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St. Thomas and the Preambles of Faith

Ralph McInerny

On several occasions St. Thomas makes use of the phrase *praeambula fidei* in speaking of those truths about God which are accessible to unaided human reason. It is well known that Thomas thought that pagan philosophers, notably Aristotle, had succeeded in proving that God exists and had come to knowledge of many of His attributes. These are the matters the phrase "preambles of faith" is meant to cover and that is why discussion of it can aspire to cast some light on the notion of Natural Theology, the culminating concern of metaphysics and thus of philosophy.

Quite apart from the centrality and importance of the matters to which the notion of "preambles of faith" attaches itself, I was drawn to it, for purposes of this occasion, because it illustrates so well, as we follow its treatment in the texts, both the precision of St. Thomas' method and the way in which a clear surface meaning of a Thomistic tenet is supported by a complex and profound infrastructure.

In order to appreciate the conception of preambles of faith, we must be clear on the difference between knowing and believing, a difference St. Thomas establishes with reference to yet other mental acts. One knows or believes that something or other is true, so I will express the object of these mental acts by the usual variable for a proposition, *p*. Moreover, I shall employ locutions which, within the walls of philosophy, are taken for ordinary English but which, overheard by those more sensitive to the beauties of the language, bring on wincing, growls and other reactions that I should on other occasions share. As philosophers, we tend to say the sort of thing I now say: let us distinguish between "knowing that *p*" and "believing that *p*." St. Thomas, in seeking to establish this distinction, introduces as well "thinking (opining) that *p*." We shall see how such distinctions and precisings are necessary in order to grasp the correct sense of "preambles of faith."

(1) When I know that *p*, *p* is true and $\neg p$ is false.

Values for *p* are such that they can be true or false. Knowledge is had when there is determinate knowledge of the truth of *p*. St. Thomas' way of expressing the matter derives from the following consideration. If *p* is either true or false, then if *p* is true, $\neg p$ is false and if $\neg p$ is true, *p* is false. Thus, Thomas will say that, in knowing, the mind assents determinately to one side of a contradiction. To know that *p* is to know that *p* is true and that $\neg p$ is false. A simple *modus ponens*: $p \vee \neg p$; *p*; therefore $\neg p$.

It is useful to make a subdistinction here in order to allow for the difference between *intelligere* (*intellectus*) and *scire* (*scientia*). In a narrow and proper sense of know, our knowledge of the truth of *p* is inferred or derived from our knowledge of other true propositions. To know something in the strong sense of the term is medi-

ated cognition. For Thomas, *scire* and *scientia* are tied to syllogism, indeed science or knowledge in the strong sense is demonstrative syllogism. Thus, knowing that *p* bears on the conclusion of a demonstrative syllogism and that conclusion is known to be true if it follows validly from the premises. Not every judgment to which the mind gives determinate assent is mediate. St. Thomas also allows for immediate or self-evident truths, propositions known to be true so soon as one knows what the constitutive terms mean. Needless to say, for Thomas, knowing what the terms mean is not simply a matter of knowing how we use words. When I know that the whole is greater than its part, this is not as such a truth about "whole" and "part" but about wholes and parts. But that is a long story.

(2) When I think (opine) that *p*, *-p* may be true.

Opinion embraces a proposition whose contradictory might turn out to be true. Needless to say, there are certain values of *p*, such that *p* and *-p* are simultaneously true. Some men have beards and some men do not have beards. In such a case, *p* and *-p* are not contradictories. We have a contradiction only when, if *p* is true *-p* is false and if *-p* is true *p* is false. When we think or opine that *p*, we do not with confidence reject as false *-p*. In the case of knowledge, whether it bears on self-evident truths or, in the proper sense of the term, on mediated or inferred truths, the contradictory is excluded. In the case of mediated knowledge, the premises provide the grounds for this confidence. Of course the object of opinion might equally well be the conclusion of a syllogism. Our opinions are based on grounds or evidence, but it is not conclusive. No doubt there are degrees of opinion. Perhaps that is why doubt can be associated with opinion.

(3) I doubt that *p* is more or less equivalent to I think that *-p*. To think that *p* is not to be completely sure of *p* and to fear that *-p* may be true. This is not to say that in thinking that *p*, one at the same time thinks that *-p*, in the sense that he thinks either is true or both are true. If one's opinion is *p* v *-p*, he does not have an opinion. A jury that reported that the accused is either innocent or guilty as charged, has not delivered a verdict.

Perhaps this will suffice as an explanation of "knowing that *p*," "thinking that *p*" and "doubting that *p*." Knowing and opining are for our purposes the important ones: they are mental acts which bear on propositions which are either true or false. To know that *p*, is to have conclusive evidence for the truth of *p* and thus grounds to dismiss *-p* as false. To think that *p* is to have evidence for *p* as true which is not conclusive and thus one cannot dismiss, on the basis of the evidence, *-p* as false. Before adding to these accounts an account of believing that *p*, let it be said once and for all that we sometimes use the term think to express what is here defined as knowing, we often speak of knowing as believing, believing as opinion, etc. What St. Thomas is doing is assigning definite meaning to these terms for a specific purpose. This process appeals to the way we talk, it is guided in part by ordinary English or Latin, but it is not an effort simply to say what such terms always and ordinarily

mean. The fact that "think" and "know" and "believe" can be interchangeable in some contexts is, while true, not helpful when our purpose is to assign meanings to the terms which will distinguish *different* mental acts; it is the mental acts which differ even though we may sometimes speak of them one way and sometimes another. Once the differences between the mental acts is clarified, "know," "think" and "believe" can be given more or less technical meanings which will cause the remarks in which they occur to diverge slightly from ordinary talk. Forgive this excursion into the obvious.

Given his quasi-technical accounts of "knowing that p" and "thinking that p," St. Thomas adds his account of "believing that p." Let us begin with the comparisons he wishes to end with.

(4) It is impossible for a person simultaneously to know that p and to believe that p.

By the same token, he will hold:

(5) It is impossible for a person simultaneously to think that p and to believe that p.

But if "believing that p" differs from both "knowing that p" and "thinking that p," belief has similarities with knowledge and with opinion. In common with "knowing that p," "believing that p" totally excludes the possibility that -p might be true. To believe that p is to have no doubt that -p is false. In common with "thinking that p," "believing that p" is not grounded on conclusive evidence or inferred necessarily from true premises. (We can add that "believing that p" is unlike the "knowing that p" which occurs when the value of p is a self-evident truth.)

(6) I believe that p is true and that -p is false on the basis of authority.

If like knowing that p, believing that p entails the falsity of -p, this is not because the believed p follows from true premises; nor is it because, as with thinking that p, that the preponderance of the evidence indicates the truth of p. I may think that Notre Dame will defeat UCLA, I may think that bald-headed males are more amorous than their hirsute confreres and in both cases marshal evidence to support my claim, even as I agree that one who disagrees is not willfully opaque, ignorant, obtuse, etc. In the case of the Trinity or the Incarnation, it makes little sense (except in a very special context, e.g. Positive Theology) to say that the evidence seems to indicate their truth. One's assent to the truth of p and rejection of -p as false is explained, in the case of belief, not by conclusive evidence, but by reliance on authority.

St. Thomas is concerned here to clarify the character of religious belief, but we can get some help by considering instances of belief which involve one man's trusting another. Let us say that, in conversation with you, I assert that p and you inquire what prompted me to do so. I answer that my Uncle Seymour told me that p. My assertion that p resides on the fact that I trust my Uncle Seymour. I did not mention him when I asserted p, in the scenario I have in mind, but, if pressed, I would admit

to the avuncular source of my confidence. Let us assign a value to *p*. Let us imagine that what I said was: people who lay ungloved hands on hot stoves get burned. You ask me what leads me to say this, I bring in Uncle Seymour. Of course I may be the empirical type and arrange for a hot stove and lay my ungloved hand upon it. More cautiously, I could secrete myself in a broom closet and observe the reactions of others who lay their ungloved hands on the hot stove. Then when you ask me why I say that *p*, I need no longer mention the sage remark of my Uncle Seymour on that sultry day so long ago. This situation can be generalized. The student of science, the specialist in a given area of a science, may assert that *p* where the value of *p* is some scientific tenet and yet reply, when pressed, that he asserts that *p* because Professor Seymour said so or because he has just read an article in the *Alaskan Journal of Tropical Studies*. In such cases, believing that *p* is in principle replaceable by knowing that *p*. Trust or faith here, acceptance of *p* as true on the basis of authority, need not be a terminal mental act but only a stage on the way to knowledge. *Oportet addiscentem credere*, as Aristotle says when translated into Latin: the student must trust or believe, but not because that is his goal. His goal is knowledge.

In the case of religious belief, believing that *p* is the acceptance of the truth of *p* (and the falsity of $\neg p$) on the authority of another and is, moreover, a mental state or attitude toward *p* that cannot, at least in this life, be replaced by knowing that *p*. When the believer asserts that there is a Trinity of Persons in the Godhead or that Christ is both God and Man, the basis of his conviction is the authority of God. As St. Thomas puts it, the formality under which assent to one side of a contradiction is given in faith is *Deus revelans*.

The distinction between knowledge and opinion, on the one hand, and faith on the other, seems to come down to a distinction between evidence and motive. When I assert a self-evident truth, the evidence is intrinsic to the judgment made. When I assert a non-self-evident truth, as I do in both knowledge and opinion, the grounds or evidence for what I assert is found elsewhere. In the case of the conclusion of a demonstrative syllogism, the premises cause or ground the inferred truth. The same is true of the object of opinion with the difference that here the premises do not necessitate the conclusion. Now if we should say that, as opposed to self-evident truths, both knowledge and opinion rely on what is extrinsic to what is asserted, the grounds of knowledge and opinion are not extrinsic in the same way that the motive of assent to a believed truth is extrinsic to the content of that truth. My knowledge that the internal angles of a scalene triangle add up to 180° may be necessarily derived from other truths and my opinion that life exists only on earth may be grounded on a great deal of information, nonetheless the dependence of either on their evidence can be said to be intrinsic in that the content of the proposition known or opined is connected with the contents of the premises. In the case of belief, the motivation for assent, namely the trustworthiness of the authority, is quite extrinsic.

As has already been suggested, we need to distinguish two sorts of belief, the

ordinary kind in which we take another's word that something is the case and the extraordinary kind where our authority is God revealing. Let us use subscripts for the two kinds. When I believe₁ that p, I accept p as true but I can in principle establish the truth (or probability) of p and thus dispense with the appeal to someone's say-so. When I believe₂ that p (where values of p would be such truths as "There are three persons in one divine nature" or "Christ has both a human and a divine nature"), I cannot, in this life, replace my belief in these truths with knowledge of them. Thus I must continue to rely on authority, on the veracity of my source, as a motive for believing them. In believing₁, so long as my mental state is one of belief, I have a motive for assenting to or accepting a proposition as true, but I have no evidence for it. The same of course is true of believing₂ with the proviso that my condition is not even in principle temporary or corrigible *in via*.

In the case of believing₁, where attention is shifted from the content of the proposition believed to be true to our motive for thinking so, we can of course inquire into our justification for thinking that so-and-so is trustworthy. It might be said that in trusting Uncle Seymour on the truth of p, we are believing both p and Uncle Seymour. This can be summed up by saying that in either kind of belief we are believing someone and something. While true, this does not preclude our having reasons for trusting our source. In the case of believing₁ that justification may be found in the fact that on many occasions in the past Uncle Seymour has told me things which I took on his say-so and subsequently found to be true on the basis of evidence. Thus the scientist might give as justification for his taking as true what he reads in a learned journal in his field the fact that often in the past he has established to his own satisfaction the truth of its reports. In believing₁ taking another's word can thus be seen to be an expedient, a *pis aller*, a corrigible condition, since in any given instance of it p can in principle be known. Of course it would be practically impossible to prove out every claim accepted on the word of others in the scientific community, say, but this is a practical and not a theoretical constraint.

(It is a simplification for present purposes to regard believing₁ as bearing on claims like scientific ones which are amenable to a proving procedure. Of course it is anything but clear that all or most or indeed many of the humanly most significant examples of our taking another's word fall under this rubric. I have addressed myself elsewhere to that issue.)

The veracity or trustworthiness of the authority on whom we rely for our conviction of the truth of p when we believe₂ that p is a different matter. It will not do to suggest that, since divine revelation has proved its veracity in the case of the Trinity, I am justified in relying on it in the case of the Incarnation, or vice versa. All instances of believing₂ are on the same footing. We may wish to circumvent the problem in one fell swoop by saying that God is truth or God is veracious and that therefore it makes no sense to doubt what God says. While any human witness is fallible and may mislead, God, being what and who He is, cannot deceive. You will notice that our conviction that God can neither deceive nor be deceived enters into

our daily act of faith. This suggests that the truth that God cannot deceive is an object of faith, is within the circle of faith, and thus cannot be external to it as a truth which might prop up or support the truths constitutive of faith. We cannot show that faith is reasonable by invoking as motivation what is itself an object of faith.

(Signs, wonders and miracles will occur to us as possible antecedents to the assent of faith; one who produces signs and wonders, who works miracles, gains our attention to what he says and his miracles may thereby serve as motives for accepting as true claims that he makes about himself. Apologists were once wont to speak of motives of credibility and discussions of miracles were prominent. For purposes of this paper, I am proceeding on the assumption that while a miracle or sign is observable by both the believer₂ and the unbeliever, the two interpret differently what they see. The believer interprets them as miracles or signs of divinity, as works achievable only by God, and the unbeliever does not. My reasons are complex but can be suggested by the following: crowds saw and heard and witnessed Christ yet not everyone believed. Of those who saw and heard and did not believe we cannot say that witnessing works they recognized as divine they did not recognize them as divine.)

These distinctions and clarifications of what St. Thomas means by knowing, opining, doubting, believing₁ and believing₂ are a necessary preliminary to understanding the conception of preambles of faith. What St. Thomas means by the phrase is those truths about God which can be known by men independently of revelation. In other words, the truths covered by the phrase preambles of faith are possible objects of knowledge. The truths of faith are not of course objects of knowledge.

(4) It is impossible for a person simultaneously to know that p and to believe that p.

This, as we indicated earlier, is a thesis St. Thomas is insistent upon. Given our distinction between kinds of believing, we can comment on this thesis in a number of ways. The thesis is true whether it is a question of believing₁ or believing₂, although with respect to the first kind of believing the thesis can be differently expressed:

(4a) It is impossible for the same person simultaneously to know that p and to believe₁ that p.

The point of this restatement is to bring out that objects of believing₁ can also be objects of knowledge. The teacher may know an astronomical truth and the pupil may believe₁ it and these two mental acts bear on the same proposition at the same time. And of course the same person can believe₁ that p at time t₁ and know that p at time t₂. The thesis expressed in (4) can be restated for the second kind of belief as follows:

(4b) It is impossible for any man in this life to know that p if p is an object of believing₂.

This is the strongest form of the thesis. With it before us, let us select as examples of preambles of faith the following: there is a God, there is only one God, God is intelligent. It is not our present concern to give, if it could be given, a complete inventory of the preambles of faith. The ones we have mentioned are more than enough for our purposes.

We have already suggested the way to distinguish preambles of faith from truths of faith. The former are those truths about God which men can know in reliance on their natural powers alone; the latter are those truths God has revealed about Himself, which would not otherwise be assented to, and which are accepted as true because He has revealed them, not because we know them to be true. (Of course we can know that certain propositions are ones [said to be] revealed by God, but this would not be to know that they are true. Those who heard Christ knew that He was claiming to be divine but this claim could not be known to be true; it can only be believed.) Relying on *Romans*, I, 19-20, St. Thomas, like many before him and many after him, notably Vatican I, held that men can, from the visible things of this world come to knowledge of the invisible things of God. At the very least this means that the world provides evidence of the existence of God. St. Thomas took Aristotle's proof from motion to be valid and conclusive. Thus, "God exists" can be a value for p , in the schema, I know that p . But is not "God exists" the obvious value for p in the schema, I believe₂ that p ? There would be no problem here if we were faced only with the thesis as expressed in (4) since that could be construed as in (4a). But clearly, it is (4b) that comes into play and it appears that St. Thomas is inconsistent with his own precisions and definitions.

In order to show that he is not inconsistent, I wish to suggest that the faith of the religious believer comprises both believing₁ and believing₂. That is, it would seem to be a common state of affairs for the religious believer, the average Catholic, to accept on the authority of divine revelation both truths about God which are in principle knowable and truths about God which are not knowable in this life. Thus, one brought up in the faith would of course believe that God exists, that there is a God, that He is one, intelligent, etc. where the *et cetera* is meant to embrace all the preambles of faith, which by definition are knowable. Nor would he normally distinguish these from such other believed truths as the Trinity and Incarnation. However, if God's existence can be known, and if a believer comes to know it, he can no longer be said to believe this truth. If he knows that God is one, he can no longer believe it. The doctrine of preambles of faith comes down to this: among the things which the Catholic believes there are some truths which are actually objects of believing₁ although the bulk of the objects of his faith are objects of believing₂. The latter are *de fide*, of faith in the strict sense, the former are actually preambles of faith since they need not be believed, being in principle knowable. When this is recognized, there is no inconsistency in saying that one who first believed that God

exists comes to know that God exists. (4a) applies to this situation; (4b) applies only to what is *de fide*.

It may be noted that other interpretations have been offered. It might be said that the proposition "God exists" does not have the same valence when it is the conclusion of a demonstration, a philosophical achievement, that it has as an object of religious faith. Pascal distinguished the God of the philosophers from the God of Abraham and Isaac, suggesting that the God who is known is not the God who is believed. The position may perhaps be developed in this way. It is clear from St. Thomas' presentation of the Five Ways that he does not consider that "God exists" would ever as such appear as the conclusion of a proof. After each proof, he observes that what has been shown to exist is what we mean by God. What functions as the subject of the conclusion of the proofs is a given description of God, e.g. first unmoved mover, first efficient cause, etc. It is this variety of descriptions which makes a plurality of proofs of God's existence possible. We can now put the Pascalian point in this way: God is known to exist or proved to be under descriptions different from those self-descriptions God gives us in revelation. And one is reminded of Bonaventure's contention that one can simultaneously know and believe the truth that God is one, a contention which, on the surface, seems to conflict with (4), (4a), and (4b). His subsequent exposition nonetheless makes clear that it is not the same truth which is simultaneously known and believed. One may know that God is one in the sense of knowing that there cannot be a plurality of gods and believe that God is one in such a way that He is a trinity of persons.

While this tack is interesting, it is doubtful that it can be wholly satisfying. If we should say, for example, that the philosopher knows that God is the first cause of all else (and those Thomists who think Thomas granted Aristotle too much in interpreting the Stagyrte to have proved this go on to say that Thomas himself has fashioned such a proof), it is difficult to see how this differs from what believers believe about God, learning their catechism at their mother's knee. True, there are those who suggest that creation is a theological concept, apparently meaning thereby that apart from faith one could not grasp the total dependence of creation on God that the phrase *creatio ex nihilo* suggests. While this contention, if true, would preserve the radical difference between knowledge and faith, the difference seems bought at too high a price. (Thomas himself seems to hold that it is creation in time and not creation *ex nihilo* which distinguishes the believer's understanding of the way the divine causality was exercised.) Indeed, it seems headed in the direction of saying that whatever philosophers claim to know about God is false.

Bonaventure's position is actually compatible with our earlier suggestion to the effect that religious faith incorporates both believing₁ and believing₂ and that it is therefore possible that some believers who believed₁ that God is one later come to know that God is one and it is the same truth which was once believed and is now known. There is an analogous situation in the moral order. Many truths of practice were revealed which in principle need not have been because they are naturally

The causal account of responsibility made an abnormal condition responsible for the death of the bicyclist. The voluntary behavior and voluntary action accounts made the motorist responsible in the normal course of events. Liability and responsibility, however, cover the same course of events except that 'voluntary human action' is the ordinary and thus legal way we talk about responsibility. To say 'we can hold only persons responsible for their actions' is close to saying 'we can hold persons responsible only for their actions.' If there are no important abnormal conditions then the sequence of events naturally follows or follows as a matter of course. This is not far removed from saying that a natural consequence is equivalent to a voluntary consequence whether intended or foreseeable. If there is nothing abnormal then assume the behavior is voluntary and thus ascribe responsibility. If there are no interfering conditions in the course of action, then assume the consequences as voluntary. Liability is not a matter of finding the facts normal, abnormal, or linguistic. For Hart 'voluntary action' has the status of a legal fiction because of ordinary language. If a man is liable for his voluntary actions, then he is liable for his normal, natural actions and their consequences. This is a clear picture of responsibility and liability without fault.

Is a voluntary agent responsible for his reasons (intentions) or his actions? Again the law does not hold a man responsible for his thoughts. But does the law hold a man responsible for criminal actions? No. Most crimes require an *actus reus* (voluntary action and a crime) plus a *mens rea* (voluntary agent and a mental element). An agent's actions are appraised in terms of his reasons. Hart overemphasizes voluntary action and its consequences because of the presumed inaccessibility of a voluntary agent's reasons to empirical inquiry. He does not want to make morality into law. Perhaps he has thrown out what it means to be a voluntary action as well, except as an empirical issue. The ascription of liability becomes equivalent to the ascription of responsibility. Aquinas might be charged with overemphasizing a voluntary agent and his reasons and deemphasizing actions because he wants to make law into morality. It is one thing to say that all crimes are sins, and quite another to say that all sins are crimes. Generally crimes and sins, however, are actions.

There is a difference between morally required actions, moral duties, and legally required actions, legal duties. All duties are acts that are required, but not all acts are duties that are required. Aquinas frequently makes the distinction between what I ought to do (*debeo*) and what I am required to do (*teneo*).⁸ From the viewpoint of the law, moral duties are perhaps what I ought to do or what is expected of me. If you say that I ought to do something, then you are persuading me, counseling me, giving me advice, telling me the best thing to do in the situation. Moral duties might imply liability to blame, but not to criminal censures, but to blame perhaps on one's record as a man.

If the law does not limit the scope of one's duties, then it is making a man legally liable to blame for what he ought to do, or what is expected of him as a man. This

would be to make a man morally responsible and therefore legally liable for far too much. Is our motorist morally responsible, does he have general moral duty, to be careful, at all times, in all circumstances, to all people, whenever he is driving his car? To say this would mean unlimited liability for all the consequences of his acts which normally follow from his driving, thus for killing the bicycler. There is a parallel between this position and Hart's. The driver is legally liable because he broke the law and given a normal course of events he is legally responsible for his voluntary actions and their consequences. The driver is legally liable because he broke the law and given a normal course of events he is assumed morally responsible as a voluntary agent for his actions and their consequences.

Aquinas' position is that if a voluntary agent is liable to blame, then the harm is his fault. At most, Hart can say that, because the voluntary action of a man broke the law, he is legally at fault—which is not much of a concept of legal fault. At the least, our moralist can say that, because a voluntary agent broke the law, he is morally at fault which is too much of a concept of legal fault. At the least, our moralist can say that, because a voluntary agent broke the law, he is morally at fault which is too much of a concept of legal fault. Aquinas claimed that the concept of a *voluntarium* also required a concept of fault in addition to the concept of a voluntary agent. The excuse of ignorance and the concept of fault are conceptually related to the concept of a *voluntarium*. A man is legally responsible only if it is his fault and thus legally liable to blame. Can we say that only if the death of the bicycler was the motorist's fault, he is legally liable to blame? The legal concept of fault (*mens rea*) is like the moral concept of fault but limited in its application to the scope of legal requirements.

Saying that the motorist is 'legally responsible' for the death of the bicycler, however, is ambiguous. This ambiguity depends upon confusing two interpretations of the mental element required for conviction of a crime. Hart wants to eliminate the *mens rea* requirement because it is morality in the law. Any inquiry into the various mental elements of the law are historical anachronisms, carry overs from moral days long gone. Glanville Williams, on the other hand, wants to keep it because it is the only moral influence on the law.⁹ Hart holds the position that words such as 'voluntary,' 'intentional' and *mens rea* words do not have any content or meaning on their own. The word 'intentional' depends for its meaning on the legal exceptions at hand such as mistake or accident. It is simply the absence of any relevant excuse. 'Voluntary' simply excludes a heterogeneous range of exceptions. To ascribe legal responsibility by using such modifiers as 'intentional,' 'reckless,' or 'negligent' is to say that the legal exceptions do not apply. If no exception, then automatically one is legally liable and consequently legally responsible.¹⁰

Aquinas' contention is that there is a difference between saying 'he is to blame for it' and 'he is legally responsible for it.' What is missing in Hart's position is an adequate account of fault. Williams, on the other hand, does recognize the inadequacy of Hart's position when he points out the "so called defense of mistake,

ignorance, is normally a denial of intention and thus a denial of knowledge and since knowledge of the material elements of the offense is part of the notion of intention, it is a denial of intention."¹¹ *Mens rea* does have content, though it does not refer to psychological episodes. An analysis of the psychological language used to ascribe responsibility indicates that excuses are parasitic on the meaning and role the psychological language plays in legal as well as in ordinary use. Excuses depend on the role of psychological language and not vice versa as for Hart. For Hart, excuses defeat faulty action sentences. If there is no excuse, then one automatically ascribes responsibility to the agent for the faulty action. This is why Hart blurs the distinction between excuse and justification in his use of 'exception,' and responsibility becomes confused with liability. Exceptions, however, are to the rules governing actions.

There is a fundamental difference between excusing and justifying. To justify is to make an action right, *justum facere*, whereas to excuse is to *ex causa*, to take the agent out of the normal course of action in which he is accused of a wrong. 'To excuse' is to say something about the agent who performs an action, 'to justify' is to say something about an action as performed by an agent.¹² The emphasis is important, otherwise we end up confusing the role and meaning of excuses and justifications and collapse them into exceptions to rules. For Hart we might as well give up all the distinctions in the psychological language used in the law which for him have become historical muddles. But which word would be the appropriate one to keep, if any: 'voluntary,' 'intentional,' or what would amount to the same 'reckless' or 'negligent'? None of these mean anything apart from the exceptions, so my guess would be that 'negligence' would best do the trick because historically it best means what Hart wants it to mean. It places the most emphasis on a faulty action to the exclusion of the agent, for 'to be negligent' means the agent unknowingly but faultily created a risk. Williams' position has the weight of ordinary language on his side, (this is not what we mean by 'excuse'), as well as the weight of legal usage. "One doesn't first look for an 'accident' or 'mistake' or any other conceptual category to negative an intention"¹³ in the law.

Due to Hart's insensitivity to the role of excuses and *mens rea* a conclusion that might follow from his position is that the presumption of intention is the only practical method by which intention can be proved. He might also say that the only way of making sense out of a man's behavior is to assume that he intended to do it. He would thus be giving in to his inability to distinguish the different mental elements in the appraisal of a man's conduct. The 'only way to make sense out of a man's conduct' might be a substitute for my lack of ingenuity which is hardly the accused's fault. This is to make an unbridgeable gulf between outer behavior and mental episodes, or at least to deny that reasons are conceptually linked to actions.

When we say that 'it is his fault' or 'he is to blame for it' is there a meaning of fault which says something about the agent who performs an action and puts the emphasis of the fault ascription on the agent who can be excused? We can thereby stress the

'it is his fault' or the 'he is to blame for it.' This is distinct from the meaning of fault which says something about an action which is performed by an author and puts the emphasis of the fault ascription on the action to which there is an exception and thereby stress the 'it (the harm) is his fault' or the 'he is to blame for it (the harm).' It is clear that neither the action sense of fault nor the agent sense of fault will do on its own because 'it is his fault' or 'he is to blame for it' is a relationship between agent and action.

Two candidates for our analysis are the fault claims that we make in our ordinary language, namely 'he has a fault' and 'he is at fault.' To say that 'he has a fault' emphasizes the agent and his shortcomings. Either the agent has fallen short of his own expectations or fallen short of society's expectations. He has also fallen short of his legal requirements. Many shortcomings are not legally relevant and an agent is not legally liable to blame: character traits, defects, flaws, instances of defective skill or ability. Falling short of our own expectations is usually not legally relevant. In the area, however, of falling short of social expectations and legal requirements, 'having a fault' is clearly important. An agent might be socially liable to blame for instances of improper care or effort, as well as instances of improper intention such as lying and cheating. Aquinas points out a sense of ignorance which does not impute fault, and a sense of ignorance which does impute fault. Not all faults are legally important. The traditional meaning of *mens rea* has tried to preserve the importance of fault by requiring it for conviction of a crime when an *actus reus* and a concurrent *mens rea* are required for being liable to blame for a crime. The legal mental elements of intention and recklessness put stress on the faulty knowledge of the agent whether it be a blameworthy desire of a consequence, or blameworthy foresight of a consequence.

To say that 'he is at fault' is to put the stress on a blameworthy action. There is an element of luck or chance¹⁴ in the performance of faulty actions. We're taking a man's action and holding it up to society's or the law's standards and saying that the action fell short. This is especially true in cases of negligence where a man need not necessarily 'have faults' such as carelessness, indifference, or inadvertance, but be 'at fault' for something which he ought to be, namely a reasonable man, as appraised by the standards of the community. By definition his faults are not legally relevant, for he unknowingly, but faultily, created a risk. Even in the case of negligence a faulty action does reflect some discredit on the doer, provided that he voluntarily performed an action.

In saying that the motorist intentionally killed the bicycler, we're putting the emphasis on a faulty intention. He has a fault, but also his action is at fault. By saying that the motorist recklessly killed the bicycler, we're putting the emphasis on his faulty knowledge. He knowingly created or foresaw a risk which falls short of community standards. By saying that the motorist negligently killed the bicycler, we are putting the emphasis on his action as being at fault, but also on the agent as being at fault, for disregarding a standard of care which he ought to have known. The

language of the law thus depends on an understanding of the delicate balance between 'having a fault' and 'being at fault.' Thus we would lose an important way to appraise the accused if we were to blur over or omit the concept of fault from the law, which concept, Aquinas' *voluntarium* tried to preserve. Williams also preserves this requirement, Hart does not.

If this conceptual link is not preserved, fault and excuse would similarly be broken. Jones sees a cigarette on the table and smokes it. He thinks it is his own cigarette, actually it is Smith's. We can say that 1) Jones intentionally smokes a cigarette, and 2) the cigarette is Smith's. If we fuse these two sentences into one, we get Jones intentionally smokes Smith's cigarette. But for this to be true Jones must intentionally smoke a cigarette which he knows to be Smith's. If he does not know the cigarette to be Smith's, the statement is ambiguous. An action is not intentional with respect to a circumstance of which the agent is ignorant. This is quite different from an action being not reckless as to a circumstance of which the agent is mistaken.¹⁵ The way that the excuse of ignorance defeats an accusation of fault makes quite a difference to the agent.

If we prefer the Hart model of exceptions over the Williams' model of excuses, the latter of which I take to be close to Aquinas', we will not realize to what extent the ascription of a faulty action sentence is nondefeasible or defeasible.¹⁶ Nondefeasible faulty actions fall below some standard or other and thus may be regrettable, defective, or improper. To say that 'he spoke falsely,' 'he drove dangerously,' or 'he killed the bicycler' may be denied by saying either that he was not the man in question, or by justifying his action as being right in the circumstances. The way that you defeat the accusation that he lied, or he drove recklessly, or he murdered the bicycler, is by an excuse. Thus a defeasible fault imputation charges that the agent is to blame for his defective or faulty action, not merely that his performance was defective or at fault. The agent is blamed above and beyond the defectiveness of his action. If this is ignored, a motorist who is driving carelessly might be convicted and thus liable to blame for intentionally killing the bicycler if this is the consequence of his carelessness, since killing might be a natural or normal consequence of carelessly driving a fast vehicle. Similarly "it is infantile logic to argue that since consequence A was intended, therefore the 'act' is intentional, and since the 'act' is intentional, there is a *mens rea* as to an unintended consequence B."¹⁷

If the presumption of these arguments is correct then the moral influence of the law is at issue here. One of the reasons the mental element is taken into account in a conviction for crime is to protect the agent who is in a position to know his reasons for acting better than anyone else, for he is not condemned to a private world all of his own. To let a rule guide the court's decision which can make all cases of negligence into constructive malice or intention, or all cases of malice or intention into cases of negligence is to do just that. The ordinary meaning of excuse also loses its moral force, for excuses say something more about an agent than about his actions. Where we place the emphasis on an action or an agent tells us a great deal about the

role that excuses play in the law. If we can't know what role an intention plays in a legal context, it would be difficult to know how to defeat the charge of a faulty intention by an excuse. 'Constructed intention' for an action or a consequence as a basis for liability to blame is defeated in a very different way from a voluntary action.

Aquinas' position leads to the conclusion that we arrive at the meaning of 'it is his fault' by way of the relationship between the two other fault claims, namely 'he has a fault' and 'he is at fault.' Unless we are clear about the meaning and role of both kinds of fault ascriptions for each mental element required for a crime and the role that excuses play for each mental element, we will not adequately know to what extent 'it is his fault,' and this will be confused with the ascription of liability. In ascriptions of liability we place more emphasis on saying 'he is at fault' and thereby measure the actions of the agent against a standard more than the agent 'has a fault.' The agent is here being accused of breaking the law. The court nevertheless tries to appraise the agent by taking other considerations into account.

The agent is presumed to know his own reasons for acting, as well as the societal rules that govern the way people act. These are the kinds of expectations that guide the activities of ordinary men in a society. There is a difference, however, between what an ordinary agent is expected to do and what he is required to do by law. The members of the court have these expectations in common with the accused. They both ordinarily play the language game of blame whether it is saying 'he is to blame for it' or 'he is liable to blame for it' for failure to comply either with social expectations or with legal requirements. The court appraises the agent's reasons for acting in terms of the legal procedures, their social expectations and legal requirements. The court similarly knows how to ascribe fault which is part of the business of everyday life whether it be saying 'he has a fault' or 'he is at fault' or 'it is his fault.' They also know what it means to be a law-abiding person and appraise themselves at least as not unreasonable men.

When the court applies these everyday concepts to the accused it is based on making a number of distinctions far more complex than establishing the legally relevant mental element. These distinctions the court can imagine, just as anyone can, as applying to themselves in a number of situations in a first person way as well as in a third person way. The court also knows in general what it means to excuse oneself as well as other people. The agent and the court as ordinary people share certain definitions and judgements as language speakers in the community as well as know how to apply these concepts to their ordinary activities as well as to others. By putting themselves in the agent's place the court can recognize the intimate relationship between fault and excuse. Saying of a man that he has a fault is a result of the court asking itself 'why did he do it?', 'what were his reasons for doing it?' The agent's goals, purposes, objectives, his motives, his habits, his values, and even the sort of person he is help to guide the inquiry in order to establish the mental element for an *actus reus*. Causal questions, control questions, awareness questions, as well as fault and excuse questions which are the kind of considerations

Aquinas had in mind in talking about the *voluntarium* are part of the fabric of law as a social human convention.

I believe in conclusion that the conceptual relationships held by Aquinas between a voluntary agent, fault, excuse and action give us a different concept of legal responsibility and liability than the conceptual relationships between cause, exceptions, and voluntary behavior or action. Hart tries to fudge on both language games by using the term 'voluntary action.' But due to his denial of any appropriate legal role for fault and excuse, his position turns out on analysis to use the language of human action. But it is floating free from the language game to which it belongs. This is not to deny that the cause, exception, 'voluntary action' language game does have its place in the law. It is simply not enough if the law, as Aquinas presumed, is to preserve its present conceptual ties to the concepts of everyday life.

The clues that the passage of Aquinas give us if interpreted in the way that I have suggested force the criminal law to either be more consistent with the moral and ordinary ideal of saying 'it is his fault' in the context of legal responsibility and liability, or it forces the law to give up this idea and change to a different picture of legal responsibility and liability. As Wittgenstein pointed out a form of life is given. Be it natural or conventional the picture which emphasizes a voluntary agent, fault and excuse is a way of carrying on in our ordinary social relationships which gives the criminal law its roots in the natural reactions of ordinary life.

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NOTES

¹ Thomae Aquinatis, S., *Opera Omnia* (Parmae: 1852-1873, Vol. VI), II *Sent.*, 22, 2, 2.

² Innocent R. Swoboda, *Ignorance in Relation to the Imputability of Delicts* (Washington, D.C.: Catholic University of America, 1941), 59-61.

³ Joel Feinberg, *Doing and Deserving* (Princeton: Princeton University, 1970), 119-151.

⁴ H. L. A. Hart and A. M. Honore, *Causation in the Law* (Oxford: Clarendon Press, 1959), 38, 134.

⁵ H. L. A. Hart and A. M. Honore, "Causation in the Law," *Law Quarterly Review*, 72 (1956), I, 90.

⁶ Feinberg, *Doing and Deserving*, 149-150.

⁷ Stuart Hampshire and H. L. A. Hart, "Decision, Intention, and Certainty," *Mind*, 67 (Jan. 1958), 1-12.

⁸ Cf. II *Sent.*, 22, 2, 1-2; *DeMalo*, III, 6-8; *S.T.*, I-II, 6, 8; *S.T.*, I-II, 76, 1-4.

⁹ G. L. Williams, *The Mental Element in Crime* (Jerusalem: Magnes Press, Hebrew University, 1965), 14-21; Cf. Colin Howard, *Strict Responsibility* (London: Sweet, 1963), 3-9.

- ¹⁰ H. L. A. Hart, "The Ascription of Responsibility and Rights," *Proc. Arist. Soc.*, 49, (1948-49), 175-90.
- ¹¹ Williams, *Mental Element in Crime*, 16; Cf. G. L. Williams, *Criminal Law: The General Part* (London: Stevens, 1953 1st ed.), 28-29.
- ¹² J. L. Austin, "A Plea for Excuses," *Aristotelian Society Proceedings*, 57 (1956-57), 1-3; Cf. Eric D'Arcy, *Human Acts* (Oxford: Clarendon Press, 1963) 77-85.
- ¹³ Williams, *The Mental Element in Crime*, 16.
- ¹⁴ Feinberg, *Doing and Deserving*, 191-92.
- ¹⁵ G. L. Williams, *Criminal Law: The General Part* (London: Stevens, 1961 2nd ed.), 140-41.
- ¹⁶ Feinberg, *Doing and Deserving*, 120-29; Cf. Hart, "The Ascription of Responsibility and Rights," 171-94.
- ¹⁷ Williams, *The Mental Element in Crime*, 73-74.