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Can Natural Laws be Derived from Sociability?

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Abstract

The article questions whether it is possible to derive natural laws from human sociability. It examines the work of Aristotle, Augustine and Aquinas, and concludes that there are certain natural laws that can be derived from the social character of human beings. Some of these hold across all societies and at all times (semper et ad semper) whereas others hold only in general but are subject to exceptions (semper sed non ad semper). The article concludes by confronting an anti-social and immoralist challenge to the idea of natural laws of sociability.

Keywords

Natural law, sociability, Aquinas, Augustine, Aristotle

I. Aristotle, Sociability and Natural Law

In the *Politics* I.2, Aristotle seems to derive natural laws from human sociability. The human being, we are told, is gregarious to a greater extent than any other sociable animal, and the *polis* is analytically prior to either the household or the individual. For both of these are radically incomplete and undeveloped without society, and are unable to attain even very modest human goods that are required for a genuinely human life.[1] Above all, the political state is founded upon law and justice, without which human beings are the most depraved of animals.

Law, then, is natural to human society, and thus naturally a part of the human condition. But the law that is spoken of here is *positive law*, the rule of the 'great benefactor' by whose actions (undisclosed by Aristotle) human beings are brought into a society. Furthermore,

[1] Aristotle, *Pol* I.2.1235a.

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Aristotle's subtle analysis of the political state and — by extension — peaceful sociability leaves intact all of the ethical problems at the focus of ancient ethics, beginning with the question of why one ought to have any concern for the wellbeing of others, and by what means the gap between one's own self-interest and the interest of others is to be bridged.[2] Such explanations are to be found elsewhere in the *Nicomachean Ethics*, in its treatment of friendship [*philia*]. Here one's actions for the sake of the other aim to increase the wellbeing of the friend, whose wellbeing is a part of one's own wellbeing.[3] But Aristotle extends the notion of *philia*, by *pros hen* homonymy, to cover good relations between citizens, not only friends.[4] Such relations, of friendliness rather than friendship, are the basis of justice in the community. Yet nowhere in the ensuing miniature treatise on politics (VIII.8-11) does Aristotle ever state the principle by which concern is to be manufactured for fellow-citizens who lie outside the family circle.

The most that Aristotle will say is that concord, which lawmakers aim above all to secure, is more akin to friendship than to justice, so that it is through a form of friendship that the community is held together. Indeed justice in the community requires an element of friendliness.[5] This may seem to mix interested and disinterested forms of relationship, but Aristotle perhaps has it in mind that human societies are made up of smaller kinship units, families and circles of friends: hence human communities are not made up of sheer individuals who meet one another as equals and strangers in all their interactions. But Aristotle famously denies the suggestion, encountered in Plato's *Laws*, that all things are to be shared with all people: for it is possible to share one's own material wealth and stores of affection with only a few.[6] So Aristotle falls back on an alternative proposal, that concord consists in an agreement in judgments, the agreement

[2] This is the problem alluded to in *Nicomachean Ethics* [hereafter *NE*] VIII.3.1156b; on human sociability see e.g. *NE* I.7.1097b.

[3] *NE* VIII.5.1157b: 'By loving their friend they love what is good for themselves, for the good person in coming to be a friend, comes to be a good for his friend . . . '

[4] Ibid, VIII.1.1155a; VIII.4.1157a; on the use of *pros hen* analogy see VIII.6.1158b; VIII.4.1157a-b. Aristotle recognises three types of friendship, that based on pleasure, that based on usefulness and that based on goodness (the virtue of friends); the use of *pros hen* analogy can extend the meaning of any (or all) of these three types, but in the current context refers to the third kind, that of goodness: see e.g. *NE* VIII.6.1158a-7.1159a.

[5] Ibid, VIII.1.1155a.

[6] Ibid, VIII.1158a; Plato, *Laws* V.739b-d. Thus as the proximity of relationship intensifies, in a sense, the demands of justice, so is it more dreadful to defraud a friend rather than an ordinary citizen, or to aid a stranger rather than one's brother: *NE* VIII.9.1160a. For more is owed (as a matter of friendship) to the one rather than the other. But these and other cases lie within a domain in which the discussion can be only as precise as its subject matter: IX.2.1165a; I.3.1094b.

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of mind with mind, in relation to matters of communal importance.[7] Prime among such matters are the determination of how offices and advantages are to be shared, and what is just and beneficial.

But the association of justice with the 'political friendship' between citizens does not amount to the derivation of natural laws from human sociability. For Aristotle's ethics neither embodies nor contains a natural law theory in the proper sense. Natural law, in the proper sense of the term, is both a theological and a secular idea. As a theological idea, natural law is (as Thomas Aquinas says) 'a participation of eternal law in the rational creature':[8] reason's revelation of knowable truths of eternal law variously additional to or confirmed by divine law, the part of eternal law that is directly revealed by holy texts. As a secular idea, natural law explains how pagan philosophers to whom the divine law was never revealed were nonetheless able to arrive at authentic moral truths: not indeed by mere accident or coincidence but on the basis of reason's operation.[9] A natural law theory can explain the work of a philosopher who has no natural law theory. For Aristotle does not possess, as Aquinas does, the idea of an external (as well as an internal) principle by which God moves human beings to the good,[10] but takes as his starting point a discussion of voluntary action and rational choice [*prohairesis*].[11] Aristotle's ethics may be teleological and functionally ordered to characteristic forms of human flourishing, but it lacks the reality of providence in that ordering, and the careful dissection of inclinations that one finds in Aquinas. Indeed, Aristotle discussed both ethics and politics without invoking theological considerations.

In order to consider the derivation of natural laws from human sociability, it is therefore necessary to look beyond Aristotle to the Christian philosophies of the ancient and medieval periods. Specifically, it will be instructive to examine the works of St Augustine and St Thomas Aquinas. Although drawing upon elements of Aristotelianism, neither philosopher merely baptises Aristotelian thought. The present concern, however, is not with the history of ideas, but with the substantive question of how, or whether, natural

[7] *NE*, IX.6.1167a-b.

[8] Aquinas, *Summa Theologiae* [hereafter *ST*] I-II.91.2c & ad 2.

[9] See Romans 2:14: 'when Gentiles, who do not have the law, do by nature things required by the law, they are a law for themselves . . . ' Two further purposes may be mentioned. First, natural law explains how, despite cultural differences, all political communities share certain core values (such as protection of the innocent, punishment and restraint of criminality, etc.); second, it explains the basis on which one should obey the positive state law (even when unjust), and on which it should, in severe circumstances, be disobeyed: see esp *ST* I-II.96.4c & ad 3; I-II.97.1 ad 2; II-II.117.6c.

[10] *ST*, I-II.90; I-II.63.1c & I-II.63.2 ad 2.

[11] *NE* III.2.1112a; also V.1.1129a (the discussion of justice will follow the same method as that relating to other virtues).

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laws can be derived from human sociability. Historical comparisons will therefore be explored only where they are useful to the primary question.

The philosophies of the Christian writers on law and politics were concerned with the realities of both heaven and earth. One of these realities in particular dominated the Biblical and philosophical tradition down to Thomas Aquinas: the reality of humankind's sinfulness. Nowhere is this more evident than in the writings of Saint Augustine.

II. Augustine's View of Sociability

In the famous nineteenth chapter of *De Civitate Dei*, Augustine offers the second of two general definitions of a 'people'. A people is:

> a collective multitude of rational beings [*coetus multitudinis rationalis rerum*] united together by an agreement to share that which they love. Thus if we wish to discover the character of any people, we only need to examine the things they love. If it is a collective multitude of rational beings, not of animals, and is united by an agreement to share what it loves, then it is not unreasonable to call it a 'people'. But the better the objects of this agreement, the better the people, and the worse the objects, the worse the people.[12]

Here Augustine suggests that it is too great an expectation to expect *laws* to derive from the formation of a political community. Instead one can only expect a degree of consensus on goals worth pursuing.[13] Implicitly, a shared consensus on goods to be pursued is also a shared consensus on evils worth avoiding: in a good community, the objects of aversion would include, for example, sins against justice, harms toward the innocent, internal lawlessness and so forth. But not all communities are good communities, and Augustine clearly regards it as possible for a community to accept as a ground of its association precisely those evils that the good community seeks to exclude: even the political arrangements of the greatest state (Rome) resemble the internal, misdirected justice of a criminal organisation.[14]

Two considerations are worth mentioning in relation to the foundational consensus on objects of love. The first is that it is not a sociable impulse *to love one another,* but an agreement in choice about loving 'external' goods such as material wealth, honour, etc.

[12] Augustine, *De Civitate Dei* XIX.24. According to the first definition, where there is not justice, there is no association united by a common agreement as to what is right, and therefore 'no commonwealth': *De Civitate Dei* XIX.23. Cf Aristotle, *NE* VIII.9.1159b: 'There seems to be some kind of justice in every community, and some kind of friendship as well.'

[13] See O O'Donovan, *Common Objects of Love* (Grand Rapids: Eerdmans 2002), 21.

[14] *De Civitate Dei* IV.4.

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or indeed God Himself. The second consideration is that this choice is not entirely free, for it is directed to what is *valuable* in those objects, whether this be a false value or a real value. But false values can only be loved (that is, regarded *as values*) under the aspect of goodness: they are not loved and grasped as evils per se. Nor is love arbitrary: for love does not place value into the object, but depends upon the value of the object. Love is in this sense a (re)cognition of reality, and better or worse loves are differentiated by virtue of the adequacy of their grasp of these realities.[15]

For example, material goods are not to be sought and celebrated as the ultimate end, but (as Aristotle observes) they are nonetheless indispensable in assisting the virtues, as well as bodily health: for one cannot give to others except by having property to give. There are — always — genuinely good properties of material goods, even on those occasions when they are chosen wrongly, for the wrong purpose, with the wrong intention, on the wrong occasion, and so forth.[16] Our grasp of such goods is far from unproblematic. Here is an instance of the Aristotelian principle that one should not look for more precision than is inherent in the subject-matter: for general rules will yield only general conclusions. Indeed at the level of particular situations, the grasp of good and evil, like the attribution of praise or blame, is often a matter in which reason must be guided and supplemented by perception.[17] For most situations, and most choices, will involve an option for good in which some evil consequences are mixed.

Elsewhere in the same passage as his definition of a 'people', Augustine says that the welfare of a people is its degree of internal peace and harmony [*concordia*]. Peace is the highest good: both the peace in eternal life, and peace in earthly affairs.[18] Even those who wage war and indulge in acts of violence desire peace as the end of action, however misguided, selective or generally insufficient their notion of peace may be.[19] Peace between human beings is 'an ordered agreement of mind with mind',[20] not merely of bodies in proximity.

[15] See O'Donovan (n 13), 23. See also Aquinas, *ST* I-II.94.2c: 'being' is the first thing the mind apprehends, and is included in everything else the mind comprehends, including (therefore) 'good', the primary term of practical reason, and *bonum est quod omnia appetunt.*

[16] *De Civitate Dei* XIX.3: 'There can be some kind of life without virtue, whereas virtue cannot exist without life . . . '

[17] *NE*, II.9.1109b: 'How far and to what extent someone must deviate before becoming blameworthy it is not easy to determine by reason . . . [S]uch things are particulars and judgment about them lies in perception.' See also *De Civitate Dei* XXI.5 (on miracles).

[18] *De Civitate Dei* XIX.11; XIX.14.

[19] Ibid, XIX.12.

[20] Ibid, XIX.13.

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When human beings follow their natural instincts, 'the whole use of temporal things is directed toward the enjoyment of earthly peace.'[21]

The truth of this natural tendency toward peace can be demonstrated by considering the situation in which a community lacks peace. In such a situation, there can be no possibility of safely pursuing any other human good, for one's basic existence is under constant threat. There can be no common goods, such as laws or public order, for even the most tyrannical government is incapable of imposing peace without gaining the organised cooperation of members of the community (including by fear). There can be no collective endeavours, such as the joint effort to build commodious buildings, or to grow and distribute food. There can be no professions, such as the practice of medicine or of teaching. All such human goods would be limited to the efforts of households which, as Aristotle remarked, are in these crucial respects insufficient to provide for the flourishing of their members.[22]

Peace represents a natural tendency because it forms a universal end for all persons. Precisely because it is necessary for every end, peace is objectively valuable for every person, without exception, both (1) irrespective of their conception of further ends to be pursued, including the ultimate end; and (2) even if they fail to perceive its importance. For peace is valuable even to the wicked person who fails to recognise it as an essential element of the situation they seek to bring about. Even the most aggressive person requires rest from contention the majority of the time. But peace is in its proper nature a *common* good, for it can be brought about only by the common will and effort of all persons within a community, or faction, or group, or household . . .

Augustine was well aware that peace (in the sense of an imposed or coerced lack of disorderly contention, i.e. corrupt peace) could stem from a wicked person's inordinate love of self. In such a case, the wicked person does not value others except as means to the fulfilment of private goals. The peace that is achieved is good only in a heavily reduced sense. But Augustine regarded the root of *true* peace as love of neighbour, the love that extends beyond oneself to embrace the other as (in Aristotle's words) 'another self'.[23] This is the peace of orderly harmony [*ordinata concordia*] with all others; and the *precepts* which bring such order about are first, that of avoiding harm to others, and secondly that of doing good to others so far as this lies within one's powers.[24] These precepts arise out

[21] Ibid, XIX.14; for the qualification see e.g. XIX.13.

[22] Aristotle, *Pol* I.1; also Hobbes, *Leviathan* XIII.

[23] See principally Aristotle, *NE* IX.9.1170b; Augustine, *De Civitate Dei* XIX.14; Epistle 137, §17; *De Doctrina Christiana* I.8, 26-27 & 35.

[24] *De Civitate Dei* XIX.14.

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of the human being's sociable nature,[25] first of all in households, to which one's mode of belonging is both natural and societal.[26] From this domestic peace there comes, by an extension of that internal harmony of households, a civic peace, a wider sharing in the human goods that flow from orderly relations with others.[27] But Augustine leaves it in no doubt that the social instinct of human beings, a sociability in any case lacking in all except the wise,[28] is hardly strong enough to form a stable basis for civic peace. For human affairs are not settled; they ever consist of 'suspicions, hostilities and war', causing enmity even within households.[29] Thus the true source of those precepts of peaceful order is that of God's love, commanding us to love ourselves for the sake of God who created us, and to love our neighbours, also so created, as we do ourselves.

Yet, Augustine does not mean to suggest that civic peace is only a possibility for those who have accepted the mandates of divine law. Christian polities do not have a monopoly on public order. He therefore begins the discussion by observing that he will rely not only upon divine authority but will also, 'for the sake of unbelievers,' make 'as much use of reason as possible.'[30] This, however, will be public peace in a reduced and qualified sense: a 'clever pretence' of peace amid 'common evils' that ever threaten the community;[31] a form of *disciplina* rather than *concordia*.

The twin precepts of peace (avoidance of harm and doing good) are nevertheless clearly expressive of natural laws. For peace in the central, proper sense is *natural*, and remains so even if the evils of war or disordered peace are the normal experience of human communities. The central case of a concept is formed from the

[25] Ibid, XIX.5. See especially XII.28: 'There is nothing as social by nature as [the human] race, but as discordant [i.e. anti-social] through its vice.' See also RA Markus, S*aeculum: History and Society in the Theology of Saint Augustine* (Cambridge: Cambridge University Press 1970) 95 & generally Appendix B. The furthest Augustine will go in the direction of natural human sociability is his recognition of the household as the basis for community: 'Every human being is part of the human race, and human nature is a social entity, and has naturally the great good and power of friendship. For this reason God wished to produce all persons out of one so that they would be held together in social relationships not only by similarity of race but by the bond of kinship. The first natural bond of human society therefore is that of husband and wife . . . ' (*De Bono Coniugali* 1)

[26] Ibid, XIX.14.

[27] Ibid, XIX.16; *De Bono Coniugali* I.

[28] *De Civitate Dei*, XIX.5; see also XIX.3.

[29] Ibid.

[30] Ibid, XIX.1. Augustine's response to his sources is measured: 'we ought to judge according to the facts of the case rather than attaching great significance to knowing what other men have thought of them' (XIX.3); they 'endeavour to contrive for themselves an entirely false happiness by means of a virtue that is as false as it is proud . . . ' (XIX.4); see also XIX.1; XVIII.41; VIII.7-8; Epistle 1.

[31] Ibid, XIX.5.

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most flourishing and developed incarnation of the concept, not the case which is most prevalent or in potentia. It remains not as an ideal but as a fully realisable standard even in the midst of deflecting actions, unreasonable motivations and improper aims. Furthermore, 'nature' has not permitted human beings 'to wander too far from the path of truth',[32] for human inclinations impose constraints on practical reason's ability to desire false goods (i.e. actual evils) or to avoid supreme good. It is possible to perpetuate such errors only by failing to subject the underlying thinking to the unrestricted flow of reason, by cutting off practical reason's deliberations prematurely. The person who so ignores or desists from practical reason's efforts succumbs to 'an endless, aimless evil', a loss of boundaries characteristic of the life of an outlaw rather than a civilised person.[33]

Such evil consists in, and is consented to by, a view of the human mind as the source and meaning of value; and it is avoided by the realisation of the mind's restraint by the realities known as natural laws: its intellection of forms of good and evil, and of precepts of right and wrong to be applied in action. A mind thus constrained by natural laws can be said to be in good order, in harmony with itself and with reality, as opposed to a mind devoted to conflicting pleasures and experiencing mere episodes of fulfilment.[34]

Natural law precepts are not, then, (as Hobbes later said) mere 'theorems of prudence': moral theory cannot rest only upon enlightened self-interest or self-interest modified by the interests of others. Such reciprocity is not morality, but merely the realisation that I cannot have the things I want unless you have them too. Moral wrong is not simply the loss to one's interests rebounding from bad deeds to others. Moral wrong is the estimation of truly bad things as good, and correspondingly of evil actions as to be pursued, in defiance of the true order of nature — such as *pleonexia*, or contention with one's neighbours — in which the mind consents to the demands of a perverted will.[35] Faced with the possibility of evil choices, the natural law precepts (of avoiding harm and doing good) both enable reasoning (by affirming the existence of human goods) and constrain reasoning, by exposing bad suggestions, resisting base pleasures, and withholding consent to evil indulgences.[36] They suggest, too, further

[32] Ibid, XIX.1.

[33] Plato, *Gorgias* 507e.

[34] On the tendency of false goods to clash with one another see Aristotle, *NE* I.8.1099a.

[35] See Augustine, *De Libero Arbitrio* III.17.48.167; *De Civitate Dei* XI.17 & XIX.4; *De Natura Boni* IV.

[36] On the threefold nature of sin (suggestion, pleasure, consent) see Augustine, *De Sermone Domini in Monte* I.12.35.

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requirements of peace, such as justice, even if a properly just peace is unavailable in present life.[37] For there can be no stable peace without a measure of justice. It is such natural laws that are at work in Socrates's answers to the careless ripostes of Callicles in Plato's *Gorgias*, that it is better to suffer injustice than to do it.[38] For one should be prepared to forego one's *legal* right to repayment by a debtor if pressing one's claim would cause his or his family's destitution.[39]

These doctrines concerning right, justice, harm and evil must be intelligible and true (as they are) independently of the subsequent description of eternal damnation and reward. A person who leads a blameless life only out of fear of hell, or desire for paradise, has fundamentally mistaken the nature of their true good.[40] Against this 'selfish' desire for reward there is the recognition of the intrinsic goodness of *all* steps leading toward paradise, including good relations with one's neighbours. True neighbourly love cannot be selfish: for it is to 'draw [one's neighbour] to that good which you are yourself pursuing.'[41] Here is Augustine's clearest derivation of natural laws from human sociability, for it is (he says) from this precept of neighbourly love that 'proceed the duties of human society,' duties that encompass both body and soul.[42]

Human sociability is both a fact and a norm: it is at once an extant condition, grounded in powerful human inclinations, and an ideal condition that is only partially instantiated in present reality. Augustine's derivation of natural laws of peace from our sociable nature is a derivation from the *norm* of sociability, specifically the commandment to love one's neighbours. This commandment would not make any sense were it not that human beings possess powerful social inclinations, but it remains that human beings also possess sinful inclinations (especially Aristotle's *pleonexia*) that are capable of qualifying or overpowering the disposition to act sociably. The root of all such inclinations is the sin that Augustine condemns above all: pride [*superbia*].[43]

This raises questions, not directly confronted by Augustine, of what it means to possess natural laws, and to what extent they can

[37] *De Civitate Dei* XIX.27.

[38] *Gorgias* 469c; 527b.

[39] For the underlying principle (as an instance of *scandalum*) see *ST* I-II.96.4c.

[40] This approximates to the life lived for the sake of honour, described by Aristotle in *NE* I.5.1095b, and rejected by him as disclosing the ideal or best mode of life. See Aquinas, *De Malo* II.4 obj 2.

[41] Augustine, *De Moribus Ecclesiae Catholicae* I.26.49.

[42] Ibid, I.27-28.

[43] See also Aquinas, *ST* I-II.84.2; also I-II.74.4c & ad 4: the cause of all sin is inordinate self-love.

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be eradicated by the influence of sin: matters much discussed and illuminated by Thomas Aquinas.

III. Aquinas on Natural Law and Sociability

The term 'natural law' appears, possibly for the first time, in Plato's *Gorgias*, where Callicles observes that 'nature and law [*physis* and *nomos*] are for the most part opposites.'[44] In the ensuing discussion, Socrates replies that not all law is conventional, for some laws have the force of nature.[45] The remark is reminiscent of Aristotle's warning in the *Ethics* that the variation in political science's determinations of what is just makes it *seem* as though truths of justice and ethics exist only by convention and not by nature.[46] This assertion that some ethical truths exist 'by nature' is crucially ambiguous and hence not very satisfactory. For it presupposes (without illuminating) some division between human actions that are expressive of, in accordance with, or 'by' nature, and human actions that are contrary to nature.

Now, Aquinas indeed recognises quite readily that most people and their actions are depraved and unreasonable.[47] And to be depraved or unreasonable is to have a disposition that is contrary to what is in accord with one's nature.[48] But the 'nature' of a being is the form by which it derives its species, which in the case of human beings is the capacity to be rational. Thus:

> consequently, whatever is contrary to reason's order is properly contrary to the nature of the human being precisely as a human being. And whatever is in accordance with reason is in accordance with the human being as a human being ... Therefore human virtue, which makes a person good and their works good, is in accordance with human nature just so far as it is it is in accordance with reason, whereas vice is contrary to human nature just in so far as it is contrary to reason's order.[49]

At the same time, human beings also possess a sensate nature ('for it is through the operation of the senses that the human being achieves acts of reason'), and the prevalence of vice is explained by the fact that more people follow the inclinations of sensate nature

[44] Plato, *Gorgias* 482e-483a.

[45] Ibid, 489a-b; also *Laws* I.626a.

[46] *NE* I.3.1094b.

[47] *ST* I.113.1c; I-II.9.5 ad 3; I-II.93.6c; I-II.94.4c; I-II.94.6c; *SCG* III.160.

[48] *ST* I-II.71.2c; see also Augustine, *De Libero Arbitrio* III.13: 'every vice, simply because it is a vice, is contrary to nature.'

[49] Ibid; also I-II.85.4c ('every being and every good itself depends on its form, from whence it derives its species.')

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than follow reason's order, in other words they fail to complete the train of reasoning that leads to right action.[50] This is the case in sins of lust, for example,[51] *all* of which can be called unnatural.[52]

Aquinas does not conceive of sensate nature as inherently disordered, for the will (intellectual appetite) moves in us precisely through the sensory appetite.[53] Thus, just as there are evil desires [*concupiscentiae pravae*] which are opposed to correct reason, there are also good desires [*concupiscentiae bonae*] that oppose perverted reasoning.[54] Such good desires are the impression of eternal law on the rational creature, for human beings share with other animals a certain 'participation of eternal law', insofar as they acquire their respective inclinations to their proper acts and ends, and are in this sense subject to God's providence. But unlike other animals, human beings are (to some extent) 'provident for themselves and others', and *this* mode of participation 'is called natural law': natural reason's capacity to discern good from evil.[55] Such principles are *sometimes* called upon directly in practical reasoning, but are at other times present in reason only dispositionally [*habitualiter*].[56]

Every person possesses knowledge of the most general [*communissima*] precepts of natural law: these are inscribed onto the mind, as a kind of dispositional potency [*quasi habitus potentiae*], in the same way that principles of geometry are inscribed onto the mind of one who understands geometry.[57] They cannot be erased from the mind of any person, except for the knowledge of how they apply in specific cases, where reason is impeded from applying them due to desire or passion.[58] But the immediate conclusions from those general precepts — natural law's secondary principles — can be erased from the mind, either by one's own evil tendencies or by vicious customs.[59]

These foregoing propositions can be summarised by stating that human beings' rational (and to some extent sensate) nature is a source of natural laws. The good of human nature, its natural inclination to virtue, is not extinguishable even when it is diminished through sin:

[50] Ibid, I-II.71.2 ad 3.

[51] Ibid, II-II.154.1c.

[52] Ibid, II-II.154.11c.

[53] Ibid, I.20.1 ad 1. It is in this sense unlike divine will.

[54] Ibid, II-II.155.1 ad 2. Concupiscence itself is not inherently out of order: I-II.82.3 ad 1; I-II.85.3 ad 3. See also I-II.77.6 ad 2 ('Good emotion following on the judgment of reason increases merit.'); also I-II.46.5c.

[55] Ibid, I-II.91.2c; I-II.93.5 ad 1.

[56] Ibid, I-II.94.1c; a disposition known as *synderesis*: I-II.94.1 ad 2.

[57] *Sent* II.24.2.3 ad 3; *ST* I-II.93.2c.

[58] *ST* I-II.94.6c; also I-II.85.4c.

[59] Ibid.

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Aquinas uses the analogy of halving a substance, halving that half and so on, indefinitely.[60] Even the damned continue to possess this natural inclination to virtue, though they do not act upon it.

As Aquinas implies here and elsewhere, human nature is best understood by considering its characteristic inclinations, as well as the objects or ends of those inclinations: that which fulfils them. Indeed, there is an order to the precepts of natural law that follows upon the order amongst natural inclinations. Reason does not impose this order, but discovers it; for 'all those things to which the human being has an inclination *are naturally apprehended by reason* as being good ... and their contraries as evil...'[61] For present purposes it is the second- and third level inclinations that are important. Second level inclinations (shared with all animals) include the conjugal union of male and female, and the raising and education of children. Third level inclinations (peculiar to human beings as rational creatures) include living in society with others, and thus the avoidance of offence to others with whom one ought to live in harmony. Both sorts of inclinations are social inclinations. They pertain to the way in which a person is united with others as part of a human community.

In virtue of second level inclinations, human communities do not come together as a collection of unrelated individuals, but are instead structured and composed of family units, households and broader kinship groups.[62] Such units 'provide what is necessary for life';[63] they are utterly essential and their functions cannot be successfully usurped by the state. They provide the foundations for a good life, and thus the human being benefits from (and is subject to) domestic governance: such modes of governance therefore have the status of natural laws. These laws are a kind of domestic prudence,[64] with the purpose not only of managing household expenditures[65] and procuring the necessities of life, but also ruling the actions of the members, e.g. by distributing works.[66] In this way, the family is ruled 'by the law and precept' of the head of the household,[67] who has the natural authority to inflict minor punishments.[68] The end of all

[60] Ibid, I-II.85.2c & ad 1: the very *root* of the inclination is neither diminished nor destroyed.

[61] Ibid, I-II.94.2c.

[62] Aquinas, *Sententia Libri Politicorum*, Proemium §4 ('... among [human] societies there are various degrees and orders...'); also I.1.13.

[63] Aquinas, *Sententia Libri Ethicorum*, I.1.4.

[64] Domestic/civil rule as opposed to despotic: *Sent Libri Pol* I.1.13.

[65] *ST* II-II.50.3c.

[66] See *De Regno* I.2.14; *ST* I-II.97.4c.

[67] *Sententia Super Metaphysicam* XII.12.2633-34.

[68] *ST* II-II.65.2 ad 2.

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such measures is the common good, or collective flourishing, of the household.

The sociable instincts that give rise to these laws and duties are stronger within the family than within the state as a whole. The chosen union between man and woman reveals that human nature is more conjugal than political.[69] Children (ought to) love their parents with a special love that comes from their generation and nurturing,[70] whereas parental duties pertaining to the raising of children last for an entire lifetime and not only until the children become properly independent.[71]

Familial bonds in this sense represent a special case of the general love of neighbour that Christians are commanded to exhibit. But there is a more general inclination, at the third level, to live peacefully in society with others, and from this derive natural laws, amongst which is the duty to avoid offences against those with whom one must live in harmony [*debet conversari*] 'along with other things pertaining to this inclination.'[72] Aquinas several times repeats Aristotle's dictum (which he takes Aristotle to have proved) that the human being is a political animal fitted for life in society.[73] But elsewhere he seems to suggest that the corresponding natural laws are among those that may be lacking in one who fails to follow reason's order: for as he cautiously observes, 'there *ought to be* [*debet esse*] a threefold order in human beings':

> the first [is] in relation to the governance of reason, so far as all our actions and emotions ought to be commensurate with reason's governance. Another order relates to the rule of divine law, by which the human being should be directed in all things. And if the human being were naturally a solitary creature, this twofold order would be sufficient. But because the human being is by nature a political and social creature ... a third order is necessary by which a person is ordered to other persons with whom he must live.[74]

Therefore, although a person necessarily possesses the inclination to live peacefully in society, they may lack the orderliness by which they are meant to relate to others. This is one way of being unreasonable; for 'the first order encompasses the [second and] third order, and exceeds it, because in all matters by which we are directed to our neighbour, we must be directed by the order of reason itself.'[75] Aquinas closes the reply by specifying what it means to live in peace

[69] *Sent Libri Eth* VIII.12.1720.
[70] Ibid, VIII.12.1711.
[71] *ST* supp 67.1c.
[72] Ibid, I-II.94.2c.
[73] See e.g. *Sent Libri Pol* I.1.36; *ST* I-II.72.4c; *SCG* III.117.
[74] Ibid, I-II.72.4c.
[75] Ibid.

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with others: 'by the theological virtues the human being is directed to God, by moderation and fortitude to himself, and by justice to his neighbours.'

Thus Aquinas divides the natural laws relating to social peace into two cardinal precepts: (1) refraining from offences against other persons; (2) the requirement to observe justice. Under the first of these precepts, there is obviously the duty to avoid criminal acts, such as theft or violent contention, including evading the just punishment of the state by, for example, absconding or denying one's crime.[76] More broadly there is the requirement not to undermine or act against the public safety. The age-old positive laws prohibiting crimes of violence and serious forms of dishonesty are thus declarative of natural law, as even the positivist philosopher Hart appeared to recognise.[77] The demands of justice, under the second precept, are yet more wide-ranging. Aquinas observes that acts of justice are directly related to the maintenance of peace between persons, for it leaves each person undisturbed [*quiete*] in their possessions.[78] To refrain from that which belongs to another is precisely to leave them in peace. Conformity to justice is a direct contribution to the common good,[79] specifically to the common good of peace. This is evident from the acts of justice that Aquinas specifically mentions, including: honouring one's debts, refraining from harms against another's person or property, not defaming or bearing false witness, and avoiding acts that threaten the community.[80]

It is frequently overlooked — although mentioned by Grotius[81] — that a citizen's just acts are the means by which each citizen assists the state government in protecting the common good and suppressing evils. (For example, payment of taxes may enable the state to employ a police force or standing army to defend against internal and external threats to peace). But no less important is each citizen's willingness to forgive minor injuries, or foregoing their rights in the face of minor infractions, so that the state is not overwhelmed by an impossible number of complaints, and justice can continue to be effectively administered.[82]

In addition to these precepts, there is another aspect of the human instinct of sociability that Aquinas does not mention, but which is every bit as important as the requirement to observe justice. This is the willingness of all citizens to trust one another sufficiently to enter

[76] See e.g. *ST* II-II.38.1 ad 3 (on perjury and false suits).
[77] See Hart, *The Concept of Law* 2nd edn (Oxford: Clarendon 1994) 193ff.
[78] Aquinas, *SCG* III.34.2; also *ST* II-II.29.3 ad 3.
[79] *ST* II-II.58.6c.
[80] Ibid, I-II.100.5c; II-II.122.6 ad 2.
[81] See Grotius, *De Iure Belli ac Pacis* I.2.7(9); I.3.6.
[82] *ST* I-II.96.4c.

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into economic agreements and relationships, for example contracts of employment. For a great many common goods within a community depend at least to some extent on private economic activity. Goods such as health care and education, road building and communications, even where state-funded, arise from voluntary transactions, which cannot exist without ordinary trust between persons.[83] Civil remedies testify to the importance of this kind of economic activity, for acts that disrupt or threaten social peace are not limited to matters covered by the state criminal law. The character of this trust is anchored in each person's internalisation of the *virtue* of justice, the steady *disposition* to act according to justice's precepts without coercion.

Thus far, these conclusions are available to any reasonable person who takes the time and care to reflect upon the basic needs of society. But for Aquinas these natural laws are not the only sources of just rules and civic peace. For in addition to lawful obligations of peace and justice there are also the specifically Christian moral obligations of neighbourly love. Natural law directs every person to deal justly with others, by rendering to each person what is owed, and by refraining from that which is theirs.[84] As a kind of *ius*, natural law promotes peace by restoring or repairing the just situation between individuals. In so doing it calls upon the virtues, principally justice and prudence, to direct our actions to the correct ends. The theological virtue of charity [*caritas*] is concerned with the requirement to love neighbours and enemies even extending beyond justice. For charity requires (a) the necessity of wishing for, and where possible assisting in bringing about, eternal good to one's enemies as their ultimate end; (b) the excellence of wishing for, and if possible assisting in, temporal flourishing for one's enemies, and the necessity of not wishing for or conspiring to bring about their ruin; and (c) the forgiveness of wrongs for which it would not be contrary to justice to seek redress.[85] Charity is not thereby contrary to justice, for it infuses all of the natural virtues by directing their works to the highest end of friendship with God: it is the mover, form and end of every virtue.[86] It transforms temporal justice into supernatural justice.

Christian charity not only demands suitable inward states (such as avoidance of anger, peaceful intentions toward others, etc) but also

[83] Nevertheless, Aquinas states that 'The human being is not ordered to the political community in all that he is and has, so it ought not to be the case that his every action has merit or demerit in relation to the political community': *ST* I-II.21.4 ad 3.

[84] Ibid, II-II.57.1c.

[85] See *Sent* III.30.2c; *ST* II-II.23.1 ad 2.

[86] *Sent* III.27.2.4.3c; also *ST* II-II.117.6; *Sent* III.30.5 ad 3; *ST* II-II.114.4; Augustine, *De Civitate Dei* XIX.14.

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the performance of outward acts.[87] It involves giving the benefit of doubt to others, being ready to forgive, as well as the courage to oppose injustices even when one is not personally affected by them. It is charity also that causes one to risk one's life in order to save another. These instances of charity are not supererogatory, additional precepts, but counsels of perfection, i.e. intimations of what must be done in order to *perfect* one's (already due) lawful duties.[88] They represent a deepening experience of natural human inclinations of sociability.

IV. Exceptionless Norms

Having pinpointed some natural laws that flow from human sociability, it is necessary to ask whether such norms hold in all cases, or are otherwise perennial features of a political community, and to defend them (briefly) from an attack on the very possibility of such norms. It will be instructive to begin with Aristotle.

Aristotle famously defines right actions (and right dispositions) by reference to a mean, so that e.g. courage exists between cowardice on the one hand, and recklessness on the other. But he goes on to say that:

> not every action or feeling admits of a mean. For some have names immediately connected to wrongdoing, such as spite, shamelessness and envy, and among actions adultery, theft and homicide. All of these and similar actions and emotions are bad in themselves, and not because of their excesses or deficiencies. It is impossible ever to be right with regard to them; one must always be wrong. Nor does right and wrong with respect to such cases depend upon the circumstances — e.g. committing adultery with the right woman at the right time or in the right way. The mere commission of any of them is wrong.[89]

Such terms identify minimum moral rules; the acts they mention are not limited to those Aristotle mentions in this passage, for there are '[other] acts that a man cannot be compelled to do, and rather than do them he ought to submit to the most terrible death': acts including, for example, matricide.[90] Augustine and Aquinas pinpoint the invariant element that causes such actions to be wrong in any circumstance: such acts (as e.g. debauchery or blasphemy) can never be done with a *good will*;[91] negative precepts of this kind bind

[87] Aquinas, *De Perfectione Spiritualis Vitae* XIII.9.

[88] See Aquinas, *De Caritate* 8c; (contrast Finnis, *Aquinas: Moral, Political and Legal Theory* (Oxford: Oxford University Press, 1998) 192.)

[89] Aristotle, *NE* II.6.1107a; see also *Eudemian Ethics* II.3.1221b.

[90] *NE* III.1.1110a.

[91] Augustine, *De Sermone Domini in Monte* II.18.59.

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forever and always [*semper et ad semper*] by reason of their *objects* (i.e. aim).[92] They are evil in themselves [*mala ex genere*] and cannot be good no matter where or how performed; the most that can be said is that generically good or bad acts can gain *additional* good or evil from the circumstances in which they are performed.[93] So it is by reason of its object that, for example, Aquinas says that '*every* theft is a sin.'[94]

The class of exceptionless moral norms must be delineated with care; for Aquinas's general teaching (to which such norms represent an exception) is that the more one descends into detail, the more one will discover exceptions to the general precept.[95] This applies in particular to positive obligations, such as that one must return to one's neighbour what belongs to them: this rule applies 'forever but not always' [*semper sed non ad semper*],[96] i.e. not on every occasion; for it may be that one's children are starving whilst one's neighbour has plenty.

If we turn to the norms of sociability, we find this distinction being observed. There is first of all the obligation to seek peace (even through war), an obligation that holds 'forever but not always'. Just as there can be no justice without (some) peace, there cannot be peace without (some) justice. Hence there are certain negative precepts that hold without exception, forever and always: for example, that one must not kill the innocent, or that one must not lie.[97] Encompassing these duties is the requirement mentioned by Aquinas at *ST* I-II.94.2c, to avoid committing offences against those with whom we ought to live in peace: a requirement that additionally involves desisting from contention (spreading lies or denying truth),[98] fighting [*rixa*][99] and other matters of criminal liability. These norms constitute the foundation of peace and justice in the state: they are a necessary but not sufficient part of what makes human actions sociable, civilised and lawful. They represent the natural law content of positive law: the body of laws that is otherwise constituted by broader determinations of moral considerations according to the circumstances and times in

[92] Aquinas, *ST* II-II.33.2c.

[93] Aquinas, *De Malo* II.4c; *ST* I-II.18.3c & 9c.

[94] *ST* II-II.66.5 (and is also contrary to charity: II-II.66.6c).

[95] Ibid, I-II.94.4c.

[96] Ibid, I-II.71.5 ad 3.

[97] Ibid, II-II.110.3 ad 4: 'it is unlawful to tell a lie in order to deliver another from any kind of danger. But it is lawful to hide the truth prudently, by keeping it back.'

[98] Ibid, II-II.38.1c & ad 3 (it is a mortal sin to oppose the truth of justice in court).

[99] Ibid, II-II.41.1c (fighting is always sinful, but may become venial or mortal depending on the circumstances).

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which they are instituted, and which are, at the limit, legally binding through the force of their enactment alone.[100]

Throughout the history of philosophy, there have been strident objections to the idea of natural laws of justice and sociability. Here, two such attacks may be singled out: that of Hume's knave, and (perhaps the archetype of all such figures) Plato's Callicles in the *Gorgias*. Both are, in a sense, anti-social philosophies: they strike at the heart of the conceptions of sociability outlined above. For Hume's knave,

> . . . according to the imperfect way in which human affairs are conducted, a sensible knave, in particular incidents, may think that an act of iniquity or infidelity will make a considerable addition to his fortune, without causing any considerable breach in the social union and confederacy. That 'Honesty is the best policy', may be a good general rule, but is liable to many exceptions; and he, it may perhaps be thought, conducts himself with most wisdom, who observes the general rule, and takes advantage of all the exceptions. I must confess that, if a man think that this reasoning much requires an answer, it would be a little difficult to find any which will to him appear satisfactory and convincing.[101]

According to one reading, it is significant for the knave that he recognises the general goodness of the norms that, from time to time, he seeks to evade. The goodness of such norms (for example the norm against lying) reaches down into conceptions of exceptionless human *goods*, such as knowing and avoiding ignorance and error.[102] Such goods are objects of human striving, and figure in human reasoning and action in virtue of human nature. They are therefore understood as perfecting human nature, by removing what is harmful to it:[103] avoidance of acting on mistakes, of being misled or led into doubt or error. The knave as much as anyone benefits from and understands the value of, honesty. The 'exceptions' which the knave detects pertain to the acquisition of false goods (wealth, position, office), but damage the real goods of social concord and civic friendship. A society containing liars suffers from the distrust of its politicians and office-holders, and of its media and, by and large, its fellow citizens. Nor does the knave revel in being a knave: for (as Aristotle in effect observed) the knave cannot ignore the lack of congruence between

[100] Ibid, I-II.95.2c. Compare I-II.104.1c: '*ut non habeant vim obligandi ex sola ratione, sed ex institutione*': such laws do not possess obliging power from reason *alone*, but from their institution. Such determinations are not exceptionless; it may be a moral requirement to break such laws if they are grossly unjust (e.g. by commanding one to perform an immoral act): *ST* I-II.96.4c & ad 2.

[101] Hume, *Enquiry Concerning the Principles of Morals* §IX.2.

[102] *ST* I-II.94.2c; Aristotle, *Metaphysics* α.1.980a.

[103] Plato, *Republic* VIII-IX.

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his actions and the just, honest and benevolent actions that he for the most part observes and values.[104] Such a person is 'not disposed in a friendly way even to himself.'

However, on a different reading, honesty is only a *policy* for the knave, valued only because it for the most part advances the knave's (and everyone's) fortunes. But if so, the knave is radically mistaken about the human goods and values that such a policy advances: in particular, he is blinded to the possibility of genuine friendship, which involves a sharing in the value of truth. For 'friendship in the primary and real sense [is] the friendship of good people insofar as they are good, while the rest will be friendships by being like it . . . '[105] A reply to the knave therefore stresses the inadequacy of the range of (false) goods that the knave values, and condemns, as destroying or obscuring genuine goods, his sowing the seeds of distrust in the community. Indeed, Hume regards the knave as sensible '*according to the imperfect way in which human affairs are conducted*': he is a knave amongst knaves, recalling Augustine's warning that the worse the objects of love, the worse is the agreement to share them. Thus the knave may not be inconsistent in his immoralism, but is nevertheless impoverished by his failure to grasp genuine human values, the greatest of which is again, friendship.

The archetype of this immoralist, differing from the knave only by *openly* despising the good, is Plato's Callicles. Callicles resists Socrates's arguments (that it is better to suffer wrong than to do it) to the bitter end. His retorts have little to do with the argument, but simply do not take it very seriously.[106] Though he feels the force of Socrates's assertions, he refuses to submit to them: 'I do not know why, but you seem to make sense to me, Socrates. Yet I suffer the affection of the multitude: I am not entirely convinced.'[107] Socrates's reply aptly pinpoints the difficulty: 'It is the demotic love residing in your heart that resists me, Callicles. If we argued the issues over and over again, you would be persuaded.'[108]

Honest arguments are a kind of friendship insofar as they are constituents of a common good: a sharing of truth and (sometimes) of moral instruction.[109] One who fails to be moved by the rational force of arguments is enslaved by error; for such a person to think themselves happy is to sink deeper into untruth.[110] Moral philosophers

[104] See *NE* IX.4.1166b.
[105] Ibid, VIII.4.1157a.
[106] See *Gorgias* 505d, amongst a host of other examples.
[107] Ibid, 513c.
[108] Ibid.
[109] See J Finnis, 'Discourse, Truth and Friendship' in *The Collected Essays of John Finnis* I (Oxford: Oxford University Press, 2011) 44.
[110] Ibid, 48.

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need frankly to confront the limited power of arguments in moving unreasonable people to the good. For prudence cannot operate correctly without the assistance of the other virtues: temperance, justice, fortitude etc. Hence Callicles is precisely that type of young man (immature in attitudes if not in years) that Aristotle has in mind when saying that some are not fitted to listen to arguments about morality ('political science').[111]

The absolute (exceptionless) norms of natural law are never entirely erased from the mind: the foundational precepts of natural law even enter into the reasoning of the damned, who do not act according to them.[112] For all human beings possess *synderesis*, the natural disposition whereby they do not fall utterly into error as regards the most basic practical precepts.[113] It is for this reason that it is worthwhile to have the argument 'over and over again' with such persons, who are not devoid of all reason.

V. Closing Remarks

Just as there are invariant, unchanging aspects of the human condition, so also there are exceptionless moral norms of natural law that provide avenues to human fulfilment. Many such norms are not controversial, at least to those intelligent and reasonable enough to understand human affairs, for they are not directed to any specific 'form of of the good'. Rather they are essential constituents in any effort to secure the good. Apart from sheer irrationalists such as a Callicles, or a Thrasymachus, it is evident that they are not mere steps on the way to some good, but are at the same time good in themselves. So far from realising this is Callicles that he thinks the person who restrains himself from committing *pleonexia* is better off dead.[114]

Callicles's contention, that it is only by convention (*nomos*) and not by nature (*physis*) that it is more shameful to commit injustice than to suffer it,[115] overlooks the possibility that 'nature' is itself normative, a source of natural *laws*. Such a possibility begins with the ability to identify universal human goods, not the least of which is the ordinary civic friendship and lack of violent assault that enable Callicles to speak his mind unmolested. The brutality of his sentiments belies the peaceful (friendly) forms of behaviour that are essential to the discussion in which he is a participant. These forms are not *merely*

[111] *NE* I.3.1095a.
[112] *ST* I-II.94.6c; I-II.94.1sc, citing Augustine, *De Bono Coniugali* XXI.
[113] *ST* I.79.12c & ad 3.
[114] *Gorgias* 483b, 491e.
[115] Ibid, 483a.

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conventions, but are also natural foundations of human affairs. They are part of those natural laws that allow for the pursuit of further human goods, such as knowledge (in this case). Above all, Callicles is blinded to the natural law content of conventional, positive law: the body of moral rules and precepts confirmed in many or all of the legal systems observed around the world.

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