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THE CONCEPTION OF THE HUMAN PERSON

EUGENE HARPER†

I am a New York City Catholic who was educated by the Dominican nuns at St. Rosalina Parish in Washington Heights. In the 1940s and 1950s, Catholic social thought consisted basically of having nine children and sending all of them to parochial schools.

I would like to begin by talking about the human person. I think that in order to talk about the common good in Catholic social thought, one needs to begin with a discussion of the conception of the human person and then move to the discussion of the common good.¹ As lawyers, we have to take account of the principle competing political philosophy of liberalism, and ask ourselves how we compare the two for purposes of Catholic social thought.

What is Catholic social thought's understanding of the human person? To answer this, I think one has to begin with a conception of the human person. Philosophically, I would begin with Aristotle's ethics and add politics: together they give rise to the full-blown natural law theory.²

Aristotle's conception of human flourishing, *eudaimonia* (the function of man), can be found in Chapter Seven of Book One of his *Nicomachean Ethics*.³ It is the activity of the soul exhibiting excellence in a complete life.⁴ Aristotle began by carefully analyzing responsibility and choice, and ultimately addressed the distinction between intentions on the one hand, and side effects on the other. He described the cardinal virtues of

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¹ See JACQUES MARITAIN, *THE PERSON AND THE COMMON GOOD* 48–49 (1966) (defining the common good as “a good received and communicated”).

² See ARISTOTLE, *NICOMACHEAN ETHICS* (Martin Ostwald ed., 1962).

³ See *id.* at 17–18. *Eudaimonia* means to be “[h]appy, usually in the sense of a happiness attained by man through his own efforts.” *Id.* at 307.

⁴ See *id.* at 14–18.

prudence, *phronesis* [practical wisdom], right reason in control, directive of passions and emotions, and justice, distributive and communicative, as well as courage.⁵ Aristotle's concept of friendship or *philia* provides the foundation for our look at what is considered the human person.⁶

Theologically, I would proceed by way of the New Testament, the interpretation of Scripture, and the tradition of the church fathers. The human person is created in the image and likeness of God,⁷ with an ontological dignity to be fulfilled in and through identity and participation in the church community. The church community is the mystical body of the people of God.

In Aquinas, we find the great synthesis of Aristotle's philosophy with Christianity. *Eudaimonia* became beatitude, and the cardinal virtues are perfected by the Christian virtues of faith, hope and love.⁸ Aquinas also developed a full-blown natural law theory whose first precept, the first principle of practical reason is "good is to be done and pursued, and evil . . . avoided,"⁹ and it is a principle that every human person grasps.

The human person is inherently social and needing others. We are "dependent rational animals," disposed toward the good, habituated in that disposition by virtuous acts, with reason, capable of both theoretical knowledge, or *episteme*, aimed at knowing truth and practical knowledge, *phronesis*, aimed at doing good.¹⁰

We ultimately have John Paul II's profound analysis of the acting person, which Father John Coughlin would be able to

⁵ See *id.* at 312.

⁶ See *id.* at 311-12.

⁷ *Genesis* 1:26-27. "Then God said: 'Let us make man in our image, after our likeness . . . God created man in his image; in the divine image he created him; male and female he created them.'" *Id.*

⁸ See MARITAIN, *supra* note 1, at 20-21.

⁹ ST. THOMAS AQUINAS, *SUMMA THEOLOGICA*, Pt. I-II, Q. 94, art. 2 (Fathers of the English Dominican Province trans., 1947). St. Thomas stated:

the first principle in the practical reason is one founded on the notion of good . . . that good is that *which* all things seek after. Hence this is the first precept of law, that good is to be done and pursued, and evil is to be avoided. All other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided.

Id.

¹⁰ ALASDAIR MACINTYRE, *DEPENDENT RATIONAL ANIMALS: WHY HUMAN BEINGS NEED THE VIRTUES* 14-15, 151 (1999).

speak on much better than I would, given his current work deriving ministry law principles from the Christian concept of the person.

What is "the good" for the human person? Again, Aristotle begins to answer this with the concept of full human flourishing—*eudaimonia*.¹¹ Aquinas follows *eudaimonia* and adds God and redemption and we arrive at beatitude.

Modern natural law theorists fight with each other (the traditionalists against the new natural law theorists) over how one comes to know what is entailed in the concept of full human flourishing.¹² The traditionalists, McInerney,¹³ Hittinger,¹⁴ Henle,¹⁵ and Veatch,¹⁶ assert that one derives human good from prior philosophical anthropology or metaphysics of the nature or essence of the human person.

The new theorists, Grisez,¹⁷ Finnis,¹⁸ Boyle,¹⁹ and Robert George,²⁰ assert that one cannot derive an *ought* from an *is*, therefore, knowledge of basic human good is underived and self-evident, known through reflection on experience and not by deduction from prior knowledge.

The traditionalist answer to Hume²¹ is that natural essences are indeed dispositional; that the *ought* is contained in the *is*;

¹¹ See ARISTOTLE, *supra* note 2, at 307.

¹² See generally Jack B. Sarno, *A Natural Law Defense of Buckley v. Valeo*, 66 *FORDHAM L. REV.* 2693 (1998).

¹³ See RALPH M. MCINERNEY, *THE LOGIC OF ANALOGY: AN INTERPRETATION OF ST. THOMAS* (1961).

¹⁴ See Russell Hittinger, *Natural Law and Virtue: Theories at Cross Purposes*, reprinted in *NATURAL LAW THEORY: CONTEMPORARY ESSAYS* 42 (Robert P. George ed., 1992); see also Robert P. George, *Review: Recent Criticism of Natural Law Theory: Russell Hittinger's a Critique of the New Natural Law Theory*, 55 *U. CHI. L. REV.* 1371, 1407 (1988).

¹⁵ See R.J. HENLE, *THE AMERICAN THOMISTIC REVIVAL IN THE PHILOSOPHICAL PAPERS OF R.J. HENLE*, S. J. (1999).

¹⁶ See HENRY B. VEATCH, *FOR ONTOLOGY OF MORALS: A CRITIQUE OF CONTEMPORARY ETHICAL THEORY* (1971).

¹⁷ See GERMAIN GRISEZ & RUSSELL SHAW, *BEYOND THE NEW MORALITY: THE RESPONSIBILITIES OF FREEDOM* (1974).

¹⁸ See JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980).

¹⁹ See Joseph Boyle, *Natural Law and the Ethics of Traditions*, reprinted in *NATURAL LAW THEORY: CONTEMPORARY ESSAYS*, *supra* note 14, at 3.

²⁰ See Robert P. George, *Natural Law and Human Nature*, reprinted in *NATURAL LAW THEORY: CONTEMPORARY ESSAYS*, *supra* note 14, at 31.

²¹ See JAMES V. MCGLYNN & JULES J. TONER, *MODERN ETHICAL THEORIES* 24–27 (1962) (explaining, briefly, Hume's attack on traditional philosophy).

that Hume's mathematical metaphysics is bad metaphysics.²² I do not know who is right as between the traditionalists and the new theorists. As a lawyer, I know only that both come out the same way on virtually every moral issue, and one wonders what all the fuss is about in the academic community.

The new natural law theorists do, however, provide a handy summary of basic human goods that constitute full human flourishing. These include life and the transmission of life, knowledge, excellence in activity, and four different kinds of harmony: inner peace, authenticity, friendship, and religion.²³ This summary provides me with a way of thinking about and teaching the subject.

The next question is how does the human person achieve the good? Again, beginning with Aristotle and following through with Aquinas, the answer is through virtuous conduct. In the new natural law theory, the basic moral principle, which follows from the basic principle of practical reason, is that one should will only those acts that are compatible with integral human fulfillment in the basic human goods.²⁴

There are intermediate principles that have to be taken into account. They are negative prescriptions against acting contrary to basic human goods. They embody the virtues proscribing or discouraging action arising from human flaws or vices. They essentially amount to the Golden Rule—to treat others as you would have others treat you and your loved ones—and the Pauline Principle—do not intend evil—even if you think good will come of it.²⁵

Now, turning to the common good, one might ask what does Catholic social thought mean by the common good? I will repeat a little of Professor Garnett's ideas in reaching an answer. Following Catholic social thought of the common good is a set of conditions permitting each human person to seek and to achieve the human goods in ways that cannot be done alone. In other words, the sum total of social conditions that allow persons to perfect themselves in the community leads to the common good.

Standing between the individual and the government, however, is a thick complex of associations, each of which aims

²² See FINNIS, *supra* note 18.

²³ See *supra* notes 17–19.

²⁴ See *supra* note 9 and accompanying text.

²⁵ See *Romans* 3:8.

at the common good of its constituent members. These include the family, the extended family, the neighborhood, fraternal organizations, labor unions, professional organizations, parishes, Little League, and all sorts of nonprofit institutions and organizations.

When looking at the role of government, specifically the public component of the common good, Catholic social thought focuses in on two items: peace on the one hand and justice on the other, distributive and commutative or corrective justice. It is here that Catholic social thought invokes the principle of subsidiarity, grounded more deeply in the breast of Aristotle's concept of friendship, sociability, and *philia*.²⁶ In order words, full human flourishing normally requires the smaller association to instantiate the common good.

A lawyer, particularly one working in or around the public sector as I do, tends to focus on distributive justice. The structure of distributive justice, which Aristotle referred to as "proportionate equality,"²⁷ again really derives from the ethics and the politics and is picked up by Aquinas in his discussion of justice in the *Summa Theologica*.²⁸ Aristotle believed that everybody agreed that distributive justice is proportional equality based on merit, but not everyone agrees on what merit is.²⁹ An aristocrat would say merit is virtue and an oligarch would say it is wealth. A democrat would say all citizens are equally meritorious when considering distribution of the common stock of resources of the polis. We have the identical discussion going on some 2000 years later about distributive justice and what constitutes merit.

What are the requirements of Catholic social thought in terms of distributive justice? There is no mathematical formula that determines this. Prudential considerations lead to judgments, taking account of need, function and capacity, deserts and contributions.³⁰ Need is determined by one's role,

²⁶ See ARISTOTLE, *THE NICHOMACHEAN ETHICS OF ARISTOTLE* 214–47 (Sir David Ross ed., 1961) (describing generally the existence, basis, and need for each of these concepts).

²⁷ *Id.* at 118–19.

²⁸ See AQUINAS, *supra* note 9, at Part II, Q. 58–122.

²⁹ See ARISTOTLE, *supra* note 26, at 119–20 (describing generally that establishing compatibility of proportionate equality is a subjective determination that cannot be exact).

³⁰ See FINNIS, *supra* note 18, at 174–75.

responsibility, and capacity. Aristotle stated, "flutes to flute players."³¹ As lawyers, we might focus on the distribution of costs and losses in connection with the creation of "foreseen risks."³²

Aquinas would have looked to what one needs for oneself, what one needs for those one is responsible for, and the balance he would call *superflua*³³ to be put to use for the common good.

From the perspective of lawyers acting today, we have to take account of a liberal political theory that says the expiring of Marxist socialism is really the main competitor to Catholic social theory. I do not mean the current left-right political spectrum. Liberal political theory may be seen as a tradition of political thought that has two basic strands, each of which focuses in different degrees on two main concepts: freedom and equality.

The utilitarian strand is frequently libertarian and takes the stance that the person is seen as the sum of desires and demands with no such thing as intrinsic good as part of the fabric of the universe. The common good is seen as maximizing utility, reflected in an aggregate demand and overall efficiency. Utilitarian liberalism is teleological, but the end is maximizing utility. There is no such thing as that intrinsic good, which the Catholic social thought tradition focuses on.

The other strand is neo-Kantian and is frequently egalitarian. This strand believes the person upon whom the theory is based is very different from the person earlier described. It is a hypothetical individual in the original position who is located behind a veil of ignorance, not knowing his or her actual endowments or position in society.

To achieve the common good in this strand of liberal thinking, the government needs to be neutral as to the good; to have no position as to the good, but to create conditions permitting autonomous choice. This is the only way of showing equal respect and concern.

Utilitarian liberalism is a major force in our common law thinking, law in economics, whereas, Neo-Kantian liberalism is a dominant public philosophy in our constitutional law thinking.

³¹ *Id.* at 175 (quoting Aristotle).

³² *Id.*

³³ See ARISTOTLE, *supra* note 26.