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THE NEED FOR RENEWAL IN NATURAL LAW

GEORGE M. REGAN, C.M.*

MODERN SCHOLARSHIP and the ecumenical dialogue between Christian churches have stirred Catholic thinkers to reconsider some commonly accepted views. Efforts at renewal and *aggiornamento* have been in evidence particularly in the areas of biblical studies and dogmatic theology. More than any other theological discipline, however, Catholic moral theology has borne the brunt of contemporary criticism from within and without the Church for its superficiality, negativism, obligationism, and minimalism. Indeed, many Protestants have written off Catholic moral theology as a legalistic hair-splitting based upon philosophical assumptions that can be radically questioned.

Even prescinding from current ecumenical endeavors, Catholic scholars recognize a need to re-integrate moral theology with its scriptural sources and with dogmatic theology; to replace its generally legalistic tone with the vitalizing influence of Christian charity; and to harmonize modern philosophical and theological trends with more traditional approaches. General agreement exists that the academic isolation of moral theology must cease.

Despite this trend, however, one must candidly admit that complaints about the sad state of moral theology far outweigh the positive endeavors for renewal. In fact, the outstanding work of Bernard Haring, *The Law of Christ*,¹ still stands in splendid isolation as the only thorough endeavor in English.

This general demand for specifically Christian perspectives and scholarly renewal has recently singled out natural law considerations for special reflection and criticism. Since natural law occupies such a prominent place in works on moral theology, deficiencies in its

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¹ I HARING, *THE LAW OF CHRIST* (1961); II HARING, *THE LAW OF CHRIST* (1963); Volume III remains untranslated. See FORD & KELLY, *CONTEMPORARY MORAL THEOLOGY* chs. 4-6 for a resumé of some modern criticisms of, and new approaches to, moral theology. See also WOLF & SCHALL, *CURRENT TRENDS IN THEOLOGY* ch. 9 (1966).

presentation redound upon this entire branch of theological inquiry. Unless such deficiencies receive necessary correction, therefore, the entire task of renewal in moral theology will fail.

The treatment of natural law can often seem the most fruitless section in any course about Christian morals. On the one hand, it receives development within what is probably the most stereotyped of all the classical treatises, "*De legibus*." On the other hand, the whole system and its implications for moral living represent the chief area of Catholic moral theology against which the modern mind rebels the most. Indeed, such a cleavage exists between this contemporary thought and that evidenced in the classical Catholic presentation of natural law, that our contemporaries frequently reject the total reality of natural law in the name of higher values. Instead of creating a common ground for ecumenical dialogue, therefore, this "Catholic system" has proved a sometimes insurmountable obstacle to its inception.

If moral theology truly desires to become a more relevant science for concrete guidance of human activity, it must readily listen to these modern objections about natural law and strive to justify or reevaluate its traditional requirements and formulations. More specifically, new texts in moral theology for college and seminary usage must incorporate more modern and accurate presentations of natural law thought. Unless this task is accomplished, tomorrow's clergy and laity will remain hidebound to an outmoded presentation of Christian morality. Furthermore, the Church, which has undertaken to speak to the modern world with

greater frequency and vigor, must proclaim its message in a manner attuned to the needs and thinking of our times. This aim cannot be realized unless moral theologians and other competent experts provide a relevant framework for the Church's words.

Toward this end, an understanding of some historical factors contributing to the present "decadence" of the Catholic moralists' teaching about natural law may prove a valuable lesson for the future. In addition, a selective presentation of certain modern objections to natural law may stimulate natural law philosophers and theologians to undertake the work necessary in this area.

Historical Factors²

Manuals of moral theology evolved into their current state only during the past several centuries. In medieval thought, theology constituted a unified discipline, as witnessed to especially by the *Summa Theologica* of St. Thomas Aquinas. No false dichotomy unrealistically compartmentalized dogmatic theology and moral theology. Rather, moral living was founded upon a unique vision of salvation history—a doctrine which it simply applied to concrete action. Natural law thought developed in this context, nourished by the vitalizing perspective of divine Revelation.

² See generally I HARING, *op. cit. supra* note 1, at 3-33; Palazzini, *Historia Theologiae Morales* in *DICTIONARIUM MORALE ET CANONICUM* 550-55 (1965); WOLF & SCHALL, *op. cit. supra* note 1. A complete history of moral theology has not yet appeared, though a French series is in preparation by the renowned scholar Philippe Delhaye which will be entitled *Histoire Générale de la Théologie Morale*.

No human science evolves in an historical vacuum, however, and theology was not exempted from conditioning influences throughout the following centuries. Eventually separated from its vital dogmatic sources, moral theology became formalized as an autonomous technique of moral practice concerned with rather conceptualized material—the science of the priest-confessor. As enunciated in many manuals, it expounded a systematic acquisition of the knowledge required for surgically delineating both the minimum requirements for moral living and the distinction between mortal and venial sin. An exaggerated casuistry reduced morality to a handy catalogue of determined, conceptualized norms, applicable in all situations. This kind of casuistic exposition, originally intended solely for the formation of confessors, eventually became the ordinary way of presenting Christian moral ideals. The present lack of adequate moral texts directed specifically at college-level students, and generally at the Catholic laity, stems from this historical misfortune.

This moral minimalism founded its center of organization in that which sin violates: the commandments of God and of His Church. Natural law thought inevitably became the privileged terrain wherein this reduction was manifested. A voluntaristic stress on extrinsic obligation promoted this property of law to the rank of an essential constituent of primary importance. In this perspective, natural law descended from its role as the rational and evolving principle of human activity, and put on the guise of a pure source of constraint imposed by the will of the legislator, whether he be divine or human.

Natural law no longer realized the basic tendencies of man's exalted destiny, and failed to scan the vast horizons of Christian doctrine. Certain aspects of Christian Revelation, especially those dealing with obligation, sin, and the means to avoid sin, engulfed moral thought with a resultant denigrated ideal of life. One searches in vain for a natural law perspective which stressed persons informed by both the dynamic law of their being and by the practical moral reason responding in a manner appropriate to Christian love.

When employed as a proof of moral teaching, the natural law of many standard manuals and textbooks of moral theology betrays a 17-18th century understanding of the doctrine. An overriding casuistry, cut off from dogma, forms an aprioristic juridicism of moral security which foresees all reality, or in which prescriptions and infractions provide the conceptual framework. Such casuistry presents its own kind of peril, one which gravitates "into the degenerate, anti-natural state of non-human rigidity."³

This distorted conception of natural law found exposition not only in the formal sections on law in general, but throughout the whole of moral theology. Separated from its dogmatic fonts, moral theology viewed man in a static, abstract, and individualistic manner. This moral theology of duties and infractions no longer took sufficient guidance from human reality, and natural law seemed a mere policeman, instead of the fulfillment of man's intrinsic moral exigencies. The primacy of charity in Christian Revelation became

³ PIEPE, *THE FOUR CARDINAL VIRTUES* 26 (1965). See also HAMEL, *LOI NATURELLE ET LOI DU CHRIST* ch. 2 (1964).

veiled and the tool of moral guidance called "natural law" assumed the appearance of sheer naturalism for many non-Catholics.

These weaknesses in the theoretical exposition and concrete application of natural law on the part of Catholic moralists have become glaringly evident as a result of the continuing debate concerning contraception in Catholic circles. Some superficial syllogisms purporting to show the immorality of contraception from natural law premises have proven inadequate to the task. Certain long-standing inconsistencies and unproved assumptions about the alleged natural and unnatural usage of the reproductive faculty are now clearly discernible.⁴ Moreover, the failure of moralists to preserve the vital contact between natural law and Christian Revelation has occasioned telling refutations of traditional proofs which have drawn insufficiently from the prime font of moral theology.

Contemporary Reactions to Natural Law

In the light of the foregoing considerations, one can better understand why many contemporary thinkers experience discomfort when faced with the classical exposition of moral theology and natural law. Modern man does not easily admit such moral legalism. Instead, the evolution of Western thought has progressed steadily in the direction of exaltation of individual or collective freedom. For some authors, only a freely contracted

moral bond seems consonant with human dignity, and the very concept of natural law appears as an intruder in the inner domain of moral values.

Under many aspects, some forms of existentialism symbolize the complete divorce between natural law and authentic human endeavor in the minds of many contemporaries. Sartre mirrors this outlook in stating: "There is nothing in heaven, nothing good or bad, no person who gives me order. For I am a man, Jupiter himself, and each man must create his own path."

In similar fashion, a rather amorphous form of personalism, stemming from the impact of the phenomenological movement in contemporary European philosophy, has insisted on the absolute, unique, and ineffable value represented by each human person. In this view, no person could bend to the tyranny of natural law. Man's historicity and temporality, and man's freedom are made key points for understanding moral life. Natural law appears as man's determination by some assumed law of his nature in an almost crude biological sense. Some forms of situation ethics follow from this outlook, which, when carried to its logical conclusion, implies a basic denial of all universal morality. In this ethical and metaphysical nominalism, the universal could never actually bear upon the concrete with binding force.

One representative of this contemporary reaction summarizes quite forcefully these complaints about a conception of natural law placed in seeming opposition to the authentic freedom and development of man:

⁴ GRISEZ, *CONTRACEPTION AND THE NATURAL LAW* ch. 3 (1964); NOONAN, *CONTRACEPTION. A HISTORY OF ITS TREATMENT BY THE CATHOLIC THEOLOGIANS AND CANONISTS* 514-33 (1965).

It is a difficult task for man to grasp his own freedom, exposed to all the dangers of existence. So arises the temptation, under many guises, to throw away one's freedom once and for all, to accept the norms of a metaphysic, the creed of a religion, the discipline of a group. Man no longer has any need to search, to create himself. It suffices to obey, as a mere thing. . . . Moralists have, nevertheless, made this denial easy. They saw a triumph of morality in what was rather its suicide. The imperialism of the rule, of the law! Duties to oneself, to others, to society, to God! Yet, it is clear that morality should not be confused with a juridic category. The code defines the conditions for existence of a given society. . . . Precise rules, universal rules, with sanctions for support. . . . But these have only force from without. . . . Not all is resolved by a code, in spite of the security it seemingly provides.⁵

According to this pattern of thought, then, the natural law as the norm of concrete moral activity appears anachronistic in a world wherein personal freedom constitutes the supreme value. Every law, but above all the natural law, becomes the prime source of alienation of the loss of personal integrity and human dignity. Consequently, the overly juridical and extrinsic exposition of natural law found in the moralists' writings could only seem foreign to the real and modern man whom contemporary thought desires to free from all fetters. Indeed, in this perspective, a general moral law such as the natural law becomes unthinkable, for it would never attain the true human reality proper to each person. This person must instead create his own destiny, responding with an authentic decision which arises spon-

taneously from his inner sense of what the moment demands.

This false opposition between personal authenticity and natural law crystallized into a current reality due to various influences. Not the least of these influences was the progressive minimalization of the classical and truly Christian understanding of natural law. Deprived of necessary contact with concrete and developing humanity, this impoverished caricature of natural law is viewed by many as a conceptualistic system apart from the existential domain of the really human. Natural law theorists seem to extol nature at the expense of person.

This modern attitude opposing natural law and freedom has impressed a number of Protestant theologians, attracted by the parallel opposition between natural law and the Gospel. The constraint inherent in natural law seems strangely out of place in the evangelical vocabulary of grace, charity, conversion of heart, and the spontaneous freedom of the children of God. The "Glad Tidings" of God's Revelation in saving word and deed demand a personal commitment, a sincere witness of faith, which draws its value from the purity of motives and from the interiority of its sources. This entrance into a more personal religious life involves an "I-Thou" dialogue with the living God, Who, in His sovereign freedom, calls each man by name to a unique vocation at each moment.

This interiorization and personalization of religious activity seems difficult to realize in the constraining climate of absolute obligation and of minimalism proper to natural law. Above all, the universal character of natural law cannot fulfil the

⁵ GUSDORF, *TRAITÉ DE L'EXISTENCE MORALE* 41-42 (1949).

role of personal norms governing individual human conduct in every situation. Without desiring to deny all directive value to traditional morality, they believe that the study of each situation can and ought to provide a superior criterion for moral judgment, even though contrary to the maxim enunciated by universal theological morality.⁶ Summing up this position, Karl Rahner says: "The conscience is not the mediator of a law, but itself the source of moral decrees which are valid only once, only for me, only in this one situation."⁷ The loving and personal encounter with God thus transports man far above the atmosphere of merely juridical relations.

Some extreme positions, in fact, arrive at what the Protestant moral theologian Paul Ramsey has called the "wastelands of relativism." This radically situational ethic stresses the openness of Christians to the world and relies almost entirely upon the work of the Holy Spirit to inform the responses of the personal conscience in a changing world.

Many Protestant theologians, moreover, following classical Protestantism on this point, find further difficulty in natural law thought as a consequence of their understanding of the relation between fallen human nature and original sin.⁸ Sin has radically destroyed human nature, leaving no inner capacity to be healed and bettered. This essentially corrupt na-

ture cannot, therefore, provide a sufficient substructure for God's saving grace. Action in accordance with pure nature alone retains no moral or religious significance in a supernatural economy. Natural law cannot represent God's will. In fact, Catholic stress on natural law seems to advocate naturalism, a betrayal of Divine Revelation.

These Christian forms of anti-legalism have actually reacted against a degraded presentation of natural law. Their positive religious aspirations manifest an undeniable and profound authenticity, but in their negative aspects they risk mixing certain true values of objective morality into their condemnations of the prevalent aberrations.

Conclusion

These briefly summarized historical and contemporary considerations represent a serious challenge to Catholic scholars desirous of *aggiornamento* in all areas of Church teaching and practice. Attitudes based on distorted conceptions of natural law morality will continue to foster moral legalism and erroneous juridicism unless more attention is devoted to the theoretical exposition and the accurate application of natural law. A morality centered on natural law to the degree realized in traditional Catholic exposés must renew its core content if it hopes to become more relevant to our contemporaries.

Modern biblical research and insights from dogmatic theology are effectively interwoven with value ethics and more personalist and existentialist stresses derived from contemporary philosophy. Natural law, however, does not receive, in the opinion of many Catholic moralists, suf-

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⁶ See the interesting discussion about this position between Joseph Fletcher and Herbert McCabe, O.P., in 83 COMMONWEAL 427-40 (1966); for further comment see 83 COMMONWEAL 581-84 (1966).

⁷ RAHNER, NATURE AND GRACE 45 (1963).

⁸ FUCHS, NATURAL LAW. A THEOLOGICAL INVESTIGATION, chs. 3-6, 8 (1965).

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ficient in-depth exposition or application.

Some scattered efforts by Catholic authors in the field of natural law do, nevertheless, provide a realistic hope for future renewal. We might mention, in particular, the groundbreaking endeavor of Josef Fuchs in his *Natural Law. A Theological Investigation*. This work has been regarded as a source book of contemporary theology since the German original appeared in 1955. This long overdue English translation of the 1960 French edition, marred though it is by inaccurate renderings and a stilted style, will provide valuable insights into both theology and natural law for readers who desire greater acquaintance with recent thought. Louis Monden's *Sin, Liberty and Law*,⁹ likewise

⁹ MONDEN, *SIN, LIBERTY AND LAW* ch. 3 (1965).

represents a step in the right direction, though the author sketches his themes only in broad outlines. Finally, three rather recent French works offer important contributions: Philippe Delhay's *Permanence du droit naturel*, Edouard Hamel's *Loi naturelle et loi du Christ*,¹⁰ and Jean-Marie Aubert's *Loi de Dieu. Lois des hommes*.¹¹ Although the latter two works depend heavily upon Fuchs, they do develop some of his points at greater length and add other material.

Reflection upon these works and incorporation of their insights will contribute much to the future renewal of moral theology, so urgently required. Other studies by specialists in natural law doctrine must, however, complement these achievements.

¹⁰ HAMEL, *LOI NATURELLE ET LOI DU CHRIST* (1960).

¹¹ AUBERT, *LOI DE DIEU. LOIS DES HOMMES* (1964).