

ANCIENT AND MODERN: NATURAL LAW AND UNIVERSAL MORAL PRINCIPLES

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The topic of this symposium pertains to how a Catholic should approach the purported distinction between ancient and modern political thought. What is implicit in this distinction is a concern with the modern (or postmodern) world in which we live—somewhere along the line, we have strayed from the better political thought and practice of an earlier age. A foundational premise for my paper is an observation that moral relativism, rooted in a rejection of immutable universal moral principles, is what is most problematic in our modern times. Whether or not a rejection of the immutability of universal moral principles is advocated by the modern thinkers, our contemporary politics, law, and morality (and much of contemporary political thought) reject some of these principles. Thus, any discussion regarding ancient and modern political thought should include a sound understanding of the natural moral law.

The most notable advocate of a divide between the ancient and modern political thinkers is Leo Strauss, who, in *Natural Right and History*,¹ proposes a return to the natural right/law of the ancients to counter both the natural rights of the moderns and historical relativism.² Accompanying this advocacy for a return is Strauss's critique of Thomistic natural law as it pertains to universal moral principles.³ From a traditional natural law perspective there are universal moral principles which suffer no exception—that is, applicable to all, at all times, and in all circumstances. These principles primarily (but not exclusively) concern specific actions which are known as intrinsically evil actions—actions which are always evil regardless of the intention of the one choosing or the circumstances surrounding the choice (VS, #52, 80-82). For Catholics, the foundations of any political community must (at least) rest upon the universal moral truths of the natural law (*Evangelium Vitae*, #70-71, VS, #95-96, 112-113).⁴ Without them, society descends into tyranny and/or totalitarianism (EV, #70; VS, #101). It is worthwhile to explore Strauss's understanding of natural right to see whether or not his treatment of natural right/law in relation to the ancient/modern distinction is of help to Catholics. I will argue that Strauss's desire to combat historical relativism by returning to ancient natural right includes a rejection of universal moral principles, and therefore the Catholic, who must assent to the natural moral law teaching, can not fully embrace this *particular* return.

Strauss's critique primarily manifests itself in his discussion on Aristotle's natural right in chapter three of NRH. He interprets Aristotle as claiming that all of natural right is changeable. And he compares this with Aquinas, who qualifies Aristotle by claiming that the principles of natural law are immutable, and that only more specific rules are mutable. This, Strauss says, is something alien to Aristotle and is of Patristic origin (NRH, 157-8).⁵ Strauss interprets Aristotle's claim of changeability by focusing on the notion of the common good. Strauss states that, for Aristotle, the common good is what is just, and at times, this could entail the mere survival of the community. Therefore public safety (communal survival) becomes the highest law (NRH, 160). For Strauss, an enemy can "force" the ruler of the community to act in a way that is contrary to natural right principles. Thus, there are "no limits [to the means used by the ruler] which can be defined in advance" (160). Here it seems that Strauss is using the common good as an opening to a consequentialist morality: Stating that the highest law is public safety, and that anything may be done for the sake of this consequence.⁶ This is summed up in his remark that "the exceptions are as just as the rules [which one is violating]" (160). Thus, what is just is determined by the supposed good/just consequences for which one is acting.

This can be understood more fully by looking at Strauss' distinction between two sets of principles of justice: One set is based on the highest law—the safety of the public, which is rooted in a sense of necessity in extreme cases. The second set is based on more "common rules of justice" in "normal situations" (161). However, there is "no principle which defines clearly in what type of cases public safety, and in what type of cases the precise rules of justice have priority" (161). Natural right must be mutable in this way "to cope with inventions of wickedness" (161). It is the job of the statesmen to determine, based on the circumstances, when to reject the normal rules of justice. And it will be the job of the historian to determine which statesmen acted justly and which unjustly in the extreme situations (161).⁷

Strauss, by accusing the enemy of "wickedness," is making a moral judgment. It is a moral term (of disapproval) and therefore he wants one to side against the wickedness. Yet, this implies some standard to appeal to in order to determine that the enemy is actually doing something that can be labeled wicked. If there is no standard, then it is merely one's opinion or feeling that it is wicked. Yet if there is a standard by which one can judge something to be wicked, then it would have to be an objective standard—a natural right standard. But if natural right comes in two sets of principles, and there is no way of telling when either set has priority in a given circumstance—when normal natural

right is no longer right (just), then how can a ruler make the judgment that the enemy's inventions are indeed wicked? Why could not these inventions be, for the enemy, a matter of extreme necessity and consequently in accordance with the higher law? In other words, one man's wickedness could be another man's necessity: it is relative to the person's situation and circumstance.

Strauss tries to make us feel more comfortable with his rejection of universal moral principles⁸ especially as he thinks this rejection is advocated by Machiavelli (who "denies natural right" 162). Strauss' justification for how he differs from Machiavelli is that Machiavelli takes his bearings from the extremes—necessity, whereas Aristotle takes the normal situation as his bearing (162). Furthermore, Machiavelli "doesn't have to overcome a reluctance as regards the deviations from what is normally right" whereas Aristotle's statesman "reluctantly deviates from what is normally right only in order to save the cause of justice and humanity itself" (162). Yet the difference between these two positions on doing evil (or perhaps more precisely for our context—transgressing a universal moral norm of natural right/law) so that good may come (saving the cause of justice and humanity) is based on 1. some subjective arbitrary starting point (one can't know—there are no principles to tell us—when the extreme or normal rules are in play) and 2. a psychological state of mind—that the ruler has some reluctance for doing evil.

This is foreign to the traditional natural moral law view, which determines the morality of an action first by assessing what one chooses in the action itself, and certainly not by any psychological state of reluctance (VS, #77-8). Whether or not one is reluctant about a choice, it can not make an evil action good. As mentioned above, the tradition of natural law has always upheld the reality that there are certain actions based on universal moral norms which always apply—the absolutes. Yet, this appears to be the very "absolutism" that Strauss states needs to be avoided (NRH, 162). He claims that there are universally valid ends, but no universal rules of action (163). By contrast, traditional natural law affirms that one cannot attain the end by employing certain means that are intrinsically incompatible with the end—those means would violate a universal moral principle (VS, #67, 72, 78,). Thus, Strauss's approval of "sav[ing] humanity" by violating the "normal" rules of natural right, could include a violation of a universal moral law.⁹ As previously mentioned, this type of moral thinking makes the moral evaluation of the act relative to the situation at hand—based on the possible good consequences. With a rejection of any universal moral principles, it would seem Strauss can't avoid being the subject of his own

critique of relativism—for after all, when to forgo the regular principles of natural right is relative to the situation. Thus, although it is laudable that he wants to reject historical relativism, his version of natural right does not seem to afford a solution to it.

Strauss's rejection of universal moral principles is more fully seen in his treatment of Aquinas' natural law. Here he states that the modern thinker Montesquieu "restored latitude for statesmanship" which St. Thomas restricted (164). What Strauss most likely means by this is that St. Thomas' natural moral law doctrine would not allow the latitude of rejecting a universal moral principle for the sake of some perceived greater good.¹⁰ Indeed, Strauss states that the hesitations and ambiguities of the natural law teaching of Plato, Cicero and Aristotle do not exist in Thomistic natural law, especially with respect to the fundamental principles of the moral law that "suffer no exception" (NRH, 163).

Perhaps one might argue that Strauss is not rejecting universal moral principles *per se*, but only their application in particular circumstances. Thus, for example, in reference to the universal moral law not to deliberately kill an innocent person, Strauss would mean to say that at times, due to the circumstances, the statesman might have a difficult time determining if a given person is innocent or not and therefore the decision to kill the person is a judgment only he can make, for the sake of the "safety of the people." However, this interpretation does not seem to be warranted by Strauss's text. He doesn't mention application, but rather of two different sets of rules, where the "normal" rules of natural right "are justly changed." If it is about application, then it wouldn't be a question of "changing" the rules in the sense of rejecting them in this instance. The traditional natural moral law approach would judge that the application of the principle is not relevant because the subject matter is what changes, e.g. the individual is not innocent and the one doing the killing has the proper authority to kill, etc. (ST I-II, Q.100, a.8, ro. 3; EV, #55-57).

One also might object that Strauss is only talking about times of war (a saving of humanity from the enemy's wickedness), and not about everyday moral actions (NRH, 160). In other words, the law of public safety is for war and the common rules of justice are for normal situations. If it is about war, then traditional natural law provides just war principles which can apply. However these are moral principles that can never be rejected either. For instance, one absolute condition or limit to a statesmen's reprisal in war is the prohibition of directly intending the killing of innocents (non-combatants). Although, I do note that it might be difficult in some circumstance to apply this, i.e.

determining if a particular person is a non-innocent combatant and therefore can be targeted. Another reason why Strauss might not only be concerned with war is because of his mention of “subversive elements *within society*”(160, my emphasis). Lastly, the examples he provides as instances of the problematic feature of Aquinas’ natural law are the “indissolubility of marriage and birth control” (164). Although he doesn’t explain why he uses these two examples, one can infer that he references these because they pertain to immutability in relation to the natural law—which Strauss wants to reject. These two examples are not limited to politics *per se* and so Strauss is not limiting mutable natural law/right principles to war or politics.¹¹

Perhaps the reason why Strauss rejects universal moral principles has to do with his understanding of reason and revelation (philosophy and theology).¹² Strauss implies that the reason why Aquinas thinks there are universal moral principles is because they have been revealed to him by God, and hence, are mere theological opinion and not truth based on reason alone (NRH, 163). He claims that from Aquinas’ standpoint, natural law is based on natural theology which in turn is based on revealed theology (164). From a Catholic natural law standpoint, this is partly true and partly false. It is true in that it is based on a natural theology—meaning that natural law can be known to have its source in God as first cause, last end, Creator, etc. This knowledge of God can be known by reason alone and is considered natural theology, a subset of philosophy. Thus, Aquinas can define the natural law as “nothing else than the rational creatures’ participation of the eternal law” (ST I-II, Q. 91, a. 2) with the eternal law being the Creator’s instructions to each creature so that it may attain its end (Q. 91, a.1; Q. 93, a.1; VS, #40-1, 44). Therefore, the natural law (and natural theology) does not have to be based on revealed theology—biblical revelation, even though it is in harmony with it. One can’t discount natural law merely by stating that it is attached to biblical revelation. Strauss, with his two examples—“indissolubility of marriage and birth control [seemingly he means artificial contraception]” (NRH, 164), implies that the moral law (upholding the indissolubility of marriage and the prohibition of artificial birth control) can only be known by biblical revelation and not by reason. Thus, he seems to imply that these universal moral norms are considered to be unchanging *because* they are revealed by God. This is confirmed when he claims that, with Thomistic natural law, there is no doubt in one’s conscience regarding immutable principles of the natural law and that this certainty is due to the “influence of the belief in biblical revelation” (163). This, Strauss continues, is contrary to the natural law/right teachings of Plato, Aristotle, and Cicero who did not have

revelation and therefore did not claim the existence of immutable moral principles. However, it must be noted that Aquinas does say we do need the divine positive law—biblical revelation—to be certain about some of our moral judgments on some particular and contingent matters (ST I-II, Q. 91 a. 4).¹³

This does not, however, negate the claim that there are immutable moral principles and one can know them by reason. For Catholics, reason and revelation are in harmony and these two orders of truth come from the one Truth itself. They reinforce each other. Strauss's comments on Aquinas seem to imply that he thinks this is problematic, and in his Preface to the 7th Impression of NRH, he states that "the divine law is not the natural law, let alone natural right." Furthermore, Strauss claims that natural right is not contained in the Old Testament Bible—that it rejects philosophy and doesn't know nature and therefore there is no knowledge of natural right as such in the Bible (NRH, 81). He sets up an opposition of natural right and the Bible which includes the ten commandments. For Aquinas and Catholics, however, the divine law—especially the ten commandments—includes the natural law.¹⁴

In conclusion, I think that Catholics can offer much for reflection on the distinction between the ancient and moderns. The fundamental problem today, in general (and politically), is a moral relativism, most especially understood as a rejection of fundamental moral principles which apply to everyone, at all times, and under any circumstance. Strauss claims that knowledge of natural right is a science which "explains why knowledge of natural right is not always available" (99-100). In relation to the ancient/modern debate, Catholics can help make available, by word and deed, this knowledge of the natural moral law—especially the unchanging moral principles rooted in the nature and dignity of the human person. This is what is most worth retrieving from the ancients and most needed by us who live in (post?) modernity.¹⁵

Notes

1. Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press: 1953, reprint 7th impression, Chicago: University of Chicago Press, 1971). (Hereafter cited as NRH).

2. I will not dwell on an argument for why, from a Catholic perspective, natural law and natural rights are compatible. This should be evident from both historical evidence and by the authoritative teaching of the *Magisterium*. See Brian Tierney, *The Idea of Natural Rights* (Grand Rapids, MI: Eerdmans, 1997) for the former, and for the latter, *The Compendium of the Social Doctrine of the Church* (Citta del Vaticano: Libreria Editrice Vaticana, 2004), *Veritatis Splendor* (Boston: Boston, Boston, ST Paul's Book and Media, 1993)—hereafter cited as *VS*—and Pope Benedict's latest speech to the United Nations on April 19, 2008: http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/april/documents/hf_ben-xvi_spe_20080418_un-visit_en.html

3. By Thomistic natural law, which Strauss singles out, we mean traditional natural moral law in general, and more authoritatively, the natural law as taught by the Catholic Church—"which has included the Thomistic doctrine on natural law in Her own teachings on morality" (VS, #44). I focus on the Catholic Church's teaching as representative of the traditional natural law because in order to address the theme of the symposium adequately, we must come from a standpoint founded in what is to be believed by Catholics as they are Catholics. Secondly, I also do this to forestall any debate regarding Aquinas's natural law theory itself with respect to universal moral norms. I do not want Aquinas to be any final authority on the matter—and therefore have to focus on doing an analysis of his texts, which many want to debate. Indeed, some argue, wrongly in my view, that Aquinas allows for exceptions to universal moral principles: For an attempt at reinterpreting Aquinas on this and many other points of natural law, see Thomas West, *Thomas Aquinas on Natural Law: A Critique of the "Straussian" Critique*, Prepared for a Claremont Institute panel at the American Political Science Association annual meeting, Philadelphia, August 31, 2006, Additional revisions September 2006 to July 2007. Website <http://vindicatingthefounders.com/author/aquinas.pdf> Visited June 27, 2008. In general, he argues that Strauss has misinterpreted Aquinas to some degree, and that a proper interpretation of Aquinas demonstrates that his thought agrees more with Strauss's rejection of universal moral principles. This is the opposite view of what I understand Aquinas to teach, and more importantly for the purpose of our paper, opposite to natural law as expounded by the Church. One Catholic thinker who

addresses this point and the general topic I cover in this paper is Father James V. Schall, “A Latitude for Statesmanship? Strauss on Aquinas,” *The Review of Politics* 53,1 (1991): 126-145. Hereafter this article will be cited as “A Latitude.” I will be referencing documents of the Church to support the traditional natural moral law teaching regarding universal moral norms. In short, the teachings of the Church sum up the natural law tradition which She possesses as the Church Herself, but also the tradition of the individual theologians, philosophers, canonists, and jurists throughout the ages. As we shall see, the Church teaches that there are natural moral law principles which are universally valid—always and everywhere. Thus, we can know what the Church teaches and therefore what a Catholic must believe as true, and as a result, we can simply formulate the proposition: A Catholic must believe X, and if Strauss teaches Y, which is incompatible with X, then a Catholic can’t agree with Strauss’ teaching about Y and must not embrace it. Thus, my argument is not a philosophical defense of universal moral principles, but merely an argument from Authority—of the *Magisterium*, as a Catholic reflection on ancient and modern political thought with respect to universal moral principles.

4. *Evangelium Vitae* (Boston: St. Paul’s Book and Media, 1995). Hereafter cited as EV. The whole point of Catholic moral and social teaching is to have persons know truth so that it can be practiced by them and the whole society—to arrange their lives and society based more and more on this truth so as to facilitate each person’s attainment of salvation. In the *Catechism of the Catholic Church* (San Francisco: Ignatius Press, 1994) , #2105, one reads that “the Church works toward enabling them ‘to infuse the Christian spirit into the mentality and mores, laws and structures of the communities in which [they] [sic] they live.’” Hereafter the Catechism will be cited as CCC. Cf. *Gaudium et spes*, Documents of Vatican II, ed. Flannery #43.

5. Although he claims that Aristotle thinks natural right is changeable, elsewhere in the *Nicomachean Ethics*, Bk II, chap. 6, 1107a8-17, Aristotle seems to hold that some actions (the examples include adultery and murder) are always wrong, i.e. not changeable in their moral evaluation. This would seem to mean that certain actions are always wrong because they are not in accord with man’s nature, i.e. do not lead him to a life of happiness—his end.

6. And the moral theory of consequentialism is contrary to the traditional natural moral law approach (VS, #80-82).

7. It appears that Strauss means that the historian will assess the consequences of the statesmen’s actions and determine whether they were just or not. But one can ask—by what criteria does the historian

judge the consequences? By the common normal rules or the highest law of public safety?

8. Some might argue that Strauss uses the term *rules* instead of principles and that might mean he is not rejecting universal moral principles. Whether one calls them universal rules of action or universal moral principles of action, Strauss seems to deny that there are certain actions that are forever and always wrong for all persons—which are expressed precisely through the universal principles or rules of natural law that bind at all times, in all circumstances.

9. James V. Schall states that Strauss's dance with Machiavelli (doing evil for the sake of good) is "admittedly, almost too close." Yet Schall thinks that Strauss, like Aquinas, would never approve of doing a clearly evil act in any circumstances. ("A Latitude," 132, 134.) I disagree with Schall, here, in that Strauss is too close, that he does approve of doing an evil act. This seems to follow if the normal rules of natural right/justice do not apply in some circumstances. As I see it, Strauss's text doesn't seem to affirm the judgment that a clear evil is never to be approved (done). West, p. 17-18, seems to think that Strauss does reject universal principles that bind in every circumstance. Furthermore, it is argued that Strauss perhaps is merely concerned with an abstract understanding of principles and wants to focus on concrete particular decisions and so he doesn't mean rejecting the principles themselves. Of course, there can be much complexity in one's decision making with respect to time, place, and circumstances, in applying a principle, but this does not prevent the principle from always applying.

10. However, by "latitude" Strauss could mean that Aquinas' natural moral law theory was a rigid one-size blue print to impose on society and would not allow legitimate political decision making. If this is what Strauss meant, then it is clear that Aquinas does not come close to this—especially as evidenced by his distinction between civil laws being both conclusions from premises of the natural law, and determinations—more remote man made decisions (ST I-II, Q. 95, a. 2). There is ample room for a statesman's decision making—just not the type of decisions that violate universal moral norms (EV, #71).

11. His use of these two examples also seems to support the conclusion that he is not merely talking about mere application of principles, but rather a rejection of the principles themselves. For the natural law prohibits use of artificial contraception in all circumstances.

12. It is not my intention to delve into this quite complex subject matter as it relates to Strauss. Many have written on this topic—one good book advocating that Strauss was a supporter of Old Testament Biblical revelation is Susan Orr's, *Jerusalem and Athens: Reason and Revelation*

in Leo Strauss, (Lanham, MD: Rowman and Littlefield, 1995). It will suffice for us to take him at his word as written in NRH, regarding natural law and revelation.

13. The Church also teaches that we need divine revelation and grace so that “moral and religious truths may be known ‘by everyone with facility, with firm certainty and with no admixture of error’ . . .” (CCC, 1960). Thus, it is not that universal moral principles do not exist, but rather that certain ones pertaining to some actions may be more difficult for some to know, and therefore divine revelation confirms these aspects of the natural law which in principle can be known by reason (VS, #74). This is different, however, from rejecting the existence of the principles themselves as rooted in an unchanging human nature.

14. Aquinas, ST I-II, Q. 100, a.1., and VS, #79, referencing Aquinas on this point.

15. Of course, the saving power of the Catholic Faith needs to be made available as well for salvation of souls.