

III

Natural Law Foundations for Liberalism

Maritain, St. Thomas Aquinas, and the First Principles of the Natural Law

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In *Man and the State* Jacques Maritain observes, “The only practical knowledge all men have naturally and infallibly in common as a self-evident principle, intellectually perceived by virtue of the concepts involved, is that we must do good and avoid evil.”¹ Maritain maintains that Thomas Aquinas’s natural law theory calls for an historical approach because, as he contends, man’s knowledge of that law has been progressively shaped by his natural inclinations, providing over time for a richer understanding of the precepts of the natural law. However, while Thomas certainly acknowledges that most of the precepts prescribed by that law are not self-evident and must be deduced, he by no means limits the natural law to only *one* self-evident principle. Just as there are several such principles of the speculative intellect, Thomas argues, so too are there several of the practical—and these are what he calls the first precepts of the natural law. Thus, while Thomas might concur with Maritain that our understanding of the natural law involves some sort of historical development—he would *not* concur with the notion that our understanding of the most general precepts of that law are the result of such a development.

Maritain maintains that the historical development of the natural law has progressed in two ways: first as regards a movement away from a confused understanding of what he calls the “primordial regulations” of the natural law, and second as regards a dawning social awareness of the “further higher regulations” of that law by means of what he terms “a knowledge through inclination.”²

For the natural law to be indeed natural, however, it must somehow be grounded in man’s nature, which is to say that it must be grounded in some natural recognition of right from wrong. Thus, Thomas Aquinas observes that all men naturally know

¹ Jacques Maritain, *Man and the State* (Chicago: The University of Chicago Press, 1951), p. 90.

² *Ibid.*, pp. 93-94.

what he terms “the universal principles of right” (*universalia iuris praecepta*).³ These universal principles, he explains, are found in the practical intellect, i.e., in the intellect as it is directed towards practical matters. Just as the speculative intellect argues about speculative matters, so the practical intellect does about practical ones. Thus, Thomas concludes that we must naturally have an understanding—not only of speculative principles—but of practical ones as well. And it is these principles that Thomas refers to as the universal principles of right.

This habit of first practical principles, he explains, is bestowed on us by nature.⁴ Nevertheless, it is not natural to man as if these principles were innate. Rather, Thomas explains, their existence is due partly to nature and partly to some extrinsic principle.⁵ To make this fact clear, he gives an example from the speculative first principle that *every whole is greater than its part*:

For it is on account of the very nature of the intellectual soul that man, having grasped what a “whole” is and what a “part” is, should at once (*statim*) understand that every whole is greater than its part—and it is the same with the other [first principles]. But *what* a “whole” is and *what* a “part” is he cannot know except through the intelligible species which he has received from phantasms. And for this reason the Philosopher at the end of the *Posterior Analytics* shows that knowledge of principles comes to us from the senses.⁶

Thomas concludes that the first principles of the practical intellect are instilled in us in the same way. It is in this respect, then, that the habit of first principles is a natural one: because of man’s natural *capacity* to acquire those principles. For this reason, the universal principles of right that man is obliged to know he also knows naturally. But what are these principles? Thomas begins by explaining that the first thing that falls under the apprehension of the intellect *simply* is *being* since this notion is included in everything that is apprehended. Consequently, the first principle of the *speculative* intellect is the principle of non-contradiction: that the same thing cannot be affirmed and denied at the same time. Now the *practical* intellect is directed towards action, thus the first thing that falls under the apprehension of the *practical* intellect is *being* considered under the aspect of *good* since every act is performed for some end which is desirable. Thus, Thomas explains that the first principle of the practical intellect states that *good is that which all things seek after*. And so, the first *precept* or command of the natural law is that *good*

³ Saint Thomas Aquinas, *Summa Theologiae*, (henceforth ST) I-II, q. 76 a. 2. Thomas refers to these principles as the Ten Commandments in the *De Malo* (q. 3, a. 7, c.), not simply inasmuch as they are part of revelation but inasmuch as they are naturally known.

⁴ ST, I, q. 79, a. 12.

⁵ ST, I-II, q. 51, a. 1.

⁶ *Ibid.* Emphasis added. “Ex ipsa enim natura animae intellectualis, convenit homini quod statim, cognito quid est totum et quid est pars, cognoscat quod omne totum est maius sua parte; et simile est in ceteris. Sed quid sit totum, et quid sit pars, cognoscere non potest nisi per species intelligibiles a phantasmatis acceptas. Et propter hoc Philosophus in fine *Post.* ostendit quod cognitio principiorum provenit nobis ex sensu” (Ottawa ed. 918b24-34).

*is to be done and pursued, and evil is to be avoided.*⁷ Just as all the first principles of the speculative intellect follow from the principle of non-contradiction, so the other first principles of the *practical* intellect (or first precepts of the natural law) follow from *this* first one—principles, Thomas explains, “which the practical intellect naturally apprehends as the good of man.”⁸ And these other principles follow from the first, he notes, according to the order of man’s natural inclinations.

As Thomas explains, man’s most basic nature is as a substance; thus some of the precepts of the natural law follow from man’s inclination to the good in accordance with his nature simply as a substance. Since each substance seeks to preserve its own being according to its nature, Thomas concludes that “according to this inclination, those things pertain to the natural law by which man’s life is preserved, as do those things by which [what is] contrary [to man’s life] are thwarted.”⁹ Thomas next observes that it is also part of man’s nature to be an animal. Inasmuch as he is one, then, he has inclinations that he shares in common with other animals. Thus, Thomas concludes that “those things are said to be part of the natural law ‘which nature has taught to all animals,’ such as sexual intercourse, education of children, and so forth.”¹⁰ But man is more than simply an animal, he is a *rational* animal. So Thomas concludes that there is also in man an inclination to good which is according to the nature of his reason—which nature is proper to him. Thus, man has a natural inclination to know the truth about God and to live in society.¹¹ In discussing whether all the moral precepts of the Old Law are reducible to the ten precepts of the decalogue, Thomas later observes that the two principles *Thou shalt love the Lord thy God* and *Thou shalt love thy neighbor* are both self-evident, first general principles of the natural law—the former one through faith, but the latter through nature.¹²

In this way, while the precepts of the natural law are founded upon one common foundation, they are nonetheless many. Man is *obliged* to know the most general

⁷ *ST*, I-II, q. 94, a. 2.

⁸ *Ibid.* “Hoc est ergo primum praeceptum legis, quod bonum est faciendum et prosequendum, et malum vitandum. Et super hoc fundantur omnia alia praecepta legis naturae, ut scilicet omnia illa facienda vel vitanda pertineant ad praecepta legis naturae, quae ratio practica naturaliter apprehendit esse bona humana” (Ottawa ed. 1225b25-32).

⁹ *Ibid.* “Secundum igitur ordinem inclinationum naturalium est ordo praeceptorum legis naturae. Inest enim primo inclinatio homini ad bonum secundum naturam in qua communicat cum omnibus substantiis, prout scilicet quaelibet substantia appetit conservationem sui esse secundum suam naturam. Et secundum hanc inclinationem pertinent ad legem naturalem ea per quae vita hominis conservatur, et contrarium impeditur” (Ottawa ed. 1225b39-49).

¹⁰ *Ibid.* “Secundo inest homini inclinatio ad aliqua magis specialia, secundum naturam in qua communicat cum ceteris animalibus. Et secundum hoc dicuntur ea esse de lege naturali ‘quae natura omnia animalia docuit’, ut est commixtio maris et feminae, et educatio liberorum, et similia” (Ottawa ed. 1225b50-1226a3).

¹¹ *Ibid.* “Tertio modo inest homini inclinatio ad bonum secundum naturam rationis, quae est sibi propria; sicut homo habet naturalem inclinationem ad hoc quod veritatem cognoscat de Deo, et ad hoc quod in societate vivat. Et secundum hoc, ad legem naturalem pertinent ea quae ad huiusmodi inclinationem spectant, utpote quod homo ignorantiam vitet, quod alios non offendat cum quibus debet conversari, et cetera huiusmodi quae ad hoc spectant” (Ottawa ed. 1226a3-a14). Thomas’s implication is that these inclinations are self-evident first principles of the practical intellect.

¹² *ST*, I-II, q. 100, a. 3, obj. & ad 1.

precepts inasmuch as they are the universal principles of right, but he *naturally* knows them inasmuch as they are the first principles of the practical intellect. Consequently, knowledge of these precepts transcends time and culture. One cannot be ignorant of them, Thomas suggests, because these precepts of the natural law are *self-evident* to everyone.

Thomas identifies these self-evident precepts as one type of moral judgment. But not everything that belongs to the natural law is self-evident, some matters require more careful judgment regarding various circumstances. Thus Thomas identifies a second type of moral judgment as regards such matters that only the wise are competent to judge carefully. Finally, he identifies a third type of moral judgment as regards those matters that one cannot judge at all without assistance from Divine Instruction.¹³

What judgments, then, can be deemed to be so evident that *everyone* is able to approve or disapprove of them from the first principles? Is it possible because of historical or cultural influences, *e.g.*, for one not to know the basic moral precepts as outlined in the Ten Commandments? In discussing whether all the moral precepts of the Old Law belong to the natural law, Thomas gives examples of the three types of moral judgments just mentioned:

All of the moral precepts [of the Old Law] necessarily belong to the natural law, but in different ways. For there are certain things that the natural reason of each and every man judges *instantly of its own accord (statim per se)* to be done or not to be done—*e.g.*, ‘Honor thy father and thy mother’; and ‘Thou shalt not kill’; ‘Thou shalt not steal’. And such things belong to the nature law absolutely.—And, again, there are certain things that, with a more careful consideration of reason, are judged by wise men to be obligatory. And such things belong to the natural law, yet so that they need to be inculcated, the less wise being instructed by the more so: *e.g.*, ‘Rise up before the hoary head, and honor the person of the aged man,’ and the like.—And, again, there are certain things the judgment of which human reason requires divine instruction, whereby we are taught about things concerning God: *e.g.*, ‘Thou shalt not make to thyself a graven thing, nor the likeness of anything’; ‘Thou shalt not take the name of the Lord thy God in vain.’¹⁴

Thomas later explains that the precepts contained in the Decalogue are referred as conclusions to the two self-evident principles *Thou shalt love the Lord thy God* and *Thou shalt love thy neighbor*, thus implying that they are not themselves self-

¹³ ST, I-II, q. 100, a. 1.

¹⁴ Ibid. Emphasis added. “Sic igitur patet quod cum moralia praecepta sint de his quae pertinent ad bonos mores, haec autem sunt quae rationi conveniunt, omne autem rationis humanae iudicium aliquantulum a naturali ratione derivatur; necesse est quod omnia praecepta moralia pertineant ad legem naturae, sed diversimode. Quaedam enim sunt quae statim per se ratio naturalis cuiuslibet hominis diiudicat esse facienda vel non facienda; sicut: ‘Honora patrem tuum et matrem’; et ‘Non occides; Non furtum facies’. Et huiusmodi sunt absolute de lege naturae. — Quaedam vero sunt quae subtiliori consideratione rationis a sapientibus iudicantur esse observanda. Et ista sic sunt de lege naturae, ut tamen indigeant disciplina, qua minores a sapientioribus instruantur, sicut illud: ‘Coram cano capite consurge, et honora personam senis’, et alia huiusmodi. — Quaedam vero sunt ad quae iudicanda ratio humana indiget instructione divina, per quam erudimur de divinis; sicut est illud: ‘Non facies tibi sculpilae neque omnem similitudinem; Non assumes nomen Dei tui in vanum’ ” (Ottawa ed. 1259b6-b32).

evident.¹⁵ Nevertheless, he observes that “those precepts belong to the decalogue the knowledge of which man has through his very nature (*per seipsum*), from God—such precepts that can be known from general first principles immediately (*statim*) with but slight consideration.”¹⁶ This is why Thomas describes the precepts of the second tablet as being known by the intellect “instantly of its own accord,”¹⁷ and elsewhere describes them as being “like self-evident first principles.”¹⁸

Thomas thus thinks that all men naturally know that it is wrong to kill, to steal, to commit adultery, *etc.*¹⁹ Unlike the first general precepts of the natural law, they are not strictly “self-evident.” But unlike the precepts that must be ‘inculcated’ in all by wise men, these precepts are naturally and immediately acquired. Thus, just as with the speculative intellect—when one first understands the nature of a whole, *e.g.*, and that of a part he immediately recognizes that the whole is always greater—so too, Thomas suggests that, with the practical intellect, as soon as one recognizes the nature of a man and the nature of taking another’s property or taking another’s life, one recognizes of his own accord and at once that it is wrong to steal or to kill.

Given Thomas’s discussion of the general precepts of the natural law, why then does Maritain insist that the only self-evident precept is that we must do good and avoid evil? The answer lies in certain epistemological differences between himself and Thomas. Maritain notes emphatically, “. . . let us stress that human reason does not discover the regulations of natural law in an abstract and theoretical manner, as a series of geometrical theorems. Nay more, *it does not discover them through the conceptual exercise of the intellect, or by way of rational knowledge.*”²⁰ How then does man discover the regulations of the natural law? Maritain’s response: through *inclination*.

As we have seen, Thomas describes the precepts of the natural law as following according to the order of man’s natural inclinations: his inclinations *qua* substance, *qua* animal, and *qua* rational. Maritain suggests that Thomas’s teaching on this

¹⁵ *ST*, I-II, q. 100, a. 3, obj. & ad 1.

¹⁶ *ST*, I-II, q. 100, a. 3. Emphasis added. “Illa ergo praecepta ad decalogum pertinent, quorum notitiam homo habet per seipsum a Deo. Huiusmodi vero sunt illa quae statim ex principiis communibus primis cognosci possunt modica consideratione; et iterum illa quae statim ex fide divinitus infusa innotescunt” (Ottawa ed. 1261a24-30).

¹⁷ *ST*, I-II, q. 100, a. 1.

¹⁸ *ST*, II-II, q. 170, a. 2, obj. & ad 1 (Ottawa ed. 2259a4-7). Thomas makes this observation in an article examining whether the precepts of the virtues annexed to temperance are suitably given in the Divine law. The objector argues: “Praecepta enim decalogi, ut dictum est, sunt quaedam universalis principia totius legis divinae. Sed ‘superbia est initium omnis peccati’, ut dicitur *Eccli.* X. Ergo inter praecepta decalogi debuit aliquod poni prohibitorium superbiae” (Ottawa ed. 2258b1-6). To this objection, Thomas responds: “Dicendum quod superbia est initium peccati, sed latens in corde, cuius etiam inordinatio non perpenditur communiter ab omnibus. Unde eius prohibitio non debuit poni inter praecepta decalogi, quae sunt prima principia per se nota” (Ottawa ed. 2259a1-7). A variant text is listed as stating “quae sunt sicut prima principia per se nota” (emphasis added). This variation is more consistent with what Thomas says on this matter in other texts.

¹⁹ *ST*, I-II, q. 100, a. 3.

²⁰ *Man and the State*, p. 91. Emphasis added.

matter has not been sufficiently understood. As he explains, when Thomas “says that human reason discovers the regulations of natural law through the guidance of inclinations of human nature, he means that the very mode or manner in which human reason knows natural law is not rational knowledge, but knowledge *through inclination*.”²¹

But is Thomas really arguing this? Maritain grants that Thomas does not say as much, but he contends that this *is* Thomas’s meaning.²² But consider again Thomas’s explanation for the foundation of the first precept of the natural law: it is rooted, he says, in the practical intellect’s apprehension of *being*, in short, in the *concept of being*—a concept considered under the aspect of *good*. From this apprehension, then, is founded the first principle of the practical intellect from which we draw self-evident propositions of the natural law in the manner that the speculative intellect draws self-evident propositions from the principle of non-contradiction. Thomas would seem to be describing a foundation for the natural law that rests upon rational knowledge. What Maritain maintains, however, is that “The matter has been obscured somewhat because of the perpetual comparison that St. Thomas uses in these articles between the speculative and the practical intellect, and by reason of which he speaks of the *propria principia* of Natural law as ‘*quasi conclusiones principiorum communium*.’”²³

Maritain explains that—as opposed to the general principles of the natural law which Thomas describes as first principles, the *propria principia* or more specific precepts play a part that is *similar* to the conclusions of the speculative intellect—but, he emphasizes, that similarity should not be taken too literally. He argues that the specific precepts of the natural law (such as *Parricide is to be avoided* as opposed to *Murder is to be avoided*) are in fact *not* conclusions that are rationally deduced. How Maritain thinks they are arrived at we will consider in a moment; for now, let us grant his position regarding the specific precepts. But what about the *general* ones? Thomas’s comparison between these two intellects is presented first and foremost to illustrate the similarities between the most general *first* principles of each. It is *this* similarity which is key; it is by *this* comparison that Thomas concludes it to be “evident that, as regards the general principles either of the speculative or of practical intellect, truth or rectitude is the same for all, and is equally known by all.”²⁴ In short, Thomas concludes that these general, first principles—ones which Maritain calls the “primordial regulations”—are *self-evident*. They are not discovered by society over time, nor (*qua* general principles) are they even understood in a “less confused” manner over time, as Maritain suggests. Rather, as self-evident principles they are understood fully and clearly the moment the concepts involved

²¹ Ibid.

²² Ibid., n. 11.

²³ Ibid.

²⁴ *ST*, I-II, q. 94, a. 4. “Sic igitur patet quod quantum ad communia principia rationis sive speculativae sive practicae, est eadem veritas seu rectitudo apud omnes, et aequaliter nota” (Ottawa ed. 1227b31-b34).

are understood. And as Thomas shows, despite Maritain's claim to the contrary, these self-evident precepts of the natural law involve much more than simply the principle that man should do good and avoid evil.

Thus, by comparing the first principles of the practical intellect with those of the speculative, Thomas is able to illustrate the conceptual origins of the most general precepts of the natural law. But as we have seen, Maritain argues that the intellect does not discover these moral principles by means of a conceptual exercise of the intellect. Again, turning to Thomas's statements regarding inclination, Maritain maintains that such knowledge is attained through inclination. As Maritain notes, "That kind of knowledge is not clear knowledge through concepts and conceptual judgments;" what is it then? He goes on to explain, "it is obscure, unsystematic, vital knowledge by connaturality or congeniality, in which the intellect, in order to bear judgment, consults and listens to the inner melody that the vibrating strings of abiding tendencies make present in the subject."²⁵

But how does this poetic discussion of "inner melody" and "vibrating strings" fit into the framework of a Thomistic epistemology? As regards natural cognition, Thomas describes only three acts of the intellect: simple apprehension whereby we form concepts; composition and division whereby we make judgments in light of those concepts; and reasoning whereby we draw conclusions from our conceptual judgments.²⁶ As regards the most general precepts of the natural law, Maritain maintains that our knowledge is not "clear knowledge through concepts and conceptual judgments." As we have seen, however, Thomas does not reach the same conclusion. He describes these general precepts as self-evident principles: which is precisely to say that they are judgments—judgments involving concepts. Maritain's interpretation of the role of inclination thus contradicts the Thomistic account. Nevertheless, he is correct to point out that Thomas cites man's inclinations as being the origin of this law. Where, then, does Thomas's discussion of inclination fit into his epistemology?

We have seen that Thomas describes three types of inclinations in man: substantial, animalistic, and rational. It is the third type of inclination that is proper to man *qua* man and, thus, most relevant to any discussion of the natural law—for as Thomas observes, other substances and animals do not partake of the natural law.²⁷ Since Thomas presents this discussion of inclination within the context of cognition, he seems to be referring simply to the capacity of the knowing faculty to receive knowledge. Thus, inasmuch as man *is* rational, whatsoever knowledge he receives, he is inclined to receive as a rational being—just as wax is inclined to receive a seal according to its nature as wax. What Thomas concludes is that the first principles of both the speculative and practical intellect are *necessarily* recognized insofar as man receives knowledge at all. Considered in this respect, Thomas's

²⁵ *Man and the State*, pp. 91-92.

²⁶ *ST*, I, q. 85, a. 5.

²⁷ *ST*, I-II, q. 91, a. 3, ad 3.

discussion of the similarities between the two intellects does not obscure his discussion of inclination, as Maritain claims. Just as man is inclined to know the self-evident principle that a whole is always greater than its part, so too is he inclined to know the self-evident precept that one should do evil to no man.²⁸ Thus, Thomas's discussion of inclination should be seen as one of man's inclining to recognize the self-evident principles of the natural law: in short, an inclination (contrary to Maritain's claim) to recognize self-evident, *conceptual* judgments.

These self-evident, conceptual judgments are what form the habit of first practical principles, also known as *synderesis*; and this habit, Thomas argues, can never be in error.²⁹ In other words, no one errs regarding these first principles.³⁰ Furthermore, Thomas continues, as *synderesis* is not learnt, neither can it be lost. Like the habit of the first principles of understanding, *synderesis* is caused immediately by the active intellect. Consequently, it is incorruptible, either directly or indirectly. As Thomas explains, the habit of first practical principles cannot be corrupted either by forgetfulness or deception.³¹

If we cannot err regarding the first precepts of the natural law, it might seem as though there should be no error regarding our actions. But as Maritain himself points out, "Montaigne maliciously remarked that, among certain peoples, incest and thievery were considered virtuous acts."³² When the Canaanites sacrificed their children to Moloch, they did so in the belief that it was a good and pious act; and when Hindus practiced *suttee*—the ritual of burning a bride upon the death of her husband—they did so too. But nonetheless, these acts violated the precept of the natural law which forbids killing. Thomas explains that the answer to how man can commit such violations of the natural law despite the fact that he is possessed of unerring universal principles lies precisely in the nature of these principles *as* universal.

Reason, Thomas notes, directs all human acts according to a twofold knowledge: both universal and particular. When presented with a choice, the intellect confers about what should be done through the use of a syllogism, the conclusion of which is a judgment or choice made. While the precepts of the natural law are universal judgments, actions concern singulars: *viz.*, that *this* act should or should not be performed. Consequently, the conclusion of a practical syllogism is a particular proposition. But a particular proposition follows from a universal one only through the medium of another particular proposition. Thus, one rejects the sin of parricide by considering the universal proposition that it is wrong to kill one's father as well as the particular proposition that *this* man is one's father. "Hence," Thomas explains, "ignorance about either of these two [propositions] (*viz.* the universal principle

²⁸ *ST*, I-II, q. 100, a. 3.

²⁹ *ST*, I-II, q. 91, a. 3, ad 3.

³⁰ *ST*, I, q. 79, a. 12, ad 3.

³¹ *ST*, I-II, q. 53, a. 1.

³² *Man and the State*, p. 90.

that is a rule of reason, or the particular circumstance) can cause an act of parricide.”³³ Error can result, furthermore, when the practical intellect does not make a correct application of the universal principle to acts. Thus, Thomas explains that just as the speculative intellect can arrive at a false conclusion when it neglects to construct a syllogism according to the proper form of argumentation, so can the practical intellect arrive at a false conclusion in the same manner.³⁴

Earlier we had granted Maritain’s position that “those *propria principia* or specific precepts of Natural law are in no way conclusions rationally deduced . . .”³⁵—specific precepts like *Parricide is to be avoided*. But we see Thomas present here a model of the practical intellect reasoning syllogistically just as the speculative does. The significant difference between the two kinds of intellectual arguments would be the object: one concerning practical matters, the other speculative. Otherwise, Thomas suggests, the *mode* of understanding is the same. If we consider again the three acts of the intellect, man’s understanding of the *propria principia* would *necessarily* involve a conceptual act since a precept is a judgment. And, since these specific precepts are not self-evident, they must be concluded from judgments that are; in short, they must be concluded from the first precepts, as Thomas observes. Again, when he speaks of inclination, he is referring to man’s capacity to make conceptual judgments and to draw rational conclusions in these matters. There is no indication that the inclination that he describes is some non-rational mode of thought, nor is there any indication that he thinks our understanding of the specific moral precepts that follow from this inclination are as Maritain contends, “in *no* way rationally deduced.”

Thus, in discussing the origin of moral error, Thomas notes that:

We must say that as to the first general principles, the natural law is the same for all both as to rectitude and as to knowledge. But as to certain particulars *which are, as it were, conclusions of those general principles*, it is the same for all in most [cases], both as to rectitude and as to knowledge; yet in a few cases it can fail both as to rectitude . . . and also as to knowledge, since some people have a perverted reason due to passion or due to evil habit or due to an evil disposition of nature; thus, as Julius Cæsar recounts in *The Gallic Wars*, formerly among the Germans theft was not considered wrong even though it is expressly contrary to the natural law.³⁶

³³ *ST*, I-II, q. 76, a. 1. “Utriusque ergo ignorantia potest causare parricidii actum, scilicet et universalis principii, quod est quaedam regula rationis, et singularis circumstantiae” (Ottawa ed. 1131a2-6).

³⁴ Thomas Aquinas, *De Veritate*, q. 17, a. 2.

³⁵ *Man and the State*, p. 91.

³⁶ *ST*, I-II, q. 94, a. 4. Emphasis added. “Sic igitur dicendum est quod lex naturae quantum ad prima principia communia, est eadem apud omnes et secundum rectitudinem, et secundum notitiam. Sed quantum ad quaedam propria, quae sunt quasi conclusiones principiorum communium, est eadem apud omnes etiam ut in pluribus et secundum rectitudinem et secundum notitiam; sed ut in paucioribus potest deficere et quantum ad rectitudinem propter aliqua particularia impedimenta, sicut etiam naturae generabiles et corruptibiles deficient ut in paucioribus, propter impedimenta, et etiam quantum ad notitiam; et hoc propter hoc quod aliqui habent depravatam rationem ex passione, seu ex mala consuetudine, seu ex mala habitudine naturae; sicut apud Germanos olim latrocinium non reputabatur iniquum, cum tamen sit expresse contra legem naturae, ut refert Iulius Caesar in libro *De Bello Gallico*” (Ottawa ed. 1228a11-a32).

In this passage, Thomas acknowledges that cultural and historical circumstances *can* result in a certain ignorance regarding the natural law. When he notes that the ancient Germans did not consider theft to be wrong, however, Thomas is not suggesting that they were ignorant of the precept *Thou shalt not steal*. As we have seen, Thomas describes the precepts of the second tablet as being “like self-evident principles”—principles “which the natural reason of every man judges *instantly* of its own accord.” Thus, the German acceptance of theft described by Cæsar was not an ignorance regarding the substance of the Seventh Commandment; rather, it was an ignorance that theft is wrong regarding certain details: *e.g.*, that it was wrong to steal from *these* tribes or from non-Germans, or even that such an act in regards to those people constituted theft at all. Such ignorance, therefore, is an error concerning the minor premise of a practical syllogism—in short, it is a deductive error.

The supposed pervasive cultural ignorance among the early Germans regarding the evil of theft, or that of Hindus regarding the practice of Suttee, is not simply the result of individual error, however. In the *Summa*, Thomas explains that as regards the more *specific* precepts of the natural law, “the natural law can be erased (*delevi*) from the hearts of man, either because of evil persuasions . . . or because of *vicious customs* and corrupt habits.”³⁷ He seems to allow for such cultural influences in the *De Malo*, as well. There, Thomas notes that while ignorance generally signifies a privation of knowledge, “Sometimes ignorance is something opposed to knowledge, and that is said to be an ignorance from a perverse disposition, namely when someone has a habit of false principles and false opinions on account of which he is impeded from knowledge of the truth.”³⁸

Thus, Thomas shows that such violations of the natural law do not originate in an error as regards the most general precepts but as regards the *application* of those precepts—and that this error is, in part, a deductive one. When the Canaanites would sacrifice their children or when Hindus would burn their widows, they did so following certain false principles which custom and law had taught them, which is to say that they did so *believing* those principles to be true. As both Maritain and Thomas would conclude, their judgment had been corrupted. It is here that we see the possibility for what Maritain argues: *viz.*, an historical development of the understanding of the natural law.

As we have seen, Thomas describes three types of moral judgments concerning the precepts of the natural law. We have already considered the first type of judgments—*viz.*, those which are known to all men—and we have seen that it

³⁷ ST, I-II, q. 94, a. 6. Emphasis added. “Quantum vero ad alia praecepta secundaria, potest lex naturalis deleri de cordibus hominum, vel propter malas persuasiones, eo modo quo etiam in speculativis errores contingunt circa conclusiones necessarias; vel etiam propter pravas consuetudines et habitus corruptos, sicut apud quosdam non reputantur latrocinia peccata; vel etiam vitia contra naturam, ut etiam Apostolus dicit, *Ad Rom.* I²⁴” (Ottawa ed. 1230a10-20).

³⁸ Thomas Aquinas, *De Malo* (henceforth DM), q. 3, a. 7. “Quandoque autem ignorantia est aliquid scientie contrarium, que dicitur ignorantia, peruerse dispositionis: puta cum aliquis habet habitum falsorum principiorum et falsarum opinionum, ex quibus impeditur a scientia veritatis” (Leonine ed., vol. 23, p. 81, ll. 85-90).

consists of all of the moral precepts as enunciated in the second tablet of the Decalogue. These judgments are what Maritain refers to as the “primordial regulations of the natural law.” Maritain notes of these precepts that “human reason has become aware [of them] in a less and less crepuscular, rough, and confused manner ...”³⁹ As we have also seen, however, Thomas describes certain of these precepts as *self-evident*; but self-evident propositions by definition are understood clearly and thoroughly the moment that their concepts are understood. Thus, contrary to Maritain’s claim, it is impossible for there to be any development of understanding as regards this first type of judgments.

However, as regards the second type of moral judgment—*viz.*, those concerning matters that are discerned and inculcated by the wise—such judgments *do* admit of historical development. But such development would concern what Thomas refers to as the *propria principia* or more specific precepts of the natural law: such as that parricide is to be avoided. An historical development in this respect could involve such changes as a dawning social consciousness of the full implications of the first precepts of the natural law. To see how this could occur, we need to take a closer look at the erring conscience and how it can be corrected.

As we have already observed, when the Hindus burnt their widows, they did so in the belief that such acts are pious and good. In doing so, then, they were following their conscience. Now conscience, Thomas explains, directs human acts inasmuch as it applies universal precepts to particular actions. Consequently, conscience binds by the power of a precept.⁴⁰ Hence, Thomas concludes that one is bound by one’s conscience no matter how false it may be—even if it contradicts the natural law.⁴¹ As Thomas explains, “although that which an erroneous conscience dictates is not in harmony with God’s law, nevertheless it is accepted by the mistaken person *as* the very law of God; for that reason (taking the thing in itself) if one departs from it, he departs from God’s law even though it would be accidental that he does not depart from God’s law.”⁴²

The Hindu whose conscience dictated that *All widows should be burned*, then, was bound by his conscience to do so. Nevertheless, while his conscience necessarily bound him, it did *not* necessarily excuse him from sin. The question whether an erring conscience excuses from sin concerns whether one’s ignorance is voluntary or not. As Thomas explains, if conscience errs from an ignorance that is either willed directly or willed indirectly through negligence, then it does not excuse the will.⁴³ Accordingly, he concludes, “one who follows such a conscience and acts according to it acts contrary to God’s law and sins mortally. For there was sin in the error itself since it happened through the person’s ignorance of that which he

³⁹ *Man and the State*, p. 94.

⁴⁰ *De Veritate*, q. 17, a. 3.

⁴¹ *Ibid.*, q. 17, a. 4, *sed contra* 5.

⁴² *Ibid.*, q. 17, a. 4, ad 1. Emphasis added. “Ad primum igitur dicendum quod, quamvis id quod dicitur erronea conscientia non sit consonum legi Dei tamen accipitur ab errante ut ipsa lex Dei, et ideo, per se loquendo si hoc recedat recedit a lege Dei quamvis per accidens sit quod a lege Dei non recedat” (Leonine ed. vol. 22.1, p. 526, ll. 190-95).

ought to have known.”⁴⁴ Because of its specific nature, a precept such as *No widow should be burned* is not among the first principles of the practical intellect. Consequently, it is not self-evident. Nevertheless, simply because it is not a self-evident precept does not suggest that one is not obliged to know it.

The Hindu in this instance was culpable for his action regarding a *particular* judgment precisely because he was able to change his understanding of a universal one. Thus, while he had to abide by his conscience as long as it dictated that *All widows must be burned*, he was culpable for burning his brother's bride precisely because he could change his conscience. As Thomas explains, an erring conscience “does not oblige in every event. For something can happen, namely, a change of conscience, and, when such occurs, one is no longer bound.”⁴⁵ Thus, when Thomas suggests that culture or historical circumstances can inculcate in a person a habit of false principles and opinions impeding him from a knowledge of truth, Thomas does *not* mean to say that that person is impeded absolutely so that he can *never* have knowledge of the truth. A false principle impedes knowledge inasmuch as the intellect does not admit of contraries. Hence, the Hindu who judged that *All widows should be burned* was impeded from the knowledge that *No widows should be burned* insofar as it is not possible for the intellect to affirm and deny the same thing at the same time.

However, if such erroneous judgments are removed, so too is the impediment to knowledge. The Hindu possessed of his false precept, then, was capable of learning that bride burning *is* a form of murder. Insofar as he was capable of making this judgment, so too was he capable of changing his conscience. And so too is an entire culture capable of changing *its* conscience. This is one example, then, of how an historical development of an understanding of the natural law can occur. And such realization, Thomas explains, is discerned and inculcated by the wise: not necessarily the wise absolutely speaking, but at least those wise enough to deduce the *propria principia* that follow from the first general precepts of the natural law. Such an historical development seems to be what Maritain describes as the kind that is “as regards the way in which [human reason] has become aware . . . of [the natural law's] further, higher regulations.”⁴⁶

Thus, the second type of moral judgments that Thomas describes—those that are evident to the wise—would allow of an historical development. And, the third type of moral judgments would as well—*viz.*, those that can only be known by

⁴³ *ST*, I-II, q. 19, a. 6.

⁴⁴ *De Veritate*, q. 17, a. 4, ad 3. Emphasis added. “Ad tertium dicendum quod conscientia erronea errans in his quae sunt per se mala, dictat contraria legi Dei, sed tamen illa quae dictat dicit esse legem Dei, et ideo transgressor illius conscientiae efficitur quasi transgressor legis Dei, quamvis etiam conscientiam sequens et eam opere implens contra legem Dei faciens mortaliter peccet, quia in ipso errore peccatum erat cum contingeret per ignorantiam eius quod scire debebat” (22.1, p. 526, ll. 211-20).

⁴⁵ *Ibid.*, q. 17, a. 4. “unde talis conscientia non obligat in omnem eventum, potest enim aliquid contingere, scilicet depositio conscientiae, quo contingente aliquis ulterius non ligatur” (vol. 22.2, p. 525, ll. 158-62). Cf. *Ibid.*, ad 8.

⁴⁶ *Man and the State*, p. 94.

revelation. This is apparent if we simply consider the fact that the Jews received the Old Law from God whereas once they did not have it. But, again, the first type of judgments—those involving the first precepts of the natural law—can admit of *no* historical development whatsoever. It is true that the conclusions that follow from them and that stand as precepts in their own right can be developed, but if we are to argue as Thomas does that the first principles of the practical intellect are self-evident, then we must conclude that everyone who recognizes the concepts involved in those judgments recognizes the judgments themselves immediately. Thus, it is incorrect to conclude as Maritain does that “the knowledge of the primordial aspects of natural law was first expressed in *social patterns* rather than in personal judgments ...”⁴⁷ Social patterns might explain our developed understanding of the *specific* precepts of that law, but if our understanding of the natural law were not ultimately grounded in self-evident precepts—which is to say that if it were not ultimately grounded in self-evident “personal judgments”—then there could be no foundation for its expression in social patterns from the start.

Maritain maintains that Thomas’s teaching on the natural law “should be understood in a much deeper and more precise fashion than is usual.”⁴⁸ However, he does not present such an understanding in *Man and the State*; rather, he departs from that teaching on several essential points. Contrary to Thomas, Maritain maintains that only one precept of the natural law is self-evident: *viz.*, that man should do good and avoid evil. Thomas, however, enumerates several self-evident precepts. Contrary to Thomas, Maritain maintains that these first precepts are not conceptual judgments. Thomas, however, in describing them as self-evident principles, necessarily implies that they *are* conceptual judgments. Finally, contrary to Thomas, Maritain maintains that the more specific precepts that follow from these general ones are in no way rationally deduced. Thomas, however, leaves no room for the reader to conclude anything but that they *must* be deduced.

These departures from Thomas’s teaching on the natural law are due principally to Maritain’s interpretation of what is meant by the term “inclination”. When Thomas speaks of man’s inclinations in reference to the natural law, he does not mean by this term some sort of non-rational, non-conceptual mode of knowledge, as Maritain maintains; to the contrary, by inclination Thomas refers to nothing less than man’s natural capacity to form concepts, make judgments, and deduce conclusions. It is precisely because man has this capacity to reason, Thomas explains, that he is capable of recognizing the natural law. Thus, Thomas’s comparison between the speculative and practical intellect does not *obscure* matters, as Maritain claims; rather, it makes things all the more clear. Instead, it is Maritain’s poetic interpretation of the natural law—with his discussion of “inner melodies” and “vibrating strings of abiding tendencies”—that, in the end, obscures Thomas’s own theory by presenting it in a “less precise fashion than is usual.”

⁴⁷ *Ibid.*, p. 92. Emphasis added.

⁴⁸ *Ibid.*, p. 91