

Intelligibility in the Natural Law

An exploration of Jean Porter's approach

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Abstract: Throughout this article I will argue that Jean Porter's theory of the natural law, developed in her book *Nature as Reason*, provides an approach that is more adequate than that of the neo-scholastic manuals of moral theology and the New Natural Law Theory, whilst also consistent with the fundamentals of Catholic moral theology. This will primarily involve presenting a summary of Porter's approach, beginning with its grounding in scholastic natural law, and highlighting points of contact with Catholic teaching. The difference between Porter's approach and the less adequate understandings will be made clear throughout.

A development of natural law

Jean Porter's book *Nature as Reason: A Thomistic Theory of the Natural Law* has received widespread critical acclaim.¹ I present it here as a more adequate approach than the inflexible understanding employed in the neo-scholastic manuals of moral theology and the New Natural Law Theory (hereafter NNLT). Each of these approaches has received plenty of well-grounded criticism and it is not my purpose to repeat this. It suffices to say that they both fault on an underlying assumption that reality is static and unchanging, that certain persons or

¹ See Jason A. Fout, "Nature as Reason: A Thomistic Theory of the Natural Law by Jean Porter," *Reviews in Religion & Theology* 13, no. 4 (2006); Derek S. Jeffreys, "Nature as Reason: A Thomistic Theory of the Natural Law," *Journal of Religion* 86, no. 3 (2006); Patrick Magidon, "Nature as Reason: A Thomistic Theory of the Natural Law," *Heythrop Journal* 47, no. 7 (2006); Patrick McCormick, "Review of *Nature as Reason: A Thomistic Theory of the Natural Law* by Jean Porter," *Journal of the Society of Christian Ethics* 29, no. 1 (2009). Not all critiques of Porter's work have been as positive, c.f. Martin Rhonheimer, "Nature as Reason: A Thomistic Theory of the Natural Law," *Studies in Christian Ethics* 19, no. 3 (2006).

groups have access to complete truth about this reality, and that highly specific moral norms can be deduced from it. As the many critics of these approaches point out, they do not do justice to the complexity of the human person and the uniqueness of the myriad of social and historical contexts which she inhabits.²

A scholastic approach

Porter sets out to formulate a theological account of natural law which has its starting point in the thought of Aquinas and his scholastic contemporaries. Porter sees the scholastic understanding of natural law as a foundation on which to build an approach to contemporary ethical situations:

(The scholastic approach) offers a way to affirm the moral significance of human nature, including the prerational dimensions of that nature, without denying the central importance of reason for moral reflection and practice. As such, it suggests fresh lines of inquiry – fresh, at least, to us – into a whole range of topics.³

The scholastics⁴ built their understanding of natural law primarily on the texts that were familiar to them. Scripture acted as their authoritative source and was used in dialogue with classical Christian, Roman and Hellenistic texts.⁵ As such, the scholastic perspective was firmly based in tradition, but allowed room for the innovation that came about amidst reflection on different sources of moral wisdom.⁶ This led to an acknowledgement of the difference between social conventions and prerational nature in their understanding of natural law.⁷ Such a position implies that there are particular natural “givens” and that a diversity of social conventions can arise out of these.⁸ For the scholastics, social conventions arise out of the process of reasonable reflection

² For an overview of the issues concerned see Richard M. Gula, *Reason Informed by Faith: Foundations of Catholic Morality* (Mahwah: Paulist Press, 1989), 31-46. For more specific dealings with NNLT see Jean Porter, "Basic Goods and the Human Good in Recent Catholic Moral Theology," *The Thomist* 57 (1993).

³ Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids: William B. Eerdmans Publishing Company, 2005), 45.

⁴ It is important to point out that the use of the term “scholastic” is limited here. This article follows Porter’s use of the term which refers to the scholastics who were theologians and canon lawyers.

⁵ Porter names the writings of Augustine, Aristotle, Justinian and Cicero as influential on the scholastic understanding of the natural law. Porter, *Nature as Reason*, 8.

⁶ Porter, *Nature as Reason*, 9. The scholastics did not understand tradition as static. Rather they integrated and developed previous thought into a coherent account that responded to their particular circumstances. This point is explored more thoroughly in Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Grand Rapids: William B. Eerdmans Publishing Company, 1999), 25-62.

⁷ These social conventions are an example of the valid innovation that was mentioned above, although Porter does not explicitly make this connection in her book.

⁸ Porter, *Nature as Reason*, 11-12.

and invention in participation with these natural processes. Partaking in this process is identified as *reason* and is a part of the unique nature of the human person.⁹

We can now see the beginnings of the scholastic understanding of natural law. Firstly, the scholastics suggest that there are prerational natural processes that have moral weight. Secondly, that reason participates with these processes in creating moral norms while constantly analysing and evaluating their validity.¹⁰ Furthermore, that natural processes and human reason are manifestations, albeit ambiguous ones, of the wisdom of God.¹¹

We can also note the clear difference here between this approach and the approaches critiqued earlier. For the scholastics, natural law was not a tool for developing a specific set of norms that would be applicable in all circumstances. Rather, natural law was a tool with which to analyse the validity of existing norms and to evaluate competing moral claims in particular circumstances.¹² In its recent document *The Search for Universal Ethics* the International Theological Commission encouraged an approach to natural law that is historically conscious – one that allows for various *specific* moral conclusions in *specific* circumstances.¹³ Although the scholastics would not have used the language of historical consciousness, we can see that this concept fits neatly within their approach.

Robust realism

While the scholastics emphasised the role of reason in the natural law, they also understood prerational nature as having moral significance.¹⁴ Porter uses this insight to begin an exploration of what she refers to as “nature as nature”. Her overall aim is to provide a plausible account of

⁹ Porter, *Nature as Reason*, 19. These points correspond with the precepts of the natural law developed in the International Theological Commission’s document “The Search for Universal Ethics: A New Look at the Natural Law” (hereafter TSUE), Vatican Website:

http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_fr.html nos. 48-52.

¹⁰ Porter, *Nature as Reason*, 10.

¹¹ Porter, *Nature as Reason*, 16. For further discussion on this point see Porter, *Natural and Divine Law*, 129-146.

¹² Porter, *Nature as Reason*, 20, 18 respectively. The reader will note that this suggestion runs the risk of leading to some form of relativism. This important issue will be dealt with in more detail below.

¹³ TSUE, no. 53. This is a continuation of the official Catholic understanding of natural law. See *Catechism of the Catholic Church* no. 1957.

¹⁴ Porter, *Nature as Reason*, 56.

human nature which is built on the premise that nature is intelligible in its operations and reveals the goodness and reasonableness of creation.¹⁵ This exploration brings her work into dialogue with contemporary thought in the natural sciences. Porter begins this dialogue by using the words of Alister McGrath to note that one cannot simply have objective access to nature:

“Nature” is thus not a neutral entity, having the status of an “observation statement;” it involves seeing the world in a particular way – and the way in which it is seen shapes the resulting concept of “nature.” Far from being a “given,” the idea of “nature” is shaped by the prior assumptions of the observer. One does not “observe” nature; one constructs it. And once the importance of socially mediated ideas, theories and values is conceded, it is impossible to avoid the conclusion that the concept of nature is, at least in part, a social construction. If the concept of nature is socially mediated – to whatever extent – it cannot serve as an allegedly neutral, objective or uninterpreted foundation of a theory or theology. *Nature is already an interpreted category.*¹⁶

The inability to have objective access to nature, however, does not mean that we cannot gain a certain degree of accurate knowledge about the nature of things. Porter refers to this knowledge as *robust realism* and argues that it negates both the idea that one can have purely objective knowledge of nature and the suggestion that one cannot have any accurate access to nature at all.¹⁷ Her caution against any body of thought that claims objective access to nature is a significant challenge to the approaches cited earlier that build on this assumption. However, this should not be confused with some form of relativism. To emphasise the point again – Porter agrees that we can have a certain level of accurate knowledge about the nature of things, but that this will be limited by both context and understanding. For Porter, any convincing body of theological thought should have its grounding in this *robust realism*.¹⁸ With this grounding, we can now explore Porter’s understanding of nature.

¹⁵ Porter, *Nature as Reason*, 56-57.

¹⁶ Alister E. McGrath, *A Scientific Theology*, vol. 1: Nature (Edinburgh: T & T Clark, 2001), 113. Emphasis in original. Quoted in Porter, *Nature as Reason*, 58.

¹⁷ Porter, *Nature as Reason*, 61-64. Porter notes that this last suggestion reveals a form of relativism. She uses Alasdair MacIntyre’s writing on tradition to argue against both relativism and proportionalism, suggesting that collective bodies of thought (traditions) constantly develop both within themselves and in dialogue with other sources of truth. In this way traditions do not represent only their own truth (relativism) or claim completely objective truth in themselves (fundamentalism) but rather act as mediators and frameworks for dialogue between the intellect and reality. Porter, *Nature as Reason*, 64.

¹⁸ Porter, *Nature as Reason*, 64. Porter develops this theological approach in more detail in Porter, *Natural and Divine Law*, 164-167. The Magisterium’s approach to natural law is congruent with this point. See *TSUE*, no. 54.

Nature, intelligibility and teleology

For the scholastics and Porter, nature is understood primarily in terms of the natures of specific kinds of creatures. In their observation of nature the scholastics noted that each creature is intelligible in its own right.¹⁹ On its most basic level, this intelligibility allows a creature to exist and maintain its existence. In addition to this, creatures possess and actualise complex patterns of action, born out of their intelligibility, which allow them to coexist with other creatures, to reproduce and to care for offspring.²⁰ Furthermore, each creature is made up of a myriad of complex patterns of actions which can only be understood with reference to the intelligibility proper to that creature.²¹ When a creature enacts these natural intelligibilities according to its specific form, it is said to be in the state of *well-being*. For the human creature, this entails the use of its specific level of intelligibility, reason. This leads Porter to state that:

“Nature is reason” in the sense that reason is itself a natural capacity, and in its functioning it is informed or mirrored by the intelligible order manifested in our own humanity, and in the world within which our lives are embedded.²²

In other words, reason is the natural intelligibility proper to the human creature. Reason is therefore humanity’s specific way of drawing on, extending and completing the intelligibility of its prerational nature. This prerational nature provides reason with aims that act as both starting points and goals which focus its practical operation in orientation toward the human creature’s well-being.²³ We can now see how Porter understands prerational nature as having moral weight; it provides the foundational structure and overall purposiveness from which the specifically human interaction with natural law stems. Reason cannot be understood apart from its relation to

¹⁹ Intelligibility here is defined as something which possesses observable principles of operation which, when enacted, reveal some form of purposiveness. For example, a creature is naturally orientated toward its own survival and the different faculties of the creature all work in cooperation toward this goal.

²⁰ Porter, *Nature as Reason*, 71. Note the correlation with the basic and generic levels of natural law.

²¹ A somewhat trivial example would be that the patterns of action of a bird cannot be understood outside of the overall intelligibility of that bird – an intelligibility which orientates the entire creature toward the survival, reproduction and flourishing proper to a bird.

²² Porter, *Nature as Reason*, 71. The reader will note that this corresponds to the specific level of natural law explained in chapter two.

²³ Porter, *Nature as Reason*, 72.

prerational nature. Porter uses the human inclination toward reproduction to exemplify this dialectic between prerational nature and nature as reason:

1. Humans are generally inclined toward uniting with a member of the opposite sex. This occurs on the pre-rational level.
2. This pre-rational inclination is experienced as a human inclination. Therefore, it is mediated through reason which directs it toward its proper object – namely, an appropriate sexual partner.²⁴
3. A further qualification of this inclination occurs through the level of reason which becomes manifest in social institutions. In this instance, it involves uniting one's self to another in the institution of marriage.²⁵

As stated earlier, the scholastics did not use this methodology to derive moral norms from reflection on natural inclinations. Rather, it was a tool with which to assess and justify the morality (or not) of existing social institutions and individual actions.²⁶ Furthermore, the individual actions of a creature and its overall structure cannot be understood without reference to the intelligibility proper to that creature. For the purposes of this article and Porter's theory, it is therefore important to develop an account of what constitutes human intelligibility.

Before exploring Porter's account of the human intelligibility, two points should be underscored. The first is that if the approach to natural law summarised thus far is implemented, we cannot simply derive moral norms from biological structures, a technique many have argued is employed in official Catholic sexual ethics and seems also to be present in NNLT.²⁷ For Porter, while biological structures constitute an important part of the creature who possesses them, their function can only be understood with reference to the overall intelligibility of that creature. For the human person, this means taking into account all dimensions of what it means to be human.

In terms of Catholic theology, this would mean taking seriously the understanding of the human person promulgated throughout Vatican II and developed since into a concept known as *the*

²⁴ Porter, *Nature as Reason*, 72.

²⁵ Porter, *Nature as Reason*, 72.

²⁶ Porter, *Nature as Reason*, 74. This is not to suggest that the scholastics or Porter are engaged in a medieval form of relativism. For the scholastics scripture and tradition provided the most perfect expressions of natural law. These provided a general framework on which the scholastics could approach natural law from their Christian perspective. For further exploration see Jean Porter, "Natural Law as Scriptural Concept," *Theology Today* 59, no. 2 (2002).

²⁷ See for example Charles E. Curran, "Catholic Social and Sexual Teaching: A Methodological Comparison," *Theology Today* 44 (1988): 48-92; Todd A. Salzman and Michael G. Lawler, *The Sexual Person: Toward a Renewed Catholic Anthropology* (Washington: Georgetown University Press, 2008).

human person adequately considered. This concept begins with the human person as a subjective being with inherent dignity and individuality and extends into their embodiment, relationship to the material world, relationship with others, relationship with social groups, relationship with God and particular historical location.²⁸ Among other things, taking this approach seriously would involve dialogue with the most recent findings of the natural and social sciences as well as philosophy and theology. For example, if the third dimension is taken seriously (that people are to be considered in terms of their relationship to the material world) then an accurate understanding of the material world is required.

The second point is that in its emphasis on intelligibility and purposiveness, this approach to natural law is *teleological*, an approach which can only be understood with reference to the end or purpose proper to the creature under consideration.²⁹ So, what is the particular nature of the human person? Toward what purpose is the human person orientated?

On the road to a concept of human nature

Some important questions immediately arise when one attempts to define human nature: is it possible? Is not the human person too complex and unique to allow for an adequate concept of her nature to be developed? Should we be so bold as to suggest that the human person can be understood in any meaningful way in terms of the same regularities that apply to the nonhuman world?³⁰ Porter's response, true to her concept of robust realism, is that we can account for the kind of creature the human person is whilst acknowledging that this account is by no means fully developed or comprehensive.³¹

²⁸ Louis Janssens' development of this concept is widely considered the most thorough. See Louis Janssens, "Artificial Insemination: Ethical Considerations," *Louvain Studies*, no. 8 (1980). An excellent overview of this concept can be found in Gula, *Reason Informed by Faith*, 66-72.

²⁹ Porter, *Nature as Reason*, 82-103. Porter here develops a convincing account of natural teleology which draws heavily on contemporary natural sciences and philosophy. In summarising her developed understanding of teleology she defines teleology in terms of some ideal of flourishing proper to the creature under consideration. Porter, *Nature as Reason*, 103.

³⁰ Porter, *Nature as Reason*, 105.

³¹ There is a risk in developing such a concept. If we define what it means to be a properly functioning human person would, for example, a handicapped person still be understood as a human person? Porter's answer is that it is a mistake to use a general concept as a strict set of rules for inclusion within a category. Porter, *Nature as Reason*, 108.

For Porter, a concept of a creature is made up of judgments about what is perceived as well-being for that creature, which are based on an observation of the optimal way of life and patterns of behaviour enacted when that creature is flourishing.³² Porter notes, in terms of the human creature, that “we can confidently claim to know a great deal about what it means to be human, and by implication, what a good life for the human person would look like.”³³ While such knowledge is limited by our own understanding and circumstances, this does not mean it is irrelevant or that it cannot give us genuine insight. Rather, it provides starting points and general frameworks.³⁴ Such ideas about what it means for the human person to achieve well-being are inevitably complex – it is clear that there is a diversity of ways that the human creature reaches this state and there are no immediately obvious criteria to judge amongst them.

While this insight can account for the diversity of moral frameworks that exist in the human world, it does not and cannot provide a framework within which competing moral claims and social conventions can be assessed. For this reason, further specification and theoretical elaboration is required for any understanding of the nature of the human person if it is to go beyond a very general level and provide the basis for a natural law framework.³⁵ For Porter this specification and theoretical elaboration comes in terms of Aquinas’ idea of human flourishing. Before exploring this, however, it is helpful to consider Porter’s analysis of the usefulness of her understanding of natural law from a Catholic perspective.

The first point to note is that this approach can account for different manifestations of morality as culturally and historically specific ways of expressing the social structures natural to humanity as

³² Porter, *Nature as Reason*, 114.

³³ Porter, *Nature as Reason*, 115.

³⁴ Porter, *Nature as Reason*, 115-116.

³⁵ Porter, *Nature as Reason*, 126. A criticism that Porter predicts of her theory at this point is why one would not simply jump to a “reason alone” perspective, given that rationality now becomes the key to understanding natural law. In other words, why begin with “nature as nature” if reason determines how nature is understood? Such an approach is suggested by NNLT. This theory shares some similarity with the scholastic approach in its emphasis on the existence of certain *basic goods*. However, Porter calls into question the methodology by which NNLT comes to these basic goods and the amount of substantial content that is drawn from them. To summarise, NNLT suggests that these goods can be known by reason alone, built on prerational nature but not ultimately reliant on it, are universal enough to be regarded as self-evident to all and also freighted with enough self-evident content to provide an immediate basis for practical reflection and action. See Germain Grisez, John Finnis, and Joseph Boyle, “Practical Principles, Moral Truth, and Ultimate Ends,” *American Journal of Jurisprudence* 32 (1987): 108, 106, 121-127, respectively. This is distinct from Porter’s approach which takes the inclinations toward which the human person is intelligibly and prerationally orientated seriously and appeals to a wider body of thought to specify these in terms of a moral framework (as we will see below). Porter successfully dismisses the basis on which NNLT is built in her discussion of the theory, see Porter, “Basic Goods.”; Porter, *Nature as Reason*, 127-130. Salzman and Lawler also develop an extensive critique, see Salzman and Lawler, *The Sexual Person*, 58-75.

a species.³⁶ Such an approach inevitably takes its moral content from particular intelligible human traits commonly found in human moral frameworks. For Porter, these traits come in the form of ideals built on desirable or praiseworthy states of character specifically represented by the virtues.³⁷ The second point to note is that Porter's approach takes seriously the Catholic affirmation that our nature is created, that it is created good and that it reflects God's wisdom and loving will. As such, nature reflects, albeit partially, God's will for humanity.³⁸

We now reach a good point at which to summarise the content of the article so far. We have seen that Porter builds on the scholastic understanding of the natural law. On this view, natural law must be understood in terms of the particular nature (intelligible form) proper to the kind of creature being considered. Porter specifies further:

The goodness of a creature is inextricably bound up with its intelligible form, that is to say, with the ordered functioning proper to the kind of creature it is. Organs and functions are interpreted teleologically in light of their contributions to the overall life and flourishing of the creature, or the well-being of its family, social group, or kind. Hence, on this kind of analysis the focus is not on the design of particular organs or functions, but rather on the way they can be rendered intelligible in light of a whole way of life.³⁹

For the human creature, this involves reasonable participation in the natural law in both continuity and discontinuity with the nonhuman world and in orientation toward the type of well-being proper to humankind. We turn now, therefore, to a concept of human flourishing.

To flourish and be happy

Porter's concept of human flourishing suggests an ideal form of human existence which acknowledges the goods of health, physical security and reproduction as well as participation in social life. As we have noted, this idea is very general and in itself cannot be used as a basis for a natural law morality. Responding to this involves introducing moral principles which aim to *specify* what natural human well-being would look like in terms of a life of flourishing. Porter provides a useful distinction in terms to refine this idea: the general concept of flourishing proper

³⁶ It therefore takes historical consciousness seriously. Porter, *Nature as Reason*, 131.

³⁷ Porter, *Nature as Reason*, 133.

³⁸ Porter, *Nature as Reason*, 136.

³⁹ Porter, *Nature as Reason*, 131.

to the human creature is referred to as *well-being* and the more specific moral ideal which specifies and qualifies this is referred to as *happiness*.⁴⁰ Porter's own words help in making this distinction clearer:

Well-being will thus be understood in terms analogous to the normative ideal of flourishing proper to any other kind of creature, and as such, it will include all the components of a humanly desirable life, including life itself, health, security and participation in a network of family and social relations. Happiness will be understood to qualify this basic ideal by specifying the best or most appropriate way in which men and women can attain and enjoy the activities constitutive of well-being.⁴¹

Porter's specifying of well-being entails a consideration of Aquinas, for whom happiness was the goal of existence and the moral life.⁴² It is here that we see the link between the flourishing proper to the human creature (happiness) and natural law: for Aquinas, happiness is identified with the practice of the virtues.⁴³ Porter notes that this "concept of happiness provides resources for developing an account of morality which gives a central place to the intelligibilities structuring human life – a natural law theory of morality, in other words."⁴⁴ On this view, happiness is built on and adds to its foundation in well-being through the practice of the virtues which, in turn, provide the necessary context for happiness.⁴⁵ Happiness, therefore, is not equated with the natural state of well-being, but is the human creature's intelligible way of perfecting well-being through the practice of the virtues. The practice of the virtues *is* the human

⁴⁰ Porter, *Nature as Reason*, 142. Happiness here is not defined as a particular emotional state, but the state of participating fruitfully in the moral life through practice of the virtues. This definition of happiness will be explored further below.

⁴¹ Porter, *Nature as Reason*, 143. In using the language of "best" and "most appropriate" we can now see how Porter is moving toward a moral framework.

⁴² Porter, *Nature as Reason*, 143. Aquinas understands happiness as the ultimate perfection of the human creature and it is to this definition that the word will refer hereafter. For more in depth discussion on Aquinas' conception of happiness see Porter, *Nature as Reason*, 155-161. In aligning her theory with the thought of Aquinas, Porter further removes it from NNLT by affirming its grounding in both tradition *and* metaphysical principles. Porter argues that any convincing body of ethical thought requires grounding in "contentious" theoretical accounts of what it means for a human person to flourish. Rather than try to cover this up on the premise that the theory could be universally valid, Porter chooses to state it explicitly and aims to defend her theoretical account of choice. See Porter, *Nature as Reason*, 151-152.

⁴³ Porter, *Nature as Reason*, 145.

⁴⁴ Porter, *Nature as Reason*, 145.

⁴⁵ Porter, *Nature as Reason*, 154. Porter notes that in emphasising happiness rather than well-being her theory moves away from a utilitarian approach which would place morality at the level of attaining well-being. It is also worth noting that both Aquinas and Porter acknowledge the reality of sin and that distortions of happiness can occur as a result of this. There is a type of happiness that comes as a result of the fulfillment of one's own will, and that will can be distorted and misled by sin. In this sense there is a difference in this approach to natural law between objective happiness (perfection) and subjective happiness (the fulfillment of an individual's will). For further discussion see Porter, *Nature as Reason*, 157-161.

creature's unique way of intelligibly drawing on, completing and extending its prerational nature. Natural law as a moral framework, in turn, takes its norms from these virtues.⁴⁶ We must now, therefore, move to a consideration of Porter's understanding of virtue.

On to virtue ethics

What is clear from the above is that the virtues build on the natural inclinations and needs of the human person which are orientated towards well-being and specified in happiness. Porter suggests that the most appropriate way of exploring virtues is through *paradigms*; morally significant situations where a person acts in a way that is considered virtuous.⁴⁷ For instance, people who decide not to indulge in more food than their body requires, despite its availability, exemplify the virtue of moderation. Such an example is clearly general and does not necessarily apply to every situation. For Porter, a "paradigm represents what the happy life will typically or normally look like, and it is through reflection on this paradigm that we grasp some sense of the overall aims and the point of this way of life."⁴⁸ In the example above we see the value of living a life of moderation and, through rational reflection, are able to apply this virtue in circumstances that differ from the paradigm itself. In this way the ideals of particular virtues are indeterminate; they need further specification before being applied to concrete situations.⁴⁹ As such, the virtues are the intelligibilities proper to the human orientation toward perfection and must be understood within this wider context.⁵⁰

Porter suggests that the virtues are specified and applied to concrete situations through the operations of practical reason. She notes that practical reason does not operate in a vacuum – it cannot achieve its goal of applying the virtues in concrete situations without recourse to some wider system of specific beliefs, commitments and practices.⁵¹ For example:

Imagine the situation of someone who spends much of his adult life as a professional soldier, with much experience of battle and many occasions for displaying physical

⁴⁶ Porter, *Nature as Reason*, 162.

⁴⁷ Porter, *Nature as Reason*, 223.

⁴⁸ Porter, *Nature as Reason*, 223.

⁴⁹ Porter, *Nature as Reason*, 226.

⁵⁰ Porter, *Nature as Reason*, 227.

⁵¹ Porter, *Nature as Reason*, 227.

courage. Now suppose that this man undergoes a kind of moral or religious conversion, which leads him to adopt a strict pacifism. This conversion will lead him to renounce much of what he previously prized and did under the rubric of courageous behaviour – aggressively attacking the enemy, withstanding hostile fire on the battlefield, and the like. Yet he may well find himself called upon to exercise other forms of courage, perhaps as difficult in their way – patience in the face of ignominy, willing submission to arrest and detention (supposing, say, he refuses to follow orders to fight), even submission to death (supposing he is court-martialed and shot). These qualities of patience, forbearance, and the willing submission to death are defensibly forms of courage, or closely allied to it – they find their field of operation in situations of risk and potential or actual loss, and they are characterised by a willingness to risk or forgo lesser goods for more important goods. Yet these are not just examples of turning the same quality of aggressive physical courage to different ends, as if the soldier were to switch sides in the middle of a war; they represent distinctive ways of acting and comporting oneself in response to the actions of others, informed by very different views about the overall value of physical aggressiveness, and therefore its appropriateness, or not, as an expression of courage.⁵²

Porter's example reveals the need to locate the virtues within a wider framework of convictions about the purpose and meaning of human life if they are to be made concrete.⁵³ For a Catholic exploration of natural law, this involves drawing on Scripture and tradition – both of which have as their most basic moral affirmation that the human person is made in the image and likeness of God (Gen 1:26-27). For the scholastics, this image and likeness is primarily reflected in the human person's capability for rational knowledge and self-direction.⁵⁴ This approach, therefore, places a great deal of importance on these capabilities as they work in dialogue with Scripture, tradition and prerational nature to achieve concrete manifestations of the natural law.⁵⁵ It is to this process that we now turn.

Nature as reason

Porter begins her exploration of the role of reason in the discernment and application of the paradigms of virtue with a cautionary comment: the scholastics do not understand reason in the

⁵² Porter, *Nature as Reason*, 227-228.

⁵³ Porter, *Nature as Reason*, 230.

⁵⁴ Porter, *Nature as Reason*, 230.

⁵⁵ The Magisterium suggests a similar approach, see *TSUE*, nos. 101-116.

same way that many modern theorists do.⁵⁶ For the scholastics, reason stems from the intelligibilities natural to the human person and its role is to determine the appropriate form of their expression.⁵⁷ Porter provides the following helpful illustration of two modern approaches to the role of reason and how these differ from her scholastic theory.

Let us use the metaphor of a ship for the human person with the crew representing their natural inclinations. From a Humean approach the direction of the ship is determined by the compromise that is achieved as conflicting crew members each work toward their own goal. The captain of this ship (practical reason) plays a minor role – as a slave to the inclinations. A Kantian approach gives us a very different kind of ship. On this view the crew are still present, but are superseded by a captain who can freely override their inclinations and promptings. The captain is separated - seated on a pedestal in splendid isolation from the crew below.⁵⁸ Porter's own approach, in contrast, involves dialogue between crew and captain. The crew (the *intelligible* inclinations of the human person) provide their captain (practical reason) with promptings and suggestions on which course to take and the captain builds on these when navigating the vessel. Furthermore, the captain appeals to knowledge about the environment the ship is travelling in as well as her own orientation toward the overall goal of the ship (happiness) to specify the most appropriate course of action.

This gives us a good model to explain how the scholastics understand nature as nature, nature as reason and their relationship to each other. However, it needs to be supplemented. We will now explore Porter's understanding of practical reason and its relationship with prerational nature in more detail.

⁵⁶ Porter, *Nature as Reason*, 232. Porter provides a detailed exploration of current philosophical thought about practical reason which she divides into broadly Kantian approaches and broadly instrumentalist approaches which will be outlined below. Porter finds neither of these approaches adequate and believes that a convincing understanding of practical reason must appeal to some form of metaphysical argument about the status of the human person, see Porter, *Nature as Reason*, 244. Her discussion takes place on pages 234-244. The NNLT theorists would disagree on the premise that "the ultimate principles of morality cannot be theoretical truths of metaphysics and/or philosophical anthropology." Grisez, Finnis, and Boyle, "Practical Principles," 102. While their concern may be valid, we have seen that their critical "reason alone" response to this is unconvincing at best.

⁵⁷ Porter, *Nature as Reason*, 232-233.

⁵⁸ Porter, *Nature as Reason*, 252. Porter takes this example from Simon Blackburn, *Ruling Passions: A Theory of Practical Reason* (Oxford: Clarendon, 1998), 245-246. The following extension of her example is not Porter's own, but represents a good construal of her understanding of practical reason which will be explored in more detail below.

Practical reason and prudence

It should be clear by now that the role of practical reason⁵⁹ is far more limited in Porter's theory than in the Kantian approach explained above.⁶⁰ For Porter, reason operates at the level of choice. In her own words its task is "to inquire with respect to what is to be done in a given situation, to form a judgment based on that inquiry, and to command the action so determined."⁶¹ In terms of the virtues, reason is the intelligibility which determines the meaning of the virtues and asks how they should be applied in each situation.⁶² In this sense it builds on and makes concrete the moral virtues – for Porter, neither can exist without the other.⁶³ We can now see the dialectic relationship that exists between nature as nature and nature as reason. Porter's words clarify:

"Nature is reason" in the sense that reason is itself a natural capacity, and in its functioning it is informed or mirrored by the intelligible order manifested in our own humanity, and in the world within which our lives are embedded.⁶⁴

More specifically, reason extends and perfects prerational nature through the practice and application of the virtues. Reason is the tool by which the human person specifies her natural orientation toward well-being into a rational orientation toward her happiness. For Porter, this exercise of reason is identified with the virtue of prudence, defined as the ability to determine the best possible outcome in a given situation:

Practical reason requires balancing diverse considerations, in order to arrive at a choice which is not only virtuous in this or that respect, but virtuous without qualification. The hallmark of the prudent person will therefore be this ability to balance diverse considerations in order to arrive at a settled judgment concerning the best course of action, all things considered.⁶⁵

⁵⁹ Hereafter *practical reason* will be referred to as *reason* for simplicity's sake.

⁶⁰ Porter, *Nature as Reason*, 309.

⁶¹ Porter, *Nature as Reason*, 312.

⁶² Each situation is unique, and reason achieves its judgment in dialogue with the sources of knowledge available at any given point in history. In terms of our example of the ship, the captain is in dialogue with the best data she has to assist in accurately navigating her vessel toward its destination.

⁶³ Porter, *Nature as Reason*, 312.

⁶⁴ Porter, *Nature as Reason*, 71.

⁶⁵ Porter, *Nature as Reason*, 314.

This approach moves away from any form of deductive morality. Prudence involves dialogue with both context and paradigms of virtue in order to determine the most appropriate course of action. Such an approach will inevitably lead to different outcomes in different situations which enables it to account for the diversity of moral norms and social conventions in existence.

This should not be confused with some form of relativism. As we have already seen, this process of practical reasoning occurs under the framework of the human person who is naturally and intelligibly orientated toward the good as created in the image and likeness of God. In other words, the human person participates in God's provident wisdom "through rationally grasping and acting upon the principles structuring her proper inclinations."⁶⁶ While such a process does not lead to specific moral norms, the human person is inevitably situated in the context of the moral reflections of others which, through dialogue, leads to a communal process of reflection. This process of reflection, in turn, results in more specific moral frameworks.⁶⁷ Porter clarifies:

The natural law in its primary sense allows for a diversity of expressions. In any case, the practices and laws of any society can be analysed in terms of the diverse aspects of the natural law which they reflect, and this reflection, in turn, provides a basis for normative critique, both positive and negative.⁶⁸

While this process reflects God's provident wisdom, it is inevitably distorted by human weakness and the reality of original sin.⁶⁹ It must therefore be corrected and completed with reference to another source of revelation, to which we now turn.

Natural and divine law

The scholastics affirmed God's supreme authority and wisdom and, as we have seen, they saw this reflected in the created world through the reasonableness of natural law.⁷⁰ In terms of the

⁶⁶ Porter, *Nature as Reason*, 266.

⁶⁷ Porter, *Nature as Reason*, 266.

⁶⁸ Porter, *Nature as Reason*, 267.

⁶⁹ Porter, *Nature as Reason*, 267.

⁷⁰ Porter, *Nature as Reason*, 268.

nature of the human person, this reasonableness moves the human person toward the virtue of justice⁷¹ through the principles which underlie the virtue of prudence:

- To do good and avoid evil.
- To do no harm.
- To observe particular obligations.
- To love God and neighbour.⁷²

As we have noted above, the exercise of practical reason is necessarily limited by the human condition. For the scholastics the revelation that corrects and specifies nature is most adequately revealed in the Decalogue.⁷³ In their understanding, the laws of the Decalogue represent a specification of particular moral precepts which, in their turn, are specification of the principles to do good and avoid evil, to do no harm, to observe particular obligations and to love God and neighbour. In this way, the morality of a concrete action must be measured against the precepts relevant to the kind of action it is.⁷⁴ In other words, reflection on the Decalogue provides one with an understanding of the precepts which underlie it and these precepts become the measurements by which actions can be judged as moral or immoral. Porter explains this point further:

These precepts are presented in Scripture, and regarded by the scholastics, as apodictic laws applying in every imaginable situation and allowing of no exceptions. Yet the scriptural context itself, to say nothing of the complexities of life in the scholastics' own time, confronted them with many instances of seemingly justifiable exceptions to these laws... when we are faced with a seeming exception to a moral rule, we should look for an explanation along these lines: this act is not an exception to the precept in question, because when we analyse the precept in light of its underlying rationale, it is apparent that the act in question falls outside its scope. (If we cannot arrive at a persuasive explanation

⁷¹ Understood as a disposition of concern for the well-being and flourishing of other creatures, particularly other humans.

⁷² Porter, *Nature as Reason*, 263. In this sense the authentic practice of the virtues of prudence and justice cannot be separated from one another, cf. Porter, *Nature as Reason*, 308.

⁷³ Porter, *Nature as Reason*, 268.

⁷⁴ In other words, the object toward which that act is directed. Determining the object of an act brings us to a highly technical part of Porter's theory and it is beyond the scope of this article to summarise this adequately. For Porter's own discussion see Porter, *Nature as Reason*, 274-288.

along these lines, then the dubious act will turn out after all to be a violation of the relevant rule.)⁷⁵

A telling example of this phenomenon is if violent force is required to protect innocent persons. On the scholastic view, acts which legitimately fall under this banner relate more properly to the commandment of loving thy neighbour than the injunction to do no harm.⁷⁶

The Decalogue and the principles mentioned above are most intimately related to the virtue of justice. However, this same approach can be applied by extending it to an assessment of the moral validity of acts in terms of the other virtues, and further in terms of the human inclinations out of which they arise. When one can establish the object of an act, one can also assess whether it is a fulfillment or a perversion of natural law as revealed in the intelligibilities proper to the human creature which are corrected, perfected and specified through divine law.

Concerns revisited

At the beginning of this article I outlined criticism that the neo-scholastic manuals of moral theology and the so called New Natural Law Theory were inadequate approaches the natural law given that they operate out of a static understanding of the human person and do not allow for the complexity of her historical situation. In light of this, I have attempted to show that Porter provides a more adequate theory of the natural law. In her suggestion that the human person cannot be understood without reference to an overall orientation toward happiness and the intelligibilities proper to the human creature, Porter's theory can take seriously all aspects of the human person adequately considered. In affirming reason's role in discovering appropriate ways to enact one's inclinations according to the best insight available at any given time, Porter takes seriously both an historical consciousness and the role of reason in applying natural law. Furthermore, and significantly for Catholic theology, she acknowledges the important role that revelation plays in specifying, correcting and perfecting the human person's orientation toward happiness.

⁷⁵ Porter, *Nature as Reason*, 270.

⁷⁶ As Porter notes, the love of neighbour is a "more comprehensive obligation, which can sometimes justify harming someone if broader or more exigent demands of neighbour-love require it." Porter, *Nature as Reason*, 273.

Bibliography

- Blackburn, Simon. *Ruling Passions: A Theory of Practical Reason*. Oxford: Clarendon, 1998.
- Congregation for the Doctrine of the Faith, *Catechism of the Catholic Church 2nd Edition*, Strathfield: St Pauls, 2000.
- Curran, Charles E. "Catholic Social and Sexual Teaching: A Methodological Comparison." *Theology Today* 44 (1988): 425-440.
- Fout, Jason A. "Nature as Reason: A Thomistic Theory of the Natural Law by Jean Porter." *Reviews in Religion & Theology* 13, no. 4 (2006): 590-593.
- Grisez, Germain, John Finnis, and Joseph Boyle. "Practical Principles, Moral Truth, and Ultimate Ends." *American Journal of Jurisprudence* 32 (1987): 99-151.
- Gula, Richard M. *Reason Informed by Faith: Foundations of Catholic Morality*. Mahwah: Paulist Press, 1989.
- International Theological Commission, "The Search for Universal Ethics: A New Look at the Natural Law," (2009) Vatican Website:
http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_fr.html
- Janssens, Louis. "Artificial Insemination: Ethical Considerations." *Louvain Studies*, no. 8 (1980): 3-29.
- Jeffreys, Derek S. "Nature as Reason: A Thomistic Theory of the Natural Law." *Journal of Religion* 86, no. 3 (2006): 487-489.
- Magidon, Patrick. "Nature as Reason: A Thomistic Theory of the Natural Law." *Heythrop Journal* 47, no. 7 (2006): 662-669.
- McCormick, Patrick. "Review of Nature as Reason: A Thomistic Theory of the Natural Law by Jean Porter." *Journal of the Society of Christian Ethics* 29, no. 1 (2009): 251-253.
- McGrath, Alister E. *A Scientific Theology. Vol. 1: Nature*. Edinburgh: T & T Clark, 2001.
- Porter, Jean. "Basic Goods and the Human Good in Recent Catholic Moral Theology." *The Thomist* 57 (1993): 28-42.
- _____. *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics*. Grand Rapids: William B. Eerdmans Publishing Company, 1999.
- _____. "Natural Law as Scriptural Concept." *Theology Today* 59, no. 2 (2002): 226-241.

_____. *Nature as Reason: A Thomistic Theory of the Natural Law*. Grand Rapids: William B. Eerdmans Publishing Company, 2005.

Rhonheimer, Martin. "Nature as Reason: A Thomistic Theory of the Natural Law." *Studies in Christian Ethics* 19, no. 3 (2006): 357-378.

Salzman, Todd A., and Michael G. Lawler. *The Sexual Person: Toward a Renewed Catholic Anthropology*. Washington: Georgetown University Press, 2008.

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