PHCE 4012: Natural Law

DSPT: Spring, 2015 / Mondays 11:10-2:00 / Classroom is DSPT #3 / Edward Krasevac, O.P.

Welcome!

NOTE: There may be some minor changes made to this syllabus before the first day of class.

This seminar will examine the concept of natural law in Aquinas through its development in several contemporary authors (especially Jean Porter). In particular it will address the following major issues: the natural law as capacity for moral discernment, the fundamental principles through which such a capacity operates, and the moral norms that are their result; the relation of natural law to Christian revelation and to the acquired and infused virtues; the relation of reason to natural structure and inclination ("natural law" to "laws of nature"); the sources of moral obligation; and the relation between natural law and human (or civil) law. Are the roots of natural law in reason or revelation or both? Is morality "underdetermined" by human nature? What role could and should natural law play in Christian ethics? Is there an unbridgeable gulf between the "is" and the "ought"? What are the principles that govern the determination of natural law in human law?

The goal of the class is to give you the opportunity to think through the foundations of moral living (in both the natural and supernatural orders) in the tradition of Aquinas, particularly the relation between natural law, revelation, the virtues, and civil law.

In the process of realizing this goal, you should achieve the following learning outcomes by the end of the class: you should understand the concept of law in general, and natural law in particular, in the thought of Aquinas, and you should have a command of the following issues in natural law theory as they are developed by Porter: how can one make the transition between human "well-being" (understood as a factual state) and human "happiness" (understood as a moral state); how can a natural law theory be based upon the teleologies of nature in general and the human being in particular, and what implications does this have for bridging the modern "fact-value" dichotomy; in what sense can morality said to be "underdetermined" by human nature; what are the implications of a properly theological concept of natural law, and would such a concept rule out a properly philosophical one; what are the grounds for and implications of distinguishing between "nature-as-nature" and "nature-as-reason; what is the relation between what is moral and what is legal in civil society?"

Requirements are class attendance and participation, and 20 pages of written work. The actual character of the seminar will depend on how much active student presentation/participation and how much lecture will be determined by the instructor early in the semester, based upon the backgrounds and needs of the students.

Details on assignments and grading will be found in the following pages. Note that the reading assignments are given with no dates attached; they should be read in sequence, depending upon how far we get on any particular day.

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Please check your email daily, particularly before leaving for class: this is the primary way in which I will communicate with you regarding changes of reading assignments or in the event a class is canceled. If your email address changes during the semester, please notify me immediately.

Class will not be held during Reading Week (3/23) or during the last week of the semester (5/18).

A number of the readings for the class will be found in the Class Reader, which can be purchased from Copy Central, 48 Shattuck Square, Berkeley. The exceptions will be the readings taken from Jean Porter's books Moral Action and Christian Ethics and Nature as Reason, Eberhard Schockenhoff's Natural Law & Human Dignity, Lawrence Cunningham's Intractable Disputes About the Natural Law, Aquinas' Treatise on Law, and Cathleen Kaveny's Law's Virtues, which may be purchased online.

If you will need special arrangements for meeting course requirements for reasons of documented disability, please speak to the instructor early in the term so that arrangements can be anticipated and arranged. Students who have trouble climbing the stairs to my office may meet with me in a designated ADA room on the first level of the East Building.

1Jean Porter's phrasing.
Jean Porter on Moral Action: *Moral Action and Christian Ethics* One Class

*Moral Action and Christian Ethics*, pp. 3-7 / 18-58 / 89-110 / 133-166

One page of quotes from Porter's "Moral Reasoning, Authority, and Community in *Veritatis Splendor*" [R]

One page handout entitled "Texts from Ralph McInerny and Martin Rhonheimer," lines 14-33 [R]

Aquinas on Natural Law: a quick review of the most critical texts

Thomas Hibbs, *Virtue's Splendor*, pp. 65-73 on the intellectualism of Aquinas [R]


Richard Gula, *What Are They Saying About Moral Norms?*, pp. 34-45 [R]

Thomas Aquinas, *Summa Theologiae* I-II, qq. **90** (entire) / **91** (articles 1, 2, 3, 4) / **92** (art. 1) / **94** (art., 2, 3, 4, 5, 6) / **93** (art. 6) / **95** art. 2, 4 / recommended: qq. 95-96-97. Can be conveniently found in the paperback, *Treatise on Law*.

(Columba Ryan, "The Traditional Concept of NL: An Interpretation," in Evans, ed., *Light on the Natural Law* [R]

(Seven pages of texts from various works of Jacques Maritain concerning "knowledge by connaturality" of the NL [R]

(Five pages of typed texts from two articles by Stephen L. Brock on the Natural Law [R]

*Three pages of texts entitled "NATURAL VERSUS UNNATURAL SINS AGAINST CHASTITY" [R]* discuss after Schockenhoff

(Three pages entitled "Types of Law (Following Aquinas)" and "Tentative Outline of Aquinas Natural Law Schema"[R]

The Concept of Natural Law I: Porter's *Nature as Reason* Four Classes

Chapter One

One page entitled "Underdetermination of morality" [R]

Chapter Two**

Four pages from Steven Pinker's, *The Blank Slate* (Brown's list of human universals) [R]

Anthony Lisska's *Aquinas's Theory of Natural Law*, pp. 82-109 (esp. 99-100 / 103-4 /107-108) [R]

One page of quotations from Ruth Barnhouse and Columba Ryan on natural law [R]

Chapter Three

One page entitled "Epicheia" [R]

One page entitled "The Variability of Moral Reality" [R]

One page entitled "Moral Relationships" [R]

One page on "Nature as Nature" and "Nature as Reason" [R]

Two pages of texts entitled "Texts from Jean Porter's *Nature as Reason* on the Relation between Well-Being and Happiness" [R]

Chapter Four [pages 234-248 on Kantian and instrumentalist ethics are recommended, not required]

Three pages on "synderesis" [R]

Clifford Kossel, "Natural Law and the Human Law" (in Pope's, *The Ethics of Thomas Aquinas*), pp. 169-178 [R]

Four pages entitled "Texts on the Natural Law Precepts of Justice" [R]

Two pages entitled "The Ethical Decalogue" and "Lee, Patrick. "Permanence of the Ten Commandments" [R]

Chapter Five, pages 325-342 and 378-400 only

Clifford Kossel, "Natural Law and the Human Law", pp. 178-182 (see Kossel article above) [R]

The Concept of Natural Law II: Natural Law as a Theological Concept One and One-half Classes


Nine pages of texts from Jean Porter, *Natural Law and Divine Law* [R]


Two pages of texts entitled "Jean Porter, Does the Natural Law Provide a Universally Valid Morality" [R]
Jean Porter, "Does the Natural Law Provide a Universally Valid Morality?" In Lawrence Cunningham, ed., *Intractable Disputes About the Natural Law.*

Gerald McKenny, "Moral Disagreement and the Limits of Reason: Reflections on MacIntyre and Ratzinger." In Lawrence Cunningham, ed., *Intractable Disputes About the Natural Law.*


**The Concept of Natural Law III: Eberhard Schockenhoff and Martin Rhonheimer**


Four pages of texts from the above [R]

Seven Pages of texts from Rhonheimer's *Natural Law and Practical Reason* [R]

Four pages on consequentialism to be handed out in class.

**The Concept of Natural Law IV: Nature and Grace, and the Acquired and Infused Moral Virtues**


Jean Porter, "The Subversion of Virtue: Aquinas and Infused Virtues in the *Summa Theologiae*." In *The Annual of the Society of Christian Ethics* 12. [R]

William Mattison, "Can Christians Possess the Acquired Cardinal Virtues?" [Available on-line through GTU Electronic Resources]

Angela McKay Knobel, "Relating Aquinas's Infused and Acquired Virtues: Some Problematic Texts for a Common Interpretation." [R]

Diana Fritz Cates, *Choosing to Feel*, pp. 38-9 (to be handed out in class)


**The Concept of Natural Law V: the relation to civil law**

Thirteen pages of texts from Jean Porter's, *Ministers of the Law*


**Required Readings** (books may be purchased online)

Reader [R]: at Copy Central, at 48 Shattuck Square

Jean Porter, *Moral Action and Christian Ethics* ($43.20 new at Amazon; from $13.01 used)

Jean Porter, *Nature as Reason* ($33.00 new at Amazon.com [$29.20 Kindle]; from $24.2 used)

Eberhard Schockenhoff, *Natural Law & Human Dignity* ($27.40 new at Amazon.com; much less used)

Cathleen Kaveny, *Law's Virtues* ($26.96 new at Amazon.com [$18.83 Kindle]; from 16.42 used)

Lawrence Cunningham, ed., *Intractable Disputes About the Natural Law* ($26.92 new at Amazon; from 22.34 used)

Thomas Aquinas, *Summa Theologiae I-II* q-q 90-97 (published separately as the *Treatise on Law* ISBN 9780872205482, $9.95/7.52 Kindle Edition] at Amazon.com). Note: these questions are also available in library copies of the *ST*, as well as on-line sites for free. They should be brought to class on the days when they are discussed, whatever your source for them may be.
Course Requirements

1. **Written Essays**: Two essays (each 10 pages in length) written on topics suggested and approved by the instructor comprise the major written requirements of the class; each essay should incorporate appropriate insights gained from the readings, lectures, and class discussions, as well as outside research, if appropriate. Upon consultation with the instructor, permission may be given for one 20 page essay on an appropriate topic which would be more research-based than the 10 page essays; the completed essays will not be due until Friday, May 22\textsuperscript{nd}. The point of these essays is to help you understand, critically assimilate and express the important issues covered in the course in a concise and synthetic fashion. The essays are to be considered formal writing, even if they need not be research papers, and must be written according to the standards prescribed in the most recent edition of *A Manual for the Writers of Term Papers, Theses and Dissertations*, by Kate Turabian. Mistakes that show carelessness (such as typos, misspellings, sloppiness) will not be tolerated. Although the content of the written work is obviously of primary importance, the presentation of that content is important as well, particularly for those who will have careers in preaching or teaching. Proofread your work!

2. **Attendance**: attendance at all class sessions is a requirement for the course. If you have commitments that will cause you to miss more than two classes, or which do not give you leeway for missing class due to illness, you should consider not taking this class (missing more than two classes will preclude you from receiving credit for the course at all). You are responsible for all material discussed in class; if you miss a class, you should check with someone who was present. Also, being late for a small class can be disruptive and annoying for everyone, as well as discourteous; please be prompt!

3. **Grades** will be determined by the quality of the written essays that of their content (how well they reflect your knowledge of the readings and lectures, your ability to recognize and develop the important principles contained in them, as well as your ability to think through the material synthetically) and their form (your ability to express in good written English, free of syntactical and grammatical error, what you know.

4. **Incompletes**: If you have not turned in all of your essays by Friday, May 22\textsuperscript{nd}, you must submit the form to take an incomplete by then. Essays turned in after Friday without taking an incomplete will lose one full grade.

5. **Plagiarism**. Always use quotation marks around others’ phrases that you use in your essays, and cite the reference in a footnote or parentheses. An instance of plagiarism will automatically result in a grade of "F" for the course.

5. **ESL Students**: If English is your second language, you may ask for and be given one extra week to complete the book review without taking an incomplete.
Ideas for Essay Topics
(To be refined during the course of the semester)

1. Discuss the relation of the fundamental principles of natural law to its secondary precepts and more detailed "determinations," as well as to human law. What role does prudence play in the promulgation and determination of natural law in the concrete circumstance?

2. Analyze Porter's argument regarding the transition from normative human "well-being" to the moral concept of human "happiness." What are the key elements in her argument (including, of course) the concept of the virtues? Why is it an essential argument to make? How do the concepts of "natural species" and "moral species" relate to the argument?

3. Discuss the role of teleology and the intelligibility of nature in the natural law. How does Porter define the concept of natural law in the face of modern science? Is her concept of ethical naturalism cogent? Why is teleology crucial to an ethical naturalism?

4. Discuss the role of the acquired virtues in Aquinas' natural law theory. Why do Porter and Hall affirm that an ethic of the virtues is completely compatible with an ethic of law? Do you think that a natural law morality is compatible with a prudence-based virtue ethic? Why, or why not? What might be the relationship of the virtues to "rules" generated by the natural law? What is the basis for "exceptionless" moral rules in a morality based on the natural law and the virtues?

5. Discuss the relation of natural law to revelation and to grace: how does revelation complement, make known, go beyond, etc., the natural law? What is the relation of the acquired to the infused moral virtues? Does the natural law have a role in "norming" even the infused virtues, eg., through the concept of "well-being?"

6. What is the role of the natural inclinations in Aquinas' theory of natural law? What are they, and what is their relation to reason and the generation of moral norms?

7. Discuss the issues surrounding the promulgation of the natural law, including the role of syndesis. Is the natural law promulgated through nature, through reason, or both? Are its principles per se nota or deduced? What are the roles of prudence and practical reasoning in discovering the natural law? The roles of society and history?

8. Discuss some of the issues Porter discusses in sections three and four of Chapter Four of Nature as Reason, such as the character and specification of moral objects, the difference between acting and allowing to happen, the difference between "natural species" and "moral species," etc.

9. Discuss the tension between nature-as-nature and nature-as-reason, and in particular Aquinas' theory of "sins against nature." Are the realms of nature and reason reconciled in Aquinas' development of natural law, or do they stand if some uneasy tension? In what sense is nature-as-nature the moral norm, and in what sense is nature-as-reason? Is, or should be, Aquinas' jus naturale an integral part of lex naturalis, that in some basic ways determines it?

10. How does Aquinas' understanding of natural law at least according to such authors as Porter, MacIntyre, McInerny, et al ground moral obligation? Do you think that the "naturalistic fallacy" is really a fallacy?

11. Discuss the concepts of development/change in natural law, and the "failure" of natural law secondary precepts to apply in certain situations. In what senses, if any, can the natural law develop, change, or fail in its concrete application? In what sense is human nature "changeable," as Aquinas sometimes says (II-II 57.2 ad 2/ Supp. 41.1 ad 3 / Ryan and Crowe articles).

12. Is knowledge of the basic precepts of natural law "connatural" or "by inclination," as Maritain and Simon think? What does Aquinas mean by "naturally known" and "natural reason?" What is the meaning of "quasi" that Aquinas uses in speaking of the derivation of conclusions from natural law precepts? How basically does speculative reasoning differ from practical, and what are the implications of this difference for knowledge of natural law?
13. What is the relation between a legitimate sense of the autonomy of reason and the authority of God as lawgiver? Is there such a thing as an "autonomous ethics" in Aquinas' natural law theory? Or to put it another way, what is the relationship between natural teleology, human fulfillment, and God-as-Lawgiver, or between the moral virtues and the commandments of God, given either through nature or grace?

14. Is the concept of God as supreme lawgiver necessarily entailed in a concept of natural law (can one experience the natural law as law without an explicit acknowledgment of the eternal law)? Could there be a valid concept of natural law without recourse to the existence and nature of that reality to which human beings ascribe the name of God? Does the notion of moral obligation require the existence of an act of will of a transcendent lawgiver? Is moral obligation necessarily bound up with the notion of the will of a lawgiver, or can it rather attach to the perception of the good-as-end, that is, as attracting and perfective?

15. Porter says in "A Tradition of Civility" that "there are (at least) two ways to look at the natural law. Seen from one perspective, the natural law is more or less equivalent to a universal morality, whether this is seen as grounded in nature in some general sense, or more specifically in the deliverances of practical reason. Seen from another perspective, the natural law is a specific tradition which cannot be adequately understood apart from some account of its historical development and social location." Do you think that, as she says, the "idea of a natural law embedded in a historically determined tradition [is] . . . intolerably paradoxical?" Do you think that "the natural law can be formulated and defended apart from this tradition, whether, to put it another way, there is a universally valid natural law morality that can be abstracted from its history?" (pp. 27, 28)

16. Discuss natural law as a reality that both transcends every particular culture and tradition, yet seems to be only accessible through and able to be expressed in such cultures and traditions (and perhaps is only able to be concretely determined by them). Where do authors such as Porter, Rhonheimer, Maclntyre, Ratzinger, and the writers of "The Search for a Universal Ethics: A New Look at Natural Law" agree and disagree on this issue? Anthony Battaglia, in his Toward a Reformulation of Natural Law, speaks of "moral conventions." Is the natural law prior to conventions, or are the precepts of natural law in themselves subject to convention? Would Battaglia's phrase be acceptable to Aquinas? Or again, what is the relation of natural law as a "pre-conventional" reality to its "conventional" cultural manifestations?

17. Develop Porter's theory of the "underdetermination" of morality by human nature: what exactly does she mean by it, and what are the implications of this theory? What distinctions could usefully be made with regard to sinfulness, social structures, the necessity that the basic human goods will always be attained in various forms, etc.? Does Aquinas' view that the order of the lower powers to reason which the first human beings enjoyed was the effect of grace, rather than nature (ST I 95.1) open the possibility for such "underdetermination" (is it conceivable that a certain disorder could exist in the inclinations of nature that is not the result of sin, and hence could be called "natural," thus opening up the possibility that he could have understood moral perspectives based on such disorder "natural moralities," as does Porter)? Does the fact that the "means" of the various virtues are in some measure culturally determined support a theory of "underdetermination?" How would you express the "underdetermination" of natural law, if you think there is one?

18. Discuss some of the attributes Kaveny believes that good human law must possess "in addition to encouraging the citizenry to act virtuously." What are some of her arguments as to why "virtuousness and justice are necessary but not sufficient attributes of good law?" (Law's Virtues: Preface xi and Introduction 3).
General Criteria for Grading of Papers

A: Not only does the student's work reflect a correct understanding of the subject matter, but his or her efforts show something more: a certain and marked depth of understanding of the subject which allows its wider implications to be grasped and creatively applied to other areas of thought and life, an ability to discern and articulate the principles involved, as well as a talent to express oneself with both clarity and power. The writing is both fluent and without grammatical or syntactical error, and follows the standards prescribed in the most recent edition of *A Manual for the Writers of Term Papers, Theses and Dissertations*, by Kate Turabian.

A-: For work that falls somewhat short of the above.

B+: The student has demonstrated that he or she has correctly grasped the subject matter, free of error, and has expressed it articulately and well.

B: The student has correctly grasped the subject matter, albeit with a few errors, and has expressed it articulately and well.

B-: Although the work shows a fundamental and a good understanding of the subject matter, some errors in understanding have been made, and/or the expression is not as articulate as it could be, resulting in some confusion when it is read.

C+: The student's work shows effort, and some real understanding of the subject matter. However, there are important errors or omissions, or the expression may make it difficult to determine just what the student indeed has grasped.

C: Again, effort has been demonstrated, but there are some serious errors or omissions that show that the student has not grasped important aspects of the subject matter, or has expressed them so poorly as to leave a serious question in that regard.

C-: The work is poor, in both understanding and expression, but effort to understand has been demonstrated.

D/D-: Not only is the work poorly done and poorly expressed, but it is obvious that the effort normally expected of a student has simply not been made.

F: The assignments have not been turned in