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The Practical Value of Natural Law Theory in the Work of St Thomas Aquinas

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CHAPTER SEVENTEEN

THE PRACTICAL VALUE OF NATURAL LAW THEORY IN THE WORK OF ST THOMAS AQUINAS

MARIO ŠILAR

Introduction: «Ante scientiam oportet inquirere modum scientiae»

In a recent article, Dr. Alfredo Cruz has rejected the claim that natural law theory (NLT) may have practical value in the realm of moral philosophy. Neither motivation which might infuse human action with a certain force of obligation nor knowledge of natural law (NL), would give NLT practical value.

An alternative conceptual framework for the interpretation of some texts in the work of St Thomas Aquinas, on which Cruz draws in support of his argument, is offered in this paper. In particular, I will argue that the concept of obligation (vis obligandi) in Aquinas’s work is broader than that deferred to by Cruz in his article. My purpose is to show that NLT has practical significance, at least in a derivative sense.

* I would like to express my gratitude to “Friends of the University of Navarra Inc.”.

1 In Boethium De Trinitate, pars III, prooemium, prologus.

2 See Alfredo Cruz, “Natural Law and Practical Philosophy: The Presence of a Theological Concept in Moral Knowledge,” in Contemporary Perspectives on Natural Law. Natural Law as a Limiting Concept, ed. Ana Marta González (Aldershot: Ashgate, 2008), 161-74. Dr. Cruz kindly commented on an earlier version of this paper and helped me to correct several misinterpretations of his position.
This paper is structured in five sections. The first section examines the relationship, and difference, between theoretical reason (TR) and practical reason (PR). In the second, the meaning of the terms “practical” and “practicable” (operabile) in Thomistic moral thinking is explored. The idea of “end” in moral philosophy and virtuous action is analysed in the third section—above all, in light of the Commentary on the Nicomachean Ethics. The fourth presents a distinction between the epistemological and real levels in the study of NL. The link between goodness and the obligatory nature of action, the keystone of my argument, is addressed in the fifth section. In this regard, two apparently competing notions surface in Aquinas’s writings: self-legislation and the law unto oneself—which should prompt further consideration of the ways in which the concept of law itself is understood.

The potentialities enabled by a wider, analogical interpretation of St Thomas’s view of law, as against a limiting, univocal account, are highlighted in the article’s concluding section. This broadening of the conceptual framework serves two purposes: it defuses apparent intertextual tensions, and grants NLT a certain degree of practical significance.¹

«Intellectus speculativus fit practicus per extensionem» ²

St Thomas adopted the Aristotelian distinction between TR and PR in accordance with the different ends which each may serve in the use of reason.³ The term extensionem denotes the practical realisation of TR.⁴

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¹ The first four points do not invalidate Cruz’s thesis; in fact, they would appear to be implicit in his line of argument. Nevertheless, a number of specific issues reflected in his position are addressed in the final section and conclusion to this paper.
⁴ "Similis autem processus esse invenitur rationis practicae et speculativae, utraque enim ex quibusdam principiis ad quasdam conclusiones procedit, ut superius habitum est". S. Th. I-II, q. 91, a. 3 c. Rhonheimer holds that the term "extensio" is invoked in order to safeguard the unity of the potency, irrespective of the different acts. See Martin Rhonheimer, Natural Law and Practical Reason: A Thomist View
which encompasses both the unity of the potency and the difference between its products—that is, the judgements of reason in their theoretical or practical uses.\(^7\)

*Extensio ad opus* is made possible by the fact that “truth and good—the objects to which reason is directed—include one another.”\(^8\) The difference between TR and PR is expressed as follows:

it is the speculative intellect which directs what it apprehends, not to operation, but to the consideration of truth; while the practical intellect is that which directs what it apprehends to operation.\(^9\)

Practical intellectual knowledge is enabled by the fact that the “good is something true, otherwise it would not be intelligible.”\(^10\) Thus, the following conclusion may be drawn:

therefore as the object of the appetite may be something true, as having the aspect of good […]; so the object of the practical intellect is good directed

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\(^7\) St Thomas refers to *De Anima* (L. III, chap. 10, Bk 433a 14-15) on numerous occasions. The *Commissio Leonina* held that Aquinas, who used the translation by William of Moerbeke, did not read the word “extensionem” when he commented on this section [See *In III de Anima*, chap. 9, no. 35-40 (Leonina), lectio 15, no. 820 (Marietti)]. Nevertheless, he refers or alludes to this passage at various points in his work, for instance in: *In III Sent.*, d. 23, q. 2, a. 3, qla. 2 c, S. Th. I, q. 79, a. 11 sed contra, II-II, q. 4, a. 2 ad 3; *De Veritate*, q. 2 a. 8; q. 14, a. 4 c. The word directs the reader to the *Vetus translatio* by James of Venice, on which St Thomas drew. See “Saint Thomas, utilisateur de la *Vetus* (1247 - vers 1264),” René-A. Gauthier, “Préface,” in Sancti Thomae de Aquino, *Opera omnia iussu Leonis XIII P. M. edita, Sentencia libri De anima*, vol. XLV, 1 (Rome-Paris: Commissio Leonina-J. Vrin, 1984), 267 and ff. Also — — — , *Opera omnia iussu Leonis XIII P. M. edita, Quaestiones Disputatae de Veritate* vol. XXII, 1 (Rome: Editori di San Tommaso, 1975), aparatius criticus, p. 69 (q. 2, a. 8, no. 55). Here the « *per extensionem* » is attributed to *De Anima*, chap. 9, (432b 26 - 433a 1); see also *In III de Anima*, chap. 8, no. 237-298 (Leonina), lectio 14, no. 812-817 (Marietti).

\(^8\) S. Th. I, q. 79, a. 11, ad 2.

\(^9\) S. Th. I, q. 79, a. 11 c.

\(^10\) S. Th. I, q. 79, a. 11 ad 2.
to the operation, and under the aspect of truth. For the practical intellect knows truth, just as the speculative, but it directs the known truth to operation.\textsuperscript{11}

To know the truth directed to operation, the defining function of PR, allows one to speak of the truth—the practical truth—of action, the criteria by which real and apparent goods may be distinguished from one another.\textsuperscript{12}

Cruz points out that “the truth of the practical is variable truth, which only exists fully in the particular and the concrete.”\textsuperscript{13} However, the value of principles, on which the intelligibility of every concrete good depends,\textsuperscript{14} should not be ignored on that account. These principles direct and set certain unequivocal limits on meaningful human action.\textsuperscript{15} The unity of PR is not undone by the distinction between the first practical principles and the specific judgments of action which comprise the virtue of prudence.\textsuperscript{16} In reality, while the acts of PR are directed to action, PR in the perfection of its final concretion is one and the same reason as has such principles for its object. Thus, while the truth of the practical is variable, the fact that the principles are present in every specific judgement of action—in an intentional way, in as particular a form as is required by the need to act in the \textit{hic et nunc}—should also be acknowledged. Moreover, while it is true that contemplation of principles is not in itself sufficient to prompt good action, without those principles, the action would be wholly unintelligible.

\textsuperscript{11} S. Th. I, q. 79, a. 11 ad 2.
\textsuperscript{13} Cruz, “Natural Law and Practical Philosophy,” 161.
\textsuperscript{14} St Thomas holds that those things to which the moral virtues incline, are as the principles of prudence whereas the products of art are not the principles, but the matter of art. See S. Th. I-II, q. 65, a. 1 ad 4.
\textsuperscript{16} “Etiam cogitatio de eo quod est ad finem, prout consideratur in ordine ad finem, est eadem cum cogitatione finis; non autem cogitatio de eo quod est ad finem ut est res quaedam, et similiter nec voluntas”. In \textit{II Sent.}, d. 38, q. 1, a. 4, ad 3. See Martin Rhonheimer, \textit{La perspectiva de la moral: Fundamentos de la Ética Filosófica}, ed. José Carlos Mardomingo (Madrid: Rialp, 2000), 371.
Ethica: sciencia practica

The difference between theoretical and practical knowledge lies in the different ends that each serves. The speculative idea is supplemented by the practical with a direction to operation, in the same way as—to defer to the example given by St Thomas—the addition of “rational” to “animal” yields “man” without giving rise in the process to two different things (res). This clarification gives an idea of the broader meaning of the concept of “practical truth”, which should not be reduced to the agreement of right reason and right desire (appetite); strictly speaking, this refined definition refers only to prudential practical truth. Moreover, this limited understanding may give rise to confusion about the meaning of practical knowledge. In an observation that is as surprising as it is little known, St Thomas holds that the knowledge is not rendered practical by the union between reason and will, but by the direction to operation—to action. Given that the will centres on the end, and the end is to be found in both, the will is common to both speculative and practical understanding.

To sum up, therefore, the inclusion of the direction to operation marks the difference between the theoretical and the practical. According to ST, I, q. 14, a. 16, three criteria govern this inclusion: object, end and mode.
Purely speculative knowledge (object, end and mode of speculation) and purely practical knowledge (object, end and mode in practice) are the extremes on the scale established in accordance with the three-fold criteria. A wide range of intermediate forms of knowledge come between these two extremes, through different possible combinations or by comparison between different types of knowledge. Given that further nuances and new combinations may always arise, the distinction between theoretical and practical resists any reduction to a fixed framework. The practicability of the end may nevertheless be regarded as the determining element in practical knowledge; thus, the more specific the end, the more practical the knowledge. A number of aspects of this position might fruitfully be examined in further detail.

First, St Thomas states explicitly that PR originates in the universal principles of the TR; although its end is the particular and practicable, it is rooted in the same subject as speculative knowledge. It follows that practical knowledge is not perfect unless it attains to the singular; and the closer its consideration of the particular, the more perfect the practical science. However, this “stretching out” (extensio) of its speculative act through an “application to task” (ordinatio ad opus) is not the sole prerogative of only one habit. Both moral science (the practical science)
and prudence involve the application of the universal principles of practice derived from synderesis. This duality is possible because, as is explained below, singular things may be known from two distinct formal perspectives.

Second, St Thomas defines science as *recta ratio scibilium* and prudence as *recta ratio agibilium*. Given that practical knowledge is predicated as much on the *agibile* as the *scibile*, the distinction between *scibile* and *agibile* does not correspond exactly to the difference between theory and practice. This asymmetry shows that the meaning of the “practical” is broader than the meaning of the “practicable”. In fact, there are two specifically different ways of knowing the particular and contingent: both are practical, but they defer to different formalities: on the one hand, the practical knowledge of science (*scibilium*), by which singular things are known insofar as they are contained in the universal (theoretical-practical knowledge); on the other hand, singular things are known to prudence (*agibilium*) by virtue of their own particular reasons (practical-practical knowledge). If the object of science is the universal and necessary, rather than singular and contingent things, then that which takes singular and contingent things insofar as they are contained in the universal as its object may be referred to as “practical science”. This argument is in line with the dual perspective to which singular things are open alluded to above: 1) *in accordance with their universal reasons*, which are the ground of demonstrations of the contingent (*recta ratio scibilium*); or 2) *in their singularity*, wherein these universal reasons take on extremely variable forms that are not encompassed by immediate intellectual knowledge, but rather, on reflection, by virtue of the role played by the cogitative function in the exercise of prudence (*recta ratio agibilium*).

To sum up, the meaning of what is “practical” involves both a degree of understanding related to the universal and necessary and a specifically practical knowledge of the particular and contingent. In contrast, the

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29 In fact, in his commentary on Aristotle, Aquinas holds that the practical science is prudence considered solely insofar as it pertains to reason: “omnia ergo de quibus hic fit mentio, in tantum sunt species prudentiae, inquantum non in ratione sola consistunt, sed habent aliquid in appetitu. Inquantum enim sunt in sola ratione, dicuntur quaedam scientiae practicae, scilicet ethica oeconomica et politica”. *In VI Ethicorum*, chap. 7, 1141 b29, no. 90-95 (Leonina), lectio 7, no. 1200 (Marietti). It follows that the practical science corresponds to prudence to a certain extent, without being wholly identical to it.

30 See *S. Th.* II-II, q. 55, a. 3.

31 *In II Sent.*, d. 24, q. 2, a. 4 ad 6.
meaning of “practicable” is wholly confined to the context of singular things. St Thomas strengthens the Aristotelian expression by means of this refined definition of terms. The analogical meaning of the “practical” must be clearly acknowledged: although they are not predicated on the same ground, both meanings are applied *simpliciter* and *formaliter*, thus preserving the formal character of practical knowledge—its direction to operation, the mode of which (*modus ordinationis*) may be *actual*, in the case of prudence (*the agibile*), or *habitual* in the case of moral science (*the scibile*). Thus, knowledge may be practical as regards its object and mode, and ordered with respect to the end of that action in an actual or virtual way. This duality corresponds to the dual perspective by which contingent things may be known referred to above. Given that direction to operation is deferred to in both moral science and prudence, both forms of knowledge are practical; however, since the mode of direction is different in each case, prudence is practical in an immediate way, while the practicality of the moral science is mediate.

The following conclusions may be drawn from the above discussion: practical knowledge expresses a certain direction to operation; and the judgements of practical knowledge, while universal, comprise an effective norm of moral order, although at the level of concrete good action the exercise of prudence and right reason (*recta ratio*) are also required. The question of the practical value of NLT cannot be adequately addressed if the duality of practical knowledge—actual or habitual—is not taken into account. In fact, the terms of the question demand that the meaning of the “practical”—in St Thomas’s definition of the term—mean more than what

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33 See S. Th. I, q. 1, a. 6; q. 14 a. 16; q. 22. a 3 ad 1; I-II, q. 53, a. 4; In III Sent., d. 35, q. 1, a. 3, qla. 2 c., and ad 2; De Veritate, q. 2, a. 8; q. 3 a. 3; In I Post. Anal., lect. 41; In Boethium De Trinitate, q. 5, a. 1, ad 3, and ad 4; etc. For an historical overview of this question, see Georg Wieland, *Ethica, Scientia Practica. Die Anfänge der philosophischen Ethik im 13. Jahrhundert* (Münster: Aschendorff, 1981).
35 De Veritate, q. 3, a. 3.
is strictly speaking practicable; in the final analysis, the practicable must be read in the context of a full conceptual understanding of the practical.

The “rational demonstrations” of the contingent betoken the presence of universal reasons, recognised by PR as underlying all particular things. Although it may not amount to the highest degree of perfection of practical knowledge, such demonstrative knowledge is a necessary part of all practical sciences in general. The contingent, seen only in the light of its particularity, is undeniably variable; it is the object of intellectual understanding only in a reflected way—that is, by assuming the contribution of the order of appetites, and the involvement of the cogitative power and prudence. Thus, the statement that “the value of knowledge on the practical is the practical value of such knowledge” has true meaning only if the “practical” is not reduced to the “practicable”, a reductive reading that collapses the distinction between practical science and prudence.

The idea of “end” in knowledge and action

The discussion thus far enables a more refined understanding of the relationship between knowledge and virtue, in light of St Thomas’s account of the requisite attitude for the study of ethics. Man does not inquire into virtue solely in order to know it, but also to become virtuous. Aquinas’s commentary on the Aristotelian text highlights the practical commitment implicit in this inquiry, and furnishes a subtle distinction that facilitates a more refined understanding of the scientific nature of this form of knowledge. St Thomas refers to the inexperience of youth in the exercise of knowledge in order to show the duality of ends involved in practical knowledge. Thus, although Aquinas follows the line of argument set out in Aristotelian thought, he offers a more in-depth understanding and more refined definition of the idea of practical knowledge than is reflected in Aristotle’s work.

First, Aquinas makes a distinction between two ways of understanding youth: as a function of age (the young man) or of custom (the passionate man); this distinction opens up a dual perspective on the idea of the end. Given that he lacks experience, the young man lacks the requisite aptitude for the end of this science, which is knowledge (juvenis aetate deficit a fine huius scientiae, qui est cognitio). On the other hand, while the

37 See S. Th. I, q. 86, a. 1 ad 2; II-II, q. 47, a. 3 c., and ad 1, q. 49, a. 2 ad 1; De Veritate, q. 10, a. 5 c.; ad 2, ad 3, and ad 4.
38 Cruz, “Natural Law and Practical Philosophy,” 161.
passionate man, who is young by virtue of his customs, may acquire a
certain degree of knowledge of this science (finis enim huius scientiae non est sola cognitio, ad quam forte pervenire possent passionum sectatores), such knowledge may be pointless or useless because the passionate man lives by the drive of his passions, not by the light of reason, and the knowledge acquired might not lead to its proper end, which is action (ita ille qui est iuvenis moribus deficit a fine, qui est actio). 39

Thus, St Thomas simultaneously reaffirms the practical end of this form of knowledge and underscores the significance of the universality of the practical principles for the acquisition and exercise of prudential virtue. The young man (in both senses of the term) is not thwarted by time or age: rather, in both cases the universal principles are impaired, and the passionate man yields to the sway of the particular desires provoked by his passions (sequitur singula, ad quae passiones inclinant), while the young man fails to direct action in accordance with the knowledge of moral science he possesses (qui non sequuntur scientiam, quam de moralibus habent). 40 The singularity of action and the universality of the principles which direct action and make it meaningful are brought into balance by the duality of ends; and, as a result, the singular is neither subsumed in nor deduced from the universal.

The duality of the end has been systematised in the philosophical tradition in the ideas of mediate and immediate ends. 41 What is practical is not only a function of what is immediately practical (prudence)—that is, of the final product of PR; rather, it is also a function of the habit of science. Direction to operation safeguards the practical nature of knowledge. Thus, while it may be true to say that practical knowledge is valuable insofar as it enables growth in the exercise of virtue, the view that the content of practical knowledge and the acquisition of virtue are to be regarded as identical does not follow as a matter of course. Everything in the realm of practice is directed towards the final end—that is, to action; however, the meaning of practice encompasses elements beyond those involved in the immediate direction to operation.

39 In I Ethicorum, chap. 3, 1095 a4, no. 151-155 (Leonina), lectio 3, no. 40 (Marietti).
40 In I Ethicorum, chap. 3, 1095 a4, no. 155-160 (Leonina), lectio 3, no. 40 (Marietti).
The difference between the order of action and the order of knowledge should be noted in this context. In each case, the relationship to the mediate-immediate end is effected in a different way: the immediately practical (the exercise of virtue) in the order of action is the mediate or immediate end of moral science; whereas the mediately practical (the habit of science) in the order of action is the immediate end of moral science. In other words, in the order of action, the immediate practical end is the exercise of virtue (prudence), in which case the habit of science is mediately practical because direction to operation depends on the last concretion conferred by the virtue of prudence. In the order of knowledge, the immediate end of moral science is knowledge (recta ratio scibilium); hence it is a science. Nevertheless, the mediate end of moral science is direction to operation. If action were taken to be its immediate end, moral science could lay no claim to universality, which is the prerogative of all scientific knowledge. However, given that prudence presupposes the presence of the habit of science, which it encompasses and extends insofar as it also involves the realm of appetite, recta ratio scibilium is not merely a remote end with respect to action.

Thus, while St Thomas acknowledges that the disposition prompted by the habit of first principles and science concerning the precepts of the moral order are not sufficient in themselves to ensure right judgement with respect to the particular and practicable end, he also clearly states the prior need for this disposition in the perfect development of prudence. This line of argument does not imply that the acquisition and exercise of individual prudence is wholly dependent on the possession of moral science in a systematic way. In fact, one of the defining characteristics of prudence is experiential knowledge; however, some degree of rational or reasoned knowledge, which is connoted by the term "science" in the conceptual framework of Thomistic thought, is required.

It might be argued that while the discussion thus far does broaden the meaning of the "practical" in the context of moral science, it does not provide an adequate response to the question of the "practical value" of a moral doctrine, such as, for example, NLT. A distinction based on the different levels on which the ethical dimension unfolds may be valuable in responding to this objection.

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42 De Virtutibus in communi, a. 6 ad 1.
43 “prudentia est circa singularia, quae fiunt nobis cognita per experientiam”. In VI Ethicorum, chap. 7, 1142 a11, no. 174-175 (Leonina), lectio 7, no. 1208 (Marietti).
44 S. Th. I-II, q. 6, a. 8; I-II, q. 76, a. 1 c. See Domingo Basso OP, Las normas de la moralidad (Buenos Aires: Claretianas, 1994), 254.
Two levels of understanding in the ethical dimension: the case of NL

Rhonheimer frames the ethical dimension on two planes: the Prescriptive-Practical Level (PPL) is the plane of concrete, singular action; the Descriptive-Reflexive Level (DRL) is the plane of reflection and ethical-philosophical thought. It is clear that the scientific nature of the DRL presupposes a higher degree of speculative universality. The difference between the two planes may be illustrated as follows: man, a rational agent committed to action, may discern that specific actions draw him closer to or move him further from his intended end. This experience, as such, pertains to the PPL. However, the structure of rationality implicit in individual human action may also be conceptualized in terms of moral philosophy. This process of conceptualization pertains to the DRL. On this plane of the ethical dimension, the philosopher may discover, for example, that man would not be able to question the rectitude of the action with respect to the end were it not for the fact that he is also aware of the rule and measure which govern action. This conceptualization is not a figment of the moral philosopher’s imagination; rather, it is the way in which the phenomenon discerned on the PPL is expressed in conceptual terms. To use the nomenclature of the Scholastic tradition, it is an in actu signato explanation of what occurs in actu exercito.

Action may be judged in accordance with the rule and measure referred to above, which pertain to both levels of the ethical dimension. St Thomas’s thought on this point is consistent: deficiency of the will always originates in a decision to ignore the rule or norm of reason. The fact that, in the order of action, “to distance oneself from the norm of practical reason distances oneself from the end at the same time; in other words, if a man’s action moves him further from his end, that is because he has deviated from the norm” should also be noted in this context. NL makes its presence felt at this point: its function as a rule implies that it is constituted by reason (aliquid per rationem constitutum) and, thus, a connatural element of the human way of being.

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45 See Rhonheimer, Natural Law and Practical Reason, 58-61.
46 S. Th. I-II, q. 90, a. 1 ad 1; I-II, q. 91, a. 2 c.
48 See, for example, De Malo, q. 2, a. 1 c.
49 González, Moral, razón y naturaleza, 413. For further discussion of bad action and St Thomas’s view that sin consists to a greater degree of distancing oneself from the rule rather than the end, see chap. 5, “La mala acción,” 365-466.
My argument is that this interpretative framework enables the fullest understanding of NL. A number of consequences follow from the distinction outlined above. From the PPL perspective, strictly speaking, not even the question of virtue pertains to PR, as such, defined in scientific terms.50 In fact, virtue is reflected in the action of the virtuous man—not as an explicit conceptual theorisation—on PPL. Thus, any question concerning the practical value of a particular moral doctrine formulated on the basis of PPL would be to all intents and purposes a *contradictio in adiecto*; no doctrine, as such, may be a doctrine on the prescriptive practical level of the ethical dimension. The meaning of the question may be more adequately contextualized in terms of the distinction between the *scibile* (theoretical-practical: science) and the *agibile* (practical-practical: prudence) referred to in some detail above. Given that the idea of value involves a theorisation of the practical, the conceptual content of which pertains to the DRL, not the PPL, the practical value of a moral doctrine is never immediately operative.

As a result, the question concerning the practical value of NLT may only be framed in terms of the DRL; that is, on the plane of philosophical reflection on ethical action. Having established this position, the meaning of the term “practical” as used in the formulation of the question must be analysed. As has already been noted, in order to be authentic theory and genuine practice, a theory of the practical does not require exclusive reference to the practicable or operable. The content of a *theory of the practical* need not be transformed into a *theory of the practicable*, a transformation which would in any case change the meaning of the terms involved.

First, the meaning of “practical” may be read in the strict sense of the term—that is, the practicable or *agibile*; or in a wider sense, such as the *scibile*—. In line with both the letter and the spirit of the texts cited thus far, to interpret the term in its strict sense is to deform the meaning of the practical by identifying it with what is practicable. Thus, the issue under discussion should address the “practicable value” rather than the “practical value” of NLT. This question of practicability, however, rests on an extrapolation: it involves an attempt to access the PPL by incorporating categories proper to the DRL. Moreover, any response to such a question that laid claim to the authority of St Thomas’s thought would prompt an equivocal position because the interpretation of the term “practical” it contains is different to and more limited than that reflected in Aquinas’s work. As has already been discussed above, any response to the question

concerning the practical value of a theory must encompass the inclusion of the plane of universal reasons which underlie singular and contingent actions, which also comprise the meaning of what is “practical”.

Second, the term “practical” may be interpreted within the framework of meaning set out by St Thomas. In this context, the universal that underlies singular action must also be regarded as open to “practical evaluation”. Thus, the first principles of PR—the content of NL—would have, at least, a mediate practical value. This mediate practical value should not be deferred to either the immediate or remote levels of action.

To sum up, the question concerning the practical value of a moral doctrine requires that the two planes on which ethical issues unfold be taken into consideration. Both planes are practical, but the practical is realised in different ways on each plane. Thus, NL emerges on the PPL, through the various particularizations and concretions of action; while NLT on the DRL articulates conceptual support for the explanation of the reasons that mark the limits of meaningful human action in light of living in accordance with reason.

Good, obligation and NL

NL—to draw on the well-known Thomist definition—is constituted by reason (aliquid per rationem constitum).\(^{51}\) The nature of law contained in NL is underwritten by the link between rationality and legality.\(^{52}\) Law is a rule and measure of action. Reason is the rule and measure of all man’s actions. Reason and law are linked by a common nature: rule and measure.\(^{53}\) Thus, Aquinas notes on several occasions that the good of man is defined by its conformity to reason.\(^{54}\)

Not merely by similarity or resemblance is NL ascribed to man, as is the case of irrational beings;\(^{55}\) the agent who commits himself to action contains within himself a rule which is close-to-hand and homogenous, and constitutes a measure of action: reason.\(^{56}\) St Thomas also holds that


\(^{52}\) S. Th. I-II, q. 91, a. 2 ad 3.

\(^{53}\) S. Th. I-II, q. 90, a. 1 c.

\(^{54}\) See S. Th. I-II, q. 74, a. 4 c.

\(^{55}\) “In creatura autem irrationali non participatur rationaliter, unde non potest dici lex nisi per similitudinem.” S. Th. I-II, q. 91, a. 2 ad 3.

\(^{56}\) S. Th. I-II, q. 71, a. 6 c.
knowledge of sinful action depends on the recognition of two factors: the rule or measure, and the end of action.\textsuperscript{57} However, distancing oneself from the rule or measure, rather than the end, is the reason \textit{per se} of sin.\textsuperscript{58} A reductive and skewed extrinsic reading of the moral rule is deflected by the significance that Aquinas attributes to the rule in determining the morality of action; such a reductive interpretation of moral knowledge could not account for the operative intimacy of human being.\textsuperscript{59}

St Thomas holds that “someone who refrains from evil not because it is evil but because there is a divine mandate forbidding it is not free; he who is free refrains from doing evil because it is evil,”\textsuperscript{60} and Cruz is right to argue, in the light of this text, that “what God wants, what He seeks through His mandate, is that we should act according to our own good and, moreover, be moved thereto by this good itself, not by divine mandate as such.”\textsuperscript{61} Aquinas’s position is prompted by his commentary on 2 Cor 3:17: \textit{ubi spiritus Domini, ibi libertas}. St Thomas also refers to 1 Tim 1:9 in this regard: the law was not laid down for the just man (\textit{iusto non est lex posita}). The primary purpose of this reference is to point out the error of their ways to those who read the verse as grounds for concluding that the spiritual man is not bound to obey the precepts of divine law (\textit{aliqui erronee dixerunt quod viri spirituales non obligantur praeceptis legis divinae}). This position is erroneous because the precepts of divine law function as a rule for the human will (\textit{sunt regula voluntatis humanae}); the will, as a created faculty, cannot create for itself its own rule of action. To St Thomas’s mind, therefore, any state of affairs in which man is not bound by the divine precepts is literally inconceivable. Having addressed

\textsuperscript{57} De Malo, q. 2, a. 1 c.
\textsuperscript{58} De Malo, q. 2, a. 1 c. This line of argument does not undermine the significance of the end, which is the criterion of the gravity of error. In fact, the higher the end to which human acts are directed, the more serious the sin; See S. Th. I-II, q. 73, a. 3 c.
\textsuperscript{59} A number of writers point out that this argument rests on the fact that Aquinas does not defer to the modern separation of the good from the norm. See Michel Villey, \textit{La Formation de la Penseé Juridique Moderne} (Paris: Éditions Montchrétien, 1975), Michel Bastit, \textit{Naissance de la loi moderne: La pensée de la loi de saint Thomas à Suarez} (Paris: Presses Universitaires de France, 1990), Brian Tierney, \textit{The Idea of Natural Rights. Studies on Natural Rights, Natural Law and Church Law 1150-1626} (Atlanta: Scholars Press, 1997).
\textsuperscript{60} “Ille ergo, qui vitat mala, non quia mala, sed propter mandatum domini, non est liber; sed qui vitat mala, quia mala, est liber.” \textit{Super II Cor.}, chap. III, lect. 3, no. 112. [The translation here is from Cruz.]
\textsuperscript{61} Cruz, “Natural Law and Practical Philosophy,” 169.
this erroneous interpretation, Aquinas goes on to offer a correct reading of
the gospel text; that the law was not laid down for the just man should be
interpreted in the following way: the just man is moved by an internal
habit towards that prescribed by the law (qui interiori habitu moventur ad
ea quae lex Dei praecipit).

Thus, the reference to 1 Tim 1:9, which might at first glance be read as
a refutation of 2 Cor 3:17, in fact provides the ideal conceptual framework
for the correct interpretation of the quotation from the letter to the
Corinthians. The phrase “where the Spirit of the Lord is, there is freedom,”
should be read in the sense that the free man is the proper cause (causa
sui) of his action; in contrast, the servant is moved by the cause of his
master. The idea that the free man flees evil because of that evil in
itself—rather than because of the existence of a divine command that
prohibits it—surfaces in this context. St Thomas goes on to point out that
the Holy Spirit perfects the interior of the mind of man by means of good
habit so that what is laid down in divine law may be fulfilled. Thus, man is
free not because he is bound to obey divine law, but because the
inclination of his good habits is to do what he should do—that is, what
divine law commands (non quin subdatur legi divinae, sed quia ex bono
habitui inclinatur ad hoc faciendum, quod lex divina ordinat).

St Thomas addresses this issue once again in his commentary on Gal
5:18: if man is led by the Spirit, he is not bound under the law (si spiritu
ducimini, non estis sub lege).\(^62\) First, he holds that the phrase “not under
the law” (non estis sub lege) may be read as referring to the order of
judicial, ceremonial or moral precepts, a distinction that Aquinas also
invokes in the Treatise on the Old Law in the Summa Theologica.\(^63\) The
expression “to be under the law” (esse sub lege) may be read in two ways
in the context of moral precepts: in terms of obligation or coercion.\(^64\) All
men are subject to the law in the first sense.\(^65\) However, the just man is not
subject to the law, read as a form of coercion, because he is moved to
action by the Holy Spirit who, through love, inclines him towards doing
that which is laid down in the law. The just man has an internal law which
leads him to do—in a spontaneous way, not as a consequence of
coercion—what the (external) law commands. Thus, the just man is bound

\(^{62}\) Super ad Gal., c. 4, l. 2.
\(^{63}\) See S. Th. I-II, qq. 100-105.
\(^{64}\) See S. Th. I-II, q. 96, a. 5 ad 1.
\(^{65}\) Mt 5:17 – “Think not that I have come to abolish the law…” — is mentioned in
this regard.
by the law, but not coerced by it; whereas the unjust man is not only bound by the law, but also, to a certain extent, coerced by it.

In a further comment on a gospel text, St Thomas goes so far as to say that if all men were just, there would be no need for laws to be laid down (si omnes essent iusti, nulla necessitas esset dandi legem). However, rather than reflect on a state of absolute lawlessness, this line of argument leads him to conclude that in such a state of affairs, each man would be a law unto himself (quia omnes essent sibi lex).66 In a strict, univocal interpretation of the idea of law, if each man were a law unto himself, then what is understood by the term “law” would not in fact exist;67 in a certain sense, the idea that man may be a law unto himself calls the idea of law itself into question. However, in light of the texts and interpretations discussed above, it would appear that St Thomas does not see the obligatory nature of law and the goodness of action as absolutely contradictory.

The vision of a state of affairs in which all men are just, and thus in no need of the prescription of laws, is consonant with St Thomas’s thought, albeit as the extreme end-point of his line of argument. Nevertheless, this hypothetical state of harmony need not prompt the conclusion that the idea of law would disappear, or the annulment of the law; rather, that the idea of law becomes particular to the highest degree, that is, to the individual68; if the just man is not bound by the law in vis coactiva, he is still bound by the law in vis obligandi.

The prominence and number of references to the expression sine lege throughout the Corpus underwrite and reinforce this interpretation. In general, the expression is used to denote the absence of external law, not to deny the subjection of all men in vis obligandi; this obligation extends to the just man, who is moved to do what is just even in the absence of law (inclinatur ex seipsis ad iustitiam faciendam, etiam sine lege).69

For all of the reasons outlined above, Cruz’s conclusion that the nature of NL in the field of praxis is somewhat paradoxical seems justified.70

66 Super ad Tim., I chap. 1, lectio 3.
67 Given that its end is the common good, Aquinas states explicitly that, at least in the case of human law, the law applies to all men. See S. Th. I-II, q. 96, a. 1 c.
68 The positive argument concerning the fulfilment of the law, rather than the negative view of its annulment, may have been inspired by the gospel (Mt 5:17: “…I have come not to abolish [the law and the prophets] but to fulfil them”).
69 See, for example, SCG, III, c. 128, no. 8.
70 “The expression ‘natural law’ seems slightly paradoxical taken as the expression of a reality belonging strictly to the sphere of the practical. In this sphere, which is
Nevertheless, in light of the various conceptual nuances reflected in Aquinas’s work, to read this paradox within an interpretative framework that suggests that the virtuous man is more or less subject to the law (where the law is not understood as referring to *external* law) seems to follow a truer reading of St Thomas’s texts. This does not mean that the virtuous man may conceive of his subjection to the law as a form of coercion. The spirit of the texts cited above implies that the fulfilment of the law for the just or virtuous man does not connote its abolition. To conceive of the just man as an agent who regards himself as not law-governed by any type of law would provoke tension within Thomistic ethical thought and might ultimately undermine the value of NL.

**Conclusion: The analogical meaning of law in NL and the interpretation of the practicality of NLT**

On the basis of what has been discussed thus far, it would appear that Aquinas concedes a certain experience of obligation which does not necessarily involve a clear “awareness of a law-giver”, a position that may only be sustained by an analogous reading of the idea of law, specifically in the case of NL. Thus, NL is different to positive law—human or divine—and remains nonetheless a form of law. As St Thomas himself acknowledges explicitly on several occasions, self-legislation is impossible if NL is conceived of in the same terms as the functioning of positive law. However, if NL is defined as the work of reason itself (*opus rationis*), the conclusion that the good man is a law unto himself (*ipsi sibi sunt lex*) may be stated with equal clarity. Cruz’s analysis of the sphere of action considered from the point of view of the agent, what is connatural is precisely that which is not governed by law. Insofar as we feel that the correctness of an action is self-evident, and right in a practical sense, we do not see the action as governed by a law, nor do we see ourselves as under an obligation and linked to this action by a mandate from our superior. Rather, we perceive such action as an object that fits in with our own inclination and our own character, as a completely intrinsic operative decision, based on an intrinsic principle, not on an extrinsic principle that has been imposed on us”. Cruz, “Natural Law and Practical Philosophy,” 163-64.

71 Here I am indebted to very helpful questions raised by Alfredo Cruz. I do not know whether he would agree with my way of answering them.

72 *S. Th.* I-II, q. 96, a. 5 ad 3. Cruz’s argument relies heavily on St Thomas’s repeated assertions regarding the impossibility of self-legislation (see *S. Th.* I-II, q. 90, a. 3 c., 93, a. 5 c., *et al.*).

73 *In III Sent.*, d. 37, a. 1 ad 5; *Super Ep. Ad Romanos*, c. 2, l. 3.
issue in his article suggests that the meaning of the expression that man is a law unto himself is, at best, metaphorical. The argument here is that Aquinas does not express his position in metaphorical terms. Given the radical impossibility of self-legislation, the many points at which reason is compared to a kind of ‘ruler’ in the realm of human action take on special significance in St Thomas’s work; they show that Aquinas attributes a ‘legislative’ function to natural reason, albeit in an analogous sense. For example, in his account of the distinction between judicial, ceremonial and moral precepts in the Old Law, he writes:

[Hence] there are no judicial precepts ordaining man in himself. All such precepts are moral, because the reason, which is the principle in moral matters, holds the same position in man, with regard to things that concern him, as a prince or judge holds in the state.\(^74\)

Given the absolute impossibility of self-legislation by \textit{via inventionis} (in the strict sense of the term), and without going so far as to join in Cruz’s appeal to principle, that the good man is a law unto himself may be concluded from St Thomas’s work (in a broader or derived sense) by \textit{via resolutionis}. While the enlightening and action-guiding power of NL depends on its participation in the light of eternal reason, as a secondary cause in the realm of created things the law is constituted by the work of natural reason—that is, as a regulative judgment or dictate of reason, and the corresponding obligation—.\(^75\)

The practical significance of NLT may be illustrated by reference to the meaning of the rules of a competitive game. The purpose of the rules of a game is to make the contest entertaining; the primary purpose of the game’s players, however, is to win, not to entertain. For the players, to compete and to be aware of the obligation to obey certain rules are not


\(^75\) The nature of law in NL does not depend on its derivation from a \textit{divine legislator}. As Rhonheimer has pointed out, Aquinas never uses the term \textit{legislator} in relation to NL, nor to the Eternal Law; \textit{gubernatio} is the only term used in this regard. “Therefore, according to Aquinas, natural law is not properly dependent on a divine ‘legislator’ but it is the \textit{participation} of the eternal law and, thus, possessed as \textit{law} by the rational creature (see for this again I-II, q. 91, a. 2 ad 3: ‘the participation of the eternal law in the rational creature is properly called a law, since a law is something pertaining to reason, as stated above’”). Ibid.: footnote no. 25, 373.
The Practical Value of Natural Law Theory in the Work of St Thomas Aquinas

Synonymous aims; rather, the players seek to claim the objective of the game—that is, to win the prize—within the framework established by the rules of the game. The practicality of the rules of game in a competition is not primarily ‘to have an awareness of the obligation to respect and follow the rules’. The competition is defined by the desire to win through a creative exploitation of the wide range of options enabled by respect for the rules of the game. The content of NLT as the framework that shapes meaningful human action functions in a similar way. In line with the framework established by NLT, man lays claim to specific moral goods; he does so by means of what may be highly creative practices, which at the same time endow action with meaning.

The comparison to the rules of a game sheds light on the degree of practical value pertaining to NLT: NLT has practical value insofar as it is the articulation of the \textit{vis obligandi} of the judgments of PR. This statement is dependent on the extent to which, in the broader conceptual framework set out here, the precepts of PR are—in a derived sense—law; and, to the same extent, on the \textit{vis obligandi} which pertains to them, albeit in an indirect way. To say that no one is obliged to follow a natural inclination is both true and uncontroversial; that is why the term “natural inclinations”, rather than “natural obligations”, is in common use. Nevertheless, in his pursuit of specific goods, NLT requires that man refrain from acting directly against any of the goods identified as such by reason in accordance with his natural inclinations.\footnote{See John Finnis, \textit{Moral Absolutes. Tradition, Revision and Truth} (Washington D.C.: The Catholic University of America, 1991), 31-83.}

To sum up, the way in which the \textit{vis obligandi} is present in the good of reason—reflected in the precepts of NL—may be conceived of in the same way as the assent of the first speculative principles rests with TR. The first principles play a role in the exercise of TR; the science of metaphysics need not be made explicit in man’s every rational practice as a consequence. In a similar way, and insofar as it is committed to action, PR shapes the precepts, and the \textit{vis obligandi}, of NL.\footnote{See Martin Rhonheimer, “The Cognitive Structure of the Natural Law and the Truth of Subjectivity,” \textit{The Thomist} 67, no. 1 (2003): 10-11.}

Therefore, to say that NLT is the participation of eternal law in rational creatures is not to define the essence of NLT; rather, it is merely to describe the relationship between NLT and eternal law.\footnote{This idea is taken from Rhonheimer: ‘(as when we say ‘man is the image of God in the material world’ this is not a definition of the essence of man, but rather a characterisation of the relation of his nature to God’s nature; a definition of the}
in rational creatures need not be made explicit—in the context of systematic moral science, which pertains to the DRL— for it to have its own prerogative as law. However, a degree of reasoned understanding available to every man (on the PPL), as a result of the exercise of synderesis and the habit of science, is required in relation to the good he ought to pursue. Thus, in line with the argument articulated by Cruz, it may be said that the man’s fundamental moral experience is not to obey a law but to work towards the good that he should seek to do (bonum faciendum).

The contribution of NL to the practice of good action should be specified in this context; the analysis of the relationship between TR and PR is relevant to this discussion. The judgments of PR are intrinsically oriented to human good, in light of its truth. Like the speculative intellect, essence of man would be ‘man is a rational animal’). Aquinas’s definition of the natural law, which is ‘natural law is the light of natural reason, whereby we discern what is good and what is evil’ (a definition which exactly evidences what this ‘participation in the eternal law’ consists in) appears each time he treats the subject, while the characterisation ‘rational creature’s participation of the eternal law’ just appears in the Summa theologiae I-II, q. 91, a. 2 to put the doctrine of natural law into the context of the logic of its treatise on law (after the article on ‘eternal law’). Notice that according to S. Th. I-II, q. 93, a. 3, all laws, including human law, insofar they are true law, derive from the eternal law!” Rhonheimer, “Nature as Reason: A Thomistic Theory of the Natural Law,” footnote no. 7, 363.  


the practical intellect comes to know the truth. Good which is known and carried out is 'truth-in-practice'. By its very nature as true, the truth commands the respect of conscience. Thus, the knowing subject is impelled to act by the moral good known to reason to the same extent that the truth once known commands his assent. Therefore, the judgements of PR have the nature of a precept, to which a *vis obligandi* is intrinsic. At the same time, given certain circumstances or in extreme situations, explicit acknowledgement of the participated nature of the precepts of NL may supply the decisive reason for effective obedience to the dictates of NL.

In this context, therefore, it is clear that to include NLT in the structure of PR does not necessarily weaken the only element in the order of practice which has the status of a principle—that is, the good. Given that the good is the principle of action in the order of practice, it is equally clear that the good may appear under numerous and various guises and that man may avail of a variety of mediations to correctly achieve his proper end. The status of the good as a principle is strengthened—not weakened—by the precepts of NL, which function as a protective framework for the realisation of meaningful human action. They frame human action within a structure that puts different goods in order, in accordance with the *bonum rationis* or human good. As has been noted already above, insofar as it furnishes him with a natural inclination towards the appropriate action and end, the rational creature participates in the eternal law (*habet naturalem inclinationem ad debitum actum et finem*). NL comprises the judgements of PR which express the good to be done or the evil to be avoided in a prescriptive or imperative way, in accordance with the order of ends shaped by man’s natural inclinations.

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85 S. Th. I-II, q. 91, a. 2 c.
To be more specific: NL comprises the judgements of PR which reflect that which it is reasonable, by nature, to do. Thus, the precepts of NL are not an obstacle to the effective execution of moral action; in fact, they are the starting point for all good action. There can be no action without NL: every action is directed towards an end; without an end, no action could ever be undertaken. In Aquinas’s words: “the first direction of our acts to their end must needs be in virtue of the natural law,” and, in the order of practice,

nothing stands firm with regard to the practical reason, unless it be directed to the last end which is the common good: and whatever stands to reason in this sense, has the nature of a law.

From the perspective of the analysis articulated by Dr. Cruz in his article, it might be argued that the nature of the law established by PR is subsequent and consequent to a theory that defines human action as rule-governed, to which no practical significance of any kind need be attributed. The argument here is that the issue under discussion is a defining one, and has the potential to enable a more coherent account of the different positions expressed in the *Corpus Thomisticum*, which may appear at times to be opposed or even contradictory. Cruz’s article provides a valuable reminder of the fact that Thomist moral theory as a whole cannot be reduced to a ‘natural law ethic’; as Aquinas himself observed: “totam materiam moralem ad considerationem virtutum reducere.”

Finally, that NLT also encompasses the presence of different levels of perfection in the execution of good action should also be borne in mind. The undue identification of good action with perfectly good action may at times overshadow the moral value of average good action, such as that put into practice by the continent man. The full potential of NL unfolds in the

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87 S. Th. I-II, q. 91, a. 2 ad 2.

88 S. Th. I-II, q. 90, a. 2 ad 3.

89 S. Th. II-II, *prologus*. “It is only the virtuous person whose natural reason infallibly illumines and correctly distinguishes good from evil. The possession of moral virtue, to some degree, is thus the condition under which natural law works as it should, though its basic principles are always present in the human mind. Therefore, a truly Thomistic ‘natural law morality’ at the end must be an ethics of the virtues including a theory of vice and moral evil.” Rhonheimer, “Nature as Reason: A Thomistic Theory of the Natural Law,” 369-70.
case of the virtuous man—who, at the same time, acts with great naturalness; but this need not prompt the conclusion that NL is not also reflected in the action of, for example, the continent man. Moreover, NL may also be discerned in the action of the incontinent man and the vicious man; in these cases, however, the particular judgment of what is pleasing, rather than the universal judgment of *bonum rationis*, holds sway—with a certain sense of conflict in the case of the former, and no such sense in the latter.\(^9\) The desire to highlight the moral value of the most perfect form of action should not give rise to an underestimation of the value of good action put into practice from a position of perfectible moral goodness. The fundamental nature of the good in moral action is illuminated, not obscured, through practical reflection on NL and theoretical-practical study of NLT.

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\(^9\) Mark Murphy has carried out a refined analysis of the presence of first principles in NL. See Mark Murphy, "La epistemología de los primeros principios de la ley natural," in *Una ley de libertad para la vida del mundo. Actas del Congreso Internacional sobre Ley Natural*, ed. Juan José Pérez-Soba, Juan de Dios Larrú, and Jaime Ballesteros (Madrid: Collectanea Matritensia - 2007), 111-24.


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