Nature, Language and the Human Sciences

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Abstract

Working with an Aristotelian/Thomistic understanding of scientific knowledge acquisition, it is possible to speak in a more than merely metaphorical way of a whole range of distinctively human sciences. These sciences have as their objects the proper understanding of the human action system and its products. Unlike the study of systems in the non-human world, study of the human action system depends upon at least some form of cognitive reflexivity. This reflexivity is necessary to draw out evidence from the external world relating to the minds' actions and work backwards in order to reach conclusions as to the underlying mechanisms governing human behaviour. It is also to engage in the sort of reconstructive procedure suggested by Jurgen Habermas, but without his commitment to a post-Kantian ontology, as well as to speak of the mechanisms underlying human action as of necessarily generative nature. In particular, this generativity allows for the unity-in-diversity which, it is argued, is fundamental to explaining the operations of the human person as an embodied intellect. Finally, the natural law concerns itself not with performative competence but with the right use of that competence, and observance of the precepts of the natural law is necessary to preserve the integrity of the human action system as a whole. To the extent that they are breached, so the human action system starts to display signs of disintegration that are manifest in the breaking down of its natural balance between unity and diversity.

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A full elaboration and defence of the Aristotelian/Thomistic account of the scientific enterprise would involve establishing the essentially immaterial nature of the human intellect, the distinctively rational way it operates in its natural, that is, embodied environment via its three distinctive 'acts', and the manner in which, through hard and deliberate study, it becomes progressively more assimilated to the intelligible realities underlying the observable universe. It is not the purpose of the present paper to offer such an defense which is, in any case, being undertaken with increasing success elsewhere. Instead, such a broadly Aristotelian/Thomistic account is presupposed in order to focus more squarely upon the way in which it might afford a satisfactory basis for understanding the human action-system and of the consequences of human action more generally. In seeking to elaborate such account, it is also operating upon the implicit, though at this stage unargued for, assumption that such a frame of reference supports an altogether more adequate and complete account that do the available alternatives.

Human Law

Whilst there is significant epistemic and methodological continuity among different types of science, a crucial distinction opens up, on an Aristotelian-Thomistic account no less than on its alternatives, between the physical sciences and those standardly referred to as the 'human' sciences. Human sciences, in this sense, are sciences specifically related to the human person and the communities to which human persons give rise. They study the many different dimensions of human being – social, psychological, and historical – but although each enjoys its own legitimate province, in order not to have a distorting effect on reality, each must also be set within the overall context of a correct and philosophically grounded anthropology. In particular, each must allow for the primitive and indispensable fact of human freedom; not, indeed, a completely unlimited freedom, but a freedom which, even when heavily constrained by specific individual or communal circumstances, nonetheless continues

to remain – precisely because ontologically primitive – of at least some explanatory importance.[1] Moreover, as set within this wider anthropological context, the various human sciences are also distinctive in that they each concern the powers of, or the products of the powers of, the very beings whose cognitive expansion, as sciences, it is their purpose to facilitate. In other words, unlike the physical sciences, they are not merely concerned with understanding the external, material world, but are concerned with understanding it precisely as it reflects back upon, or manifests indispensable regularities underlying the products of, personal and inter-personal activity. In this sense, they are sciences in which the knowing mind studies its own operations and operational prerequisites.

According to an Aristotelian/Thomistic metaphysic, of course, it is only ever possible to know a being – any being – by becoming aware of its action in the world since it is only owing to the palpability of such action that an observer is enabled to conclude there exists an underlying substantial and abiding centre or activity at all.[2] Nevertheless, whereas in the non-human sciences the mind's primary objects are (external) material beings, in the human sciences, the objects of the mind's special study are the acts it engages in itself. As Aquinas puts it:

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[1] "The human sciences have particular characteristics that differentiate them from the experimental sciences of nature, since in their object of study, freedom is found. Although they employ, in part, the experimental method (with respect to the more material aspects of human behaviour), they have to rely on the 'philosophy of man.'" Artigas, M., (1990) *Introduction to Philosophy*. Manila: Sinag-Tala. p. 63.

[2] As Norris-Clarke puts it: "[Action] is the link that connects up our minds and whole cognitive apparatus with the world of real beings outside of us….all knowledge of the real for us must pass across the bridge of action as the primary self-manifestation of real being. I know the existence of real beings by the fact that they act…Thus, I do not know the hidden nature of things as they are hidden in themselves apart from their action on me…But I do know them as they really do manifest their existence and their natures by their real action on me. Action is precisely the self-revelation of being. Action that is indeterminate, that reveals nothing about the nature from which it proceeds, is not action at all. Hence all action is essence-structured action." Norris-Clarke, W., (2001) *The One and the Many: A Contemporary Thomistic Metaphysic*. Notre Dame: University of Notre Dame Press. pp. 34-35.

"[T]hat which is primarily cognized by the human intellect is the [nature of material things]; the act itself by which [the nature of material things] is cognized, is secondarily cognized; and it is through this act that the intellect itself is cognized."[3]

Indeed, precisely because "it is connatural for our intellect…to look to material things…it follows that our intellect understands itself according as it is made actual by species abstracted form sensible realities."[4] Just as in the process of cognising (external) material substances so too in the cognition of itself the mind proceeds from that which is more extrinsic. Thus it is said that objects are understood before acts, acts before powers, and powers before "the essence of the soul."[5] Yet, it is different from the cognition of (external) material substances since it implies something more, namely, that the act by which "the intellect understands a stone is other than (and additional to) the act by which the intellect understands itself understanding a stone."[6] Consequently, in understanding its own operations:

"the intellect reflects back upon itself, according to which it understands itself to understand and the species by which it understands. And so the species understood is *secondarily* that which is understood. But that which is understood primarily is the [external] thing of which the intelligible species is a similitude."[7]

As an embodied being, the actions of the human mind are ordered to finding expression in bodily behaviour the results of which are observable in the same way that all other external phenomena are observable. From observation of this bodily

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[3] *ST* Ia. 87. 1. Quoted in O'Callaghan, J. *Thomist Realism and the Linguistic Turn*. p. 226.

[4] Ibid.

[5] Quoted in O'Callaghan, J. *Thomist Realism and the Linguistic Turn*. p. 227.

[6] *ST* 1a. 87. 3. Quoted in O'Callaghan, J. *Thomist Realism and the Linguistic Turn*.   p. 226.

[7] Quoted in O'Callaghan, J. *Thomist Realism and the Linguistic Turn*.   p. 225.

behaviour "which is the externalisation of the mind's interior operations," it becomes possible to infer the existence of these operations.[8]   Importantly, it follows from this that the mind learns about its operations, not only from reflecting upon the consequences of its own activity, but also by observing and reflecting upon the activity of other minds with which it forms a knowing and acting community. This in no way reduces the significance of its distinctively capacity for properly reflexive knowledge, because it is only possible to draw self-referential conclusions from the actions of others in so far as the mind is aware that it shares with them a common nature and this itself implies a precedent reflexive, epistemologically foundational, judgement. What it does point to, however, is both the inherently communal nature of the human knowledge acquisition, and the fact that all forms of human self-knowledge inescapably presuppose a stable underlying ontological reality from which that knowledge derives.

This reflexive capacity goes a long way to explaining the persuasiveness of Jurgen Habermas's suggestion that the human/social sciences are properly understood as 'reconstructive' in nature. With the term 'reconstructive' Habermas means to point to those sciences whose proper function it is to 'reconstruct' generative systems of rules/ norms from the kaleidoscope of particular human actions.[9] It is these generative systems, he suggests, that help account for the non-determined yet thoroughly ordered nature of such actions, affirming both their real freedom and meaningful content. Setting these suggestions within the context of an Aristotelian/Thomistic account of reflexivity, offers a basis for their creative completion by preserving the unique value they undoubtedly offer for a truly adequate social epistemology, whilst prescinding

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[8] In Pope, S. (ed.) (2002) *The Ethics of Aquinas*. Washington D.C: Georgetown University Press. p.146.

[9] For Habermas: "[r]econstructive proposals are directed to domains of pre-theoretical *knowledge*, that is, not to any implicit opinion, but to proven intuitive fore-knowlegdge…Thus, for example, syntactical theory, propositional logic, the theory of science, and ethics start with syntactically well-formed sentences, correctly fashioned propositions, well-corroborated theories, and morally unobjectionable resolutions of norm conflicts, in order to reconstruct the rules according to which these formations can be produced." Habermas, J. (979) *Communication and the Evolution of Society*. London: Heinemann. p.

from the limitations of Habermas's wider post-Kantian, anti-metaphysical commitments.[10]

Equally important is the role that implicit or, as Michael Polanyi has more recently termed it, 'tacit' knowledge plays in the Habermasian account. Thus, essential to the procedure of the reconstructive sciences, properly conceived, is the transformation of "a practically mastered pre-theoretical knowledge (know-how) of competent subjects into an objective and explicit knowledge (know-that)." [11] In other words, a reconstructive science, transforms implicit into explicit knowledge, by explicating the inherent human tendency to behave in an ordered and rule-governed manner. At the same time it is not simply concerned to reconstruct any and every practically demonstrated competence, but only those of a universal or species defining nature.

> "To the extent that universal-validity claims…underlie intuitive evaluations…reconstructions relate to pre-theoretical knowledge of a general sort, to *universal capabilities*, and not only to particular competences of individual groups…or to the ability of particular individuals…When the pre-theoretical knowledge to be reconstructed expresses a universal capability, a general cognitive, linguistic, or interactive competence (or sub-competence) then what begins a an explication of meaning aims at the reconstruction of species competences."[12]

It is this that enables the social critic to tease out the most significant structural implications of the tendencies underlying human action, as well as the types of capacity its manifestation presupposes, what constitutes the correct or healthy

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[10] This is tied to a further contention that the foundation offered by an Aristotelian/Thomistic metaphysic, endows the reconstructive hypothesis with altogether more profound and comprehensive operational implications.

[11] Habermas, J., *Communication and the Evolution of Society*. p.15.

[12] Ibid. p.14.

functioning of those capacities, what constitutes their malfunctioning, how the variable degrees of healthy functioning and malfunctioning might be measured, and the longer term consequences of each.

A moment's reflection makes clear that, to be at all credible, the 'pre-theoretical' knowledge required by this account must be premised upon some mechanism of habit formation, and it is the elaboration of just such a mechanism that has been a peculiarly distinguishing feature of the Aristotelian tradition. It is in writing within this tradition, whilst trying to make sense of more recent conceptions of linguistic competence, that Polanyi has pointed to the inherently self-contradictory notion of explicit knowledge devoid of 'tacit coefficients', since this would render "all spoken words, all formulae, all maps and graphs…strictly meaningless."[13] Quite to the contrary, from its earliest age, nearly every child engages in a vast range of behaviour underpinned by a set of norms of apparent infinite complexity which are intelligible, if at all, only to a handful of experts, and it does so because its "striving imagination has the power to implement its aims by the subsidiary practice of ingenious rules of which [it] remains focally ignorant." In so doing, suggest Polanyi, the child has in fact discovered a whole new system of tacit grammar, and its imagination enables it to apply this to each new situation it encounters.[14] Thus:

"[f]rom its very start [the child] takes up the problem which will guide its quest throughout – the task of improving communication. The growth of vocabulary and the acquisition of evermore complex and subtle grammatical rules are both activated by the imaginative search for greater enrichment and greater precision in communication. Semantic sense-giving and sense-reading are striven for ever further, as the twin powers of intuition and imagination work towards this from start to finish."[15]

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[13] Polanyi, M., (1969) *Knowing and Being: Essays by Michael Polanyi.* Greene, M., (ed.) RKP. p. 95.

[14] Ibid. p. 200

[15] Ibid. p. 205

Of particular importance for Habermas are the generative systems underlying communication:

> "I take the type of action aimed at reaching understanding to be fundamental. Thus I start from the assumption…that other forms of social action – for example, conflict, competition, strategic action in general – are derivatives of action oriented to reaching understanding…" [16]

Although 'communicative action' performs a less constitutive/substantivist, more properly characteristic, role relative to healthy human functioning in the systems of Aristotle and Aquinas, the central position Habermas affords it here nonetheless resonates strongly with the premium his predecessors place upon the inherently social nature of the human person, and the way each consequently asserts with the greatest possible emphasis the indispensable nature of socially mediated action and interaction in the attainment of human flourishing. "If man is by nature a political animal," states contemporary Thomist, John O'Callaghan,

> "it stands to reason that his political life, which necessarily involves communication, is the flower of his more basic vital activities or *forms of life*....[Thus][h]is political life is his flourishing, the 'more perfect existence' that the individual naturally seeks, without which his individual existence is naturally incomplete and naturally less than perfect."[17]

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[16]Habermas, J., *Communication and the Evolution of Society*. p. 1. The goal of coming to an understanding, he goes on to say: "is to bring about agreement that terminates in the intersubjective mutuality of reciprocal understanding, shared knowledge, mutual trust, and accord with one another." Ibid. p. 3.

[17] O'Callaghan, J., *Thomist Realism and the Linguistic Turn*. p. 291.

It follows that "[b]eing rational, linguistic, and political are the specifically human ways of being an animal." [18] As Aristotle himself states, "everyone needs to communicate his thoughts to others" and it is communicative action taken in the widest sense, action of which language as normally understood is the central or paradigm case, that makes this possible. "Through language, men interact with one another, using meaningful expressions", and it is this which "enables them to live together as a community." [19] It is the handmaiden of a completing unity forged "across time and space" propelled by the common, fundamental human "desire for knowledge, understanding and wisdom." [20] Thus:

> "When the Aristotelian distinguishes between understanding *as such* and the vocal expression of understanding, he is not necessarily distinguishing two things, that is, two acts. He is, in the first place, providing sufficient space or recognising that understanding is expressed in all human action and not just the manipulation of verbal or written symbols. He is also, in the second place, leaving sufficient conceptual space for a movement, that is, a development of the understanding expressed in all the modes of human action to the more perfect from of existence embodied in the expression of speech which is the fruit of understanding shared with the community." [21]

The indivisibly material and immaterial nature of human being confers inherent meaningfulness upon properly human action which brings together communicative and expressive qualities in virtue of which both the internal operations, acts and

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[18] Ibid. See also Herbert McCabe's contention: "It is characteristic of human animals to deploy symbols, to live in the structure we can broadly call language. What we call having a 'mind' is having the capacity to live in such structures, structures which, like the nervous system, or the genetic programme of an animal species, provide for meanings. Language is the nervous system of the human community. It is the context for meaning. The linguistic system of symbols is parallel to and comparable to the genetically provided system of meanings that govern the behaviour of animals." McCabe, H., (200) *The Good Life*. London: Continuum. p. 67.

[19] Aquinas, *In I Peri hermereias.*[*In I. Perih.*] lect. 2. Quoted in Sanguineti, J., *Logic.* p.

[20] O'Callaghan, J., *Thomist Realism and the Linguistic Turn*. p. 296.

[21] Ibid. p. 292.

thoughts of the human spirit are externalised in the material world and the intelligible aspects of reality are made simultaneously available to more than one mind. In this way, it can be seen that "conceptual [and volitional] functioning on the part of the human animal is naturally ordered toward expression in non-linguistic and linguistic acts alike, forming through these linguistic and non-linguistic acts social and political communities."[22] Moreover, even within the context of an individual's private conceptual functioning, it would seem that some sort of organised symbolic system is necessary owing to the fact, noted earlier, that all human thought, being that of embodied intellect, is essentially orientated towards cognition of universals in particulars. Consequently, "[t]o fix and recall items from the flux of experience, to be able to use this recalled knowledge in inferences and association, we need words to stand as… recallable proxies for the things we want to argue and think about."[23] In order for this to be possible, thought needs to take on a quasi-embodied existence "it must be something symbolically encoded, something the believer can retain and think about."[24] In this way language makes possible thought "about absent things, about generalities and about possibility and impossibility." [25]

It is important to note here that it is precisely the embodied nature of the human intellect and thus of the mind's conceptual functioning that renders the human being a *rational* being ordered towards activity of a distinctively *rational* kind. Communicative action represents both a subset of the wider category of rational activity as well as being its most complete expression. Crucially, it also follows from this that all distinctively human action will itself be possessed of a certain dual character. On the one hand, the basis for the underlying unity it displays is the capacity of the human mind to become conceptually enriched by intelligible aspects

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[22] Ibid. p. 298.

[23]   O'Hear, A., (1997) *Beyond Evolution: Human Nature and the Limits of Evolutionary Explanation*. Oxford: Oxford University Press. p. 37.

[24] Ibid.

[25] Ibid.

of reality. As intelligible, and therefore immaterial, these aspects and the concepts into which they are formed are, at least in principle, inherently communicable to all other human minds. It is for this reason that all human languages are capable of some form of translation and, indeed, why individual persons are capable of engaging in mutually intelligible discourse at all. On the other hand, as the human mind is that of a being composed of essential immaterial and material metaphysical co-principles, whatever conceptual content the mind possesses or seeks to communicate, must necessarily be in some manner embodied, and it is this embodiment that forms the basis of linguistic diversity. That diversity exists at a number of different levels. It exists, first, at the relatively superficial level of phonology or physical notation, where it is accounted for by the inherently conventional nature of linguistic signifiers. Secondly, diversity exists at the level of individual grammars, which bring together a natural grammatical endowment with its particular realisations through a series of conventionally mediated, though nonetheless tightly constrained, choices. Finally, diversity also exists at the level of conceptual enrichment. This is because, just as different people will know different things about the world, so too, at the level of communal understanding, given the various traditions of enquiry, environmental interactions, and condensations of experience, different languages will have developed different conceptual vocabularies, idiomatic expressions and forms of speech, each of which group together meanings, both singularly and collectively, in quite distinctive, though not of course, mutually untranslatable ways.

The surface/depth character that all this confers upon the human action-system manifests itself not just as between particular actions, but also as between whole clusters of actions premised upon the development by their agents of habituated propensities to act in one way rather than another. Finally, and perhaps most significantly for the present study, owing to the inherently social nature of the human

being, this surface/depth character, also manifests itself in the embodied propensities of whole communities to act in one way rather than another.[26]

The Precepts of Right Use – The Natural Law

At this point, an important distinction needs to be drawn between the possession of a capacity to act, on the one hand, and the employment or use of that capacity, on the other. This corresponds to a distinction Aquinas draws between virtues of the intellect and those of the appetite. By doing so he points to the fact that it is possible to develop both intellectually and morally. It is possible to develop intellectually by acquiring "a more refined capacity to reason to conclusions from…[the first] principles [of a science], a deeper understanding of life, a more discerning sensitivity in making practical judgments, and a more adept skill at making things."[27] It is possible to develop morally by developing habits such as those of treating people justly and of responding appropriately to one's various desires. This, he says, is because:

> "[t]here are two principles of human action, namely intellect or reason and appetite…Hence any human virtue must be perfective of one or the other of these principles. If it is perfective of the speculative or practical intellect so that a person acts well, it is an intellectual virtue; if it is perfective of the appetitive part, it is a moral virtue." [28]

At the same time it is also important to notice a qualitative difference these two types of habit:

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[26] A fact of which, it will be argued, the diversity of natural languages represents the paradigm case.

[27] Pope, S.,'Overview of the Ethics of Thomas Aquinas' in Pope, S. (ed.) *The Ethics of Aquinas*. p. 34.

[28] *ST* IaIIae.58.3.

"A man is not said to be good absolutely because he may be good in some part, but because he is wholly good: and this he is when his will is good….A man who is good in one of his powers, without having a good will, is said to be good as regards that power, e.g., because he has good vision or hearing… It is clear then that a man is not said to be absolutely good from the fact that he has science, but only to have a good mind or good understanding. The like may be said of art and of other habits of this sort."[29]

Thus, because intellectual virtues, whether those of the theoretical intellect, or of the practical intellect, confer "only aptness to act", not the "right use of that aptness", they are correctly taken to be virtues only in a relative or analogical sense, whereas, virtues of the will are virtues properly so called or virtues without qualification.[30] "Only habits that dispose appetite give both capacity and the bent to use that capacity well:"[31] indeed the tendency to act well is precisely the capacity that they are said to confer. It follows from this that any human action capable of being "appraised technically can also be appraised morally",[32] and that these two appraisals remain analytically distinct. In particular, whereas moral appraisal relates to the good of the whole person, technical appraisal relates only to the good of the particular work done. As Maritain puts it:

"Making is ordered to such-and-such a definite end, separate and self-sufficient, not to the common end of human life; and it relates to the

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[29] Aquinas, *Quaestiones disputatae Virtutibus in Communi* [*QDVC*]., q.un.,a.7, ad 2. Quoted in, Reichberg, 'The Intellectual Virtues', 141.

[30] Aristotle, *Eth. Nic.* 2.6 (1106a 22-23) and *ST* Ia IIae, q., 56, a. 3, c., quoted in Reichberg, 'The Intellectual Virtues', in Pope, S. (ed.) *The Ethics of Aquinas*. p. 141. See also, Kent, B., 'Habits and Virtues' in the same volume. p.121.

[31] McInerney, R., 'Ethics.' in Kretzmann, N., and Stump, E., (ed.) (199) *The Cambridge Companion to Aquinas*. Cambridge: Cambridge University Press. p. 204.

[32] Ibid.

peculiar good or perfection not of the man making, but of the work made."[33]

The paradigm case here is, of course, art. Art concerns itself primarily with the production of things external to the agent, and is thus to be contrasted with the "the pure inwardness of knowing",[34] which is the proper concern of science. Yet this basic distinction admits also of a degree of mutual overlap. Consequently, there also exist certain peculiarly "speculative arts which are at the same time sciences". Logic is the most obvious example. "[S]uch scientific arts", writes Maritain:

> "perfect the speculative intellect, not the practical intellect; but the sciences in question retain in their manner an element of the practical, and are arts only because they involve *the making of a work* – in this case a work wholly within the mind, whose sole object is knowledge, a work which consists in putting order into our concepts, in framing a proposition or an argument. The result is then, that whenever you find art you find some action or operation to be contrived, some work to be done."[35]

Thus there is a sense in which all distinctively human action, that is, all rational action, and then, by further implication, all communicative and linguistic action, involves the cultivation and practice of some art or arts. To understand, then, something of the generative mechanisms that underlie such action is not yet to have a grasp of the human-action system as a whole. It is, instead, merely to understand how it is possible for individual creative acts to be engaged in, or to understand something of the manner in which the unique products of the human mind are bodied-forth in the world. This is to deal with the method of bringing about the goods internal to those individual products. There are deeper questions it leaves untouched which relate to

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[33] Maritian, J., (1947) *Art and Scholasticism*. Trans. Scanlon, J., London: Sheed & Ward., p. 6.

[34] Ibid.

[35] Ibid., pp. 3-4.

the functioning of the human-action system as a whole – which is, of course, synonymous with the good of the human person as a whole. These questions require separate consideration, and lie precisely within the province of the virtues of the appetite, of which the basic precepts of the natural law are simply a normative expression. As Ralph McInerny crisply explains:

> "The will as intellective appetite bears on things the mind sees as good, and there are certain things that are seen to be necessary components of the complete human good. Indeed, the mind grasps them as goods to which we are already necessarily inclined. Virtue, as second nature, is the perfection of a natural inclination towards the good; Judgments about goods to which we are naturally inclined from the starting points or principles of moral discourse. If particular choices are analysed in terms of a kind of syllogism that applies a moral rule to particular circumstances, the principles are nongainsayable precepts that we articulate when less general guides for action are questioned. The set of the principles of moral discourse is what Aquinas means by natural law. These judgements as to what one ought to do cannot be coherently denied. In this they are likened to the first principles of reasoning in general, and Aquinas has in mind the way in which the principle of non-contradiction is defended."[36]

Within the moral order the equivalent of the   "The equivalent of the principle of non-contradiction in the moral order is "Good should be pursued and done and evil avoided." It makes no sense to commend evil because, in doing so one must commend it, as Aquinas says, under the form of the good, namely, as desirable and worthy of pursuit. Thus, "[w]hatever a human being seeks, it seeks under the aspect of the good (*sub ratione boni*), and if it does not seek it as its perfect good, which is its ultimate end, it must seek it as tending to that perfect good, since any beginning is ordered

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[36] McInerney, R., 'Ethics.' p.

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towards its culmination." [37] The other nongainsayable moral principles are articulations or specifications of this basic one. "This is the foundation of all the other precepts of nature's law, such that whatever things practical reason naturally grasps to be human goods pertain to natural law's precepts as to what is to be done or avoided."[38] On what basis will practical reason judge something to be a human good, a constituent if the comprehensive human good? "Since good has the character of an end and evil the contrary character, all those things to which a man has a natural inclination reason naturally grasps as goods, and consequently as things to be pursued, and it grasps their contraries as things to be avoided."[39] Human beings have, in common with everything, an inclination to preserve themselves in existence; in common with other animals, they have an inclination to mate, have young, and care for them; and they have a peculiar inclination following on their defining trait, reason – to know and to converse and to live together in society."

The fact that the generative mechanisms, which, it has been suggested, underlie and make possible the exercise of meaningful human action are capable of being analysed independent of the deeper precepts of the natural law, should not be taken to imply

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[37] *ST* Ia.IIae.1.6.

[38] *ST* Ia.IIae.94.2.

[39] Ibid. In terms of how the mind actually come to know these precepts. MaCabe has written the following: "The natural law thus does not require a lawgiver, except in the sense that we may regard our humanity as *given*. We can, however, as we come to understand mankind, construct the code of law which would have been given if there had been a lawgiver; but the whole purpose of such a code is to serve as a clue to the inclinations that are within us but difficult to discern." Later he goes on to say: "We can only expect happiness when we arrive at the stage of fulfilling our deep desires not because we have been told what they are, but because we personally feel them. Such genuine freedom can only be the result of a long period of investigation into our true wants. The theory thus proposes two approaches to the question, 'what is it morally good to do?' One approach seeks, by investigating the kind of community that mankind is, to discover what its laws must be and hence what I who am by nature a member of mankind must deeply want to do; the other is a direct 'autobiographical' investigation of what I find myself wanting to do. Morals, on this theory, would be conducted as a dialectic discussion in which these two sources of illumination reflect upon each other." McCabe, H., (200) *Law, Love and Language.* London: Continuum. pp. 63 and 66.

that they bear no relation to it; clearly they do. Indeed, a proper observance of the natural law is vital to maintaining the fundamental integrity of the overall action-system. In so far as its precepts come habitually to be departed from, to that extent truly interpersonal and reciprocal, that is, fully communicative, human action starts to become problematic. [Here such departure my usefully be contrasted with potential departures from basic linguistic or grammatical norms. Thus, if the grammatical principles underlying meaningful discourse are disregarded, if a person starts to speak ungrammatically, it soon becomes clear that they are speaking nonsense. They will simply not be able to achieve their communicative purposes. In contrast, the consequences of breaching basic precepts of the natural law take much longer to manifest themselves, though those consequences are altogether more insidious and profound.

The Indicative Nature of Variations in Human Law

Now, given the surface/depth nature of human action in general, and consequently, the fact that a whole variety of different schemes are consistent with the precepts of the natural law, when it comes to concrete action the principles of the natural law are incapable of manifesting themselves in an unmediated form. They must always be found either to have been transgressed or to have been complied with within the context of an agent or group of agents executing a particular judgment or set of judgments, or in the context of the development by those agents of habituated propensities to do so. For this reason, when it comes to the systematic departure from the precepts of the natural law, it is obvious that this will eventually become manifest in its mediating norm systems. In other words, it will eventually become manifest in changes to the normative schemes which individuals and communities through their actions have purposed to create.

Here it should be at once realised that *both* the normative networks specific to particular human languages and those specific to particular sets of 'human law' are examples, though of differing varieties, of just such mediating norm systems, and are thus, in some sense, deeply connected one to another. Consequently, when contemporary natural law theorist, Robert George, writes the following in explanation of Aquinas's understanding of 'human law' or law 'posited' by particular human communities, he could almost as accurately be writing about particular human languages:

> "A number of different schemes…are consistent with the natural law. So the legislator must exercise a kind of creativity in choosing a scheme. He must move, not by deduction, but rather by an activity of the practical intellect that Aquinas called *determinatio*. Specification or concretisation – In this way, the positive law is a human creation in the order of making which builds overtime into a "vast cultural object" of almost infinite complexity."[40]

Indeed, the analogy might be even more powerfully drawn when it is recalled that Aquinas allows an important place for custom in the positing of 'human law',[41] and that this form of customary ordering inevitably comprises significant levels of implicit or unspoken commitment spontaneously transmitted from generation to generation.

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[40] George, R. (1999) 'Natural Law and Positive Law' in, *In Defense of Natural Law*. Oxford: OUP. p. 108 -109

[41] "All law proceeds from the reason and will of the legislator…The reason and the will are manifested in action through words and deeds, for the way one acts shows what he considers to be good. It is clear that human words can change. So also a law can be changed and developed by the repeated actions that comprise custom. In addition something can be established by custom that obtains the force of law because such repeated external actions effectively reveal internal motives of the will and concepts of the reason, since if something is done a number of times it seems to be the result of a deliberate rational decision. In this sense custom has the power of law, it abolishes law, and it acts as the interpreter of law." *ST* IaIIae. 97. 3.

What really distinguishes the legal and the linguistic in this context, is that whilst 'human law' taken in the broad sense employed in the present study concerns some form of social pressure, the normative networks specific to particular human languages are the result of action that is of an un-coerced, fully reciprocal, nature. This is not, of course, to suggest that there are not many examples of particular languages being both structured and employed in coercive and discriminatory manner. What it does suggest, however, is that, to the extent that they are so employed, they begin to lose their properly linguistic or communicative qualities and take on qualities that are of an essentially non-linguistic nature. There is a sense, then, in which both the mediating norms systems proper to particular languages and those manifest in specific bodies of 'human law' are being theorised here as something akin to ideal types. Yet whilst it makes sense to speak of more or less pure 'linguistic' forms, it makes rather less sense to speak thus of the various systems of 'human law' since there is a considerable range of qualitatively different forms of social pressure, ranging from the most subtle and tentative to the most explicit and coercive.

Here it is useful to contrast 'human law' as a system of regulative norms not only with those of particular languages, but also with that of physical nature. Indeed, unlike 'human law', the norms of language and physical nature are not susceptible to fundamental qualitative variability.   This is not, of course, to suggest that they do not allow for variability at all, just that the variability that they do allow for operates at a uniform qualitative level. By stating that they operate at a uniform qualitative level, what is meant here is that they each permit a specific degree of human freedom or volition. At one extreme, the various linguistic norm systems, which can be said to manifest man's being in its natural, fully socialized, state, allow human volition to the maximal degree. They allow, in other words, for maximal, spontaneous and un-coerced expression, which is nonetheless guaranteed and made intelligible by the largely unconscious employment of regular underlying patterns. At the other extreme, the laws of physical nature exclude the exercise of volition altogether, though they do,

of course, allow some forms of non-volitional indeterminacy. In contrast to both these extremes, 'human law', like language, incorporates the idea of volition, and therefore is distinguishable from the laws of physical nature, but, unlike language, implies some degree of restriction on the scope of that volition. Thus, 'human law' implies a distinction between actions that are permissible and those that are not. In this sense, 'human law' can, in fact, be said to represent an admixture of these other two varieties of norm system; or, more precisely, to occupy a variable intermediate point between the two qualitative extremes they respectively represent. Moreover, its very existence presupposes that at least some individuals within a given community have developed tendencies to breach the deeper regulative principles of human nature, that is, to breach the basic precepts of the natural law, such that it has become necessary to ensure the observance of those precepts by some form of social pressure. In this sense, the emergence of 'human law' as it is being characterized here is consequent upon some sort of dysfunction. Were there no such tendencies to breach the precepts of the natural law, were those precepts adhered to by all in an entirely spontaneous fashion, then the norms of fully rational action, that is, of communicative or linguistic action, would be entirely sufficient as would the particular regulative and coordinative normative systems to which they give rise in given contexts. Given the fact that no such halcyon community of absolute virtue has ever obtained in practice, norms of social pressure – 'human laws' – have, in fact, existed in all real communities and they have done so in a great variety of forms, placing differing degrees of restriction upon human volition. Underlying this variety, however, can be detected a very general overall movement towards more formal manifestations and away from informal ones. Indicative of a cognate overall rise in social fixation, this process of formalisation, understood properly, also references a general trend towards ever-greater diminution in the scope of un-coerced human volition. Indeed, as the norms of social pressure become gradually more formalised, they become proportionately more inflexible and restrictive. They also begin to emerge in a more determinate and less spontaneous fashion. In each of these respects they become less

like the norms of language and more like those of physical nature. It is precisely in this sense that the degree to which the norms of social pressure have been formalised within a society offers an accurate indication of the extent to which it has become alienated from its natural, maximally human, state.