

Aquinas on the Supreme Court – and on the Bible, or How to Read This Book

Aquinas on the Bible and the Court

Contemporary accounts of what’s “natural” for human society still cite the thirteenth-century system of Thomas Aquinas – even on the Supreme Court. But those accounts ignore his biblical commentaries, which reveal something much stranger. Against the reigning impression, the commentaries embed all law, even the law of nature, in a sexually charged story of decline by specific ethnic groups – Jews and Gentiles – gendered in changing ways and redeemed by the reinsemination of divine grace. This book uses accounts of ethnicity and gender, nature and grace in Aquinas’s biblical commentaries to reframe the systematic works (especially his *Summa theologiae*) still quoted in court.

The whole advantage of natural law is supposed to lie in its independence from any particular group, history, or religion. That is why rival views of gender and sexuality both appeal to “nature” and cite Aquinas. But Aquinas’s *Summa* ties natural law to specific biblical passages, where his commentary describes a nature that differs by ethnicity, varies over time, and changes sexuality by God’s decree. This destabilizes turn-of-the-twenty-first-century uses, liberal or conservative.

Consider a story of decline and rise from Aquinas's commentary on the biblical book of Romans: In the beginning, God impressed or (in a parallel passage) "inseminated" human minds with a moral "law of nature" – God presses or fathers them in God's image. According to the law of nature, human beings would multiply and do justice. But after the fall of Adam, they came to love *injustice*. To hide that injustice, they "bound" (*detinent*) or "tied up" (*ligatur*) the law of nature until they "held it captive" (*captivatur*) and "put an end to it" (*terminatur*) (*In Rom.* §§112, 127). The verbs reveal this as a tale of bondage. By the time of Abraham, particular ethnic groups ("Gentiles"), having "put an end to" nature, began to worship dead idols (*tempore Abrahæ, quando creditur idolatria inceperit*). The living God punished them by giving them up to "the vice against nature" (same-sex sexuality) – so that they would die out (*ex quo generatio sequi non potest*). The author finds the punishment strictly appropriate (*satis rationabiliter*), since according to the story nonprocreative sex befits the binding of nature and the worship of dead idols (§151; see Chapters 5, 6, and 9). After the coming of Jesus, the Holy Spirit reinseminates them with natural law as "the semen proceeding from the Father." "How they become again children of God is clear," says the author,

from comparison to physical children, who are begotten by physical semen proceeding from the father. For the spiritual semen proceeding from the Father, is the Holy Spirit. And therefore by this semen some human beings are (re)generated as children of God. – 1 John 3:9: "Everyone who is born of God does no sin, since the seed of God remains in him [*semen Dei manet in eo*]." (*In Rom.*, §636; see Chapter 12)

The United States Supreme Court cites the same author – Thomas Aquinas – in cases crucial to gender issues, including *Roe v. Wade* (abortion) and *Bowers v. Hardwick* (sodomy laws). Eight centuries after he lectured on the Bible, advocates and critics agree, Aquinas remains the most influential natural law philosopher. Even liberals cite Aquinas – Blackmun, for the majority in *Roe* and in dissent in *Bowers*. Citations of philosophers show "a slow rise in majority decisions" and "a dramatic and recent rise" in dissents, trending toward 30 cases a year. Behind the scenes, the influence

of philosophical sources exceeds the citation rate (Brooks, 27 *Rutgers L. Rec.* 1; Rao, 65 *U. Chi. L. Rev.* 1371).

This book links four claims: (1) Aquinas's recently or never translated commentaries complicate all understandings of Aquinas's natural law, conservative and liberal alike. (2) The commentaries differ from the systematic works in the type of reasoning Aquinas employs – narrative in the commentaries, logical in the *Summa*. (3) Aquinas's writing belongs in a historical context including medieval practices of teaching and his commitments to the Dominican Order of Preachers. (4) Aquinas's commentaries submit the law of nature to particularities of ethnicity, gender, history, and religion that would embarrass secular courts.

My method sounds simple, but has hardly been tried: When Aquinas's systematic works quote the Bible, I read his biblical commentaries on the passages he cites. Widely available in complete if unopened Latin sets, the commentaries remain unread even by those who call themselves Thomists. Why not hear Aquinas on the texts he cites?

This book critiques turn-of-the-twenty-first-century natural-law theory by its founding text. I do not try to deconstruct natural law by appeal to natural science, since that would hardly work with thinkers who treat nature as normative goal rather than scientific evidence. Natural lawyers don't go by science. They go by texts. That favors my approach, since Aquinas also goes by texts – not just Aristotle's, but those of Augustine, Pseudo-Dionysius, and the Bible. Those texts leave Aquinas more interested in natural law's failures than moderns give him credit for.

If you read the *Summa theologiae* on natural law, you find that Aquinas cites the New Testament book of Romans for his claims about nature. If you open Aquinas's commentary to the places where he interprets those citations, you find that, contrary to the *Summa's* impression, Aquinas embeds all law, even natural law, not in a particular *logic*, but in a particular *story*. There, Aquinas places natural law in a narrative of God's dealings with two religio-ethnic groups, Jews and Gentiles. There, having or lacking natural law depends not on humanity but on ethnicity. The narrative tries to explain, not how natural law would work, but why it fails. Aquinas the commentator veers away from all his modern readers, pro or con.

Among those Aquinas readers are those who prepare Supreme Court opinions, write *amicus* or interested-party briefs, and examine Supreme Court nominees on the Senate Judiciary Committee. *Roe v. Wade* legalized abortion in the United States (1973, 410 US 113). *Webster v. Reproductive Health Services* (1989, 492 US 490) confirmed *Roe*; both decisions cited Aquinas on the issue of “ensoulment” (cf. Haldane and Lee). And *Bowers v. Hardwick* (1986, 478 US 186), overruled by *Lawrence v. Texas* (1993, 539 US 558), was the last Supreme Court decision upholding sodomy laws. In another sexual orientation case that reached the Supreme Court, *Romer v. Evans* (1996, 116 S. Ct. 1620), the State District Court took testimony about the law of nature from “prominent Roman Catholic and Jewish theological scholars . . . about interpretations of the teachings of their own traditions that are not uncontroversial within those traditions” (Olyan and Nussbaum, xiv) and prompted an article of 136 pages in the *Virginia Law Review* about nature in Plato and Aristotle (Nussbaum; I thank Joseph Naron). *Romer* addressed the access of gay and lesbian citizens to the courts.

In 1991, when Clarence Thomas was up for confirmation to the Supreme Court, Senator Joseph Biden (later US vice-president), suggested that the Judiciary Committee explore whether Thomas had a “good” or “bad” theory of natural law. A bad theory, according to Biden, would impose a “code of behavior . . . suggesting that natural law dictates morality to us,” while a good one would support individual rights, as in the Declaration of Independence (Hittinger 36, quoting Biden; I thank Joseph Naron). Biden also voted against failed Supreme Court nominee Robert Bork because Bork rejected the “good” kind of natural law (Hittinger 83). As I correct this manuscript, vice-presidential nominee Paul Ryan claims (without evidence) to have been influenced less by Ayn Rand than by Thomas Aquinas. On the Supreme Court and on the Senate Judiciary Committee, liberals and conservatives argue over Aquinas. This book uses narratives of ethnicity and gender in Thomas Aquinas’s biblical commentaries to reframe his account of a natural moral law (especially in his *Summa theologiae*) still cited on the Court, in the Senate, and on the political trail.

LexisNexis, the online legal database, finds 2,824 articles in law reviews and journals mentioning Thomas Aquinas (as of July 29, 2012; two days later, five more). In the 10 years between 1982 and

1992, *LexisNexis* shows 225 law review articles citing Aquinas. In the five years between 1992 and 1997 – half the time – the number doubles to 402. Between 1997 and 2002, the number rises by half again to 632. Between 2002 and 2007, the number again increases by a third to 838. In the five years between 2007 and the time of writing, the increase holds steady at 708, but the delay in recording keeps that figure down. So the attempts to influence the courts by citing Thomas Aquinas have risen dramatically, the greatest acceleration occurring between 1992 and 1997 and leveling off at the time of writing to something over a hundred law review articles a year. That seems a high rate for an author who died almost as many years before North America was discovered, as since the United States first set up the Supreme Court.

Aquinas and the Court in New Natural Law Theory

Prominent among those who cite Aquinas are the ones grouped as “new natural law” theorists. A conservative movement animated by such authors as Robert George, John Finnis, Joseph Boyle, and Germain Grisez, the natural lawyers have recently tried to influence secular courts with their interpretation of Aquinas. They have enjoyed great success with institutes, websites, and articles in journals, including law reviews. The Witherspoon Institute in Princeton, associated with George, and the Natural Law Institute at Notre Dame, associated with Finnis, seek to influence the courts with a conservative approach to natural law, especially on gender and sexuality. For *Lawrence v. Texas* (1993, 539 US 558), for example, George wrote an *amicus* brief, sponsored by the Witherspoon Institute and the American Family Association for Law and Policy, in favor of sodomy laws.

The philosopher of religion Nicholas Wolterstorff offers an uncontroversial description of the Finnis–Grisez–Boyle platform:

From its beginnings among the Stoics of antiquity, the natural law tradition of ethical theory has undergone many transformations. The most prominent contemporary spokesmen of the tradition, John Finnis and Joseph Boyle, who see themselves as representing the Aristotelian–Thomistic version of the tradition, offer natural law

theory as a mode of ethical inquiry which is independent both of all comprehensive religions and philosophical perspectives, and of all concrete moral communities. In particular, they present it as independent of theology. It is from human nature as such that they propose to derive ethical principles; and it is their claim that these principles are not only knowable, but in good measure actually *known*, by every rational adult human being whatsoever. (Wolterstorff 11)

In fact (as Wolterstorff implies), Aquinas stands against that description in every particular. The qualification that natural law operates only among “adults,” for example, recalls Aquinas’s own qualification that natural law is possessed – but does not operate – among infants. In the same breath, Aquinas notes that it also fails to operate among the *damned* (I-II.94.1*sc*). Whether you estimate the number of the damned as large, small, zero, or of no interest, Aquinas’s qualification implies that, for him, natural law operates in the presence of grace and not by itself. The trouble with the new natural law theory is its semi-Pelagian attempt to operate natural law in the absence of grace. When you note that Aquinas also thinks natural law is defective among Germans (I-II.94.4), you begin to suspect that he is as interested in its failure as in its success.

Finnis, George, and other authors of law review articles assume that they can appeal to Thomas Aquinas for a putatively secular project because, they think, he contributes his views as a philosopher rather than as a theologian, or at least because they can easily disentangle a secular philosophy from his theological commitments. As a theologian, I aim to show how Aquinas is a theologian all the way through, so that his authority can hardly be claimed for a secular project, and that nothing in the *Summa theologiae* counts as “natural” in the sense that the new natural lawyers need or that secular courts should countenance. It is widely accepted among theologians in the United States, Britain, Germany, and France that the reading of Aquinas is wrong according to which nature and grace form a two-story system with nature at the bottom and grace, extrinsic to nature, at the top (even if that is still debated among ethicists and unheard of among natural lawyers). In the last stage of Aquinas’s authorship, which includes both the *Summa theologiae* most quoted in natural-law reasoning, and his *Commentary on*

Romans, which is his most useful guide to reading it, the purely natural does not exist. Rather, nature without qualification is always already shot through with grace, so that “nature” remains a religious, Christian, theological concept all the way down. The courts *ought* to take the position on Aquinas’s concept of nature in general, that Justice Stevens (concurring in part and dissenting in part) took in *Webster*.

If the views of St. Thomas were held as widely today as they were in the Middle Ages, and if a state legislature were to enact a statute prefaced with a “finding” that female life begins 80 days after conception and male life begins 40 days after conception, I have no doubt that this Court would promptly conclude that such an endorsement of a particular religious tenet is violative of the Establishment Clause. (*Webster v. Reproductive Health Services*, 492 US 490 (1989))

But *all* of Aquinas’s talk about nature belongs to a particular religious tenet – one that his natural law advocates (“with friends like these . . .”) deny: God holds nature in being by grace. So far from a concept independent of religion or free from dispute among rational adults, “nature” as the natural lawyers use it remains a disputed question even among theologians and Thomists: so that any courts appealing to it appeal not only to a religious understanding, but willy-nilly take sides in an *intra*-religious dispute. Secular natural lawyers, so far from following in Aquinas’s footsteps, have, in his terms, demoted themselves to the status of the *philosophi in mundo*, the pagan philosophers (*In Rom.* 1:20, §122).

If we return to those nearly 3,000 law review articles, we find that the highest total number, 92, comes from the *American Journal of Jurisprudence*, the house organ of Notre Dame’s Natural Law Institute, and closely associated with John Finnis, who serves as editor. That number would be higher, except that the database has indexed it only since 1996. The second-highest number (60) comes, similarly, from the *Notre Dame Law Review*. One starts to see a pattern when the third-highest number (56) comes from the *Journal of Catholic Legal Studies*, and the fourth-highest number comes from the *Ave Maria Law Review*. To complete the top five, see the *University of St. Thomas Law Journal: Fides et Iustitia* (44). Tied for sixth

is (again) the *Notre Dame Journal of Law, Ethics, and Public Policy* (42). Its rival for sixth place is the first non-Catholic journal, the *Michigan Law Review*, followed by the *Yale Law Review*. *Fordham Law Review* and *Catholic University Law Review* round out the top ten. So half of the top six spots belong to Notre Dame; eight of the top ten belong to Catholic institutions. Of articles citing Aquinas, 609, or 22 percent, also cite John Finnis. The evidently sectarian success of something supposed to enjoy universal appeal might make more sense if its defenders developed a more Thomistic–Augustinian theory of its failure: there is such a thing as natural law, but people disagree about what it is.

Like a higher and more textually sophisticated Intelligent Design for gender roles, new natural law theory dresses deeply religious views in secular clothing. But the point of this book is not that natural law reasoning is sectarian (whether it is or not). The point of this book is that Thomas Aquinas himself does not in fact defend the optimistic, timeless, universal, secular, and court-worthy argument for traditional gender roles that a raft of books and the almost 3,000 law review articles would lead you to believe.

In the Supreme Court and on the Senate Judiciary Committee, in *amicus* briefs and law review articles, on websites and in think-tanks, natural law thinkers are trying to influence sex and gender law by invoking the author of the now bizarre religious narrative that opened this chapter. If you find that prospect alarming, this book is for you. If you find the prospect alarming for theological reasons, or because, as a student of law, religion, or the humanities you respect the integrity of religious reasoning, even better. If the very sophistication of Finnis's *Aquinas: Moral, Political, and Legal Theory* (1998), together with the social program of the *American Journal of Jurisprudence*, leaves you wondering how to pry apart their self-insulation, this book offers strategies.

It hardly undermines the need for a book like this to note that the reach of new natural law theory exceeds its grasp. Not when standard sourcebooks in Aquinas's so-called treatise on law or political theory leave the uniform impression that undergraduates, law students, and political theorists can responsibly read bits from the *Summa* of theology with little or no attention to theology at all. (I can think of half a dozen: Bigongiari, Dyson, Feddoso, Henle, Regan, Sigmund, the last a little less narrow than the others.) New

natural law's claim to be perennial emboldens its advocates and insulates them from setbacks, since precisely if it is perennial, natural law "must" come back. Nor does it much chasten the theory that one of its critical adherents has called it "a doctrine for Cartesian minds somehow under Church discipline" (Hittinger 62; I thank Joseph Naron) or that Pope Benedict XVI, writing as Cardinal Ratzinger, describes it as a "blunt instrument" – one thinks of a cudgel – in secular society (Ratzinger 2006:29–30). Ratzinger also calls it a "fiction" that one could "construct a rational philosophical picture of man intelligible to all and on which all men of goodwill can agree, the actual Christian doctrines being added to this as a sort of crowning conclusion" (1996:119). Tracey Rowland argues that new natural law theory is being replaced by John Paul's nuptial mysticism. Thus too the cases mentioned almost exhaust the ones in which the Supreme Court has used Aquinas seriously, and the abortion citations count *against* the view that life begins with conception; rather, according to Aquinas, humanity begins with the conferral, at different times for girls and boys, of a rational soul (*In 3 Sent.* 3.5.2; *Webster* 492 US 490; Haldane and Lee). One can remain alarmed at the attempt without yet ruing the outcome.

In the *Secunda pars* of the *Summa theologiae*, Aquinas devotes only a few pages (six, in a standard Latin edition) to natural law. He devotes 25 times as many (157 pages) to biblical and human forms of law: the Old Law, the New Law, ceremonial law, human law, and vastly more to the virtues, their background and context – around 1,200 pages, or 200 times as many as on natural law. Let me repeat that: 200 pages of virtue for every page of natural law, even if the natural lawyers correctly interpreted it. Why regard Aquinas as a natural-law philosopher at all? Law, he says, is the deliverance of a ruler's *prudence* (see Chapters 3, 5, and 6). But the great surprise to non-Thomists about Aquinas on natural law is textual: he says so little about it, and he does so little with it. While in theory the wrongness of an action might be stated both in the language of law, and in the language of virtue, that grants too much to natural law, since "not all virtuous acts are prescribed by the natural law" (I-II.94.3 *in fin.*), and in practice Aquinas almost always chooses to state the goodness of an act in the language of virtue. Natural law manages not to answer the modern, essentialist yearning for something to command universal agreement. On the contrary,

Aquinas explicitly claims that something as obviously wrong as stealing signally *fails* to command agreement (I-II.94.4). But these facts are widely known, even if in some quarters they are also widely ignored. My contribution is to put them into the context of the even larger corpus of Aquinas texts that remain unknown and ignored almost everywhere: his commentaries on the Bible, especially the *Commentary on Romans*.

How to Read Aquinas

A critic might answer that Aquinas's biblical citations are only decorative, *Schmückzitate* to be passed over in silence. A philosopher might suppose Aquinas's theological and philosophical views easy to disentangle. But those objections would be mistaken. As Chapter 7 explains in more detail, the *Summa theologiae*, home of appeals to natural law, begins, in question 1, to argue that sacred doctrine, or theology, only becomes an Aristotelian discipline or "science," in proceeding from first principles, which come from scripture. Typically, every article in the *Summa theologiae* pivots – in the *sed contra*, or "on the other hand" that cites Aquinas's authoritative warrant – on a quotation from scripture (or failing that from Augustine or a theologian of similar stature). Aristotle himself appears but rarely, and serves to provide distinctions rather than authority. It makes sense, therefore, to turn to Aquinas's biblical commentaries when he quotes the Bible. That is my main interpretive move throughout the book. Fergus Kerr calls the procedure "an intriguing argument." As he restates my proposal, a citation of scripture,

far from being a contextless slogan, is simply a reminder of the much fuller treatment Thomas assumes his students have had in the customary biblical course. In effect, we should regard biblical references in the *Summa* as an invitation to turn to the biblical commentaries where the same topics are discussed. (Kerr 63)

An anonymous reviewer for the press described what I was doing in terms of Robert Brandom's distinction between a *de re* versus a *de dicto* interpretation. "A *de dicto* interpretation," the reviewer wrote, "aims to say what the writer said, and is therefore con-

strained to prioritize the writer's own ancillary commitments and cultural context. A *de re* interpretation aims to say what follows from (some of) the writer's commitments when they are placed in the setting of the *interpreter's* ancillary commitments and cultural context." I agree with the reviewer that in this book I want "to combine a *de re* interpretation of Aquinas with a certain amount of internal critique (as a way of using some of Aquinas's actual commitments to put critical pressure on some of his other actual commitments)." (See Stout, Rorty, Brandom.)

A reviewer of my earlier book *Sexuality and the Christian Body*, where two of these chapters appeared to different purpose, portrayed my strategy with Aquinas with an image:

The first corrective step is taken with Aquinas's own help. The great man's weight cannot be ignored but can, perhaps, be used against him in a judo-like manoeuvre. How exactly (asks Rogers) does Aquinas co-ordinate natural law and virtue ethics? Does he not give priority to the latter, inasmuch as the latter leads onward and upward into an evangelical ethics of grace? Does he himself not recognize, in fact, that the former has been destroyed after the fall, and sublated by the new law of the Spirit? This is a throw which Rogers has been practicing, and one I am inclined to admire. (Farrow 267–268)

The main throw, as I said, is biblical: when I interpret the *Summa's* principled appeals to the Bible in terms of Aquinas's own biblical commentaries.

We misread Aquinas when we read him as a secular philosopher of natural law. We misread him because we favor his innovations in systemizing medieval learning and recovering Aristotle over his *use* of those innovations to teach the Bible and understand God. But the tools and the use are hard to disentangle, because Aquinas's use of system and Aristotle transforms them all the way down, leaving nothing unchanged. The more systematic Aquinas is, the more he relates everything to God. The more Aristotelian he is, the more he takes scripture as first principle. In that context, Aquinas interprets nature as a character in the Bible, a creature in God's hand. That makes Aquinas and his theories both harder to secularize and more awkward to cite in secular courts.

Thomas Aquinas lived from 1225 to 1274, just 49 years. He has generated multiple, overlapping, often conflicting interpretations ever since. Those conflicts arise in part from multiple interests and in part from selective reading. Selective reading becomes more difficult, however, if we attend to concrete, historical practices in which Aquinas wove complexly together multiple interests now regarded as distinct or incompatible. Or, better, medieval practices of teaching and study tended to unite what contemporary interests divide (MacIntyre 1991:3). This book focuses on Aquinas's professional vocation to lecture on the books of the Bible. Lecturing on the Bible, Aquinas performed readings supple, complicated, detailed, and constantly changing. In this book I present several cases of Aquinas's historical treatment of law in his commentary on Romans. They root, enrich, and complicate controversies in the ethics of sex and the theology of grace.

During his short life, Aquinas developed a new genre of theological writing, the *Summa* (not the same as a *Sentence* commentary), and harmonized an Augustinian theology with a rediscovered source of secular wisdom, Aristotle. Those innovations would prompt more interesting readings than one. But a focus on the innovations at the expense of his historical practice led to generations of interpretations innocent of context. Because the *Summa* became a byword for structure and system, and Aristotle for logic, readers interpreted Aquinas as a perennial philosopher. Thomists today can still read Aquinas as if he underwent no development, springing like Athena fully formed from the head of Zeus, and, never changing his mind, wrote only one, entirely self-consistent work, called *Opera omnia*. But at the very beginning of the *Summa*, Aquinas himself wrote that the practice of study takes place "by a few people, with an admixture of many errors, and over a long period of time" (I.1.1). Accordingly, I choose a work from the last of four periods of his authorship, the *Commentary on Romans*, which dates from 1271 or 1272 to 1273 (Torrell 250–251).

Aquinas also belonged to a religious order, the Dominicans, officially the Order of Preachers. It little resembled the order to which many philosophers now assign him. The Order of Preachers was not the Order of Theists. The Order of Preachers was only

one generation old, still zealous enough for Aquinas's family to regard it as an evangelical cult. In the colorful legend, they kept him prisoner in a castle dungeon to hold him back. This order of beggars committed Aquinas to social critique, to the idea that even a Christian society could go badly wrong. Aquinas as the perennial philosopher cleanly misses the zeal of the Aquinas who joined a new movement against property and toward the Bible. Thus this book returns to his biblical commentary.

Meanwhile, Aquinas was not paid or employed to write *summas*. He spent many of his years as a teacher, and as a teacher at the University of Paris his assignment was to lecture on books of the Bible. The faculty of arts had to beg for his commentaries on Aristotle because he did not *teach* Aristotle, but commented on Aristotle for himself. Nor did his students learn from him by reading his *Summa*. They learned by attending his lectures on the Bible. *Summas* were constructed from disputed questions of public debate, giving the *Summa*, too, a social location and internalized politics of struggle. And yet the disputed questions *arose* and *first appeared* in continuous commentaries on scripture. The lecturer proceeded verse by verse, arrived at a crux, observed that commentators disagreed, and sought an answer, a *quaestio*, the true medieval quest (MacIntyre 1990:88). So even the disputed questions had their home in the lecture on the Bible. In characterizing the literary genre of theology, Aquinas did not say, "the mode of this science is logical." What he said was "the mode of this science is narrative" (*In 1 Sent.*, prol., 5c).

And yet none of Aquinas's longer biblical commentaries have appeared in English – only Ephesians, Galatians, and eight chapters of John. In particular, his Romans commentary first appeared in English only in 2008, unreviewed and unrefereed on the web. That makes this project no less necessary, but even more urgent. Although the translator, Fabian Larcher (1914–1991), is well regarded, this translation appeared some 15 years after his death with no information about whether it was a first, partial, or final and polished draft. Until 2008, older translations into German and French (Fahsel, Bralé) were available in only 11 and five libraries respectively in the English-speaking world. However welcome the English, its diction remains so Edwardian as to obscure the

very things of interest here – including how Aquinas’s conceptions of ethnicity and gender may outlie and outface our own. The web version retains such obvious typos as “see first” for “see fit” and “could have bad it” for “could have had it.” We get “heathenish” for *gentilis*, “Gentile” (1:27, §151) or “seed” for *semen carnale a patrem procedens*, “physical semen issuing from the father” (8:17, §646). At §151 we read that same-sex practices “began as idolatry,” as if to *classify* sexuality into *species* – while the Latin says *simul cum*, “began at the same time as idolatry,” to *narrate* sexuality over *time*. Now, philosophical readers hardly expect Aquinas to make a historical argument here, which they consider a category mistake. But that’s all the more reason not to cover up Aquinas’s divergence from ourselves. Ignoring Aquinas’s commentaries has led, on natural law and virtue ethics, to rival interpretations that preen themselves on alternate series of texts from the systematic works that appear (as if belying the name of system) to tend in opposite directions. Aquinas *seems* to hold a number of highly incompatible views on law, because no one has invited scholars to attend to the biblical commentary in which Aquinas worked many of those views into a coherent narrative, not with the logic of a system, but about the travails of a character. The story of law in Aquinas’s *Commentary on Romans* runs to episodes with frequent interruptions by set pieces. In this it bears distant resemblance to another oral performance, the epic – with scenes of scorn, captivity, obscurity, deliverance, and recognition.

In Aquinas’s *Commentary on Romans*, Law names a character with several guises, changes of costume, and successive revelations of identity. What holds them together is Law as a kind of *pull*, whether a slope that inclines by gravity or a pedagogue that lures by attraction: law is that which, as we shall see, “leads human beings toward the good” (*In Rom.* 1:18, §112). As such, Law tends toward liberty. Aquinas’s writings introduce various characters called “Law.” We meet *eternal* law, which Aquinas innovates to identify with the prudence in God’s mind, a masterful character, sometimes appearing as Jesus Christ. We meet *natural* law, a character usually associated in the modern period with human choice and rationality, a sort of optimistic Everyman, but in Aquinas’s *Commentary on Romans* considerably more particular: natural law was ethnically Gentile, a fallen

woman, ineffective and hemmed in by social injustice, blinkered by culpable ignorance, abandoned to sexual sin that led to death. In another treatise confined today mostly to political scientists – a letter to the king of Cyprus – we meet civil law, in the character of a Frankish crusader seeking Aquinas's advice on leading a mixed society of Orthodox Greeks and Muslim Turks. We also meet the Old Law, whom Aquinas sometimes respected as Torah and sometimes regarded as a shadow of the New. And finally we meet the Law of Life, also known as Grace, who nevertheless hardly used that name in Romans 8, but appeared as a trinitarian Torah or an indwelling Spirit.

How to Read This Book

The chapters that follow have appeared before in widely scattered places to much different purposes (sometimes already more than once) – epistemology, sexuality, pneumatology, theology of natural science. Since my first Aquinas book (1995), my pattern of publication has worked by topics treating multiple authors – hermeneutics, the body, religious experience – confining Aquinas to chapters or articles. That procedure strengthened the topical cases while leaving the Aquinas interpretation orphaned. In this book, I draw a dozen essays into an argument of interest to scholars and graduate students in humanities and law as well as lawyers and judges. I bring them together, because I always had one thing in mind – to distinguish the many common and banal things that we cannot say about the law of nature in Aquinas's name, from the fewer and stranger things that we can. Both what Aquinas says and what he refuses to say should interest us, because they lie on the frontier of what theology can and cannot claim to say. As Victor Preller used to remark, theology is the discipline in which, strictly speaking, we don't know *what* we are saying (since in this life we cannot know of God what God is) or *how* what we are saying is true (since we know by revelation). Although human minds regard nature more easily than they regard God, they participate in God's mystery, because nature is animated by the Spirit (Gen. 1:2, 2:7), or in technical language, capable of grace (*capax gratiae*). Therefore there *is* such a thing as nature, and we don't know what it's

capable of; there is such a thing as revelation, and we don't know how it's true.

This and the next two chapters are new for this volume. In the others, it is not so much the words that are new as the case they make: that what we cannot say about nature is very odd, and what we can say is odder still: that nature, like the Spirit, blows and escapes us; that nature is matter in motion, inspired, Spirit-moved, dynamic all the way down. So this book is neither a single-minded monograph that argues only one thing in chapters conceived as steps on a path, nor a collection of essays that hangs together merely because they share a theme. Rather it lies in between: a single focus refracted and regathered. The book collects essays to build a compound perspective on a complex thesis. I have framed their beginnings and modulated their content so that each is made to lead out of the previous and return to the theme for the reader who takes them in order, or each can stand alone for the reader who reads them as they interest her.

It only helps the case, as a reader noted for the press, that idiosyncratic and nonstandard interpretations have appeared in print before. Individually they have gained from rigorous review in multiple venues. Collectively they have gained from the alternate skepticism and excitement of reviewers for funding agencies who can hardly credit the idea that the exceedingly strange Aquinas of the commentaries is the same thinker they think they know from modernized and domesticated readings of his systems. In the past I have sought to make Aquinas strange to theologians and ethicists. To that end, two of the chapters appeared, in somewhat different form, in an earlier *Challenges* book, *Sexuality and the Christian Body* (Blackwell, 1999), which *Christian Century* in 2010 named among essential reading in theology of the preceding 25 years.¹ Now I hope among other things to estrange Aquinas as well from judges, political theorists, and philosophers of law who chain him to a natural-law theory of which he would disapprove, one that teeters on a high and narrow textual ridge with support only from the clouds of later witnesses.

Its defenders and detractors suppose natural law to be perennial, universal, and neutral with respect to ethnicity, gender, and religion. But natural law in Aquinas's commentaries is none of those.

Each of the following chapters makes the natural-law reasoning associated with Aquinas more difficult for secular courts to use.

Part I: Aquinas on the failure of natural law

Chapter 2, “What Aquinas Thinks We Cannot Know,” collects four well-known strains of apophaticism in Aquinas’s writing to correct the widespread impression that Aquinas thinks we can know a lot. Chapter 3, “How God Moves Creatures: For and Against Natural Law,” says what I think natural law is for, precisely if it’s not for delivering content. Chapter 4, “How Aquinas Reads Scripture,” asks *how* Aquinas, as a medieval lecturer on the Bible, goes about interpreting it. As in law, so in biblical interpretation: Aquinas proceeds not according to rules, which he leaves underdetermined, but according to virtues.

Chapter 5, “How the Law of Nature Is a Character in Decline,” shows how Aquinas reads the New Testament book of Romans to tell a story of the fall of non-Jews into idol worship at the time of Abraham, “detaining,” “binding,” or “ending” natural law. Aquinas’s better-known *defense* of natural law in the *Summa* describes an ideal case that no longer obtains. That understanding sets a narrative rather than philosophical context for Aquinas’s legal thinking. Courts appeal to Aquinas for a natural law perennial and secular: Aquinas’s commentaries present a fallen figure redeemed by grace, changeable and religious. Courts usually require neutrality on gender and ethnicity: the commentary’s account of nature tells a story with elements of both.

Chapter 6, “How the Narrative Sexualizes Nature’s Decline,” shows how same-sex relationships divide both the courts and ethicists following Aquinas. Natural-law ethicists may call same-sex relationships unnatural; virtue ethicists may commend relationships fostering love and justice. Aquinas’s *Commentary on Romans* follows Paul to treat same-sex sexual activity as a sin of excess (rather than contrariety). Distinct from the fall of Adam, this fall marks ethnic *Gentiles*. Aquinas’s account depends on a narrative of divine punishment for Gentile idolatry at the time of Abraham that would startle the courts.

Part II: Aquinas on the redemption of natural law

Chapter 7, “How Aquinas Gets Nature and Grace Back Together Again,” shows how Aquinas uses “nature” as a mode of scriptural exegesis and christological discipline. To raise the stakes, I compare Aquinas with Karl Barth, a Protestant theologian of grace who called Aquinas’s theory “*the invention of the Antichrist.*” “Nature” becomes a field where Protestants and Catholics contest the relation of the Bible to the world. That leaves nature neither secular nor stable enough for courts to use.

Chapter 8, “How Faith and Reason Follow Glory,” shows how Aquinas hangs his *positive* account of our nature on a religious premise that secular courts can hardly admit – the Holy Spirit engraving a new law on believers’ hearts by *grace*. The *Commentary on Romans* defines “nature” without further qualification (in a passage to which we shall often recur, *In Rom.* 2:14, §215–216) as nature *redeemed*, a creature of the Holy Spirit. *With* qualification, *natura sua* means one’s own unaided nature – which fails. Faith and reason alike depend from above upon the light of glory. They work only from the top down. Courts appealing to Aquinas on natural law put their foot into an intra-Christian dispute about nature and grace, or nature and the Spirit. That dispute is needless. But it requires a theological medicine that the courts cannot swallow and politics cannot supply.

Chapter 9, “How Aquinas Makes Nature Dynamic All the Way Down,” imagines Aquinas meeting Judith Butler. Both Aristotle and critical gender theory depart from Platonic essences to treat nature as a dynamic principle of change. Because I read Aquinas as deriving ethical content from the virtues rather than the law of nature, a critic might object by pointing to two places where Aquinas does seem to derive content from nature, his accounts of lying and lying with someone of the same sex. On the contrary, I claim that Aquinas, like Butler, thinks that bodies can demand more language, interpreting the contemporary notion of “coming out” in Thomistic terms.

Chapter 10, “How the Spirit Moves the Law,” shows how Aquinas can relate Spirit to Law without the mediating term of grace. In his *Commentary on Romans*, Aquinas flatly denies the courts’ expectation that nature’s usefulness lies in remaining stable

and predictable. “Since every creature is naturally subject to God, whatever God does in the creature is simply natural, even if it is not natural according to the proper and particular nature of the thing in which God does it” (*In Rom.*, §910b). In this chapter, I examine a case in which the Spirit writes the law on the heart directly, without obtruding “grace” as a third term.

Chapter 11, “How Natural Science Becomes a Form of Prayer,” asks how Aquinas might regard that other “natural law,” not an innate moral law, but a law of physics. Aristotelian science gets a bad reputation for hostility to experiment. Yet Aquinas thinks extensively about learning from trial and error when he thinks about human *character*. Here I apply Aquinas’s ethical innovations to supply theology with a Thomistic account of natural science, and natural science with a theological description.

Chapter 12, “How the Semen of the Spirit Genders the Gentiles,” suggests how Aquinas calls different groups “Gentiles” depending on which law they lack – sometimes non-Christians, lacking “the law of Christ”; sometimes non-Jews, lacking the law of Sinai. Aquinas may describe either group as lacking “the law of nature.” Another *Summa*, called *Contra Gentiles* after its first line, varies again who counts as Gentile. Commenting on Paul, Aquinas genders the Gentiles as “exceeding nature,” first in ascribing to them “the vice in excess of nature” – and then in describing them as those who retain God’s seed – so that God himself “exceeds nature.” Aquinas has God take on the gender-bending characteristics of Gentiles precisely to save them. This picture of law is at once too religious and too queer for the courts.

A book aimed at multiple audiences can hardly treat all readers with equal solicitude, and most of these chapters were originally written with students of Aquinas in mind. I expect that students of law are smart enough to connect the dots where I leave them insufficiently instructed. But I can help readers follow different paths through the book.

Readers interested in law should read the introductory paragraphs to each chapter, which highlight how the chapter makes the legal use of Aquinas more difficult. Students of law might then want to move through Chapters 5, 6, 9, and 12, which elaborate issues of gender, sexuality, and ethnicity in Aquinas’s account of nature. I beg their indulgence for uses of legal material that fall flat-footedly:

it is a hazard of attempting to make theology and history available to more audiences than one. *Readers interested in Protestant–Catholic disputes over nature and grace* might focus on Chapters 4, 7, 8, and 10. *Readers looking for an alternative account of what natural law is for* should read Chapters 2 and 3. *Readers who are primarily interested in Aquinas* should read the book in order, skipping Chapter 7 on Aquinas and Barth, if they find it too technical. To enable different readers to read different parts of the book, or to read the chapters out of order, I have allowed some motifs (on nature and grace, revealed and revealable, the meaning of *para phusin*) to recur, with references to the main discussion, and with the kind indulgence of readers who take the chapters in order.

This book uses Aquinas’s commentaries to reassess the natural-law tradition for scholars of ethics, politics, philosophy, religion, and law, as well as those clergy, lawyers, pundits, and justices who hope or fear it will settle controversial issues, especially of sexuality and gender, in multiple public forums.

Note

- 1 At <http://www.christiancentury.org/reviews/2010-09/willie-james-jennings-5-picks>, accessed Nov. 20, 2012.

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