PERSONS, PRECEPTS, AND MARITAIN'S ACCOUNT OF THE UNIVERSALITY OF NATURAL LAW

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Many today would dispute the claim that there is a moral law which constitutes a normative standard for human persons—but it is a claim that is central to Jacques Maritain's natural law theory. He writes: "there is, by the very virtue of human nature, an order or disposition which human reason can discover and according to which the human will must act in order to attune itself to the essential and necessary ends of the human being. The unwritten law, or natural law, is nothing more than that."[1] Again, many would dispute the view that this moral law is universal for humanity—but Maritain says that it *must* be universal because "human nature is the same in all men" and because "man possesses ends [...] which are the same for all."[2] It is also, Maritain states, a law which is "unchangeable."[3]

Over the centuries, there have of course been *many* different natural law theories. Maritain distinguishes his account from 'rationalist' and empiricist ones, but he also sees it as importantly distinct from a number of late mediaeval versions which, he argues, are not consistent with the one with which he is most in sympathy—namely, that found in the work of St Thomas Aquinas.[4] And although he believes that most natural law theories prove to be ultimately unsound, he also holds that a satisfactory statement of such a theory is still

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[1] *La loi naturelle ou loi non-écrite*: texte inédit, établi par Georges Brazzola. (Fribourg, Suisse: Editions universitaires, 1986), p. 21 [future references to this text will be to LNL, followed by the page number]; cf. *Man and the State*. (Chicago: University of Chicago Press, 1951), p. 86 [future references to this text will be to MS, followed by the page number].

[2] LNL 20-21; cf MS 85-86.

[3] MS 85.

[4] See my "Maritain's Criticisms of Natural Law Theories," in *Études maritainiennes / Maritain Studies*, Vol. XII (1996): 33-49.

possible—and it is a modified version of St Thomas's that Maritain himself provides.

Some have argued, however, that there are several difficulties in Maritain's account[5]—particularly concerning the issue of the universality and unchangeability of the natural law.[6] Critics draw attention to such general concerns as i) whether any moral 'law' can be known to—and, hence, be binding on—all persons, ii) the apparent existence of anthropologically confirmed exceptions to natural law—i.e., that no putative natural law seems to be in effect in every culture[7], and iii) the impossibility of determining exactly what is 'natural.' They insist that there are several 'internal' problems as well (e.g., concerning difficulties in specifying what, exactly, the natural law is, and whether Maritain's account of the content of the natural law is internally consistent). And, particularly, some would maintain that, by emphasising the universality of natural law, Maritain's approach to morality is too formal and abstract, and ignores the relevance of context—and the relevance of differences of context—to the moral questions that persons are confronted with.

In this paper, I want to focus on these latter, 'internal' problems with Maritain's natural law theory. To address these issues, one needs first to understand what he holds the precepts of natural law to be, what the relations among these precepts are, and what this implies concerning the universality and unchangeability of the natural law as a whole. Once one fully appreciates Maritain's views here, one will see that his account is much more attentive to the contingencies and contexts in which human persons find themselves than generally thought,[8] that it is able to address or avoid the preceding—and some of the other—standard criticisms raised against natural law theory, and also that it provides us with a view of natural law which is much less determinate than it is frequently assumed to be.

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[5] See, e.g., Kai Nielsen, "An Examination of the Thomistic Theory of Natural Moral Law", in *Natural Law Forum*, 4 (1959): 44-71. Reprinted in his *God and the Grounding of Morality*, Ottawa, ON: University of Ottawa Press, 1991, ch. 3 (pp. 41-68).

[6] Maritain describes the natural law as "immuable" (148) and "valable pour tous les temps" (119), and its 'common principles' as "toujours vrais et droits pour tout homme et en toute circonstance" (142). Natural laws are, as noted already, laws that "live forever"—"vivent pour toujours" (20).

[7] The objection continues: to say that "where such laws are not recognised, the underlying inclinations are 'perverted'" begs the question; it presumes that we already have established which inclinations—and, thus, which laws—are 'natural.'

[8] In fact, Maritain himself concludes that, once one understands the 'structural architecture' of the natural law, one sees "a flexibility and a realism that reveals itself to be infinitely precious" (120; cf. 143-154).

I - Precepts

Maritain's discussion of natural law occurs in a number of texts, but what is perhaps[9] his most sustained account appears in the posthumously published *Lectures on Natural Law*.[10] It is here, especially, that Maritain raises and addresses a number of questions concerning the universality and unchangeability of natural law and its role in moral decision making—specifically, concerning its consistency with ethnological data and with the law and practices of the Patriarchs of the Hebrew Scriptures, and its appropriateness in regressive or barbarous societies and regimes.

Central to Maritain's description of natural law is his reference to its precepts. On his account, there are three kinds of precepts of the natural law[11]: first precepts, second precepts 'in the broadest sense,' and second precepts 'in the strict sense.' First precepts are, he says, connaturally known, and treat of human being in a general sense; examples of these first precepts are: 'do good and avoid evil' and 'act in conformity with reason' (121).[12] Second precepts 'in the broad

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[9] See, e.g., *Éléments de Philosophie I: Introduction générale à la philosophie*. (Paris, Téqui, 1920) [*An Introduction to Philosophy*. (London: Sheed and Ward, 1944)]; *Les droits de l'homme et la loi naturelle*. (New York: Editions de la Maison française, 1942). [*The Rights of Man and Natural Law*. Tr. Doris C. Anson. (New York: Charles Scribner's Sons, 1943)]; *Neuf leçons sur les notions premières de la philosophie morale*. Collection "Cours et documents de philosophie," (Téqui, 1951) [*An Introduction to Basic Problems of Moral Philosophy*. (Albany, NY: Magi Books, 1990)]; *La Philosophie morale. I. Examen historique et critique des grands systèmes*. (Gallimard, Bibliothèque des Idées, 1960) [*Moral Philosophy*. Ed. Joseph W. Evans. (London: G. Bles, 1964)]. There are also important discussions in Chapter 4 of *Man and the State*, *op. cit.*, and in an article entitled "Natural Law and Moral Law" in *Moral Principles of Action: Man's Ethical Imperative.* Ed. Ruth Nanda Anshen. (New York and London: Harper & Brothers, 1952), pp. 62-76. (This is a translation of "Quelques remarques sur la loi naturelle," *Oeuvres complètes* [de] Jacques et Raïssa Maritain, 15 vols., (Fribourg [Switzerland]: Éditions universitaires, 1982—), Vol. X, pp 955-974.)

[10] *La loi naturelle ou loi non-écrite*, op. cit. An English translation is to appear under the title *Lectures on Natural Law* in *The Collected Works of Jacques Maritain*, (general editor, Ralph McInerny), Vol. VI (edited by William Sweet), Notre Dame, IN: University of Notre Dame Press.

[11] Cf. *Leçons* 5 to 7 of *LNL*. (Unless otherwise indicated, in what follows, all references will be to *LNL* and included in the text.) Note that, in *LNL*, Maritain holds that there is no significant distinction between 'principles' and 'precepts' (see 148). He says that here he is following St Thomas—that St Thomas uses the terms interchangeably. But it is also important to note that he uses both terms in different senses—that Thomas's use of the terms in the *Commentary on the Sentences* and in the Supplement to *Summa Theologiae* is different from the way they are used in *ST* I-II (qq 91-95), composed later.

[12] Other 'first precepts' he refers to are: 'act according to what you are' and 'act like a man' [see *LNL*, Table II, 196]. Sometimes Maritain says that 'do good and avoid evil' is "the first precept of the natural law" (135). Other times he says that "the absolutely first principle"

sense' are fruits or 'necessary concretions' of these first precepts, also known connaturally [13]; examples of these are: 'do not steal,' 'return objects held in trust,' and 'do not commit adultery' (see 123), as well as 'preserve your life.' Finally, second precepts in the 'strict' sense require the use of reason and concepts for one to be aware of them—they are 'derived' rationally and conceptually from those principles 'naturally known'. Examples of these, Maritain writes, are: 'do not engage in polygamy' and 'do not divorce' and, perhaps, 'do not torture', 'care for the bodies of your dead' and 'you may kill the enemy in a just war.'

Maritain says that there is a priority among these precepts—and this is of particular practical significance as there are situations in which one might argue that precepts conflict and where one needs to know which precept one should follow. But exactly which precepts are properly part of the natural law,[14] and exactly what the priority is among them, are matters that are far from clear.

Maritain writes that we can know the precepts of the natural law, and know that they are fundamental, through connatural knowledge. This epistemic element is important because it is said to explain how we can hold these precepts to be true, despite having no demonstrative proof of them.

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is "act according to reason" (152).

[13] See note 11 in Chapter 4 of *MS*, p. 91.

[14] Lest I later be accused of overlooking the obvious, let it be noted now that there seem to be different accounts of what Maritain takes to be (the content of) the natural law. Maritain writes that "Natural Law, dealing only with regulations known through inclination, deals only with principles immediately known (that is known through inclination, without any conceptual and rational medium) of human morality" ["On Knowledge Through Connaturality," in *The Range of Reason* (New York: Charles Scribner's Sons, 1952), pp. 22-29, at p. 27]. And, elsewhere, he writes that " the law of nations [...] differs from the Natural Law in the manner in which it is known [...]. The law of nations is known, not through inclination, but through the conceptual exercise of reason" ["Natural Law and the Moral Law," p. 72]—the implication being, of course, that natural law is known through inclination. (This latter understanding is consistent with his description in Table III [pp. 124-125].) But Maritain also writes "that we must do good and avoid evil. This is the preamble and the principle of natural law; it is not the law itself. Natural law is the ensemble of things to do and not to do which follow therefrom in *necessary* fashion." [*MS* 90; *LNL* 27]. Of course, what 'necessarily follows' need not be simply something that is connaturally known. And, again, Maritain later notes that "the natural law is made up of a certain multiplicity of principles, even though these principles do not all have the same extension and are not, to the same extent, principles" (126).

One solution here—though it would not quite address the distinction between 'principle' and the law itself, raised in the preceding quotation—would seem to be to distinguish between the natural law epistemologically considered and the natural law ontologically considered. In this way, the 'droit des gens'—and the whole series of precepts rationally derived from first precepts—would be in the natural law *ontologically* considered, though only the first precepts and their 'necessary concretions' in the natural law *epistemologically* considered.

Of course, this epistemic element is also important because, in general, for law to be law, it must be able to be known. Thus, one recalls Maritain's definition of law (borrowed from St Thomas, *Summa Theologiae*, I-II, 90, 4): that it is 'an ordinance of reason for the common good made by one who has care for the community and which *is promulgated*' (cf. 126). Law must be known, or be able to be known readily, in order to have force.

Still, while the epistemological dimension is involved in speaking of natural law as *law*, and while the process by which natural law is known is (as Maritain emphasizes) something natural, one should not conclude that it is always sufficient to determine the precise content of, and the priority of precepts in, that law.

In fact, although this epistemic element is said by Maritain to give us a means of distinguishing among the different kinds of precepts, the *priority* of one precept over another is *not* determined by how they are known, but by something about the precepts themselves or about what it is they describe. For, Maritain states, the precepts 'do good and avoid evil,' 'do not steal,' and 'obey the laws of the group' can *all* be known connaturally[15] and—were the way in which a precept is known a necessary and sufficient criterion for establishing it as a first or second precept of natural law—one could not assert the priority of the first precept just mentionned over either of the latter.

But if it is not by appealing to epistemology—about how one *knows* the natural law and its precepts—what *is* the basis for saying that one precept has priority over others? Indeed, how can Maritain know whether some 'principle' actually is a precept of the natural law?

For an answer to these questions, Maritain suggests that we turn to ontology. So, for example, he says that what differentiates the first and second precepts is what their respective *objects* are, or what acting on them involves—not how the precepts themselves are 'known.' (This is just as we should expect, given Maritain's general view of the priority of metaphysics over epistemology—that what is known is determined by the nature of the object known [as well as the nature of the knower].) Indeed, Maritain discusses *two* accounts of the priority of precepts, with correspondingly distinct implications for the content of the natural law, which he develops from texts of St Thomas from the *Summa Theologiae* and the *Commentary on the Sentences*.[16] And he hints of there being a *third* way of determining the priority of precepts in the natural law. But first it will be useful to explain the two principal accounts of these precepts and their relation to one another.

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[15] The former is suggested in the tables on pp. 123-125; the latter is stated in "Natural Law and the Moral Law," op. cit., p. 73.

[16] See note 11 above.

1.1. Precepts based in being

One way in which Maritain provides an 'ordering' of precepts of the natural law is in terms of human being and its inclinations; this is an elaboration of St Thomas's discussion in the *Prima secundae* of the *Summa Theologiae*. Here, the ontological priority of a first precept (e.g., 'do good and avoid evil') over other precepts seems to be based on its generality and breadth, and particularly because it deals with and concerns what is broadest and most general in human being.

But such a first principle—'do good and avoid evil'—is not only broad but rather vague; the terms 'good' and 'evil' must be given content, and this is done, presumably, by reference to human nature—specifically, the natural inclinations human beings have to their essential ends (139) (which are apprehended non-conceptually). And it is here that one can begin to articulate 'second precepts.' Thus—and this is, Maritain says, also St Thomas's view—the order of precepts of the natural law is determined by the order of natural inclinations (138-139).

Maritain illustrates what such an ordering will look like in *Leçon 6* of the *Lectures on Natural Law*. 'First' precepts deal with human beings as considered according to their being—that which they have in common with all things ("principes absolument communs") (139). Here, one would find the inclination to self-preservation (and, Maritain notes, following St Thomas in the *Commentary on the Sentences,* precepts to temperance and not to kill others). Next, we have precepts that deal with human beings considered as 'animals' (140; see also *Leçon 3*, pp. 64-65); these reflect inclinations for sexual relations and for the procreation and raising of children, and their content concerns the family and marriage [though these inclinations are rooted in human reason (see 157)]. Here, one would find precepts against infanticide[17], polyandry—though not polygamy—and sexual promiscuity [Table I, 184-185]. Finally, we have precepts that deal with human beings as rational (141)—that, as endowed with reason, human beings desire to know the truth about God and to live in society. Here, we find precepts forbidding theft, lying, and enjoining us to live under law [see Table I, 184-185]. While the priority among precepts is determined by the breadth of the aspect of being that is referred to in the precept, still, *all* of these precepts—i.e., so far as they are precepts of human being as a rational being—"belong to the natural law" (141) and, "all that follows from them [...] are derivations from these absolutely first principles" (141).

This account of the priority of precepts of the natural law is, however, confusing. First, there seems to be some incongruity between the order of the different precepts of the natural law (cited earlier, at the beginning of Section I) and that order reflected by the 'levels' of nature or of natural inclination (cited here). For example, the list of 'absolutely first principles' given here is clearly much more particular and specific than (the earlier) 'do good and avoid evil.'

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[17] It is not clear why this does not fall under the first category of precepts.

Moreover, it is at the very least unclear how one is to understand the relation of *these* 'absolutely first principles' to the various 'first' and 'second' precepts that Maritain has identified already. Consider, for instance, Maritain's claim that the precept against polyandry reflects a fundamental inclination of human beings, and that it is among the most basic principles of the natural law. But it surely is more plausible to hold that such a precept is 'derived' from the principles of the natural law *by way of inference* [see Table III, 124-125] and, therefore, that it is better understood as part of what he calls the *droit des gens* or 'the common law of civilisations.'

One might also argue that there are gaps in Maritain's account here that would lead to problems in our knowledge of, and hence our acting on, moral precepts. From what we have seen, it is clear that there is a significant difference between our knowledge that some principle is a precept of the natural law and that that precept is a *basic* one. But consider the following example. Maritain recognizes that there is a precept in favour of human freedom—he holds that freedom belongs to human beings as rational, and that slavery is incompatible with the rights of the human person (199; see Maritain's injunction against slavery [Table I, 185-186; Table II 196-197]). But while an injunction to 'respect freedom'—"freedom of autonomy" (MS 107)—would therefore seem to be something that should be fundamental, it appears to have come to be known only rather recently in human history. So how basic is it, and over which precepts would it have priority? It is curious that Maritain does not include this injunction among the 'absolutely first principles,' and it is not clear where exactly it fits within the rest of the natural law—e.g., as part of 'the root inclination to preserve being,' as a necessary concretion of a naturally known principle, or as an inference therefrom. And so, it is unclear what the actual moral force of an injunction to value and protect human freedom actually does amount to. And there is a related problem as well. This example of the precept to respect freedom suggests that there not only are, but that there could be *other*, precepts of the natural law which are fundamental and essential to human well being, but of which we are not—or are not yet fully—aware. And if this is so, this suggests that one can never be sure that, in acting on the basis of a precept of the natural law, one has in fact acted morally, since other, as yet unknown, precepts may be relevant to the act.

Furthermore, Maritain's account of the priority of precepts also raises some questions concerning the universality and unchangeability of natural law. Consider, for example, the following precept: 'one should return objects held in trust.' Though Maritain says that this *is* a precept of the natural law—he notes that it is a 'second precept in the broad sense'—he also notes that it clearly admits of exceptions. Sometimes one should *not* follow this precept, and return a weapon held in trust, such as when one has reason to believe that the weapon will be used to harm someone. Thus, Maritain says, second precepts in the broad

sense "are true and right as a general rule or in the majority of cases, but not always and in any circumstance whatsoever" (142). But this means that some precepts are *not* universal and unchangeable—and, further, if they are essentially part of the natural law, it means that the natural law is not absolute.[18]

How, specifically, Maritain might be able to deal with such 'exceptions' to the natural law (or—one might prefer to say—those precepts of the natural law which are simply general and not universal) is a matter to which I shall return presently. Still, one might note some other puzzles with this part of Maritain's discussion of the nature and priority of precepts. First, Maritain maintains that there is an ontological priority among precepts, based on the order of natural inclinations. But given the fact that certain inclinations become apparent only over time, how does one know *which* of these inclinations are genuinely 'natural' or basic and, thereby, morally authoritative? (Admittedly, this is an issue mentioned frequently in the discussion of natural law theories, and it is one which Maritain does attempt to address [cf. 186-193], but it is also one to which his reply is at best incomplete.) This is not just an epistemological problem, but an ontological one; i.e., the issue is that it already assumes that there is a sufficiently complete description of human nature and its inclinations that will allow one to say whether some 'new' propensity is 'natural' and 'essential' or not[19]. Claiming that one can know whether a 'new' inclination is 'natural,' simply by determining whether knowledge of it is obtained connaturally, comes dangerously close to moral intuitionism. Now, in fact, Maritain's 'ordering' of precepts does seem to more readily reflect a 'descriptive' account of human nature based on the observed behaviour of human beings, rather than one based on 'connatural knowledge' of one's own 'inclinations'—but, if this is so, the 'ontological problem' remains.

More importantly, perhaps, Maritain has not shown that the (preceding) ontological ordering of precepts is even necessary—that one can or need have a priority among precepts. It has been argued (for example, by Germain Grisez[20])

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[18]This feature of 'second precepts in the broad sense' has important implications for first precepts of natural law as well. Recall that Maritain admits that these second precepts can be known connaturally. If it is the case, however, that such precepts may be only *general* rules, then it would seem that the fact that a precept is known connaturally—whether it be a first or a second precept—does not entail that one should take it, on its own, as obligatory, let alone universally true. And thus it would seem that, for first precepts to be 'properly basic,' they have to be confirmed by something that is not connatural—that is, by *reason*.

[19] The epistemological problem here is, however, no less significant. It would seem that, to distinguish 'real' inclinations from inauthentic dispositions, one must already know the 'end' or nature of human beings. But it is difficult to see how one might know this, if one did not already know what real human inclinations are.

[20] See Grisez, *Abortion: The Myths, The Realities, and the Arguments* (New York: Corpus Books, 1970), pp. 310-321. Consequently, one might add, whatever 'priorities' one alleges

that there are 'goods' appropriate to human beings that are 'incommensurable' with—and so simply cannot be priorized in relation to—one another.

Further, even if one could provide an ontological ordering of precepts according to the different 'levels of being' in which humans participate, it is not clear that this corresponds, or is even relevant, to them being *ethically* obligatory. Matters dealing with killing reflect aspects of being that are, plausibly, ontologically prior to those dealing with abuse of trust, and one can see how—despite the difficulties in Maritain's arguments—there would be an ethical priority of the former over the latter. But, even if it is the case that precepts concerning sexual activity rest on principles that are, on Maritain's view, 'ontologically prior' to those dealing with knowledge or speech, it is not clear that a precept like 'no sexual promiscuity' has (or should have) ethical priority over 'do not lie' or 'do not turn yourself away from the natural knowledge of God' (see Table I, 184). Maritain cannot just claim that the *ethical* priority of one precept over another is based on some feature of human being, but must provide some argument for this position.

In short, there is a case for holding that there are some tensions in that part of Maritain's account that is based on *ST* I-II, qq. 91-95—i.e., concerning the specific precepts of the natural law, the order or priority among these precepts, and the arguments for the justification of such an order. But the preceding summary of Maritain's views also shows that his description of the content and character of natural law is not as monolithic as one might have thought. It is clear that, so far as specific precepts—'second precepts'—are part of the natural law, the natural law as a whole is not obviously universal and unchanging.

1.2. Precepts based in acts

There is a second way that, Maritain notes, we can speak about precepts of natural law and according to which we can determine a priority among them—that is, in terms of their relation to the various 'ends' that an action may have (162). This, he says, follows St Thomas's discussion in the *Commentary on the Sentences* and in the Supplement to *ST* (which, as noted above, is distinct from, and earlier than, that in the *Prima secundae*.) Here, however, the 'firstness' or 'secondness' of precepts is to be understood in a different sense than that discussed in the preceding sub-section.

Maritain states that some actions can be seen as having more than one 'end.' If we take the example of the act of marriage, the first end is the procreation and

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to exist are not priorities among genuine precepts, but, as it were, among 'principles' and secondary 'general rules.' Still, such a resolution simply moves the question of whether there can be priority in moral rules back one step, for one may then ask *when* or *how we know whether* certain rules or practices constitute precepts, or when they must give way to precepts.

education of children; the second end is the peace and union of the family, including the mutual support of the spouses—especially, he says, the support of the wife. In light of the 'first' and 'second' ends of an act, then, we can speak of 'first precepts'—i.e., those which promote the realisation of the 'first end'—and 'second precepts'—i.e., those which promote the realisation of the second end (see 162ff.). Specifically, the distinction here is between 'first principles in a given order' and 'second principles in a given order.'

Now, Maritain writes, "that which completely impedes the realization of the first end of an act is said to be [...] contrary to a first precept of natural law." Such a violation of a 'first principle in a given order' is, he insists, unequivocally wrong (163). Because second precepts—'second precepts in a given order'—are defined in light of the second end of an act, their violation is not as serious as a violation of a first precept and so is sometimes morally allowable. (In fact, Maritain holds that the civil authority can dispense us from a second precept, whereas it is only God who can dispense us from a first precept [see 179].)

To return to the preceding example for an illustration, then, since polyandry would hinder "the generation and the education of children" (the first end of the act of marriage), it is morally prohibited (163). But, Maritain continues, poly*gamy* does *not* hinder the first end of the act of marriage; indeed, though it may gravely compromise the second end, it does not impede it either. Thus, polygamy is, at worst, only a violation of a second precept. (Indeed, given that the civil authority can dispense one from second precepts in view of a common good, and since, strictly speaking, only the author of a law can dispense from that law, it would seem that, on Maritain's—and St Thomas's—view here, the injunction against polygamy may even not be part of the natural law.)

This way of ordering precepts is particularly suited to ethical concerns. Where 'first' and 'second' precepts conflict, the precept promoting the first end takes priority over that promoting the second end, and thus we have a clear means by which we can determine what must be done. It is, no doubt, for this reason that Maritain finds this account of first and second precepts to be "rational, reasonable, and fruitful" (176).

Nevertheless, this statement of the precepts of natural law and of the priority among them is not without its problems.

To begin with, this account seems to be liable to some of the same difficulties raised earlier in the discussion of precepts ordered in terms of human being and inclinations. Now, by looking at acts alone, it may appear that Maritain *avoids* such problems as determining what counts as a natural or a 'rational' inclination. But to speak of the first and second ends of an act requires a knowledge of these acts *as* the acts of human persons and, therefore, prior knowledge of what the ends of such beings are—if not also general knowledge of human nature, human inclinations and, perhaps, of natural law as a whole. Thus, the plausibility of *this*

account of the priority of precepts depends, in part, on certain features which were seen to be problematic in the preceding account.

A second concern one might have is whether it is appropriate to speak of first and second 'ends' of actions. What is it, for example, that would make an end, a 'first' end? And again, what sense does it make to say that an act has a second *end* as distinct from a simple 'consequence' or 'effect'? Is it even plausible to hold that acts have multiple ends? And if we should wish to say that an act has more than one end, what makes one of them 'first'? (Maritain's discussion of the distinction between polyandry and polygamy might suggest to many that the priority he establishes between them is, in fact, a rather arbitrary one.) Is it a matter of the logical priority of one end to another? But if it is, why should one believe that this is relevant to establishing an *ethical* priority of corresponding precepts? And why should we think of the 'precepts' to achieve 'second' ends as part of the natural law?

Maritain does not provide a direct answer to these questions, although he would no doubt employ the kind of explanations given by St Thomas. Still, and in any event, it is not clear how far this way of ordering precepts of the natural law might be genuinely helpful in resolving most conflicts of precepts. For example, would it allow us to prefer the 'first' end of one act to the 'second' end of another act? But then 'telling the truth'—the first end of speech—would always take priority over 'doing what one can to provide peace and union in the family'—the second end of marriage—and this is not obviously plausible. Nor does this basis for the ordering of precepts provide guidance in dealing with possible conflicts between or among precepts involving the first ends of different actions. If two 'first precepts in a given order' were to conflict, it is not obvious how or whether, by reference to the ends of the actions alone, one could have priority over another.

Finally, even if this account of the precepts of the natural law and of the priority among them were to prove to be adequate, one should note that Maritain himself would acknowledge that not all of these precepts are universal. For example, although Maritain says that both first and second precepts are part of the natural law (see Table I in *Leçon 8* [pp. 184-185]), he admits that one *can* be exempted from second precepts. (As noted above, Maritain allows that such exemptions can be made by the civil authority.)

One thing that is clear in Maritain's discussion of the natural law and the priority of precepts, then, is that some precepts—'second precepts'—are not universal. And Maritain is aware of this. If we were to take all precepts as absolute, he notes, we could end up acting against the good and irrationally. He writes that 'the moral good is, by definition, that which is in conformity with reason' (143), and so precepts—particular precepts that reflect these second 'ends'—cease to apply when they conflict with the common good—for, to insist on them in such cases would be 'irrational' (143). (Indeed, a 'precept' that is

contrary to reason—i.e., contrary to what is reasonable *in a particular circumstance*—is, *ipso facto*, no longer a precept (144; see 152).)

This account of natural law, as including precepts that are based on the various 'ends' an action may have, seems, therefore, to be no less problematic than that which focussed on precepts dealing with human 'being' and inclination. Once again, it is not clear that Maritain provides a satisfactory explanation of which precepts are morally obligatory, and when. Moreover, as noted earlier, if second precepts can and do give way in certain situations, how can it be appropriate to continue to describe that law as universal? Alternately, if those precepts focusing on the second ends of actions are not, in fact, universal and unchangeable, then how can one think of them as constituting part of the natural law? Clearly, certain principles—particularly that principle which is alternately expressed as 'act in conformity with reason' or 'act according to what you are'—must be universal and unchanging for there to be any universal 'natural law' at all. But can this natural law also include such precepts as 'return objects held in trust'? And so one is led back to the question posed at the beginning of Section I—namely, exactly which precepts are properly part of the natural law?

1.3 Precepts and the natural law

Though Maritain's account of the natural law includes a discussion of its precepts, it is not clear what conclusion he expects us to draw from his analysis of the different ways in which we might speak of a priority among these precepts. And recall that one of the reasons for the discussion of the precepts of the natural law is that these precepts putatively show us what, precisely, the natural law is. But there are, as we have seen, problems in identifying what, exactly, is to count as a precept of this law and how these precepts are to be ordered.

In particular, there seem to be a number of difficulties concerning what are called 'second precepts' for—Maritain's description of the natural law notwithstanding—they are seen to be sometimes *not* "universal and unchangeable." In fact, one might argue that some *cannot* be part of the natural law because, as we have seen, law, to be law, must be promulgated. Since many of these second precepts not only were not, but could not be, known at certain times and in certain places, one must conclude that they had not actually been promulgated and, hence, cannot be part of an *unchanging* natural law.

The preceding accounts of how one might establish a priority among precepts of the natural law require us, then, to reflect again on what natural law is and on how many of what Maritain calls 'precepts'—particularly, second precepts—*are* universally obligatory or "live forever" (20).[21] They also oblige us to reflect on what, exactly, it means for something to count as a 'first precept.' Furthermore,

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[21] This is partly due, as noted in footnote 14 above, to some unclarity about what the natural law is.

one must consider whether orderings of precepts—in either of the two ways suggested—are actually realisable. And, as noted above, it is not at all evident how 'orderings' in the ways described actually help us in establishing an ethical priority among precepts in moral decision making—especially in dealing with situations where it seems practically impossible to observe the moral law or where first precepts appear to conflict. One is also drawn to ask whether the two ways in which Maritain proposes precepts might be ordered are compatible and consistent. While Maritain believes that the two accounts described above are compatible, it is not clear how they can—or even whether they can—be brought together in a way that will help us to resolve apparent conflicts of precepts.

Finally, it is curious that, in the articulation of the content of the natural law and in the discussion of the priority of precepts, the very element which is said to distinguish Maritain's natural law theory as a whole—i.e., the epistemological element whereby certain precepts are known connaturally *as* precepts—seems to take on *less* importance. Indeed, it seems that we acquire certainty in moral principle not purely connaturally, but with the aid of conceptual 'reason.' By depending on the ontological character of natural law for basic moral knowledge, it would seem as if Maritain gives up on something that is presumably one of the most distinctive features of the theory he offers to us.

In short, we can see that Maritain's discussion of the precepts of the natural law (and of the priorities among them) reveals that the character of the natural law and its content is far from straightforward. But, not surprisingly, Maritain himself recognises this. For further insight into what Maritain understands to be the natural law, let us briefly turn to his account of a few of the cases where *he* says that there is some difficulty in speaking of the universality of the natural law. I call these 'irregular cases.'

II - Irregular cases

Maritain is not unaware that there are—and have been—a number of challenges to the (and *his*) Thomistic account of natural law, and he raises three cases that seem to constitute exceptions to the claim that the natural law is universal—i.e., the same for all beings of the same nature. These cases are the existence of 'the old law,' the *prima facie* inapplicability of precepts of the natural law in regressive or barbarous societies, and the apparent evolution of the natural law.

2.1 'The old law'

One apparent exception to the universality and unchangeability of the natural law is posed by the existence of 'the old law.' There are practices that, Maritain says, we now hold to be violations of the natural law but seem to have been licit in the past (cf 149-152; 165-170)—for example, the polygamy practiced by the patriarchs of ancient Israel, and the practice of divorce according to the law of

Moses. Now, if the natural law is "unchangeable," how can such practices ever have been permitted? Maritain proposes two principal possible explanations.

But before entering into these explanations, Maritain notes that there was a classical 'justification' for these practices. For example, St Thomas held that the patriarchs of Israel were 'dispensed' by God from those precepts of the natural law prohibiting polygamy, and that they knew this by an 'interior inspiration' (167). This is an argument that, however, Maritain considers "defective" (167). At the very least, he notes, God need not have 'dispensed' anyone; He simply could have 'permitted' it, since He is the author of the natural law, and can do with it as He chooses. Indeed, God, as the 'reason' that is the source of the natural law, could have made such a practice 'natural.' (151).

Maritain's own account takes a different approach. To begin with, he notes that practices such as divorce are not in themselves violations of the natural law at all. He holds (following, he believes, St Thomas) that, while the dissolution of marriage "poses an obstacle, to a certain extent, makes difficult, and less perfect the realisation of the principal end [i.e., the procreation and education of children], [...] it does not impede it totally" (171). Thus, according to Maritain— he says that St Thomas does not settle this matter categorically [see *ST*, Supplement, q. 67]—one should see divorce as, at most, contrary to a second, rather than a first, precept of the natural law (172), and he suggests that the prohibition of divorce was not absolute, until the institution of marriage as a sacrament (174).

There is, as well, a second explanation of how certain practices, now apparently proscribed by the natural law, can have been licit in the past. Maritain writes that, if we examine past civilisations, we will note that the stage of moral awareness that individuals had reached was often somewhat 'primitive' and that many natural inclinations had not yet developed. And, so, certain practices, now regarded as illicit, were nevertheless allowable at that time (199, see Table 196-197) so far as two conditions were met: first, they were not forbidden by the 'first principle of natural law'—to be more precise, they did not violate the first end of the act concerned (as in the case of polygamy and divorce)—and, second, the imperfect moral consciousness of these individuals, or their imperfect knowledge of the law (170), was due to a non-culpable 'crudeness' (*grossièreté*) or 'primitiveness' (*rudesse habituelle*) in human nature (175; cf 153). To the extent that people were incapable of acquiring certain elements of moral knowledge, this 'primitiveness' was "not culpable" (194) and these practices (e.g., polygamy and divorce [165-175]), Maritain writes, were not "sinful" (167).[22]

Maritain's explanation of the apparent change in natural law is, plausibly, an advance on that given by St. Thomas, but there still seem to be some tensions in

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[22] And Maritain allows that, in particular circumstances, God may permit one to put the law aside [179; see 171].)

his account. For example, Maritain suggests that, while some practices that are wrong now were not sinful at the time of the 'old law,' *other* practices are not only wrong now, but were evil and wrong *then*. (See, for example, his list of 'real'—and, presumably, culpable—infractions of precepts of natural law, such as sexual promiscuity and refusing to live together in security under the law [Table I, 184-185].) If we compare these precepts with those to which Maritain allows exceptions, one might well wonder whether Maritain's distinction between those cases where we can take into account historical context and culture, and those where we must not, is a consistent one. In the cases where Maritain suggests that certain practices are and were wrong, then, one may wonder whether he does not, in some measure, abandon the thesis of the 'gradualness' of the knowledge of the natural law—and, thereby, shows that there may be little to differentiate him from the 'rationalist' view of the natural law that he rejects (87-89).

Of course, Maritain might reply that one can distinguish his view from the 'rationalist' ones because he, unlike the rationalist, can differentiate between those practices which were engaged in because of a defect in knowing or understanding the natural law, or because of the absence of the 'natural inclination' that underlies it, and those which were engaged in, in defiance of what people actually knew as the natural law.

Now, in the first place, it is not clear that this is sufficient to show that *all* such cases of licit practices can be distinguished in just this way. Consider the injunction against killing or enslaving those outside of one's community or tribe—i.e., beings who are in some sense 'not like oneself.' One might argue that the recognition of other human beings *as* human beings is, in part, dependent upon the level of social development or, more broadly, the historical context and culture. How *can* one be culpable if, prior to such a recognition existing, one acted in a way that is inconsistent with it? And even if practices such as slavery violate the first end of an action—though it is not clear *which* action one might have in mind here—or violate a principle which, over time, comes to be known connaturally (such as 'respect autonomous life'), it is by no means clear that one can say that these practices are unambiguously known to be against the natural law (i.e., known to be violations of what has been promulgated as law) and, therefore, are *immoral* practices. Moreover, even if we allow that one *can* differentiate among precepts in terms of the level of moral knowledge possessed by the individual (or society) whose practices we wish to evaluate, the distinction between the injunction against polygamy and that against polyandry seems, at best, contingent and arbitrary. In general, then, if the practices of polygamy and divorce were allowable because there was a non-culpable lack of knowledge in those who engaged in these practices, then it seems that it is at least possible that the practices of slavery and killing of those outside one's tribe could also be licit.

Maritain's apparent denial of this raises the question of whether there might be some tension in his view.

A further tension in Maritain's account can be seen in *how* he views the moral character of past practices such as polygamy and divorce. If we ask 'Is polygamy—or divorce—a violation of a precept of natural law?,' Maritain is surely suggesting that they were not. He writes that 'these actions were not a sin.' Now this is clearly different from saying that those who practiced polygamy were not sinful—for one may say that one violated the law, but was not morally culpable. It is therefore not just that the moral consciousness of these individuals is pure (166), but that *what* they did was no sin. Yet Maritain also wants to say that engaging in such non-sinful practices is still a reflection on one's character. Recall his apparent approval of the remark of Saint Jerome that "Abraham was greater than me, but my state is better" (166). It seems, however, at the very least odd to say that an act was 'licit' and yet the agent was in a (presumably, morally) 'inferior' state of being in doing it.

One final point might be made here. If such practices as polygamy and divorce were not always sinful in the past but are now, it would seem to follow that, either polygamy and divorce are not violations of a universal precept of the natural law, or the natural law can change, or the natural law is not universal and unchangeable. Now it seems clear that Maritain does not accept the latter two options. And so this would seem to entail that the precepts that *now* forbid polygamy and divorce are not, strictly speaking, part of the *natural* law (though they may be inconsistent with *other* law.) And perhaps it is his awareness of this that leads Maritain to speak of a certain relativity in the precepts of the natural law and to say that there can be 'progress' in the moral knowledge of these principles (167).

One way to avoid the preceding 'tensions' in his view—an option already hinted at above—is for Maritain to say that there is no inconsistency *within* the natural law itself, but that these difficulties arise in considering how to apply that law. Before exploring this line further, however, I want to turn to another set of *prima facie* exceptions to the universality and unchangeability of natural law—namely those that would arise in regressive or barbarous societies.

2.2 Hard cases

Maritain considers a second set of situations where there appear to be exceptions to the universality and unchangeability of natural law—those where individuals may be called on to act in circumstances of exceptional moral difficulty, or where we may have to judge the rightness or wrongness of acts that take place in 'regressive or barbarous societies'—'hard cases.'

One such situation that Maritain undoubtedly has in mind, given the period in which he did most of his work on ethics and political philosophy—i.e., during and following the Second World War—is that of 'life' in Nazi concentration camps. The conditions of such 'life' were far from normal, and one could not expect

individuals to live according to the kinds of ethical precepts that govern ordinary social life. In the camps, the line of demarcation between 'good' and 'evil' may have often been far from obvious; certainly, it was quite different from what it ordinarily would be. And so Maritain allows that, in such situations, "many things which, as to their moral nature, were fraudulent, or murderous, or perfidious in ordinary life, no longer fall under the same definition and become, as to their moral nature, objectively permissible or ethically good" (160; cf MS 73). In such cases—situations in which standard moral practices are not possible—Maritain seems to allow that the application of the natural law can be 'relative'—that the (second) precepts to which we might normally appeal do not apply here. Indeed, one could well imagine that, even if individuals were committed to acting morally, it might not be at all clear what the basic moral precepts required of them.

There are other 'hard cases' that one might be confronted with. In *Leçon 7*, Maritain writes that there seem to be situations where some apparent violations of the natural law are, in fact, known to be morally correct—even our duty. "Common sense [...] knows very well, however, that, in certain cases, [...] it must be possible to say that which is not true" (155)—for example, in a situation where, if one did not do so, one would be handing over an innocent person to her executioners. This conclusion of 'common sense'—which, Maritain writes, is "a typical example of knowledge by inclination"—is something for which, he says, the explanations given by philosophers or theologians are "more or less complete, more or less imperfect" (156).

What becomes of the universality of natural law when one must act in such situations? What provides the standard of right action when the usual appeals to moral precepts and moral procedures are unavailable or impossible?

There are different ways in which one might respond. In some situations, one might claim that the natural law continues to be universal and unchanging and that, appearances notwithstanding, certain actions are not violations of the natural law. Maritain does say, for example, that one must note a difference between the formal and the material character of an action. Thus, just as one might distinguish 'theft' from 'unauthorised taking of resources not essential to another, in time of necessity' (cf 147), so Maritain seems to believe that one can distinguish "saying that which is not true" (as distinct from not saying that which is true) from 'lying.' In such cases, then, one might be able to preserve the universality of the appropriate precept.

In any event, Maritain clearly does not make such a move in discussing other situations, for there are instances in which he says that "one has to judge according to his inclinations, by connaturality to the moral virtues" (161). And, again, he writes that 'the person of virtue' is the one who is to judge (161) these situations.

One might wonder, given these last comments, whether Maritain is here moving from a natural law theory to a 'virtue ethic.' There is, after all, no obvious conflict between the two, and some natural law theorists have argued that natural law theory itself is incomplete without taking into account human goods and the moral virtues. Still, it is doubtful that 'virtue ethicists' such as Aristotle would have thought the two compatible, and there are also problems with *Maritain* taking such a position. For example, to suggest that what the person of virtue would choose is that which one *ought* to do may not, in fact, be consistent with the universality of certain precepts of 'natural law,' since (if Alasdair MacIntyre is correct) these individuals can and do go beyond such precepts. Besides, there is no evidence that Maritain thought that one would need to have recourse to such a strategy for natural law theory to be sustained.

So how can one reconcile natural law theory with the fact that Maritain allows that hard cases and exceptional circumstances (such as life in a concentration camp) may affect whether or how certain precepts need be respected?

From what we have seen earlier, a precept is not morally obligatory if one of two conditions hold: the precept cannot be known, or the inclination underlying the precept has not been able to develop and have notice taken of it. But, if we consider the level of moral awareness of those who, for example, found themselves incarcerated in concentration camps, neither of these conditions seem to hold.

One might, then, suggest that, in determining what one is morally obliged to do, a third factor must be taken into account—namely, what is practically possible in the situation at hand. Thus, while the first or basic principles of natural law remain, since the situation in which these principles are to be applied is unique, the particular obligations and precepts that result will be different from what one would ordinarily expect. One can say that since reason—or, if one wishes, the first precept that one act in conformity with reason—*is* universal, some actions are never permitted but, in unusual situations, other actions which are ordinarily not allowed may not only be permitted but even be obligatory. In short, when we are to act in a situation where conditions are extreme, first, we advert to the first precept of the natural law to 'act in conformity with reason' and, second, we look at the situation in order to determine what exactly reason requires. And this approach is consistent with Maritain's remark that 'the moral nature or specification of an act and the internal relation to truth changes when the situation does' (160).[23] Of course, if this is to be the approach that underlies

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[23] As noted earlier, Maritain allows that morality or the obligatory character of moral principles is affected by one's state of, or capacity for, knowledge. Here Maritain seems to recognise that one's moral obligations are determined by the economic or social situation that one is in. In fact, this would explain how Maritain can say that there is a natural right to a suitable accommodation—something conducive to human virtue—when economic

moral action, then the role of many 'precepts' of the natural law—specifically, second precepts—is clearly far less important than initially suggested. Indeed, not only are second precepts not universal and without exception, but the elements of the concrete situation in which persons find themselves have a more fundamental role in determining the *morality* of actions than many other natural law theories would seem to allow.

2.3 The relativity of inclinations and human nature

A third apparent exception to the universality of natural law that Maritain considers is suggested by comments which, if we take them seriously, imply that he thought that there was a certain 'relativity' or fluidity in human nature.

When Maritain states that moral knowledge is gradual and progressive, his argument is that such knowledge depends on the presence of the corresponding inclinations essential to human nature, and that some inclinations—'inclinations of reason' (188)—although "essential in the sense that they are related to the essence of man" (188), are not completely developed in individuals and emerge and develop in them only as the culture in which they live develops (126; cf 153). Thus, it seems that Maritain holds that our human nature itself develops (or, better perhaps, that we 'grow into' our human nature [153-154]), and that it is because that on which and out of which our moral consciousness arises evolves, that our moral consciousness and the natural law themselves evolve.

One might reply, however, that this is puzzling, particularly for someone like Maritain to hold. For not only does it seem inconsistent with Maritain's position on the character of the natural law as universal and unchanging, but it raises the question of how the natural law is even 'natural.' It sounds strange to hold that a precept is part of the natural law because it reflects inclinations that are essential and proper to an individual and, yet, are not actually present in that being. While one can imagine that someone may fail to be aware of an inclination, to say that such an inclination was not yet present—that it was impeded, for example, by the social or technical structures in the culture in which that person lived—and yet was *essential*, seems odd. For how could one establish that an inclination was essential without already knowing what it is to have that nature? Knowledge of what the nature of a being is depends upon knowing first what its 'natural inclinations' are—but to know whether a 'new' inclination was part of one's nature would assume that one already knows what that nature is. Nor is it clear how Maritain could ever establish what this 'nature' is without begging the question. Indeed, in order to argue plausibly that an inclination were essential and natural (and, hence, something that could reflect natural law), it would seem that it would have to have shown itself more than once, and in different places, within the history of humanity.

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conditions allow for its realisation (190).

Arguably, however, Maritain might reply that an inclination may fail to develop in an individual due to some 'internal' impediment (e.g., a mental or genetic handicap) and yet still be 'natural'; why couldn't the same 'failure' be true in a group of individuals, particularly if there were some 'external' impediment to its development? At the very least, then, an inclination could, over time, arise and be natural, even if it might not be known with certainty to be so. And one could speak of precepts that reflect this as part of the natural law and yet allow that one might not know whether these precepts *are* part of it, and even that they are not always present and obligatory because that inclination on which they depend is not, in fact, present.

First precepts—'do good and avoid evil', 'act according to what you are', and so on—would, of course, still have force, for these would be precepts that *all* human persons would know connaturally or so far as they are human persons. But the 'concretions' or fruits of these precepts, and whatever we may deduce from them—requiring, as they seem to, something about the specific stage of the development of human inclinations—may not always hold. Thus it would seem that there could be some 'relativity' in the natural law that allows one to explain how the licitness of certain practices could have changed; this is consistent with the progress or growth in moral knowledge of which Maritain speaks. Such a view, if it can be sustained, could explain how the natural law can be universal and unchangeable without, for example, many or most of its precepts having existed always and everywhere.

Admittedly, while Maritain is willing to allow for a measure of relativity, it is obvious that he wishes to avoid relativism, that he believes that human nature has not changed in any fundamental way, and that he does not wish to abandon a view of natural law as prescribing universal principles of human conduct. Maritain clearly wishes at least to reduce—if not altogether eliminate—the number of occasions in which we might think that exceptions to precepts of natural law may occur (see 143ff).

Hence, consider the imperatives that we 'return objects held in trust' and 'do not steal'. Maritain notes that there are cases in which one might plausibly imagine exceptions to these demands. Or again, as we have seen, in some extreme situations 'everyone would say that it is appropriate to lie to protect the innocent'—and Maritain adds that they would find this justified by a 'knowledge by inclination' (156). Nevertheless, Maritain does not believe these instances to be genuine exceptions to a universal, natural law. Thus, by way of addressing the first example, Maritain holds that something may appear to be a case of theft and may involve all of the physical actions involved in theft, and yet not be theft, for the physical actions which constitute an act do not give it its moral character. So, in some cases that involve the licit taking of goods by another, what we have is not an exception to a precept against theft; rather, it simply looks like one is violating that precept, for the act has a different moral character. Again, it may

be true that there are cases where a "precept ceases to apply because its application would contribute to the destruction of the common good" (143). But, Maritain says, this does not mean the natural law is not universal. Since the moral good must be in conformity with reason (143), a precept that is contrary to reason is simply not a precept of the natural law (144; see 152). Or again, in *Leçon* 9, Maritain discusses ethnological data—and argues that, even in cultures and societies very different from those of the modern west, where one finds cultural practices quite unlike our own (e.g., permitting infanticide), it is also the case that "the natural judgement of conscience was not completely blinded" and that precepts of the natural law (e.g., prohibiting infanticide) not only exist, but (to some extent at least) are recognized (219).

Thus, although Maritain wishes to maintain a natural law theory, it would seem, from the different features of his account of inclinations, noted above, that his view of the content of the natural law is at least much narrower (or the precepts less categorical and absolute) than one might have thought. And, in fact, there appear to be some serious difficulties with it.

In the first place, as noted earlier, Maritain's account of human inclination is problematic. By 'inclination,' recall, Maritain means both the Freudian unconscious of instinct rooted in the animal nature of human beings—though he notes that these instincts are not absolutely determined but are progressively set during infancy—and the 'preconscious' that emanates from or reflects intelligence and reason (63-64). And it is through these inclinations that knowledge of the natural law, 'by inclination' or by connaturality, takes place (65).

Now some inclinations, Maritain notes, have not always been present; in many of these cases, there have been putative impediments to the 'development' of these inclinations, impediments which seem to have afflicted all of humanity for a long time—as, for example, presumably was the case for the inclination to be treated as a free and equal being which, apparently, did not surface until the 17th or 18th centuries.

But, as indicated earlier, how do we know that such inclinations are fundamental and rational (since we do not already have a complete understanding of human nature and of what is essential to it) and, further, how can we say that they have priority over other, more 'primitive,' inclinations? And again, since there are natural inclinations—such as the inclination to commit murder (64)—inclinations of which we are aware 'connaturally,' how are we to ascertain whether a particular inclination is one that we *ought* to consider ourselves bound by? Maritain would, of course, claim that we could make a judgement concerning the morally binding character of such an inclination by reference to its being 'rational.' But this is problematic because, first, as noted above, it already supposes that we have knowledge about what human nature and what 'the rational' is, *and* that we have knowledge—that 'the rational' *should* take priority over the purely instinctual. And, second, it seems inconsistent with Maritain's

frequent remark that one can arrive at definite knowledge of ethical principle and moral obligation just through reference to those inclinations known 'connaturally.' Indeed, if Maritain wishes to make allowance for the 'historical' character of human 'being' and human moral knowledge (see *Leçon* 8), it seems very difficult indeed to insist, at the same time, on the universality and unchangeability of moral precepts.

Equally importantly, perhaps, Maritain's attempt to avoid talking of 'exceptions' to moral principles seems rather tortured. Recall, for example, his earlier remarks that some practices really were not a sin (because, at that time, they could not be known to be sinful and because they were consistent with the 'principal ends' of certain activities). This no doubt reflects the view that law, to be law, must be promulgated. But if it is *true* that such practices or activities are now sinful, then surely this is either (i) because the natural law can change (i.e., natural law can be promulgated over time), or (ii) because, when these things became sinful, it was not because they were violations of the natural law as such, but because they were violations of a 'prolongation' of that natural law in the context of divine positive law. Now, (i) would threaten the unchangeability of the natural law, and so it would be more plausible to hold, as Maritain in fact sometimes seems to, that actions such as polygamy and divorce are not violations of the natural law at all—that they are violations of rules or guidelines that are generally valid but to which exceptions can, when in accord with the first precept of natural law, be made.

Thus, despite these objections, Maritain could still speak of *natural* law and of such law as universal and unchangeable—but (as he suggests on p. 153)[24] the only real precepts or principles of that law would be the 'absolutely first' ones—e.g., that we should 'do good and avoid evil' or, in other words, one should 'act rationally.' In other words, the only real precept of the natural law are its first principle and whatever (if anything) it analytically entails.

2.4 Apparent exceptions and the universality of moral precepts

The examination of these 'irregular cases' clearly shows that Maritain recognises that the issues surrounding the natural law and its content are complex. Nevertheless, he has argued that a natural law theory—and, it would seem, a view of natural law as "universal and unchangeable"—can still be maintained.

We have seen, however, that on Maritain's own account, *specific* precepts of the natural law are *not* universal and unchanging, and that he is fully aware of this. Indeed, as the examples of regressive or barbarous societies show, certain

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[24] "Encore une fois, c'est seulement au sujet des principes absolument communs ou des préceptes absoluments premiers qu'il [i.e. St Thomas] affirme l'invariabilité ou l'immutabilité absolue de la loi naturelle [...]"

'precepts' are simply sometimes unavailable as moral options, let alone be principles that are morally obligatory.

But then, one is drawn to ask, what exactly does it mean to speak of a natural-law theory, and how are we to make sense of Maritain's discussion of the priority of precepts of the natural law based on ontological principles such as the inclinations of human beings or the ends of human actions? More importantly, one might wonder, what are the implications of Maritain's openness to development and progress in morality for his initial account of the ontological and epistemological character of the natural law?

III - Conclusion

3.1 A solution?

In the first two sections of this paper, I argued that there are a number of difficulties involved in Maritain's presentation of the nature and role of precepts in the natural law—a law which he says is universal and unchangeable. From what we have seen, Maritain's account of these precepts—the content of the natural law—is problematic. As the discussion in Section I of this paper has suggested, there are tensions in Maritain's account, both concerning how precepts are to be ordered and what the priority of certain precepts should be. Moreover, despite his apparent insistence on the universality of natural law, there seem to be a number of precepts or principles, which are said to be part of the natural law, but which are not, in fact, universal, unchangeable, and absolute.

On the whole, Maritain clearly wants to defend a natural law theory—though it is one that is sensitive to the fact of progress in moral knowledge. Thus, as noted earlier, Maritain does attempt to accommodate apparent exceptions within natural law theory—by insisting, for example, that we distinguish between the physical form of an act and the moral connotation of an act (e.g., 144). He is certainly anxious to avoid being seen to approve of violations of absolute principles—he states that, to say that it is "permitted to do evil for the good" or that "it is moral and permitted [...] to violate the moral law" is a solution "unworthy of a moralist" (146). Nevertheless, we should note as well that Maritain is uncomfortable with solutions that attempt to preserve the universality of second precepts in ways that seem at the very least to be question begging (156).

Given these features of his view, is there any way in which Maritain can sidestep some of the difficulties raised earlier? One option, consistent with many of his remarks, is for Maritain to say that, strictly speaking, the natural law is simply the first precept and all those precepts which are rationally deduced from it. Thus, no other particular precept is a necessary part of the natural law. One can still speak of such precepts being morally binding so far as they are derived from, or consistent with, the common good, and hold that one precept can take priority over another, depending on how it contributes to the common good—or,

if one wishes, depending on the situation. (This would allow Maritain, then, to circumvent some of the problems raised in Section I of this paper concerning the (ethical) priority of precepts that constitute the content of the natural law, and how one might determine what these precepts are. For, while it may be consistent with what Maritain has said about ontological priority, here it is *ultimately* not in terms of 'being' or the nature of an act, but in terms of the common good, that such priority is determined.) This 'solution' also reflects one of Maritain's comments, noted earlier, that the circumstances involved in certain situations render irrational and immoral an act that, in a normal situation, would be moral (or vice versa)—and that 'reason'—"reason as aiming at the good of human life"—is what determines what is right and wrong (145). Because it does take account of the situation, one could call this approach relativistic. But it is not a pure relativism, however, because it still holds the first precept(s) of the natural law to be "invariable and absolutely unchangeable" (153).

There are some interesting implications of this solution. First, it allows that,

while 'second' precepts are not absolutely morally obligatory, they are morally authoritative in the sense of being general 'rules of thumb.' What constitutes the natural law as universal and unchangeable, then, is simply the 'first precept'—a precept that is understood in different ways but, basically, that states: 'act like a human person.'

Second, this solution suggests that the natural law in the broad sense—i.e., as consisting of all those precepts which 'follow' from the first principle—is *not*, in its entirety, universal and unchangeable. Thus, we can take account of the particularities of moral situations—and "that certain acts, so far as they are proportionate and suitable, may be virtuous for some and vicious for others" (143)—without abandoning a commitment to the objectivity of natural law.

Third, this solution preserves the view that the role of the inclinations and of connatural knowledge is important—for what does it mean for a human being to act 'according to what it is' unless we have some idea of what human inclinations are and what 'reason' (which is also part of what human beings are) requires? Nevertheless, it also suggests that the role of connatural knowledge may not be as strong as one might think—for example, that certain rules, known connaturally (e.g., 'obey the laws of the social group'—or even the more particular ones, where we are enjoined to 'speak so as to preserve innocent life') are *not*, by virtue of their origin, obligatory and that they *must*, in the end, be subject to a rational assessment.

One might, of course, argue that there are limits to such a solution. For example, while it acknowledges an important role for knowledge of inclinations and knowledge *by* inclination, it seems that the importance of appeals to precepts based on our understanding of human inclinations in judging the morality of an action, is no longer paramount. Moreover, by eliminating the absolute character of particular moral precepts, it may appear that we leave room for moral

indeterminacy, doubt, or even scepticism. One may also wonder whether, in allowing such an epistemological and, to an extent, moral relativity, one can consistently hold to an essentialist ontology and analysis of the human person. And, finally, one might fear that this solution gives too central a role to 'rationality,' and too limited a place to connaturality. Still, one can, I think, argue that these issues can be addressed—though doing so would be a matter for another time.

3.2 Concluding remarks

Given the preceding discussion of Maritain's remarks in the *Lectures on Natural Law*, it appears that there are some problems in clearly discerning what his view of the natural law and its content might be. Nevertheless, one might argue that, in the end, Maritain offers a reading of natural law that shows it to be far from monolithic, and that there are features of his view that show it to be a much less determinate (or, at least, much less determined) standard than it has often been assumed to be. The fact that there may be few, if any, 'second precepts' of the natural law that are universal is something that would be consistent with the reports of some anthropologists and ethnographers. And Maritain can speak of there being different precepts of the natural law—at least, in a broad sense—with some having priority over others, without having to have a complete account of human nature, but simply an understanding of the relation of these precepts to a human common good. If this reading of Maritain is plausible, and if one is to take natural law, not as a set of abstract and formal standards, but as a set of living rules which take full account of both the nature of, and the social and epistemological conditions relevant to, the human person, one need not abandon a view of natural law as universal and unchanging.

In short, then, what the present analysis of Maritain's remarks in the *Lectures on Natural Law* leads us to is the recognition that, *if Maritain's fundamental insights into natural law are correct*, and if we are to take full account of the concrete experience and history of persons, a natural law theory does not and cannot state a set of 'second precepts' that are universal and unchangeable or immutable. It is not just that the natural law is subject to 'revision' or exemption by God, but that, at the very least, secondary precepts—including those which are said to be known connaturally—must always be subject to reason and, as such, to the differences of context that are relevant to and involved in moral decision making. This also suggests that, strictly speaking, according to Maritain, there is only one universal and unchangeable principle of natural law, though it may appear in different forms—and that is, 'be reasonable.'

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