

Natural law revisited

by [William P. George](#) in the [January 31, 2001](#) issue

*Natural and Divine Law: Reclaiming the Tradition for Christian Ethics*, by Jean Porter

You can drive nature out with a pitchfork," as the saying goes, "but it will always return." So also with natural law. Jean Porter, professor of Christian ethics and moral theology at the University of Notre Dame, illustrates what Heinrich Rommen called natural law's "eternal return." Her book, a masterful retrieval of the natural law perspective of medieval theologians and canonists, contributes significantly to current debates in fundamental moral theology.

Such a retrieval and contribution ought not be taken for granted. Protestant thinkers like Karl Barth and, more recently, Stanley Hauerwas have rejected this approach to moral reflection. Though Catholic scholars have been less likely to renounce the natural law tradition, it has been challenged by Vatican II's emphasis on the theological and scriptural foundations of moral theology. Natural law thinking runs as an undercurrent for civil and human rights movements, and the natural law heritage stubbornly lives on in certain approaches to international law. Perhaps most significant, natural law thinking grounds certain strands of the environmental movement.

In recent Christian moral reflection Protestant as well as Catholic writers have shown a lively interest in natural law. For instance, James M. Gustafson has always paid attention to "nature," and those influenced by him--William C. French, Stephen Pope and others--have brought "nature" and "other animals" into Christian ethics. Both Protestants and Catholics concerned to establish grounds for public moral discourse have turned to the natural law thinking of John Courtney Murray, while feminist writers such as Lisa Sowle Cahill, Cristina L. H. Traina and Susan Frank Parsons have sympathetically yet critically engaged the natural law tradition. Christian thinkers are especially concerned that natural law not be severed from its theological moorings.

But what is natural law? Is it a set of moral precepts that issue from inclinations shared not only with other humans but with other animals as well? Is it in our genes,

as E. O. Wilson would have it? Is it "nature" or "reason" or both? It can mean and has meant many things. Add an eagerness to reattach natural law to theology and the confusion may grow.

Implicitly following Aristotle's advice that moral investigation need not consider every opinion but only the more plausible ones, Porter undertakes not an exhaustive treatment of natural law, but rather a detailed and erudite exploration of the "scholastic concept of natural law," which matured in the 12th and 13th centuries. The full meaning of this concept emerges over the course of some 300 pages, as Porter moves expertly back and forth between the idea "seen on its own terms" and "its relevance for contemporary Christian ethics."

It may be best to start with what, on Porter's review of the Latin sources, natural law is not. First, it is not reducible to what Thomas Aquinas said about it. Aquinas invariably provides a mature articulation of the concept, but he is not the only one with insights worth retrieving. Albert the Great, Bonaventure and William of Auxerre, among others, make critical contributions, too. Second and more important, the scholastic concept is not a set of moral truths derived from a fixed understanding of human nature, provided by either reason or observations of the natural world. The scholastics, Porter argues, had no such fixed understanding.

Scholastic appeals to natural law emerged in response to the profound social change of the medieval period. Since theologians had for some time been reflecting upon nature, natural law reasoning was available to this theologically infused age. Natural law, precisely because of its generality, provided a flexible means of adjudicating among the competing claims of new institutions. Most significantly, insofar as scholasticism drew upon authoritative texts, the scriptural moorings of natural law thinking were not only assumed but also paramount.

But these university professors were not content simply to find scriptural warrants for natural law. They did not regard scripture and natural law, understood as some pre-Christian philosophy, as two complementary modes of moral reasoning--an approach to Christian ethics that some today find attractive. Rather, scripture itself provided the means for selecting which among several expressions of nature were to be considered normative. As Porter puts it, "when the scholastics use their concept of natural law to interpret specific scriptural texts, they are interpreting Scripture (as represented by a particular text) by Scripture (taken as a whole, through the medium of theological reflection)."

Porter might well have recalled Aquinas's remark that when it comes to "sacred doctrine" (which includes his discussion of the natural law), it is "the canonical Scriptures" that give "incontrovertible proof"; proofs gleaned from philosophers and church fathers are at best "probable." Given the deep commitment to scripture on the part of some of Porter's adversaries--Hauerwas, John Howard Yoder and, behind them, Karl Barth--this stress on the scriptural commitments of the scholastic natural lawyers is a crucial contribution to the current debate.

Scripture also provides natural law with content, especially through the Golden Rule and the Decalogue. Those expressions of nature that accord with these general principles are deemed normative for Christians, while other expressions are not. Porter nicely illustrates what is at stake in a brief discussion of Nietzsche, whose impact on the recent intellectual climate has been immense. Nietzsche presents a view of human nature and thus a natural law that he thinks humans ought to follow. But the human tendencies Nietzsche portrays as normative--spiritedness, aggression, fierceness--would fail on scriptural and theological grounds to find moral favor among Christians.

By attending both to fundamental questions, such as the scholastic understanding of the relationship between nature and reason, and to issues of marriage, sexuality, bioethics and social ethics, Porter is able to highlight several tendencies in the scholastic concept that advance current debate. First is a scripturally warranted respect for the relative autonomy of natural processes and a serious regard for those natural inclinations which humans share with other animals. Thus one finds in the scholastic tradition important affinities with current efforts to relate morality to biology.

But the scholastic approach does not degenerate into biologism. Rather, the scholastics "interpret human morality as the distinctively rational expression of needs and ways of behaving that are found more generally throughout the animal kingdom." In light of the near schism in Catholic moral theology, this is significant, for such a tendency leads Porter away from the Vatican's absolutist position on the issue of contraception while fully affirming a basic value at stake in that position, namely, the goodness of procreation.

A second feature of the scholastic concept is thus its flexibility. This shows up, for instance, in the scholastic notion of "indications." Scriptural divine law, as a form of natural law, not only prohibits some things and commands others to be done, but it

also "indicates what would be best, or ideal, or even just what is permitted." These indications lack the absolute force of proscriptions and prescriptions, and thus point to the changeability of natural law.

Without a fixed idea of human nature from which the natural law may be deduced, the scholastic concept also yields a more flexible view toward such traditionally controversial matters as polygamy. Since for the scholastics the primary purpose of marriage is the maintenance of social order through procreation and the education of offspring, and since polygamy achieves this end, it "is a valid form of marriage with its own integrity and value, even though from a Christian standpoint it appears flawed" due to its failure to uphold other values, such as equality.

A third feature of the scholastic concept is a set of values it assumes or promotes. These include equality, freedom and, especially, the basic goodness of creation--including the goodness of sexual desire. In contrast to the negative view of secular society expressed by Hauerwas, Yoder and John Milbank, the scholastic tradition affirms the good in the "world" without denying its creaturely ambiguity. In the area of sexuality, Porter is aware of the problematic elements in the scholastic tradition. Nevertheless, on her reading, the scholastics, unlike their adversaries, stressed the basic goodness of marriage, and they rejected the earlier Christian view that sexual pleasure, even within marriage, is wrong in itself.

The scholastic conception also opens the door for the ideal of equality, even within marriage. Porter does not deny the problematic strains in this tradition; indeed, she confronts the scholastic affirmations of both servitude and social persecution. But "these problematic aspects of scholastic social thought are not necessary consequences of [the scholastic] concept of natural law." Furthermore, this tradition bears within itself the seeds of its own revision, such as evident concern about a zone of freedom and equality even within the practice of slavery. Porter also draws upon the superb work of historian Brian Tierney to show that the idea of natural--or human--rights, so crucial today, was already alive among the scholastics.

The value of Porter's approach is that she steers between those who would sever natural law from theology and those who trumpet theology, scripture and narrative and hold a "remarkably negative attitude toward secular society and especially political life." For this reason among others, the scholastic concept is timely and worthy of discussion. Porter is cautious, however, regarding the full constructive implications of her retrieval--this awaits another book--and she is fully aware that

the scholastic age is not ours.

In the interest of furthering that constructive move, let me highlight some questions provoked by this important study. As I've emphasized, the retrieval of the scholastic tradition bespeaks the return not only of natural law but also of Christian theology and its primary source, scripture. But just as Alisdair MacIntyre asks in one of his books, "Whose justice, which rationality?," one might ask of Porter, "Whose theology, which scripture?" The tradition has been immensely varied in its interpretation of scripture and its implications for issues such as Christian attitudes toward violence. Porter's retrieval of the scholastic concept allows for a strong presumption against killing, on the one hand, and reasonable exceptions to that rule, on the other. But as Lisa Cahill and others have suggested, a commitment to a both/and approach (displayed, for example, by the U.S. Catholic bishops) may be a refuge from some tough exegetical and theological questions. A fuller retrieval of natural law must ensure that these questions are adequately addressed.

Despite the clear emphasis on the theological character of the scholastic concept of natural law, theology remains somewhat muted in this study. Porter does spend a few pages refuting her Barthian adversaries' nature-denying view of the incarnation, but one might still ask how a fuller exploration of christological, soteriological, eschatological, pneumatological and ecclesiological assumptions and commitments would affect one's reading of the scholastic concept and its relevance for today.

These questions are not only academic but practical--in keeping with the demonstrably practical character of scholastic theology itself. For instance, because of its specifically theological character, the scholastic concept does not "yield the universally valid moral code that modern and contemporary natural law theorists have attempted to provide." Rather, "diverse human mores [may be viewed theologically] as expressions of human nature having their own integrity and value, even when they are not compatible with a Christian way of life." Christians may contribute to international agreements and conventions (which, like the medieval "law of nations," might count as a form of natural law), "but we should not expect that ours will be the only, or even the dominant, voice in this process."

Now even if one agrees with this view of diversity and distinguishes it from what Mary Midgley calls "moral isolationism" (a refusal to make moral judgments about another culture), one may still ask what becomes of the Christian moral vision if it is ineluctably tied to scripture and a theological view that others cannot accept, or if

the Christian contribution is in fact a diversity of theologies that have burst into a cacophony. The retrieval Porter has expertly begun may require a fuller discussion of theological as well as moral diversity and, as part of that discussion, more attention to the issue of conversion.

There is another, more mundane problem. Porter finds within the scholastic tradition a rather modern confidence in individuals' freedom and ability to apply the natural law in nuanced ways. But how are scripture and broader theological concerns to shape these applications when many people are innocent of theology and a deep-felt knowledge of the scriptures?

This is not to diminish the importance of Porter's study. On the contrary, her retrieval of a strand of natural law thinking brings with it a bonus. It suggests that, like natural law, theology, too, enjoys an eternal return. But this return is also a calling. It requires that we undertake in our day what the scholastics did in theirs: to give both God and the human, both grace and nature, both faith and reason, both theology and other forms of knowledge their due.