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BOOK REVIEW SYMPOSIUM: JOHN WITTE, JR., *CHURCH, STATE, AND FAMILY: RECONCILING TRADITIONAL TEACHINGS AND MODERN LIBERTIES*

PEDAGOGIES OF NATURAL LAW

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One virtue to imitate from John Witte—there are many—is his generosity as a reader of religious traditions. It is on full view in *Church, State, and Family*. Witte's book engages a striking range of major texts, exemplars of whole Christian traditions, before proposing a future in which traditions are treated neither as embarrassing errors nor as inert museum pieces. They become instead what they are: scenes of moral teaching. Since I admire both Witte's project and the boundless talent he brings to it, I add only a few friendly questions, small and large. I concentrate on the book's treatment of Thomas Aquinas in its second chapter, a choice dictated at once by my limits and the hope of raising specific questions that run through the whole book.

As Witte acknowledges, one difficulty in discussing Thomas on marriage is textual. After a vision (as the hagiographers believe), or because of ill health, Thomas stopped writing his *Summa of Theology* in the middle of the treatment of the sacraments, before reaching marriage. We lack his late thoughts on that sacrament and its relation to natural goods. From early on, admirers of the *Summa* have tried to fill the lacuna. With the best of intentions, Thomas's associates "completed" the *Summa* by revising his remarks from a much earlier work, the *Scriptum* or commentary on the *Sentences* of Peter Lombard. Their *Supplement* to the *Summa* cannot be attributed to Thomas. Since the form of the *Sentences*-commentary is determined by the text of Peter Lombard—which Thomas explicitly criticizes in proposing his *Summa*—the authors of the *Supplement* had first to guess what the new arrangement of topics on marriage would have been. Again, since the elegant selectivity of the *Summa* improves on the distended *Sentences*-commentary, considerable cutting was required to fit the old material into the conjectured shape. These editorial challenges conceal a worse effect: piecing together a conclusion to Thomas's last major work from earlier excerpts obscures any sense of his growth in reflection. We cannot know what Thomas would have said about marriage in the *Summa* if he had completed it, but the rest of his masterwork shows that he was not likely to repeat what he had written almost twenty years earlier.

Fortunately, there are other texts by Thomas on marriage between the *Scriptum* and the *Summa*. Witte uses them well. An obvious alternative is the (so-called) *Summa against the Gentiles*, which Thomas finished before experimenting with the shape of the *Summa of Theology*. The works differ significantly in structure and scope. *Against the Gentiles* is not offered as a well-rounded curriculum

of theology. It is an effort to see how far philosophy can reach towards revelation, especially in ethics. The topic of marriage appears twice. First, it helps to mark the boundary at which philosophical ethics must stop (book 3, chapters 122–26). Then, more briefly, marriage is announced, in a final summary of Christian doctrine, as one of the sacraments (book 4, chapter 78).[1] Thomas's structure displays the double meaning of marriage that Witte rightly emphasizes: marriage is both a disposition for the preservation of created nature and a gift of grace. I use the construction *both . . . and* because Thomas sometimes uses it. It is important not to reduce that conjunction to either an automatic sequence or a mere enumeration. The juxtaposition must retain both its tension and its surprise, which is that of reason's encounter with grace.

The boundary appears in several ways. For example, Thomas is quite clear that arguments about human reproduction from nature must be made generally and for the most part. Their rightness refers to general conditions for the species, not to the peculiarities of individuals (book 3, chapter 122, number 7). This allows for large-scale historical exceptions. If Thomas argues for the natural indissolubility of marriage from child-rearing, he obviously concedes that certain groups were allowed divorce to avoid a greater evil: God's own legislation for ancient Israel permits bills of divorce to prevent uxoricide (book 3, chapter 123, number 10). Again, the boundary of philosophical ethics for marriage appears in some asymmetries of argument. Thomas argues that polyandrous relationships violate a fundamental desire in human procreation: male certainty about one's offspring. But the same argument will not work against polygyny: in a well-policed harem, the ruler may have reasonable certainty of his paternity. So, another argument is needed—namely, an appeal to the man's sense of equity, friendship, and love. This asymmetry allows Thomas to present an attractive philosophical account of life-long marriage as "the greatest friendship" expressed through "the partnership of the whole of domestic intimacy" (*totius domesticae conversationis consortium*, book 3, chapter 123, number 6). Even at its limit, philosophy can offer persuasive accounts of its view on human goods. Indeed, Thomas's definition of marriage is not centered on intercourse, impregnation, or even the basic needs of the defenseless child. It is the "daily society" (*diuturna societas*) of the spouses who together offer "instruction as regards the [new] soul" (book 3, chapter 122, number 8; all translations of Aquinas are my own). Here, as in Witte's account of the Protestant manualists, parents run the first school.

If Thomas's antiquated biology or complacent misogyny should trouble us, we might still appreciate what else there is in his philosophical account. But the natural account is not, of course, Thomas's last. He distinguishes at many points a natural view of marriage from a scriptural or theological one—and all of them from the varying arrangements of civil law. What is more important, Thomas offers a succession of explanatory frames for the pedagogy of natural law. Grace completes nature, the old Thomist adage insists—but it does so within an unfolding history of ethical and political education. The interactions of marriage as an *officium naturae* with marriage as a sacrament of the new law are never static so long as history runs its course.[2] Much less are they

1 Thomas's double treatment of marriage in *Against the Gentiles* converges with Witte's view of marriage as a "multidimensional institution" that can be pictured as a sphere or globe (for example, 186). Thomas views philosophy as the entire hierarchy of knowledge below the level of revelation. It is intrinsically interdisciplinary.

2 Thomas's phrase, *in officium naturae*, resists translation. *Officium* was a term in Roman ethics that educated Christian writers adapted quickly (most obviously in Ambrose's *De officiis ministrorum*, a response to Cicero's *De officiis*). *Officium* is sometimes translated as *duty*, but it is certainly not duty in a Kantian sense. It is more like a charge, role, or capacity with attendant obligations. The phrase *officium naturae* and its variants do occur in early writings, including the *Institutes* of Justinian (book 2, title 13, paragraph 5). Still, the phrase gains wide use in discussions of marriage only in the thirteenth century—in the writings of Albert the Great and his sometime

accomplished in our history once for all. How could they be, since they must accommodate the conditions of generations of human learners?

One of the most compelling stories Thomas tells about the pedagogy of natural law comes in the portion of the *Summa* he did complete. Fortunately, and not unexpectedly, it mentions marriage. At the risk of rehearsing the obvious, let me recall a few features of Thomas's account. In *Summa of Theology* part 2-1, question 90, Thomas builds a simplified definition of law in four steps: "law is an ordering (*ordinatio*) by reason for the common good, by the one who has care of the community, [which has been] promulgated." This definition is modeled on human law because that kind of law is plainest to human readers. Thomas will show soon enough how deeply *analogical* the term "law" is, since the last form of law he considers—the New Law of the Gospel—often exceeds the determinations of reason and is "promulgated" by grace poured out over human hearts. In sum, each one of the four elements of human law with which Thomas begins will be significantly altered by the time he reaches the end of the extended analogy. If civil lawyers have their meanings of law, theologians have others.

A reader need not wait on evangelical law to feel the term's analogical stretch. Having enunciated the four elements in a human law, Thomas immediately reaches beyond them to three other laws, very different in kind. First in cosmic history is eternal law, God's "pattern" for the creation and unfolding of the cosmos—which is no other than an aspect of God's being. As soon as God created human beings, a natural law appeared for them, in them. This did not resemble a "law of nature" in the modern scientific sense. Neither did it mirror human statute or code. Our natural law is our share or "participation" in the divine pattern according to which we are made. It can be articulated through self-reflection, but it is first experienced as fixed direction or purpose. Natural law is an "ordering of reason" in the radical sense: it gives order to practical reason, not by enunciating quasi-geometric propositions, but by fixing goals or ends.

Thomas goes on to argue, importantly for any consideration of marriage, that natural law was never meant to be a sufficient guide for human action.[3] It evidently could not be once human beings rejected the divine plan by sinning. Humans needed human laws to specify and apply the dimming impulses of natural law. Different human communities made different laws—which is fine, Thomas judges, so long as their legislation meets the basic requirements of all law. But human legislation was still insufficient. Moved by the accumulating catastrophe of human history, God chose to reveal saving lessons as a divine law. Some of these were reminders of what was already and originally in natural law. (For example, Thomas considers most of the Ten Commandments to be no more than rearticulations of natural law.) But divine law was never meant to codify all of the "precepts" or teachings of natural law about how to live a human life. Thomas regards that enumeration as impossible and unhelpful. The most he will do is to divide natural law precepts into three levels, which correspond roughly to what humans share with other creatures, what we share with other animals, and what we share with other rational creatures. Thomas mentions human reproduction and the raising of children as cardinal examples of what we share with other animals (*Summa of Theology* part 2-1, question 94, article 2 corpus). That is one reason why Thomas will frequently return to natural law when discussing sexual sins, as Witte shows.[4]

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student, Thomas Aquinas. Thomas inflects it further by writing most often *in officium naturae*. Marriage serves as an *officium* to or for nature.

3 Compare Witte: "Even the most robust natural law theorists have always understood that the natural configuration of the marital family standing alone is unstable" (197).

4 Of course, Thomas has already argued that the education required for human children differs in many ways from that needed by animals—precisely because they are rational animals or incarnate intelligences. Human child-rearing cannot be *reduced* to animal resemblances.

Considered abstractly or generally, natural law is the same for all human beings. But this is, as Witte repeats, a "wobbly foundation" (8) for moral reasoning or social arrangements. It is wobbly not because of a defect in natural law, but because of our abstractive intelligence and our deteriorating moral sight. There are many other sources of error, both personal and communal. Even human beings who share an understanding of the principles of natural law will disagree in applying them. The inferences from articulated principles to concrete cases are long and subtle. Whatever natural law means in the *Summa*, it does not mean universal agreement on moral verdicts.

There is more to be said about Thomas; more still, about his interpreters. To my mind, early modern Thomists begin to change natural law in fundamental ways. Some do so explicitly. For example, Francisco Suárez's rewriting of Thomas on natural law in *De legibus*, book 2, chapters 5 and 6, transmutes it into a positive, divine regulation with explicit obligations and penalties. Even more faithful readers of Thomas begin to shift the frames for understanding natural law and so its functions in jurisprudence. In Francisco de Vitoria's *De indis*, to take another example, some passages identify natural law with the law of peoples (*jus gentium*) as enacted by a majority of nations after the Flood (question 3, article 1). Natural law has now become an international covenant, enforceable against dissenting minorities. Any history of natural reasoning about marriage needs to ask first and last about these shifting meanings of natural law.

For me, this reminder is not mainly or merely a question of historical interpretation. It is an acute pedagogical challenge in our present. In recent years, I have taught a large undergraduate course on sexual ethics. Originally, I offered it on the obvious hunch that curiosity about sex might lure students to consider ethics. I assumed, wrongly, that most of my students would be congenial hedonists who wanted as much pleasure as possible without hurting themselves or others—at least, not too much. So I took my task to be persuading them to integrate their sexual lives into a broader view of human goods. It took me a semester to realize that the problem was something like the reverse. Their sexual activity—as much of it as they allowed themselves—was already too much a part of their larger view: life controlled by imperatives of risk-management and anxieties over violating some subsection of an unknown code of regulations that would bring scandalous punishment. They put their trust not in pleasure, but in ever more elaborate procedural safeguards. When I would ask for an ethical judgment, they would reply with a calculus of competing rules.

In short, my pedagogical task was not to exhort them to rein in their pleasures. It was to persuade them that there had once been ways of talking about how to shape human lives in terms of persistently desired happiness rather than fluctuating risks and regulations. Before we could talk in the class about sex inside or outside of marriage, we had to relearn how to talk about shaping human lives according to human goods discoverable by reason and felt as deepest yearning. Instead of using sex to lure them into ethics, I used the possibility of something like a natural law ethics in Thomas's sense to restore some sense of sex as a fully human goal.

My students did not lose the notion of natural law on their own. Nor, I would argue, were they misled only by recent mutations of the late-capitalist nation-state or the ever more perfect distractions of "media." The cultural loss of a persuasive pedagogy of natural law has older roots—ones that I have barely hinted at in pointing to samples of early modern Thomism. Still, my aim is not to tell history—much less to raise up a nostalgic lament, which is usually inaccurate and always tedious. In the face of Witte's remarkable rereading and prodigious reconstruction, I want to ask whether there might still be pedagogical possibilities in older theological meanings of law—meanings we eclipse by assuming that the notion of law or its analogical range has remained stable across the centuries of Christendom.