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Natural Law after Aquinas

Riccardo Saccenti

In a famous passage of his *De Vulgari Eloquentia* (I, XVIII, 5), Dante discusses the existence of a unified tribunal (*curia*) in Italy and explains that its elements “have been brought together by the gracious light of reason” (*membra huius gratioso lumine rationis unita sunt*).¹ This phrase has been the subject of several discussions among Dante scholars, particularly because of its reference to the ‘light of reason’.² Back in 1951, Alessandro Passerin d’Entreves noted in a celebrated essay that such a lemma has a clear ‘Thomist’ origin. It echoes the idea of the ‘light of natural reason’ (*lumen rationis naturalis*) which is at the basis of Aquinas’s doctrine of natural

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Dante certainly had a direct knowledge of the writings of Aquinas and it is possible that the aforementioned passage from the *De Vulgari Eloquentia* is referring to the Dominican master’s discussion of natural law in the *Summa theologiae*. Moreover, Dante was probably aware of the doctrinal debate on natural law during the second half of the 13th century, a debate in which Aquinas’s position was just one of various accounts and was called into question by some important theologians.

After all, in the early 1270s, when Aquinas outlines his idea of natural law, other theologians discuss natural law in their teaching and in their writings, cite the achievements of legal discourse, and of canon law in particular, along with a new reading of the theological and philosophical sources. Moreover, natural law was seen not just as a moral category. The development of interest in physics and metaphysics had brought into play a more complex understanding of the meaning the terms ‘nature’ and ‘law’.

The purpose of this contribution is to offer a survey of how natural law is understood in the writings of two major theologians from the second half of the thirteenth century, whose work deals directly dealt with the development and the reception of Aquinas’s thought. Peter of Tarentaise was regent master in Paris in the late 1260s, when Aquinas started his second Parisian

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3 Passerin D'Entréves, *Natural Law*, 106. For the Thomistic references see Aquinas, *Super Sententiarum* II, d. 42, q. 1, a. 4, ad 3; III, d. 14, q. 1, a. 3, qc. 1, co.; *De regno* I, 1; *Summa Theologiae*, I-II, q. 19, a. 4, co.; q. 91, a. 2, co.; q. 109, a. 1, co.; II-II, q. 171, a. 5, arg. 3; q. 173, a. 4, arg. 2.

period of teaching, and thus his account of natural law is contemporaneous with Aquinas’s composition of the I-IIae of the *Summa theologiae*. Matthew of Aquasparta, whose academic career dates from the decade after the death of both Aquinas and Peter of Tarentaise, develops his idea of natural law in the early 1280s and mainly in response to Aquinas’s doctrine.

Through an examination of Peter of Tarentaise’s and Matthew of Aquasparta’s texts, this contribution will consider some specific issues connected with the idea of natural law, namely: the meaning of key terms, such as *natura* and *naturalis*, the relation between natural law and rational creatures, and the moral contents of natural law. This allows us: to reconsider theological accounts of natural law from the second half of the thirteenth century; to see how there is a development with the intellectual and doctrinal background of the discussion over natural law; build a picture of the plural doctrinal framework of the debate on this issue.

1. Readings of Aquinas’s Doctrine on Natural Law and the Text of Peter of Tarentaise and Matthew of Aquasparta

In his recent volume devoted to the idea of permissive natural law, Brian Tierney offers a reconstruction of the doctrinal tradition of one specific understanding of natural law, that ranges

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from Gratian to Kant. The American scholar suggests that the idea that natural law is not just a prohibition of wrongdoing, but rather a permission “to do good”, crosses the centuries and the disciplines. Tierney’s volume develops research whose previous stages are set out in relevant studies, such as *The Idea of Natural Rights*, which stresses how twelfth-century legal discourse on natural law forges the lexicon that has been used, since the end of the thirteenth century, by authors such as Henry of Ghent and William of Ockham, later on, in the age of “Conciliarism”, and by the major sixteenth- and seventeenth-century philosophers.

In his studies, Tierney questions the role of Thomas Aquinas in the development of the idea of natural law and, in particular, his importance in connecting the notions of *lex naturalis* and *ius naturale*, ‘law’ and ‘right’. According to one line of scholarship, which goes back to George de Lagarde and Michel Villey, Aquinas’s analysis of natural law, especially that of the I-IIa of his *Summa theologiae*, represents the most complete and consistent account of this issue produced by the “scholastic culture”. De Lagarde’s and Villey’s conclusion is based on a specific idea of the

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development of medieval thought: that it reaches its zenith in the work of Aquinas, which is presented as a veritable theological and philosophical system. Accordingly, the *Summa theologiae* offers the most complete and detailed presentation of the “Christian philosophy” (*philosophia christiana*) which characterises the whole of medieval thought. More recently, Michel Bastit has reproposed this interpretation of Aquinas’s account of natural law, and John Finnis has adopted it in order to suggest that the content of the *Summa theologiae* is still crucial for the development of a philosophical discourse on natural law and natural rights.¹⁰

Tierney’s research, on the other hand, focus on reconstructing the origins of the lexicon concerning ‘natural law’. He notes how it crosses the disciplinary borders of canon and civil law and of theology. More specifically, his account of the history of the idea of natural law stresses the crucial role of twelfth-century canon lawyers and evidences how William of Ockham is crucial in the redefinition of natural law and in the transmission of this idea to the subsequent thinkers and ages. The American scholar argues that the key figures in the development of the idea of natural law, including the twelfth-century canonists and Ockham, develop their doctrinal discourse by addressing specific, contingent problems and circumstances, such as the foundations of canon law and papal authority, or John XXII’s abuses of papal power.

Therefore, two different views emerge within research on medieval natural law. While de Lagarde, Villey, and Bastit argue that Aquinas has offered the most complete medieval scholastic


account of the issue, Tierney claims that a more accurate historical reconstruction reveals a plurality of ideas and rival doctrinal traditions. Each of these historiographic traditions contributes to shedding light some aspects of the development of the idea of natural law in the twelfth and thirteenth centuries. On the one hand, it is clear that Aquinas has a crucial place in the debate on natural law, since his own account has specific features that render it original with regard to the theological discourse of the time. On the other hand, the discussion of *lex naturalis* takes place between several disciplines. Consequently, to understand its development, it is necessary to look at history of: both canon and civil law; theology; and the medieval interpretation of philosophical sources.

In developing their discourse on natural law, medieval authors deal with a series of different *auctoritates*, including texts from: Roman civil lawyers, particularly Ulpian and Gaius, handed down in Justinian’s collection of laws; the so-called sancti (i.e. the Fathers of the Church), especially Augustine and Isidore of Seville; Cicero’s philosophical works; and, from the middle of the thirteenth century on, Aristotle’s *Nicomachean Ethics*, Book Five. These sources give them access to multiple doctrinal issues: the Stoic idea of natural law, the relation between nature and grace, the connection between divine law and human law, and the foundation of a political and ecclesial legal order.

The use and understanding of this multiple legal, philosophical, and patristic heritage within a common doctrinal framework rests on the exegesis of a specific passage of scripture: Romans 2:14-15.

“For it is not the hearers of the law who are just before God, but the doers of the law that shall be justified. For when the Gentiles, who have not the law, do by nature those things that are of the law; these having not the law are a law to themselves”.
The *Glossa ordinaria*, which dates back to the middle of the twelfth century, summarizes the approach of medieval thinkers to natural law.

*For when the Gentiles.* In fact, he [Paul] said that the gentile is damned for doing evil and saved for doing good. But if, as it were, he has no law and no knowledge of good and evil, it would seem that neither should be imputed to him. On the contrary, the Apostle states that the Gentile does have the natural law even though he lacks the written law, for he knows and is aware of good and evil. Thus, we are to believe that his acts are good or evil and that he is saved or damned deservedly. His doing good and being saved occur only thanks to the grace and faith that renew the natural image of God in man, made sluggish by longstanding vice. Without this renewal he would do evil and be damned, accused of his unnatural vices by his own conscience and, in any case, by the grace that heals what opposes nature. True, the desire for worldly things does not destroy God’s image in the human soul such that nothing remains of its attributes; the image of God impressed in the human soul at its creation is not completely lost. But this desire is not removed by nature without grace; rather, it means that the action of grace requires nature. And, because the inner man is renewed with this grace, the law of justice is rewritten, deleting the guilt of sin.\(^\text{11}\)

Once we look at the discussion on natural law against this broader and more complex cultural background, we can no longer read Aquinas as if he worked in some sort of doctrinal isolation

\(^{11}\) *Glossa Ordinaria*, IV: 1059vb
but need to see his own account as just one of the various positions in the debate on this issue. To do so, we need to evaluate the contribution of several authors. In the decades in which the Dominican master develops his own ideas and doctrines, composing first of all his *Commentary on the Sentences* and then the Ia-IIae of his *Summa theologiae*, several theologians dealt with the notion of ‘law’ and its multiple meanings, including natural law. This is the case of Peter of Tarentaise, co-friar of Aquinas and regent master of theology at Paris in 1258-60 and 1267-9, before starting an ecclesiastical career which would lead him to the cardinalate in 1273, and to the pontificate in 1276 under the name of Innocent V.\(^{12}\)

Peter of Tarentaise’s discussion on natural law falls between Aquinas’s *Commentary on the Sentences* and the *Summa theologiae*. It thereby acts as a sort of critical spokesman to Aquinas. The Franciscan master and cardinal Matthew of Aquasparta, on the other hand, composes his own *Quaestiones de legibus* in 1283-1284.\(^{13}\) At that time, Matthew had already taught theology in Paris as *magister regens* (1276-1279) and in Bologna as *lector* at the local Franciscan *studium* (1281). In 1283 he was aggregated to the *studium sacri palatii*: the *studium* attached to the Papal curia. Matthew develops an interest in natural law against quite a different cultural background with respect to Peter of Tarentaise: Etienne Tempier’s condemnation on 7 March 1277 of 219 heterodox propositions, including several Thomistic ideas. The condemnation raised questions

\(^{12}\) Kaeppeli, *Scriptores Ordinis Praedicatorum*, 264. In the following pages Peter of Tarentasia’s text is quoted from Vatican City, Biblioteca Apostolica Vaticana, MS lat. Borgh. 139, fols. 104v-134v.

about the relation between Christian faith and philosophy, particularly Aristotelianism, on key metaphysical and ethical issues.

2. *Natura and Naturalis*

The canon lawyers that lectured on Gratian’s *Decretum* from the middle of the twelfth century on, offered increasingly detailed analyses of the semantic multiplicity of the key word *natura*, which is crucial to highlighting the value and meaning of the lemmata *lex naturalis* and *ius naturale*.¹⁴ Huguccio of Pisa’s *Summa in Decretum* offers a significant example of this analytical approach to the terms *natura* and *naturalis* and examines the impact that each meaning of the terms has on one’s understanding of natural law. Distinguishing the different values of *natura* became part of the discussion on natural law among the theologians too. They discuss it in their biblical commentaries as well as in a series of disputed questions written between the end of the twelfth and the beginning of the thirteenth century. It is within this theological debate, particularly in the Parisian intellectual milieu, that this approach to natural law became more structured and started to be considered as part of a more general and comprehensive study of the idea of ‘law’ and of the relations between the genres of laws.

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The *Summa fratris Alexandri*, composed in the 1240s, combines materials from the first Franciscan masters of theology active at Paris and offers a first, paradigmatic testimony to this new theological perspective on the issue of law. Book III contains a long treaty *De legibus*. It examines the different kinds of law, starting from the ‘eternal law’ and moving on to ‘natural law’, the ‘law of Moses’ and the ‘law of the Gospel’.¹⁵ The Franciscan John of La Rochelle is the first to elaborate such a scheme for the analysis of the laws in his *Quaestiones de legibus et praeceptis*. Its contents were fully assimilated in the *Summa fratris Alexandri*.¹⁶ Through this first great theological synthesis, all the authors of the second half of the thirteenth century distinguish,

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in the following order, between *lex aeterna, lex naturalis, lex Mosayca* and *lex Evangelica.* This classification is crucial not only in the text of Aquinas, but also in the *quaestiones disputatae* on law of both Peter of Tarentaise and Matthew of Aquasparta.¹⁷

According to this scheme, natural law is subordinated to the eternal law and prior to human law. Peter of Tarentaise explains this as follows.

“A rule which is posited and not dropped is infallible, though not in and of itself. Hence, another rule is required: one which is infallible in and of itself, which is neither posited nor dropped, but is eternal. Therefore, one can distinguish a threefold law or rule of how to act: a temporary one, which is posited and dropped, namely, human positive law; a second, perpetual

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one, which is posited and not dropped, to wit, the natural law co-created with the rational mind; a third, eternal one, which is neither posited nor dropped, and is the divine law”.  

According to this classification, natural law is a medium between the eternal law and human positive law: it is a means through which human beings are able to shape their positive law on the contents of the eternal law.

Peter of Tarentaise’s account of natural law moves from the assumption that this issue pertains properly to the moral field and thus supposes that the words *natura* and *naturalis* refer to human beings as rational creatures. In doing so, the Dominican master agrees with Aquinas that ‘natural law’ is proper to rational beings. Quoting John of Damascus’ *De fide orthodoxa*, Peter distinguishes between the different powers of the soul. On the one hand, there are the irrational powers, which do not need any kind of law to accomplish their role since they act deterministically. On the other hand, the rational powers of the soul are free and their action is not

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18 Petrus de Tarentasia, *Quaestiones de legibus*, q. 1 (V 105ra): “regula que ponitur et non deponitur quamuis sit infallibilis non tamen per se; ergo preexigitur alia per se infallibilis regula que nec ponitur nec deponitur sed est eterna. Iuxta hec distinguitur triplex agendorum lex siue regula, una temporanea que ponitur et deponitur, scilicet lex humana positiua, altera perpetua que ponitur sed non deponitur ut lex naturalis menti rationali concreata, tertia eterna que nec ponitur deponitur est lex diuina.”
determined. This second kind of power requires a sort of guide that shows its proper objective and action. According to Peter of Tarentaise, natural law is such a guide.

Addressing the radical contestation of the idea of nature which follows Tempier’s censure, Matthew of Aquasparta carefully discusses the different meanings of *natura* and *naturalis*, and, accordingly, the different values of ‘natural law’.

From a general point of view, the Franciscan theologian considers a specific sense of the term ‘nature’: that which belongs to the physical order. With regard to the human soul, ‘nature’, in this sense, indicates something different from reason and will: it refers to the nutritive and sensitive souls. Accordingly, ‘natural’ indicates whatever originates in natural principles. This notion equates natural law with the ‘physical law’ proper to each nature: i.e. the rule according to which a thing accomplishes deterministically its proper action and objectives. In the case of the nutritive and the sensitive souls, the natural law is the set of natural desires which moves them and which they have to satisfy.

Matthew introduces a second, broader meaning of ‘nature’, one which encompasses both corporeal and spiritual realities, rational and irrational natures. According to this conception,

19 *Ibidem* q. 2 (V 106va): “Secundum Damascenum, libro II, capitulo XII, duplex est potentia in anima: quedam irrationalis que agit ex necessitate, quedam rationalis que ex libertate. Prima determinata est ad actum, vnde non indiget altera inclinatione uel determinante quia non potest deuiare; secunda indeterminata, vnde quia facile deuiare potest indiget altero determinante.”

20 See Mattheus ab Aquasparta, *Quaestiones de legibus*, q. 2, 459-460.

21 *Ibidem*, 460: “Accipi potest ‘natura’ vel ‘naturale’ magis large, prout quaelibet creatura cuiuscumque gradus natura quaedam est; et dividimus naturam in corporalem et spiritualem, irrationalem et rationalem sive intellectualem, et sic quaeimus hic de lege naturali.”
‘natural’ means that which is added to nature: a quality which falls outside the “definition” of a thing. This entails, the Franciscan master notes, that every rational creature, whether an angel and or a human, needs to have some natural law posited or impressed upon it by nature. Such a law is: “the principle, the rule, the norm of the practical intellect that directs the will to its ultimate end and, in accord with what is required to achieve that end, prescribes what one should desire or abstain from, what one should do, avoid, or refuse.”

3. Natural law and creaturae rationales

Both Peter of Tarentaise and Matthew of Aquasparta, each with a different approach, single out the moral sense of ‘natural law’ and identify it with the rule of the practical intellect, where ‘intellect’ designates the rational power of human soul. Their manner of grounding natural law in the rational powers of the soul has its roots in a specific conception of the structure of human intellect. This conception emerges in the first half of the thirteenth century: in the early discussions on the difference between the speculative and the practical intellect and the metaphysical implications of this distinction. Peter of Tarentaise makes specific reference to some of the crucial sources, such as Augustine and Boethius, of the medieval theory of the so-

22 Ibidem, 460-461: “quaedam ratio, regula vel dictamen practici intellectus in ultimum finem dirigens voluntatem, et secundum exigentiam finis dictans quid appetendum quidve fugiendum, quid agendum quidve cavendum vel declinandum.”
called “transcendentals”, i.e. the idea that the notions of good, true, one, and being are interchangeable and refer to one and the same reality.\(^\text{23}\)

More specifically, the distinction between the true and the good designates two different perspectives, a metaphysical one and a moral one, from which the human intellect considers one and the same object, namely, God. Accordingly, as Peter of Tarentaise explains, the human intellect takes on two forms. On the one hand, there is the speculative intellect which regards stands on the enquiry of truth (notio veri). On the other hand, there is the practical intellect, which acts by reason of the love of good (amor boni). The Dominican master explains that this distinction coincides perfectly with Aristotle’s *Nicomachean Ethics*, where the distinction between the speculative and practical fields is presented as specific of the rational soul.\(^\text{24}\)

Moreover, since the speculative intellect needs a principle which guides it toward the

\(^{23}\) Petrus de Tarentasia, *Quaestiones de legibus* q. 2 (V 106va-vb): “Dicit Boethius quod naturaliter nobis inserta sunt notio ueri et amor boni propter premium. Dicit Augustinus, libro X De Trinitate, capitolo I, quod nisi breuiter impressam omnem disciplinarum rationem habemus ad nullam earum tanto dicendi studio flageremus. Propter secundum dicit idem, libro De Trinitate VIII, capitolo I, quod nisi haberemus impressam nobis formam iusticie nullus qui non esset iustus appeteret iustus esse. Intellectus duplex est in nobis uel unus dupliciter consideratus qui uterque errare potest, scilicet speculatiuus cuius finis est ueritas et practicus cuius finis est opus.”

\(^{24}\) Ibidem (V 106vb): “Secundum Philosophum, idest VII Ethicorum, ideo intellectui speculatiue inserta est notio principiorum speculatiorum sicut quod totum est maius sua parte intellectui uero practico inserta est notio principiorum operatiorum ut nemini faciendam esse iniuriam.”
understanding of truth, so too does the practical intellect require a principle which shows it how to act. Natural law is the knowledge which concerns the supreme principles of moral action and belongs to the practical intellect.²⁵

Matthew of Aquasparta also assumes that the same distinction between speculative intellect and practical intellect must be made and that the aforementioned description of the difference between speculative knowledge and practical knowledge is consistent. Furthermore, he agrees that we need to look at the practical intellect to gain an appropriate understanding of natural law. Quoting Book III of Averroes’s Commentary on De anima, the Franciscan theologian notes that, since the speculative intellect acts on the basis of self-evident principles, the practical intellect also acts according to supreme moral principles which are self-evident and summed up in natural law.²⁶ As Matthew of Aquasparta explains, rational creatures cannot act properly unless their free will is guided by knowledge of the good to desire and the evil to avoid. This knowledge is natural

²⁵ *Ibidem* (V 106vb): “Dico ergo naturalem legem habitum esse impressum naturaliter in anima in parte eius cognitiua non affectiua, etiam intellectu practico non speculatiuo.”

²⁶ Matthaeus ab Aquasparta, *Quaestiones de legibus*, q. 2, 463: “De huiusmodi principiis, licet dicat Commentator, super III *De anima*, quod nescit unde in mentem venerint, tamen certum nobis est nonnisi ab aeterna lege vel veritate [illa] nobis esse impressa. Quod si non essent talia principia, per se nota, sed omnia probarentur, nec probarentur in scientia propria, quia nulla scientia probat sua principia, esset abire in infinitum in scientiis, immo, ut praedictum est, nulla esset scientia.”
Therefore, natural law is the source of practical knowledge: the practical intellect receives from natural law a knowledge of the basic moral rules and, thanks to this understanding of the moral principles, it is able to establish rules by which we should desire and will.

4. Notio, Regula and Lex

This examination of the theological reflection on natural law during the second half of the thirteenth century has evidenced that there is some agreement on the idea that natural law represents the basic principle of moral knowledge of the practical intellect. Although the proper sense of ‘nature’ and ‘natural’ pertains to physics, there is a more specific sense of these terms which indicates rational creatures and their psychological features, namely, their capacity to know the difference between good and evil, and to act accordingly. Peter of Tarentaise explains that natural law is both the enquiry of the supreme moral principles (notio principiorum) and the major rule of human actions (regula operandorum), and that it thereby combines both a cognitive

27 Matthaeus ab Aquasparta, Quaestiones de legibus, q. 2, 465: “Rursus, creatura rationalis, hoc ipso quod rationalis, ex parte voluntatis non tantum est mota, immo et movens, alias opera sua non essent meritoria sicut nec instrumenti. Ergo similiter ex parte rationis sive intellectus practici vel operativi non tantum est regulata, immo est regulans, ita quod regulatur ex se ipso in cognoscendo quid agendum quidve cavendum et regulat voluntatem in operando vel appetendo. Illud autem quo intellectus practicus regulatur in cognoscendo et regulat appetitum vel voluntatem, legem dicimus naturalem.”
aspect (i.e. the knowledge of the good to pursue and the evil to avoid), and an active element (i.e. being the rule according to which the same practical intellect determines the action of the will).\textsuperscript{28}

Matthew of Aquasparta notes that natural law is basically a knowledge of the eternal law that allows rational beings to not only guide their moral action but also to orient their will and desire. Such moral knowledge is proper to the highest part of rational soul and this ‘enquiry’ (\textit{notio}) of the contents and prescriptions of eternal law, which provides practical intellect with a rule, is ‘impressed’ at the moment of its creation. Using a passage from Augustine’s \textit{De doctrina christiana}, he explains that the ‘golden rule’, taken from Tobit 4:16 and from Matthew 7:12, i.e. “You never do to another what you would hate to have done to you, all things therefore whatsoever you would that men should do to you, do you also to them”, states the content of natural law and summarizes a multiple series of precepts whose value is immutable and which are indelibly impressed upon the mind of each individual rational creature.\textsuperscript{29} Thus, honouring God,

\begin{quotation}
\textsuperscript{28} Petrus de Tarentasia, \textit{Quaestiones de legibus} q. 2 (\textit{V} 106vb): “dicit Glossa Hebreorum I: ‘super illud qui cum sit splendor quod omni anime indidit Deus seminaria intellectus’, scilicet quo ad speculatiua, et sapientie, scilicet quo ad operabile. Hec autem notio principiorum uidetur uiniuersalium cum sit regula operandorum, lex naturalis appellatur. Vnde lex naturalis est habitus cognitiuus anime naturaliter impressus.”

\textsuperscript{29} Matthaeus ab Aquasparta, \textit{Quaestiones de legibus} q. 2, 461: “Et haec quidem lex naturalis, quamvis unum habeat generale praeceptum, ut ‘quod tibi non vis fieri, alii ne feceris, et alii facias quod tibi vis fieri’, secundum Augustinum, III libro \textit{De doctrina christiana}, tamen plura continet alia praecepta, quae derivantur ab isto, ut Deum esse colendum, honeste esse vivendum, parentes esse honorandos, proximis esse subveninendum in necessitate, nulli offensam vel injuriam irrogandam; quae sunt regulae quaedam immutabiles, indeelibiliter scriptae in mente cuiuslibet.”
\end{quotation}
living honestly, respecting one’s parents, helping one’s neighbour, not offending or insulting anyone, are all precepts of natural law that are impressed upon the intellect, which evil and sin cannot delete and are common to all humankind.

This way of understanding natural law, namely, as the highest form of practical knowledge of rational creatures and, more specifically, as an ‘impressed’ intellectual knowledge of the highest moral principle, makes its questionable to define it with regard to the powers of the soul and to reason in particular. ‘Natural’ can designate part of the nature of a creature. According to the aforementioned conception, however, natural law is not ‘natural’ in this sense. It is not part of the very nature of a rational creature. Rather, this notio is impressed on the intellect with the creation of each rational being. It does not belong to the specific ‘definition’ of the rational creature, whether angel or human beings. Accordingly, Peter of Tarentaise notes the closeness of this notion of natural law to Aristotle’s classification of virtues as habits. In the Categories, as well as in Nichomachean Ethics, the Philosopher explains that virtue is neither a power of the soul, an element proper of the nature of the soul, nor a passion, something which is passively received. Rather, virtue, like science, is a habit: a moral or intellectual quality that human beings acquire through exercise, to the point of becoming stable, as a sort of second nature. According to the master’s reasoning, natural law is a habit because rational beings acquire it with the impression of eternal law in their mind and, more specifically, in the cognitive part devoted to moral knowledge, namely, the practical intellect.30

“On this, the Gloss on Hebrews 1 says, ‘the one who is the splendor which God impresses upon every soul, namely, seedbeds of understanding for the realm of contemplation, and

30 Petrus de Tarentasia, Quaestiones de legibus q. 2 (V 106vb).
wisdom for the realm of action’. However, this appears to be a knowledge of universal principles since it is the rule of the works that we should perform. It is called natural law.

Natural law, therefore, is a naturally impressed cognitive *habitus* of the soul. Two things are required for a complete cognitive *habitus*: the species of a knowable thing and the single reality that is known distinctly through them. These two correspond to the act of understanding just as color and light do to the act of seeing. The species of principles are not, in fact, innate. As Aristotle notes, the soul of the creature is like a blank slate. Rather, it is through its own inborn light that the soul, once it has taken in the species of unconnected terms, sees immediately the truth of the connection of principles. For example, once it has taken in the species of the whole, the part, and the greater, and is then met with the proposition, ‘Every whole is greater than its part’, it assents to it immediately and without any further reflection. This is because intellectual principles of this kind have more truth and intelligibility. As Aristotle notes in *Metaphysics* I, they are the cause of the truth and intelligibility of other propositions that stand to them in the manner of conclusions. Hence, the soul assents to them immediately, due to their greater likeness to its own inborn intelligible light, and not as it would to conclusions. Due to its readiness to understand them, they are not called conclusions but principles that are innate to us.

Hence, Augustine says in *De Trinitate* XII, 6 that the by the natural order the mind is joined to whatever is understandable sincem just as the eye sees whatever is sensible in a sensible light, it sees what is understandable in a certain incorporeal light that is *sui generis*. This is the light of the which the Psalm (4:6), ‘the light of your face shines on us, O Lord,’ and although the light of the agent intellect suffices to generate intelligible species, perhaps there has been impressed upon the mind another, habitual light: one which sees immediately the first principles themselves, just as the eye, in addition to the exterior light by which visible species
are generated, has some kind of light within its very nature. I claim, therefore, that this natural light is a *habitus* that is naturally impressed upon the cognitive rather than the affective part of the soul, indeed upon the practical rather than the speculative intellect.”

In his *Summa theologiae*, Thomas Aquinas offers a different conception of natural law and its relation to the powers of the soul and to reason in particular. It is well known that Aquinas defines natural law as the rational creature’s participation in the eternal law (*participatio legis aeternae in racionali creatura*, I-II, q. 91, a. 2). Using the idea of ‘participation’, the Dominican master suggests that natural law is not something that rational creatures receive but, on the contrary, a product of their reason. *Lex naturalis* means the knowledge that rational creatures have of the eternal law. This definition certainly calls attention to the basic cognitive character of natural law, but it also stresses that this moral knowledge is ‘natural’ because it is proper to the practical intellect as a power of the soul. In a specific and strict sense, natural law is a statement of practical intellect, “Do good and avoid evil,” which describes what to do and not how to do. Accordingly, natural law is not a habit, but a knowledge which the practical intellect naturally produces. It is not something according to which someone acts (*quo quis agit*), but something that one accomplishes (*quod quis agit*).31

According to Aquinas, using Aristotle’s threefold classification of things in the rational soul – powers, passions and habits – is inappropriate when it comes to natural law. In the *Nicomachean Ethics*, such a distinction concerns the status of virtue, but it is not meant to establish a comprehensive classification of all the things present in a rational soul. Aquinas explains that in a

31 Thomas de Aquino, *Summa theologiae* I-II, q. 94, a. 1, co.
soul there are also other things: “For example, certain acts belong to the soul: willing to those willing, and things known to those knowing. And the natural properties of the soul, such as immortality and the like, belong to the soul.” Aquinas believes that natural law is fully proper to reason, not as a habit but as a knowledge produced by reason. This seems to establish a clear distinction between metaphysics and ethics. It treats natural law as a matter which pertains to the practical intellect and attributes to reason the innate capacity to gain a certain understanding of the basic moral principles by itself.

Etienne Tempier’s 1277 censure evinces a completely different perspective. It attempts to reaffirm that ethics, physics, and metaphysics are part of a comprehensive discourse, according to which natural law cannot be correctly defined without a strong metaphysical basis. This is, in fact, the doctrinal assumption upon which Matthew of Aquasparta grounds his own analysis of natural law and which leads him to contest Aquinas’s view that natural law is not a habit. Rather, the Franciscan theologian believes that natural law is a *habitus impressum* or that it is the principle which creates in the soul the habit which supports the activity of the practical intellect. In his view, natural law the rational creature’s capacity to achieve some understanding of the eternal law by itself, but rather it is the result of the impression of the eternal law upon the intellect. This impress of eternal law produces in the rational creature a moral habit capable of guiding the will and the desire towards the good.

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32 Thomas de Aquino, *Summa theologiae* I-II, q. 94, a. 1, ad 1.

33 Matthaeus ab Aquasparta, *Quaestiones de legibus* q. 2, ad 12, 472: “Puto quod lex naturalis vel habitus et proprie vel habitum facit in anima et per ipsum redditur facilis practicus intellectus, ut dicatur habitus talium principiorum.”
Therefore, in line with Matthew’s argument, natural law is something received by rational creatures and which enables them to develop a ‘conscience’ (conscientia): the habit that disposes them to draw practical or operative conclusions. The master notes that this is much more evident in the case of non-Christian thinkers, who have a consciences and, thus, are able to distinguish what to do and what to avoid. This conscience could not be based on written law, since, according to Romans, the gentiles do not have access to the written law of Moses. Therefore, “It is certain that in such men, conscience is not formed on the basis of the principles of the written law, and thus it is necessary that it is formed on the basis of the principles posited in it by nature, as well as on the basis of the immediate, evident, and necessary conclusions that follow therefrom, such as, ‘Do not commit adultery’, which is an act that each religion considers illicit.”

Quoting John of Damascus’ De fide orthodoxa, Matthew explains that “conscience is the law of our intellect,” noting that here, ‘conscience’ means not the habit but the set of supreme moral principles which enable the conscience to be formed. Natural law, in this sense, includes the principles that the intellect receives from God, according to which the moral conscience is formed and enabled to guide the powers of the soul.

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34 Matthaeus ab Aquasparta, Quaestiones de legibus q. 2, 463: “Nulla autem lege scripta existente, sicut in iis qui nulla scripta lege utuntur, ut gentilibus et paganis, conscientia dictat eis hoc faciedum vel non faciendum, et, si fiat vel non fiat, redarguit et remordet. Certum est autem quod non formatur conscientia in illis ex aliquibus principiis legis scriptae; ergo necessarium est quod formetur ex aliquibus principiis naturaliter inditis, sicut sunt quaedam conclusiones quae ex illis principiis immediate, evidenter et necessario consequuntur, ut quod non est adulterandum, quod in omni secta illicitum est.”
5. Moral Life, Cosmos and Habit

This survey of the writings of some major figures from the theological debate on natural law during the second half of the thirteenth century shows that there were multiple cultural perspectives and doctrinal positions. Even if they base themselves on common sources, texts, and doctrines that were already collected and analysed in the twelfth and early thirteenth century, Peter of Tarentaise, Thomas Aquinas, and Matthew of Aquasparta develop quite different positions.

It is clear that there is a significant change in the doctrinal debate between the years in which the two Dominican masters dealt with the issue of natural law (the 1260s and 1270s), and the moment in which Matthew of Aquasparta composes his disputed questions on the laws (the early 1280s). Peter of Tarentaise and Thomas Aquinas focus on the problem of the place that natural law has within the psychology of the human being. Within the structure of the intellect, which is determined by the basic distinction between truth and good and by the different kinds of intellectual activities that follow form this duality, natural law is on the side of the practical intellect. It is the highest moral knowledge, by means of which rational creatures can guide their will in moral action. Where two theologians diverge is over the issue of the status of natural law with respect to the other things present in the rational creatures.

Peter of Tarentaise considers it knowledge ‘impressed’ upon the rational soul in the manner of a habit, Aquinas holds that natural law is not received but produced by reason and is a result of its natural capability to gain a certain understanding of the eternal law by itself.

Matthew of Aquasparta, on the other hand, seems to focus his attention on the search for a more comprehensive metaphysical foundation of moral discourse. Consequently, he tries to reconsider natural law within a more general discussion on ‘law’ as the basic structure of the
metaphysical order of creation. He inherits from his confere, John of la Rochelle, a carefully articulated analysis of law which appears in the *Summa fratris Alexandri* and was written in the early 1240s. From this perspective, Aquinas’s conception of natural law as a product of created reason is insufficient, since it fails to explain how moral discourse is consistent with the more general idea of law as the standard according to which a thing must act to accomplish its own nature. According to the Franciscan theologian, natural law, in a moral sense, is proper to rational creatures but it is received as a habit rather than knowledge produced by one’s own reasoning: natural law is impressed in created rational beings, as a set of supreme moral principles which shapes conscience and thus enables each subject to guide himself, orienting his own will and desire.

Aquinas understands natural law as a practical knowledge which follows from the ‘natural’ capacity of every created reason to understand at least some of the contents of the eternal law. This makes natural law the basis for the construction of a ‘natural’ ethics. Peter of Tarentaise and Matthew of Aquasparta suggest that such a knowledge of the supreme moral principles cannot be an autonomous product of rational creatures but must be ‘received’ from divine grace at the moment of a rational being’s creation and through the ‘impress’ of the eternal law in the highest part of the soul: reason.

In developing their respective positions, Aquinas, Peter of Tarentaise and Matthew of Acquasparta suppose different conceptions of some crucial theological issues: the nature of human beings, created in the image of God; practical intellect’s capacity to know the basic moral principles; and, more broadly, the relation between metaphysics and ethics. For Aquinas, ethics has a proper rational foundation in the nature of the rational created beings: the knowledge of the moral principles as well as the ensuing moral actions are the product of the cognitive activity of the practical intellect, namely, of what Dante, in his *De Vulgari Eloquentia* calls the ‘light of
reason’ (*lumen rationis*). In contrast, firstly Peter of Tarentaise and then Matthew of Acquasparta think that the supreme rules which shape moral life are received from without, are impressed by divine grace onto the created reason, and have the eternal law as their model. Aquinas considers reason, with her universal cognitive capability, as the ultimate warrantor of the correct understanding of the rules of moral life, while Peter and Matthew believe that only compliance with the immutable and eternal precepts of the eternal law, known through an ‘impressed’ natural law, gives certainty about the rightness of one’s moral life.