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Preview Response

VIRTUES / LAW

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In her essay on *The Virtues*, Professor Herdt offers a warm and engaging account of the nature and importance of moral character in Christian ethics. In this short comment, I offer a brief exploration of one of the important observations with which she begins her essay.

Professor Herdt commences by pointing out that the rules or principles that define good conduct require people capable of putting them into practice. Principles, she notes, "must be interpreted in order to be applied, and this requires good judgement". "Without the virtues," she continues, "no moral code, however perfect, can ensure that we act well."

Despite the sense that rule-based systems of morality are somehow opposed to character-based systems of morality, it seems that both rules and character are essential components of ethical behaviour. Thomas Aquinas particularly suggests this in his discussion of the virtue of prudence. Following Aristotle, he affirms that "prudence is right reason applied to action", but he then points out that actions are singular or particular, and that prudence consists in the application of "universal rules to particular cases" (*Summa Theologica* II-II, 47.2 and 47.3). Accordingly, the prudent person must "know both the universal principles of reason, and the singulars about which actions are concerned" (ST II-II, 47.3).

This could be taken to suggest that good actions are simply a matter of following rules, but Aquinas's point is more subtle than this. The particulars to which the universal rules are to be applied are "contingent", "infinite in number" and "contain many combinations of circumstances" (ST II-II, 45.5, 47.3 and 49.7). It follows that particular cases involve factual situations of great complexity and variability, which test the limits of human memory and understanding (ST II-II, 49.1 and 49.2), and which require us to be solicitous, teachable, circumspect and cautious in our practical judgments (ST II-II, 47.9, ST II-II, 49.3, 49.7 and 49.8). As human beings limited in time and place, we find it practically necessary to rely on an understanding of these matters derived from experience, focusing on what is true and right "in the majority of cases" (ST II-II, 49.1).

In many situations, we exercise judgment according to these commonplace “rules of thumb”, but there are also situations in which the common rules are insufficient or inapposite, in which cases we have to judge according to higher and more universal principles (ST II-II, 51.3 and 51.4). Accordingly, while prudence consists in the application of universal rules to particular cases, it requires considerable qualities of character to discern, judge and act rightly. Without them, we are prone to allow impulses of will and passion, as well as thoughtlessness, inconstancy and negligence, to impel us into acting carelessly, rashly or precipitously, and thus imprudently (ST II-II, 53.3, 53.4, 53.5 and 54.1).

Accordingly, acting rightly is not simply a matter of applying rules to factual situations. It requires good judgment, which is a quality of character. This brings into a view another implication. Prudential judgment is needed in different spheres of life, one of which is the governance of a political community, which Aquinas calls the “regnative” species of prudence (ST II-II, 50.1), together with the corresponding virtue of being a good subject, which Aquinas calls the “political” species of prudence (ST II-II, 50.2). By maintaining that the virtue of prudence extends to both the responsibility of governing and the responsibility of obeying, Aquinas underscores that qualities of character are needed in both ruler and ruled.

It follows that prudent governance will not consist simply in the multiplication of rules in order to secure good conduct. The particular situations to which rules must be applied are too contingent and complex for a discrete set of rules, no matter how sophisticated and comprehensive, to provide sufficient specific guidance for good conduct in every situation that will arise. Moreover, the individuals to whom these rules are addressed are not irrational or inanimate beings set in motion by simple command; rather, as free and responsible agents, they are moved by the commands of others only as they move themselves through the exercise of their own responsible free will (ST II-II, 50.2).

Without some rectitude in the population, no laws will cause us to obey, or to obey well. Merely multiplying the rules, and backing them with sanctions, may impel a degree of outward obedience, but not the sort of good conduct that is the mark of a person of good character. Indeed, the mere multiplication of rules can have many unintended bad consequences, and serve to burden those of good will without effectively controlling the behaviour of those who care less.

And yet one of the characteristics of our time, as Oliver O’Donovan has pointed out, has been an “incessant stream of lawmaking”. [1] The quantity and complexity of the law continues to increase without measure. In the decade of the 1990s, the Australian Parliament, for example, enacted over 54,000 pages of legislation. [2] It seems we live in an age of “unbounded confidence in the value and efficacy of law as an engine of social and moral improvement”, as one experienced jurist has put it. [3]

However, as Professor Herdt has pointed out, the codes of conduct that govern behaviour require people capable of putting them into practice. It is difficult to avoid the conclusion that, having largely abandoned interest or hope in virtue, our governments have turned to law as their resource of first and final resort. But if personal character is a necessary basis for the development of healthy societies, then governments need to allow more space, and to actively encourage, the development of character in the population generally.

How is this to be done? [4] Governments need to recognise and support the vital contributions made by healthy families, vibrant local communities and wider institutions of civil society to the development of good character. Education can play an important role, but only if it is conceived not only as an undertaking directed to the transference of knowledge and the acquisition skills, but also to the inculcation of wisdom and virtue. But even education is insufficient if it doesn’t grapple

with the deepest drivers of human motivation and behaviour.

Socrates and Plato recognised that the development of good character requires a conversion of the soul. [5] However, they also considered that the ultimate cause of human failing is ignorance because human beings by nature pursue that which they consider to be good. Evil occurs, therefore, because we are ignorant of the truly good, and so we pursue that which is evil, mistaking it for good. And thus the remedy lies in acquiring knowledge. [6]

Augustine of Hippo begged to differ. He considered that a truly good character requires a conversion of the soul that goes further than anything Socrates or Plato imagined. This is because Augustine recognised that the human soul is *not* naturally moved towards the good. [7] The fundamental problem of human nature is not a deficiency of the mind; rather, it is a defect of the will. He believed that human pride is our fundamental problem, and that humility must be the first and essential step towards our moral improvement. As Alasdair MacIntyre has explained, it is only through a 'transformation of the will from a state of pride to one of humility that the intelligence can be rightly directed'. For the will 'is more fundamental than intelligence and thinking undirected by a will informed by humility will always be apt to go astray'. [8]

Augustine offered a striking image of this problem when he wrote of 'Pleasure', sitting 'like a voluptuous queen on a royal throne', with all the virtues arrayed around her as her attendant handmaidens, ready to do whatever she might command. [9] The image suggests that a person might adopt certain virtuous practices—for example, by being wise, moderate and fair in his dealings with other people—but not out of the goodness of his heart, nor even for the good of those people, but only as means of satisfying his selfish desires. Augustine points out that human pride and the desire for glory works the same way. These motivate us not to do good for its own sake but only to do good—or more precisely, to *appear* to do good—so that others will think well of us and we will get more out of them. In this way, human pride is the deepest root of our problems, for it infects us even at our very best moments when we appear to be doing good. But because the desire for glory and honour only motivates us to appear to be good, it doesn't motivate us to do what is right when no one is looking, when no one sees, or when we can get away with it. And herein lies the root of all our problems.

This is why even education cannot provide the deepest solution to our problems. For Augustine, the solution lay in religion, properly understood. Religion in this sense goes further than education, because it forces us to ask deep questions about our motivations. It forces us to self-examination. And it challenges us to confess and to repent—not just to confess the truth about our outward actions and behaviours, but to repent of our darkest inward thoughts and desires. It sets before us a model not of self-justification and self-rationalisation, but of candid acknowledgement of our failures. [10] And it presses us to admit that we are in need of forgiveness, and that we need to forgive one-another. [11]

Religion in this sense is more than mere education and it is much more than mere law. Education without religion can only inform the mind and train the hand; it cannot convert the soul. Law without religion can only require outward conformity and punish when there is disobedience; it cannot redirect the heart. Law and education therefore need to leave room for religion, so that religion can do what it alone is capable of: soften the heart and redirect the will.

End Notes

[1] Oliver O'Donovan, "Government as Judgment", *First Things*, April 1999.

[2] Michael McHugh, “The Growth of Legislation and Litigation” (1995) 69(1) *Australian Law Journal* 37.

[3] Jonathan Sumption, “The Limits of Law,” in Barber, Ekins and Yowell (eds), *Lord Sumption and the Limits of the Law*, Oxford: Hart Publishing, 2016.

[4] This section draws on Nicholas Aroney, ‘Law, Education and Religion – Pathways to the Good Society?’ (2020) 252 *St Marks Review* 19.

[5] Plato, *Republic*, Bk VII, 518b-d.

[6] Plato, *Protagoras*, 352c, 358b-d.

[7] Alasdair MacIntyre, *Three Rival Versions of Moral Inquiry: Encyclopaedia, Genealogy, and Tradition* (London: Duckworth, 1990) 84.

[8] MacIntyre, *Three Rival Versions of Moral Inquiry*, 91.

[9] Augustine, *City of God*, Bk V, ch 20.

[10] *Luke* 18:9-14.

[11] *Matthew* 18:21-35.

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