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Response to Hittinger

Gerard V. Bradley
Notre Dame Law School, gerard.v.bradley.16@nd.edu

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In *Veritatis Splendor* Pope John Paul II affirms that there are "intrinsically evil acts" which are always and everywhere wrong. This is the document's central message: some "concrete" kinds of behavior—specified without reliance upon evaluative terms—may *never* be performed. By "behavior," as the Pope makes clearest in paragraph 78, he means the possible object of free choices. Thus the Pope affirms that nothing whatsoever can morally justify certain human acts.

Much of the encyclical identifies and criticizes as incompatible with this affirmation some prevalent moral theories. Prominent among these is a "radically subjectivist conception of moral judgment" which "places man in the role of sovereign *author* of what is good and evil." This subjectivism *is* indeed incompatible with the faith. *This* "moral autonomy" is what Professor Hittinger has *most* in mind in arguing against "anthropocentrism." Professor Hittinger concludes that "man is not (*ab initio*) his own legislator." "God alone," the Holy Father said, has "the power to decide what is good and what is evil." Man is powerless to alter what, to use Professor Hittinger's term, God has "legislated."

Here is the question Professor Hittinger engages: may we (must we?) say that these norms are "natural law" in a sense that implies a "lawgiver"-God? The parties to his discussion operate within a common tradition of moral inquiry and religious commitment. Radical subjectivism is absurd, and we can all agree that God is the "author" of moral principles. The natural law pertains to man's life, and man is God's free creation. Thus, God's will—one might call it His sovereign power—precedes and is the source of moral norms of all meaning and value.

In *what* precise sense may we say that God "legislates"? Any specification must avoid a counter-position, almost as absurd but just as incompatible with the faith as radical subjectivism: what the

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Pope calls "heteronomy," denial of "man's self-determination or the imposition of norms unrelated to his own good." In this compact expression we see what is elsewhere in the encyclical often described and emphasized: the Pope's rejection of legalism and voluntarism, doctrines implying that God threatens us with (unrelated) privations for not obeying commands which bear no intrinsic relation to human goods.

We see, that is to say, the *deeply* incarnational quality of Catholicism. Moral norms direct us to pursuit of *intrinsic* goods. The Pope squarely affirms in *Veritatis*, "the role of human reason in discovering and applying the moral law," and "that creativity and originality typical of the person, the source and cause of his own deliberate acts." Here is an affirmation of free human choice and the way in which choices shape *us*. Obviously, then, man is the author of his acts and has the power to do evil, to make immoral choices, even to sin mortally. Yet man cannot change what is good, and what is evil. Men, in other words, can and do intentionally kill the innocent, but men cannot change the reality that life is a basic good.

Any specification of how God acts as legislator must respect, therefore, both law *and* freedom. Professor Hittinger of course agrees. I say so confidently because he wants to preliminarily defend (in his words) "something like the papal position in *Veritatis*." May we narrow the range of possible disagreement further?

I think so. I take it that Professor Hittinger agrees that knowledge of God is not a logically necessary condition for either coming to know the principles of the natural law or for appreciating their binding quality. This partly explains his agreement that the jurisprudes, for all practical purposes, can do their thing without resolving this question. Professor Hittinger would add, however, that the jurisprudes ought not speak casually of the matter, they should not emphasize the autonomy of reason to the point of prejudging the answer to the question he raises.

Most importantly, Professor Hittinger affirms the Pope's rejection of a "voluntarist conception of law." Rejecting voluntarism means that the norms of the natural law do not bind by dint of their origin in a superior will. This could hardly be clearer in *Veritatis*, despite its emphases upon God's "law," and its frequent use of "command" terminology. If one holds tight to this rejection and allows it to exercise a regulative influence, then the dispute here between Professor Hittinger and his interlocutors may really be quite limited. It seems to me that we have now agreed that man comes to know the principles

of the natural law naturally, that they possess a kind of rationally compelling quality, and that they direct action towards an end. One might say, in light of all this, that speaking of these principles in the imperative is not, at least in the first instance, helpful.

Does *this*, however, sound like it veers too close to "man as autonomous sovereign"? Is emphasis upon the "law"-like quality of these principles a corrective emphasis? Is that part of Professor Hittinger's concern? I think so. There is, to be sure, more than a matter of emphasis animating his paper. He wants, I think, to call practical reason a "measured measure"-law "all the way down." That claim or project comprises distinct but related elements. He would contend for: (a) more determinacy, (b) more authority (a more convincing basis of obligation), and (c) more theology (in the sense that God appears in the epistemological chain of events pretty early on) in any account of natural law.

In my view, the most telling passages in *Veritatis* on this matter are ones that Professor Hittinger highlights—most notably, that man "*participates*" in the eternal law, or "*participated* theonomy." For example,

> God provides for man differently from the way in which he provides for beings which are not persons. He cares for man not "from without," through the laws of physical nature, but "from within," through reason, which, by its natural knowledge of God's eternal law, is consequently able to show man the right direction to take in his free actions. In this way God calls man to participate in his own providence. The *natural law* enters here as the human expression of God's eternal law.

Professor Hittinger would emphasize, however, what I have not. I underscore "participates" to suggest that natural law is the eternal law *from man's point of view*.

In any event, I fully agree with Professor Hittinger that the high theological usage of which he speaks cannot be explained, nor can the case for calling moral norms natural "law" be carried by analogy to positive law. I would be more cautious than he about whether that usage—"law"—implies "lawgiver" or legislator. We can agree that the natural law, authored by God, consists of binding directives governing human action, and thus is a kind of "law." Is that not enough to explain theological usage? If not, usage before Thomas is likely to be ambiguous evidence of "lawgiver" because the notion of the "positive law," as a subject matter of study in its own right, had not emerged. That is, the "positive law" as a paradigm of "law" is a medieval development. (That Suarez made such an assumption reflects his own predicament more than sound reasoning.)

As a related historical matter, much of what has been called "law" is not legislation. The common law supposes that judicial opinions are evidence of, but themselves are not sources of, the common "law." Custom, either as "law" or as a source of "common law" originates in the "mists of history" and not in a sovereign legislative will. And, of course, contemporary legal theorists, notably Michael Moore, claim that the "positive law" simply includes moral reality. In short, and viewed solely as a matter of intellectual history, the term "law" is so multivocal that, where it appears, one must still investigate whether a "lawgiver" is implicitly recognized in any particular usage.