

Natural Law and Catholic Moral Theology

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In his 1958 lectures at the University of Chicago, later published under the title *The Tradition of Natural Law: A Philosopher's Reflections*, Yves R. Simon remarks that the subject of natural law is difficult "because it is engaged in an overwhelming diversity of doctrinal contexts and of historical accidents. It is doubtful that this double diversity, doctrinal and historical, can so be mastered as to make possible a completely orderly exposition of the subject of natural law."¹

My intention in this essay will be to examine the problem of natural law only *ad intra*, within Catholic moral theology.² The essay will have almost nothing to say about any particular issue of justice in the public sphere. It will proffer no "natural law" answers as to what judges ought to do, or how the budget deficit ought to be resolved, or what moral perspective should guide welfare funding. Furthermore, although it might reinforce the suspicion of evangelical Protestants that

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• Conscience - synthesis
• Teleology

there is something both attractive and repellent about Catholic uses of natural law, it will not try to convince Protestants on any specific disputed issue.

Rather, I will endeavor to show how the concept of natural law became a serious problem in modern Catholic moral theology, and how the papal encyclical *Veritatis Splendor* responds to that problem. My account will be very imperfect indeed, for it will be necessary both to tell a story and to make a number of distinctions along the way, allowing each to illuminate the other. To do both these things at once, and in a brief space, is a difficult task.

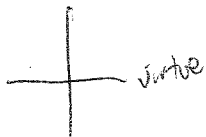
Three Foci of Natural Law Discourse

But first, what is a theory of natural law a theory of? The question can be approached in three ways. In the first place, natural law can be regarded as a matter of propositions or precepts that are first in the order of practical cognition. Thus, when a theorist reconnects debate about justice back to first principles, from which the mind can lay out properly considered and argued conclusions, he can be said to have (or practice) a theory of natural law. In the second place, natural law can be regarded as an issue of nature or human nature, in which case it is a problem not only of epistemology and logic but also of how practical reason is situated in a broader order of causality. Third, natural law can be approached not only as order in the mind or order in nature but also as the ordinance of a divine lawgiver.

Discourse about natural law can gravitate toward any one or a combination of these three foci: law in the human mind, in nature, and in the mind of God. Contemporary literature on the subject shows there is little or no agreement as to how the three foci ought to be integrated. For there is no general agreement about what should count as a proper problem, much less about what philosophical instruments to apply to it.

Rather than engage in an interminable survey of the methodological problems, I shall begin with an assertion. The theologian is (or ought to be) chiefly concerned with the third of these foci: namely, natural law as an expression of divine providence. As Karl Barth said in *Church Dogmatics*, "Ethics [is] a Task of the Doctrine of God."³ Whatever else Barth said or thought about natural law, the proposition that moral

God



theology is a task of the doctrine of God is incontestable. The Christian theologian is interested in who God is, and what God does, as he reveals himself.

Who we are and what we do are questions that can be asked outside of theology, to be sure, and the theologian will be interested in how persons outside the faith pursue such questions. Catholic and Protestant theologians have different attitudes toward these strands (Balthasar says "fragments") of moral inquiry and behavior separated from the living Word of God. While Catholic theologians have perhaps been tempted to overestimation, Protestants have been inclined to underestimation. But the main focus for the theologian *qua* theologian is, as Barth said, the doctrine of God.

HISTORICAL REFLECTIONS

Until recently, the proposition that natural law is chiefly a theological issue was uncontroversial in Catholic moral theology. Natural law in the human mind and natural law in nature were regarded as distinct but not architectonic foci. Let us first consider two passages from the Church Fathers.

In the second century, Tertullian took up the problem of divine governance prior to the written law. Like so many other of the patristic theologians of both east and west, Tertullian argued that the law given to Adam (Gen. 2:17) was the natural law: "For in this law given to Adam we recognize in embryo all the precepts which afterwards sprouted forth when given through Moses." After reciting the ten precepts of the Decalogue, Tertullian concludes that the first law is "the womb of all the precepts of God"—a "law unwritten, which was habitually understood naturally, and which the fathers kept."⁴ Which of the patriarchs? Tertullian mentions Noah, Melchizedek, Enoch, and Abraham.

This teaching is simple and familiar. Our first parents were given an unwritten law, expressing the rule of law itself: men govern only by sharing in divine governance. Adam and Eve, who understood the law naturaliter (naturally), did not keep it. But the patriarchs before Moses adhered to the unwritten law. In this brief passage Tertullian alludes to natural law in the mind and in nature. His principal interest,

however, is the economy of divine laws. As to what men knew or did *post peccatum*, Tertullian commits himself only to saying that the patriarchs were counted "righteous, on the observance of a natural law."⁵

In the fourth century, Gregory of Nyssa proposed:

... that human nature at its beginning was unbroken and immortal. Since human nature was fashioned by the divine hands and beautified with the unwritten characters of the Law, the intention of the Law lay in our nature in turning us away from evil and in honoring the divine. When the sound of sin struck our ears, that sound which the first book of Scripture calls "the voice of the serpent," but the history concerning the tables calls the "voice of drunken singing," the tables fell to the earth and were broken. But again the true Lawgiver, of whom Moses was a type, cut the tables of human nature for himself from our earth. It was not marriage which produced for him his "God-receiving" flesh, but he became the stonecutter of his own flesh, which was carved by the divine finger, for the Holy Spirit came upon the virgin and the power of the Most High overshadowed her. When this took place, our nature regained its unbroken character, becoming immortal through the letters written by his finger.⁶

Like Tertullian, Gregory of Nyssa alludes to natural law in the mind. The "intention of the Law," he writes, "lay in our nature in turning us away from evil and in honoring the divine." This is the traditional notion of a *lex indita*, a law instilled in the mind, which later patristic and medieval theologians would call *synderesis*. Gregory also speaks of the order of human nature. Yet it is clear that Gregory's focus is set upon what God does, first in ordering man by nature, second in disciplining men through the written law, and finally in recreating men through the mystery of the Incarnation and Redemption.

These two passages are typical of the patristic thinking on natural law. Issues of epistemology and human nature are distinct but not architectonic foci. Not even moral theology (in our modern sense) is the main focus. Rather, theology proper, the doctrine of revelation, organizes the Fathers' perspective. Chief among the theological themes are (1) the economy of divine laws, (2) the manner in which Christ recapitulates not just Moses but Adam, and (3) generally, getting the story right, which is to say, thinking rightly about Scripture.⁸

As early as the Second Council of Arles (473), the "law of nature" (*lex naturalis*) was defined as "the first grace of God."⁹ Beginning in late antiquity, theologians transformed the nomenclature of the lawyers to bring it in line with Christian theology. The *Corpus Iuris Civilis* divided law generally into *ius naturale*, *ius gentium*, and *ius civile*.¹⁰ The word *lex* was not reserved for written law (according to the *Institutes of Justinian*, *scriptum ius est lex*) but was especially associated with imperial pronouncements.¹¹ The Lex Julia, for example, was the Julian Act.¹² This usage was also adopted by the canonists. *Lex*, Gratian states in the *Decretum*, is a written statute, a *constitutio scripta*; and a *constitutio*, he goes on to explain, is "what a king or emperor has decided or declared."¹³ In St. Thomas's *Summa Theologiae*, the *iura* are classified as *leges*. So, rather than the *ius naturale*, we get not only *lex naturalis* but a classification of law according to diverse *leges*, such as *lex aeterna*, *lex nova*, *lex Mosaicae*, *lex membrorum*, *lex humana*, and *lex vetus*.¹⁴ The term *lex*, which the lawyers reserved for a written edict issued by an imperial lawgiver, had become for theologians a usage emphasizing the divine origin of all law, whether it be instilled in the heart or imparted by written or oral arts.

As regards the being and cause of the natural law, the theological tradition moved steadily away from any anthropocentric or merely naturalistic conception of the *ius naturale*.¹⁵

Misperceptions of Thomas

The thought of Thomas Aquinas has, of course, become nearly synonymous with "Catholic" doctrine of natural law. It would take volumes to dispel the modern misperceptions and misrepresentations of his natural law theory. Many misperceptions are due to the fact that Thomas, more than the patristic theologians, articulated the epistemological and natural foci with some philosophical precision. Those discussions in Thomas are often lifted out of context and debated as if they were completely independent of theology.

I have no intention of trying to dispel all these misperceptions at their proper level of detail and complexity. Two general points, however, need to be made. First, nowhere does Thomas define natural law in anything but theological terms. Indeed, in answer to the objection that for there to be both an eternal law and a natural law was needless

duplication, Thomas responds: "this argument would hold if the natural law were something diverse from the eternal law, whereas it is nothing but a participation thereof."¹⁶ Natural law is never (and I must emphasize *never*) defined in terms of what is first in the (human) mind or first in nature.¹⁷

Although his modern readers have little inclination to discriminate among the three foci—natural law in the mind, in nature, in the mind of God—or to reflect upon their order of priority, Thomas understood what is at stake in arriving at a proper definition. The fact that we first perceive ourselves discovering or grasping a rule of action does not mean that the human mind is first in the causal order, or in the ultimate order of being. For example, the judge who discovers a rule does not equate the cause of discovery with the cause of the rule—unless, perchance, they are one and the same. In the case of natural law, Thomas defines the law from the standpoint of its causal origin (that is, what makes it a law), not in terms of a secondary order of causality through which it is discovered (the human intellect).

Without the order of priority, we have either nature or the human mind as the cause of the law—not the cause of knowing or discovering, but the cause of the law itself. This would destroy the metaphysical continuity between the various dispensations of divine providence. For if God is to govern, he will have to supersede, if not destroy, the jurisdiction constituted (allegedly) by human causality. Insofar as the natural law is regarded as the foundation of the moral order, and insofar as that is thought to be caused (and not merely discovered) in some proper and primary way by human cognition, God will have to unseat the natural law. Almost all the modern theories of natural law seek to relieve that conflict in favor of what is first in the human mind. Thomas understood what is at stake in giving definitions, and was exceedingly careful not to confuse what is first in human cognition with what is first in being.¹⁸

In the second place, as we saw earlier, Tertullian used the adverb *naturaliter* (naturally) not to characterize the law but rather to describe how it is known. Nature is not the law but the mode of knowing it. This Latin adverb would eventually find its way into the Vulgate translation of Romans 2:14-15 to characterize what the gentiles know or do without benefit of divine positive law. Thomas Aquinas

frequently uses the same term in order to emphasize the mode of divine promulgation.¹⁹ Natural law is *lex indita*, instilled in the human mind by God, moving the creature to its proper acts and ends. As for his estimation of the efficacy of natural law in the human mind, Thomas never wavered from the judgment that only the rudiments (or the *seminalia*, the seeds) are known by the untutored mind. With regard to the gentiles mentioned in Romans 2:14, those "who having not the Law, did naturally [*naturaliter* . . . *faciunt*] things of the Law," St. Thomas points out that the words *naturaliter* and *faciunt* indicate that St. Paul was referring to gentiles whose "nature had been reformed by grace [*per naturam gratia reformatam*]." Any other interpretation, Thomas warns, would be Pelagian.²⁰

Thomas is well known for having insisted upon the *de jure* possibility of affirming the existence of God by natural reason. His estimation of the *de facto* condition of the human mind led him to make the cautious statement "known by a few, and that after a long time, and with the admixture of many errors."²¹ More to the point, however, Thomas explicitly and emphatically denied that the philosophers were able to translate such scraps of theology into virtuous acts of religion. None of the pagan theologies satisfied the natural, not to mention supernatural, virtue of religion.²²

In his last recorded remarks on the subject of natural law, made during a series of Lenten conferences in 1273, Thomas's judgment is even more stern: "Now although God in creating man gave him this law of nature, the devil oversowed another law in man, namely, the law of concupiscence. . . . Since then the law of nature was destroyed by concupiscence, man needed to be brought back to works of virtue, and to be drawn away from vice: for which purpose he needed the written law." As the critical Leonine edition of 1985 confirms, the words are *destructa erat*—"was destroyed."²³

How can he say that natural law is destroyed in us? First, he certainly does not mean that it is destroyed in the mind of the lawgiver. As a law, natural law is not "in" nature or the human mind, but is rather in the mind of God. The immutability of natural law, he insists, is due to the "immutability and perfection of the divine reason that institutes it."²⁴ Insofar as natural law can be said to be "in" things or nature, it is an order of inclinations of reason and will by which men are moved to a common good. While the created

order continues to move men, the effect of that law (in the creature) is bent by sin—not so bent that God fails to move the finite mind, for the fallen man is still a spiritual creature, possessed of the God-given light of moral understanding, but bent enough that this movement requires the remediation of divine positive law and a new law of grace.²⁵ In fact, Thomas held that God left men in such a condition—between the time of the Fall and the Mosaic law—in order to chastise them.²⁶ The so-called “time of natural law,” which refers, of course, to the historical and moral condition of man, not the precepts of the natural law itself, is not normative for Thomas’s ethics. And it is the effort to make that condition normative that marks the modern project.

By Thomas’s day, natural law theory was being used in debates over jurisdiction between civilians and canonists; it was also being used on at least a partial basis for trying to get right answers about disputed matters of personal conduct. But in Thomas there is little of this. There is only one sustained discussion, extending over several articles, in which Thomas subjects a disputed issue of personal conduct to what could be called a natural law analysis. It is from the very beginning of his career, when he was still a graduate student, in his exposition of the *Sentences of Peter Lombard*. This exposition, which is now appended to the *Summa* and called the “Supplement,” contains an extended natural law argument on the problem of polygamy.

Interestingly, the problem was one he could not resolve by using natural law. Thomas ends up saying that polygamy violates no first precept of the natural law. With the ordering of sex to procreation, the polygamist does not violate the natural law. The remainder of Thomas’s argument was a tentative one, namely, that polygamy made social life inconvenient, and that it would be difficult for the society of husband and wife to maintain itself properly intact in that kind of an arrangement. His only decisive argument against polygamy is sacramental—Jesus cannot have plural churches, man cannot have plural wives. And so the one serious effort he made to resolve the kind of issue we talk about today—a disputed moral issue—ended somewhat inconclusively on the natural law note. Once he reached that stalemate, he quickly reverted to sacramental theology as a way of resolving the issue.

Eclipse of the Theology

In the modern era, the theology of natural law was moved to the periphery, and was usually eclipsed altogether. The epistemological and natural foci become architectonic. The new sciences adopted the method of resolute analysis and compositive synthesis. Under this method, the appearances of nature are analytically reduced to the most “certain,” which is to say, the most predictable, elements: namely, modes of quantity, such as size, shape, and velocity. Then, through compositive synthesis, the quantities can be rebuilt as mathematical objects. This method was applied beyond physics to humane matters. In *De Homine*, for example, Hobbes takes man as he is, a thing of “meer nature,” and reduces the appearances to stable and predictable modes of quantity. Once we have done this, we do not find Presbyterians and Catholics; rather, we find a stimulus-response mechanism that endeavors to augment its power. What is first, then, is natural laws as “lower” laws rendering men amenable to the law of the sovereign. In *De Cive*, man is rebuilt according to rules that are true laws. Hobbes explains: “Politics and ethics (that is, the sciences of just and unjust, of equity and inequity) can be demonstrated *a priori*; because we ourselves make the principles—that is, the causes of justice (namely, laws and covenants)—whereby it is known what justice and equity, and their opposites injustice and inequity, are.”²⁷

Hobbes, of course, was a materialist. But this method of reduction and recomposition was not tied to materialist doctrines. Continental rationalism and idealism also deployed methods of reduction to what is first in the mind, from which reality can be constructed, modeled, predicted. In the reduction, Hobbes could find only “lower” laws; other Enlightenment thinkers purported to find first principles of justice and equity. Whatever the differences, the trademarks are certainty and predictability, gauged according to what is first in cognition.

Yet the main reason for the eclipse of the theology of natural law was the theologico-political problem. What better way to solve such a problem than to imagine men’s appealing to no authority other than what is first in the mind? Virtually all of the Enlightenment “state of nature” scenarios make this move. In Hobbes, Locke, Rousseau, and Kant, man is considered in an “original” position, under the authority of no pope, prince, or scripture. If there is a God, he governs through

no mundane authority. Authority will have to make its first appearance in the covenants of individuals constrained to reach a consensus on the basis of what is (or seems) self-evident. The twelfth-century summist Johannes Faventinus declared: "The streams of natural rectitude flow into the sea of natural law, such that what was lost in the first man is regained in the Mosaic law, perfected in the Gospels, and decorated in human customs."²⁸ The modern myth of the "state of nature" rejects this scheme of divine pedagogy—not directly, but indirectly, by rendering it superfluous to the quest for first principles of the political order. Indeed, the "state of nature" was meant to be a secular substitute for the story of Genesis. Never a pure science of morality, it was rather a merely useful one, designed for the political purpose of unseating the traditional doctrine of natural law.

The fact that a proposition is pellucid, knowable without logical need of a middle term (e.g., "life is good," which can be grasped without a set of theological inferences or authorities), is supposed reason enough to conclude that logical independence means ontological independence; and the "state of nature" mythology had the aim of representing that independence. Since no orthodox Christian theology holds that God and his orders of providence and of salvation crop up as what is first in untutored cognition, to force natural law into that one understanding is bound to destroy moral theology on the reefs of half-truth. The half-truth is that there are principles of practical cognition that are proximate to the natural functioning of the intellect. But they are only the beginning (the *seminalia*) of practical reason. When the starting points are made autonomous, the human mind declares independence not only from the deeper order of divine tutoring but also from the tutoring afforded by human culture, including human law.

This is why natural rights, for so many modern advocates, turn out to be nothing other than immunities against the order of law. Thus, what began for the Christian theologians as a doctrine explaining how the human mind participates in a higher order of law is turned into its opposite. The natural law becomes "temporal," the temporal becomes "secular," and the secular becomes the sphere in which human agents enjoy immunity from any laws other than those they impose upon themselves.

For a time, Catholics were not confused by the new ideologies of natural law, for these conceptions were expressed by political move-

ments vehemently hostile to the Church. But once political modernity became the "normal" state of affairs, and once the Church found a way to respond to modernity in something more than a purely reactive mode, it was almost inevitable that the new conceptions of natural law would begin to color moral theology.

MODERN CATHOLIC THOUGHT

There is a superficial congruity between the tradition of Catholic moral theology and modernity. Both (in various ways) hold that there is a moral order first in the mind, and that some problems can be reasoned without immediate introduction of premises drawn either from revelation or from a fully worked-out cosmology of nature. The overlap of traditions on this specific point is apt to be misleading. Thomist, Cartesian, and Kantian conceptions of what it means to be "first" in the mind express very different understandings of practical reason, and how practical reason is situated with regard to what is "first" in nature and in ultimate order of being.

But when the focus on what is first in the mind is conjoined with the desperate modern need for consensus, it becomes easy for Catholic uses of natural law theory to cross over into something new. The use of natural law by moral theologians has always been Janus-faced. Natural law can be used to express specifically theological propositions about divine providence, or it can be used to ground or mount arguments about particular disputed issues of conduct.

In modern times, we observe a steady drift toward the latter use, and with it a gradually diminishing sense of the sapiential context afforded by theology proper. Nowhere can this be seen more clearly than in the tradition of modern social encyclicals. As to things that have been declared contrary to nature and/or reason, a short list includes: dueling, Communism, divorce, contraception, Freemasonry, *in vitro* fertilization, and contract theories of the origin of political authority. And this is not to mention the bevy of rights and entitlements that have been declared to be owed to persons under the rubric of justice *ex ipsa natura rei*, by the very nature of the thing. Read carefully, the encyclicals assume that all three foci (law in the mind, in things, and decreed by divine providence) are legitimate and in

principle are integrated in moral theology. Compared to his successors, Leo XIII was especially careful to make the distinctions that kept divine providence in the picture.²⁹

Natural Law as a Persuasive Tool

It is not my intention to cast doubt on any particular assertion about natural law or natural rights in these official documents. The problem (for our purposes here) is not particular judgments about the morality of dueling or contraception, but the possibility that the encyclical uses of natural law create the misleading impression that on any vexed issue the minds of the faithful and the gentiles can be adequately directed by appeal to elementary principles of natural law. The moral picture of a baptized agent becomes difficult to distinguish from that of the unbaptized, which is not surprising, since so many of the encyclicals deal with political and economic crises. Thus we have the Church reaching into its treasury of wisdom and pulling out the right answer without adequately displaying the wisdom, and sometimes without showing how the chain of arguments is grounded in anything other than church authority.

Humanae Vitae suffered especially in this regard. Some rather thin strands of argument about natural functions are terminated in one direction in the Church's authority to interpret the natural law. Not surprisingly, Pope John Paul II has devoted much of his pontificate to filling out the picture, beginning with a book-length set of allocutions on the proper exegesis of Genesis.

In any case, the teaching method of trimming arguments to fit what is first in cognition, buttressed perhaps with appeals to what is first in the chain of legal command (the papal office), would eventually yield diminishing and disappointing results, not only for the gentiles but also for the faithful—especially the moral theologians. By almost imperceptible steps, it was easy to fall into the habit of regarding discourse about natural law as an instrument of persuasion, the truth of which becomes measured by its success in garnering assent.

Take, for example, Cardinal Maurice Roy's 1973 remarks on the "Occasion of the Tenth Anniversary of the Encyclical 'Pacem in Terris.'" Addressing himself to Pope Paul VI, Cardinal Roy has this to say about the encyclical's references to natural law:

Although the term "nature" does in fact lend itself to serious misunderstandings, the reality intended has lost nothing of its forcefulness when it is replaced by modern synonyms. . . . Such synonyms are: man, human being, human person, dignity, the rights of man or the rights of peoples, conscience, humaneness (in conduct), the struggle for justice, and, more recently, "the duty of being," the "quality of life." Could they not all be summarized in the concept of "values," which is very much used today?³⁰

Interestingly, on John XXIII's remark that peace is "absolute respect for the order laid down by God,"³¹ Roy observes: "But here again, this word jars the modern mentality, as does, even more, the idea that it summons up: a sort of complicated organic scheme or gigantic genealogical tree, in which each being and group has its predetermined place." Eager to reinforce truths proximate to the human mind (or, perhaps, those least proximate to the chain of church authority), Roy seemed to find even the phrase "order laid down by God" too theologically strong. Whereas earlier generations of theologians addressed the gentiles by emphasizing the relationship between moral order and divine providence, a new generation of Catholic theologians was being taught (inadvertently) that the rudiments of moral order ought to be discussed without any reference to divine governance, or, for that matter, to created nature. Modern gentiles, it seems, cannot bear the burden of even the weakest theological discourse.

To give credit where it is due, it must be said that the Church was thrust into the position of having to teach, *ad extra*, about precepts of the moral order that are in principle proximate to the human mind. That nations or individuals must not murder, must not rape, and must not plunder are not uniquely theological propositions. Many of the precepts advanced in papal encyclicals have been held by men of good will who do not explicitly assent to Christian doctrines. The Catholic Church has always regarded itself as a consensus-builder among the peoples and nations.

Seizing the Post-War Moment

The high tide of the overestimation of natural law discourse was the post-World War Two era, when the Church was eager to reinforce the right lessons of the war. Western modernity found itself recoiling

from legal positivism, and moving honestly (if temporarily) to reform its politics on the basis of ideas about human dignity and natural rights. Catholic philosophers and theologians like Jacques Maritain and John Courtney Murray did remarkable work trying to show how the Catholic tradition should seize the moment: notwithstanding the gentiles' disordered theories *about* the moral order, the experience of the war and its aftermath rendered them teachable.³² In retrospect, we see that there was an overestimation, not only of what the gentiles knew, but also of what they were willing to do with their knowledge. (Perhaps the most bizarre overestimation of common ground came in 1989 with Cardinal Bernardin's recommendation that Catholic lawyers ought to adopt the natural law theory of Ronald Dworkin.³³) From another point of view, we could say that there was a drastic underestimation of the Church's teaching mission. In the literature and discourse of that period, it is often difficult to say who was teaching whom.

Fifty years after World War II, in *Evangelium Vitae*, Pope John Paul II laments the fact that the children of Locke and Rousseau have decided to reject the natural law foundations of civil government. He writes:

A long historical process is reaching a turning-point. The process which once led to discovering the idea of "human rights"—rights inherent in every person and prior to any Constitution and State legislation—is today marked by a surprising contradiction. Precisely in an age when the inviolable rights of the person are solemnly proclaimed and the value of life is publicly affirmed, the very right to life is being denied or trampled upon, especially at the more significant moments of existence: the moment of birth and the moment of death.³⁴

"[P]aradoxically," John Paul continues, what were once crimes now "assume the nature of 'rights,' to the point that the State is called upon to give them legal recognition." It is "sinister," the Pope says, that states are "departing from the basic principles of their Constitutions." For when they recognize as moral rights the rights to kill the weak and infirm, the "entire culture of human rights" is threatened. "It is a threat capable, in the end, of jeopardizing the very meaning of democratic coexistence."³⁵

Thinking it had seized upon a moment favorable to making common cause with the modern notions of human dignity and rights, the Church finds that the culture has retreated from the few things that seemed right about its modernity. In any case, it is surely significant that most of the encyclical *Evangelium Vitae* involves a detailed exegesis of the first four chapters of Genesis. The Pope takes his audience back to the Scriptures. The gentiles need to be taught.

Piecemeal Theology

If the papacy overestimated the efficacy of the instruction *ad extra*, it underestimated the problems *ad intra*. Not only was natural law disembedded from moral theology, but moral theology was disembedded from the rest of theology. In his encyclical *Aeterni Patris* (1879), Leo XIII anticipated the problem of theology's being done piecemeal, with a lurching from issue to issue, and with the chief means of resolution being the application of authority. He wrote: "For in this, the most noble of studies, it is of the greatest necessity to bind together, as it were, in one body the many and various parts of the heavenly doctrines, that, each being allotted to its own proper place and derived from its own proper principles, the whole may join together in a complete union."

Unfortunately, this ideal was not successfully realized prior to Vatican II. Perhaps the best account of the dwindling estate of moral theology before the Council is the recent book by Servais Pinckaers, O.P., *The Sources of Christian Ethics*. Regarding the typical presentation of moral theology in the manuals used in seminaries, Pinckaers notes:

Moral theology was divided into fundamental and particular sections. Fundamental moral theology included four chapters, covering human acts, laws, conscience, and sins. Particular moral theology, after a chapter on the theological virtues and their obligations, was generally divided according to the Ten Commandments, to which were added the precepts of the Church and certain canonical prescriptions. The sacraments were studied in the light of the obligations required for their administration.³⁶

If, *ad extra*, doctrines of natural law were being used to produce conclusions to vexed moral issues among the gentiles, the opposite

tendency prevailed *ad intra*. The task of moral theology was to lay out premises from reason and church authority for the purpose of directing the legal dimension of marital and sacramental actions. Not only in the seminaries but also in the universities, the thought of St. Thomas was accorded great respect; yet it was extracted from the *Summa Theologiae* in a way that favored the rationalistic elements of law. Almost everyone who teaches Thomas today would agree with Pinckaers that Thomas's thought was deeply misrepresented when the first seven questions of the so-called Treatise on Law (*S.t.* I-II, qq. 90-97) were isolated from the questions on beatitude and virtue, and ultimately from the questions on the Old Law and the New Law.

The subject of natural law was placed in the most unfortunate position of being organized around two extreme poles. On the one end, it represented the conclusions of church authority; on the other, it represented what every agent is supposed to know according to what is first in cognition. We have Cartesian minds somehow under church discipline.

The response was inevitable. In our time, there is a deep and ultimately irrational reaction against any depiction, much less any organizing, of the moral life in terms of law. We cannot here sort through all the species of this reaction in contemporary moral theology. Earlier we saw Cardinal Roy trying to construe "order laid down by God" in any way that might avoid the notion of a legal order. As we will see in due course, *Veritatis Splendor* tries to moderate this reaction against the notion of conduct regulated by law. Yet the NCCB's advertising of the encyclical exemplified the very sort of reaction that *Veritatis Splendor* tries to moderate: "It reverses pre-Vatican II legalism by speaking of the good and the bad rather than the forbidden and permitted, and by speaking about the invitation to live a moral life in God rather than the enforcing of laws or norms." This is precisely the simplistic attitude that the encyclical tries to overcome.

Natural Law as Individual Autonomy

Before moving to *Veritatis*, let us look at one particular reaction against law, the reaction that the encyclical takes the most pains to refute. I have said that once natural law was disembedded from moral theology, and moral theology from theology, the concept was pre-

cariously stranded between two poles of authority: a chain of command somehow terminating in the authority of the Church, and a chain of propositions somehow terminating in the individual mind. Rather than fundamentally reconsidering this picture, casuists and confessors valiantly endeavored to relieve the burden of conscience. So, in the case of *Humanae Vitae*, the conclusions of the natural law deriving the official chain of command seemed (to many) to conflict with what individual "reason" pronounced.

We should not be surprised that casuistry would not have the last word. Natural law itself would have to be reformulated to side with individual conscience. Through the sluice-gates of this problem, the distinctively modern notions of natural law as individual autonomy would flow into Catholic moral theology. If this response went no further than to claim the individual's competence to respond to divine providence (with the Church as a non-authoritative support), then the story would have ended with a surprising "Protestant moment" for Catholic moral theology. But that is not where it ended. At least in contemporary moral theology, it ends with the claim of autonomy in the face of providence: the creator God exists, perhaps, but he does not govern.

For example, in his most recent book, Father Joseph Fuchs contends:

When in fact, nature-creation does speak to us, it tells us only what it is and how it functions on its own. In other words, the Creator shows us what is divinely willed to exist, and how it functions, but not how the Creator wills the human being qua person to use this existing reality.³⁷

Fuchs goes on to assert:

Neither the Hebrew Bible nor the new Testament produces statements that are independent of culture and thus universal and valid for all time; nor can these statements be given by the church or its magisterium. Rather, it is the task of human beings—of the various persons who have been given the requisite intellectual capacity—to investigate what can and must count as a conviction about these responsibilities.³⁸

In other words, God creates, but he gives no operating instructions.³⁹

Father Fuchs further asserts: "One cannot . . . deduce, from God's relationship to creation, what the obligation of the human person is in these areas or in the realm of creation as a whole."⁴⁰ Regarding *Gaudium et Spes*, where the human conscience is spoken of as a *sacrum* in which we find ourselves responsibly before God—*solus cum solo*⁴¹—Fuchs states that the notion that the human person "is illuminated by a light that comes, not from one's own reason . . . but from the wisdom of God in whom everything is created . . . cannot stand up to an objective analysis nor prove helpful in the vocabulary of Christian believers."⁴²

Father Fuchs's rejection of the Council's teaching on the nature of conscience at least has the virtue of consistency. It follows from his own doctrine that while God creates, he does not govern the human mind. The human mind is a merely natural light, to which there corresponds a merely natural jurisdiction over ethics. In its work of discovering moral norms, the mind discovers the contextual proportions of good and evil, case by case as it were. Although Fuchs struggles to avoid the implication, it would seem that a general statute of positive law could never concretely bind human conscience, because it could never adequately measure the proportions of good and evil across cases and contexts. At best, law would be a summary of previous findings, which then functions as an indicator (rather than a norm) of present or future choices.

Hence, specifically on the issue of natural law, Fuchs insists that "[a] classical understanding of natural law is basically a 'positivist' understanding of natural law (a static law 'written on nature'), and precisely does not offer genuine natural law as the living and active creaturely participation in God's eternal wisdom."⁴³ The traditional words are still present: e.g., "written on the heart," "participation in God's eternal wisdom." But they now mean something different, and in fact the opposite of the tradition in Augustine and Aquinas. For the older tradition, there is a clear distinction between the mind's *discovering* or discerning a norm and the being or *cause* of the norm. The human mind can go on to make new rules because it is first ruled. This, in essence, is the doctrine of participation as applied to natural law. Natural law designates for Fuchs, however, the human power to make moral judgments, not any moral norm regulating that power—at least no norm extrinsic to the operations of the mind. This is not

a subtle departure from the tradition; it is no more subtle than the difference between giving a teenager the keys to the car with a set of instructions, and just giving him the keys to the car.

"VERITATIS SPLENDOR": REAFFIRMING FOUNDATIONS

The encyclicals usually have pastoral purposes. Fundamental principles are cited only insofar as they are needed to address the problem at hand, or perhaps to remind the faithful of what every one believes. *Veritatis Splendor* takes a different approach. Noting that the Church has proposed moral teaching on "many different spheres of human life," Pope John Paul goes on to declare: "Today, however, it seems necessary to reflect on the *whole* of the Church's moral teaching, with the precise goal of recalling certain fundamental truths of Catholic doctrine which, in the present circumstances, risk being distorted or denied."⁴⁴

Veritatis Splendor is not aimed at consensus-building among the gentiles. It is addressed to the episcopacy. And it is chiefly concerned not with applied ethics but with the foundations of moral theology.⁴⁵

The first statement about the crisis over foundations concerns the authority of the Church: "The Magisterium itself is considered capable of intervening in matters of morality only in order to 'exhort consciences' and to 'propose values,' in the light of which each individual will independently make his or her decisions and life choices."⁴⁶

If the crisis concerned only the authority of the Church, the Pope would be putting moral theology into precisely the corner where the modern mind wants it: for it would look like the assertion of a this-worldly power to command an assertion that is immediately answered by a counter-assertion of the authority of individual conscience. The Pope needs to show that being commanded by another is not merely a device of ecclesiastical powers and offices; it is not created by papal authority or by tradition.

The Pope therefore reformulates the issue:

[C]ertain moral theologians have introduced a sharp distinction, contrary to Catholic doctrine, between an "ethical order," which

would be human in origin and of value for “this world” alone, and an “order of salvation” for which only certain intentions and interior attitudes regarding God and neighbor would be significant. This has then led to an actual denial that there exists, in Divine Revelation, a specific and determined moral content, universally valid and permanent. The word of God would be limited to proposing an exhortation . . . which the autonomous reason alone would then have the task of completing with normative directives which are truly “objective,” that is, adapted to the concrete historical situation.⁴⁷

Here, at last, we reach something fundamental for moral theology. Is the moral order a creature of divine providence, or does divine governance have to be added on to an already complete and autonomous human jurisdiction over morals? Here we are not worrying about the morality of gambling or contraception. Rather, the problem is the condition(s) of the possibility of moral theology. If God provides only the “natural” conditions for human practical reason, giving the human mind a kind of plenary authority over all the material norms, then God does not govern—except perhaps in the metaphorical fashion suggested by some of the deists. The Pope goes on to say:

Were this autonomy to imply a denial of the participation of the practical reason in the wisdom of the divine Creator and Lawgiver, or were it to suggest a freedom which creates moral norms, on the basis of historical contingencies or the diversity of societies and cultures, this sort of alleged autonomy would contradict the Church’s teaching on the truth about man. It would be the death of true freedom: “But of the tree of the knowledge of good and evil you shall not eat, for in the day that you eat of it you shall die” (Gen 2:17).⁴⁸

Throughout *Veritatis*, the Pope tries to give all three foci of natural law their due: (1) an order of nature (the “truth about man”), (2) the rudiments of which are “in principle accessible to human reason”⁴⁹ (3) and are expressions of divine providence. At least in passing, he notes the relevance of the first two of these to the “demands of dialogue and cooperation with non-Catholics and non-believers, especially in pluralistic societies.”⁵⁰ Reflection on the good and evil of human acts and of the person who performs them is “accessible to all

peoples.”⁵¹ However, there can be no mistaking the main emphasis of the encyclical, which concerns number three.

The Strategy: Dialogue With God

The question is how to give all three foci their due, while still showing their proper organization in theology. In the *Institutes*, John Calvin quotes St. Bernard of Clairvaux:

With propriety, therefore, Bernard teaches that the gate of salvation is opened to us, when in the present day we receive the Gospel with our ears, as death was once admitted at the same doors when they lay open to Satan. For Adam had never dared to resist the authority of God, if he had not discredited his word.⁵²

The Pope adopts a similar strategy of exposition, one that is dialogical from the very beginning. While never denying the fact that man enjoys natural starting points for grasping moral good and evil, the Pope puts man into conversation with God; he interrupts the soliloquy.

Notice how the major chapters of *Veritatis Splendor* are arranged:

- In the first, the reader is situated along the road where the rich young man encounters Christ (Matt. 19). The Pope contends that questions about the good are essentially religious questions.
- In the second, the reader is re-situated in the light of the original conversation between God and man in Genesis 2. Most of the discussion of natural law takes place in this context.
- In the third, the reader is turned toward the world, according to the theme of martyrdom and witness.
- In the conclusion, the reader stands with Mary at the foot of the cross.

The Pope explains in the first chapter that the first and ultimate question of morality is not a lawyerly question. Unlike the Pharisees, the rich young man does not ask what the bottom line is, from a legal standpoint. Rather, he asks what must be done in order to achieve the unconditional good, which is communion with God. Christ takes the sting out of law, not by annulling it, but by revealing the Good to

which it directs us. Remove or forget the Good and law inevitably becomes legalism.

The Scripture relates that the young man went away sad, for he had many possessions. But the modern audience is more apt to turn away sad when faced with the teaching that there is a moral law that is indispensable, and that indeed binds authority itself. The Pope points out that all issues of circumstance, culture, place, and time notwithstanding, certain actions can never be made right; no human "law" can make them right. Just as from the scales and axiomatic measures of music there can come a Beethoven sonata or a Schoenberg twelve-tone composition, so obedience to the commandments opens the possibility of a creative, fluid, and completely realized human liberty. The point of learning the musical scales is not to engage in mindless repetition; the point is to prepare to make beautiful music. A piano teacher who taught only the scales would be a legalistic simpleton. But a piano teacher who *neglected* to teach these rudiments would be unworthy of the name teacher. Musical order cannot begin solely with human spontaneity and creative improvisation. And the same is true in the domain of moral action. Anyone who sets up an opposition between law and freedom, and then takes the side of freedom, not only underestimates the need for law but also misrepresents the nature of freedom.

The story of the rich young man shows the essential unity of the law and the Gospel, and in *Veritatis* the Pope spends considerable effort on a related theme: the unity of the two tables of the Decalogue. "Acknowledging the Lord as God," he says, "is the very core, the heart of the law, from which the particular precepts flow and toward which they are ordered."⁵³ Each precept, he continues, "is the interpretation of what the words 'I am the Lord your God' mean for man."⁵⁴

"To ask about the good," in fact, "ultimately means to turn towards God," the fullness of goodness. Jesus shows that the young man's question is really a "religious question, and that the goodness that attracts and at the same time obliges man has its source in God, and indeed is God himself."⁵⁵ Georges Cottier, the Dominican theologian of the papal household, has underscored the importance of this point in the encyclical:

... awareness of the self as an image of God is at the root of moral judgements, beginning with the norms of the moral law. ... The image is turned toward its Archetype and is the origin of a desire for union with it and assimilation to it. The natural law makes known to our reason the essential goods to which we must tend in order to reach God, who is the supreme Good.⁵⁶

Back to Genesis

In the second chapter, the Pope takes the discussion of the foundations of the moral order back to the original situation in Genesis 2. This is the patristic common place for the discussion of natural law. Ever since his catechesis on Genesis, given during his weekly audiences in 1979-80 (published under the title "Original Unity of Man and Woman"), the Pope has returned over and over to the first four chapters of that book.⁵⁷

Some people ... disregarding the dependence of human reason on Divine Wisdom ... have actually posited a "complete sovereignty of reason" in the domain of moral norms regarding the right ordering of life in this world. Such norms would constitute the boundaries for a merely "human" morality; they would be the expression of a law which man in an autonomous manner lays down for himself and which has its source exclusively in human reason. In no way could God be considered the Author of this law, except in the sense that human reason exercises its autonomy in setting down laws by virtue of a primordial and total mandate given to man by God. These trends of thought have led to a denial, in opposition to Sacred Scripture (cf. Mt 15:3-6) and the Church's constant teaching, of the fact that the natural moral law has God as its author, and that man, by the use of reason, participates in the eternal law, which it is not for him to establish.⁵⁸

Turning to the injunction in Genesis 2:17, the Pope writes:

By forbidding man to "eat of the tree of the knowledge of good and evil," God makes it clear that man does not originally possess such "knowledge" as something properly his own, but only participates in it by the light of natural reason and of Divine Revelation, which manifest to him the requirements and promptings of eternal

wisdom. Law must therefore be considered an expression of divine wisdom.⁵⁹

The natural condition of man is one of participation in a higher norm. Man has liberty to direct himself because he is first directed by another.⁶⁰

The Pope makes use of a number of authorities to express the idea of natural law as "participated theonomy."⁶¹ He refers to Psalm 4:6, "Let the light of your face shine upon us, O Lord" emphasizing that moral knowledge derives from a divine illumination;⁶² using Romans 2:14, "The Gentiles who had not the Law, did naturally the things of the Law," he calls attention to the idea that it is not just by positive law that humans are directed in the moral order;⁶³ from Gregory of Nyssa he cites the passage that autonomy is predicated only of a king;⁶⁴ and from St. Bonaventure he cites the dictum that conscience does not bind on its own authority but is rather the "herald of a king."⁶⁵ The very existence of conscience, the Pope argues, indicates that we are under a law that we did not impose upon ourselves.⁶⁶ Conscience is not a witness to a human power; it is a witness to the natural law. And this is only to say that the natural law is a real law that cannot be equated with our conscience. It was precisely this equation, the Pope notes, that beguiled our first parents, when the serpent in Genesis 3:5 said they could be as gods. What does it mean to be "as gods"? It means that the human mind is a measuring measure, having plenary authority to impart the measures of moral good and evil.

The Pope also notes that the topic of natural law has been too readily detached from the economy of divine laws and pedagogy:

Even if moral-theological reflection usually distinguishes between the positive or revealed law of God and the natural law, and, within the economy of salvation, between the "old" and the "new" law, it must not be forgotten that these and other useful distinctions always refer to that law whose author is the one and the same God and which is always meant for man. The different ways in which God, acting in history, cares for the world and for mankind are not mutually exclusive; on the contrary, they support each other and intersect. They have their origin and goal in the eternal, wise and loving counsel whereby God predestines men and women "to be

conformed to the image of his Son" (Rom 8:29). God's plan poses no threat to man's genuine freedom; on the contrary, the acceptance of God's plan is the only way to affirm that freedom.⁶⁷

No Cosmic Tenure for Moral Theologians

It is surely a token of the disrepair of Catholic moral theology that the Bishop of Rome would have to remind the episcopacy, and through them the moral theologians, that natural law does not constitute a sphere of immunity (a kind of cosmic tenure for moral theologians) from the plan of divine laws.⁶⁸ But once again, what the Pope has to grapple with in this respect is not only decades of neglect *ad intra*, where the theme of natural law was detached from the fundamental principles of theology, but also the history *ad extra*, where natural law and natural rights betokened that ground of liberty in which men find themselves under no mundane authority. This secular myth, which was developed as a counter to Genesis, is contrary to the most fundamental principles of Christian theology.

However the Church might find a common ground of discourse with the gentiles, it cannot be done on the basis of that counter myth. Of course, some truths about the nature of man and the structure of moral reasoning are, as the Pope says, "in principle accessible to human reason." He does not discredit the effort of modern politics to affirm human rights and to place moral limits upon the power of the state.

Having duly noted the existence of principles proximate to human reason, the Pope emphasizes two things that correspond to the two foci of natural law that he says less about: natural law in the mind, and natural law in nature. First, he reminds the reader of the wounded human condition that needs to be repaired by Christ:

What is more, within his errors and negative decisions, man glimpses the source of a deep rebellion, which leads him to reject the truth and the good in order to set himself up as an absolute principle unto himself: "you will be like God" (Gn 3:5). Consequently, freedom itself needs to be set free. It is Christ who sets it free: He "has set us free for freedom" (cf. Gal 5:1).⁶⁹

Second, he insists that human reason, endeavoring to construct the conditions for human fulfillment, needs revelation and grace:

Only in the mystery of Christ's Redemption do we discover the "concrete" possibilities of man. It would be a very serious error to conclude . . . that the Church's teaching is essentially only an "ideal" which must then be adapted, proportioned, graduated to the so-called concrete possibilities of man, according to a "balancing of the goods in question." But what are the "concrete possibilities of man"? And of which man are we speaking? Of man dominated by lust or of man redeemed by Christ?⁷⁰

SOME IMPLICATIONS FOR PROTESTANTS

What can evangelical Protestants learn from this story? They might conclude that Karl Barth was right in saying:

It [moral theology] is in agreement with every other ethics adduced to the extent that the latter is obviously aware—explicitly or implicitly—of its origin and basis in God's command; to the extent that it does not seek authorization before any other court; to the extent that it actually attests the existence and validity of this principle. But it cannot and will not take it seriously to the extent that it tries to deny or obscure its derivation from God's command, to set up independent principles in face of autonomies and heteronomies which comprise the theonomy of human existence and action, to confront divine ethics with a human view of the world and of life which is supposed to have its own (if anything) superior value, and to undertake the replacement of the command of the grace of God by a sovereign humanism or even barbarism.⁷¹

It would be tendentious, of course, to suggest a meeting of the minds between Barth and *Veritatis Splendor*. But on this one point of theonomous ethics, there is more than a merely facile similarity. By way of negation, we can agree that the modern, secular construction of natural law is contrary to the Gospel. It is as destructive within the house of Catholic moral theology as it was in the Protestant denominations, which passed through the challenge of deism and liberalism a century before the Catholic Church.

In a certain respect, the degrading of Catholic moral theology is more cruel because Catholicism has staked more on this issue of natural law than Protestantism. The repair will also be more complicated for Catholics, because, among other reasons, the Catholic tradition has regarded the foci of natural law in the mind and natural law in things as having at least some intelligibility for those who know little or nothing of the revelation of Jesus Christ, and who have not given any effort to reconnecting these two foci back to the architectonic perspective of divine providence. The two cannot be brushed away under the rubric of the "epistemology of sin," as some Protestants are wont to do. Moreover, the Catholic Church has endeavored to address problems of justice in the temporal order according to principles immediately proximate to it.

The problem, for Catholics, is how to do all this without *ad extra* creating the misleading impression that these proximate principles are the end of the story, and also without *ad intra* reducing its own moral theology to a habit of extroversion—to having a merely worldly opinion about disputed issues in the temporal order, which opinion is then configured to conform to the consensus (if any) among the gentiles.

Moral Discourse on Public Matters

Today, especially in the United States, evangelical Protestants find themselves reconsidering the issue of natural law. Their interest seems to be occasioned by two things. First, the political success of evangelical Protestantism has made it necessary to frame an appropriate language for addressing civil politics and law. Second, evangelicals find themselves in dialogue with Catholics, with whom they share many common interests in matters of culture and politics—interests that would seem amenable to natural law discussion. Even though it is true that many Protestants today are chiefly interested in the use of natural law *ad extra*, as a way to speak to the "world," the lesson they might learn from recent Catholic moral theology runs in the other direction. For assuming the legitimate and persistent need of the Christian churches to address worldly issues of justice and morality, it is easy to lose control of this discourse, so that natural law makes moral theology superfluous, and even impossible.

It seems to me that the expression "natural law" ought to be avoided

whenever possible in the Christian address to the world about worldly things. I realize that this is practically impossible, but I shall give the reasons anyway.

Catholics, and most Protestants, will agree that there is a sphere of moral discourse about public matters that can be distinguished from sermonics and catechetics. The question is whether we should refer to the moral discourse in this sphere as "natural law." Of course, we believe it is the natural law that renders the gentiles amenable to the rudiments of moral discourse. In view of the traditional Catholic understanding of this matter (still put forth in the new Catechism of the Catholic Church),⁷² we believe that what the gentiles know is an effect of divine pedagogy, whether the gentiles know that or not. Christians do not need to teach or to construct the first rudiments of the "natural law," for this much is not the effect of human pedagogy in the first place. God, not our discourse, constitutes human creatures as moral agents. The basis of moral order will not stand or fall on whether, or to what extent, we use the words "natural law."

The problem is not whether the gentiles are moral agents, but rather the meanings they assign to the rudiments they possess by virtue of the natural law. In modern times, the rudiments have been gathered into ideologies of natural law or natural rights that not only are false but are expressed in the form of a belligerent universalism. In our country, there is a long tradition of political rhetoric about natural rights. Sadly, today most uses of this rhetoric are degraded, signifying the expansion of individual liberty on terms that are either non-moral or contrary to the moral order. Even John Courtney Murray insisted that the rhetoric was historically rooted in ideologies of the Enlightenment that ought to be corrected by a true account. Indeed, Murray's account of the American consensus includes explicit theological propositions about the relationship between moral order and divine providence. If there were a widespread dissent from these propositions, the basis for a public philosophy would collapse.⁷³

"Good" and "Bad" Natural Law

Father Murray would have been mortified, but perhaps not completely surprised, by the spectacle of that collapse in our times. In 1991, on the eve of the Senate hearings on the nomination of

Clarence Thomas to the Supreme Court, Senator Joseph Biden took the position that the Judiciary Committee should explore whether Judge Thomas held a "good" or "bad" theory of natural law. A bad theory of natural law, in Biden's view, would seek to expound a "code of behavior . . . suggesting that natural law dictates morality to us, instead of leaving matters to individual choice."⁷⁴ A good theory would support individual rights of immunity against morals legislation on matters of personal sexual conduct and abortion. The natural law teachings in recent papal encyclicals would therefore have to be regarded as "bad."

For public purposes, it is more prudent to ridicule than to argue with positions like Biden's. But the problem remains. Christians in search of a sphere of public moral discourse quickly realize that they no longer live in the age of Jefferson and Lincoln. The rhetoric of natural law is abundant in the moral discourse of the public sphere, to be sure; but it is terribly degraded. The most serious setbacks in our political and legal order have been done in the name of natural law, abortion rights being the most evident but by no means the only case in point. How then do Christians correct the ideologies in which natural law is ensconced without going on to discuss those very things that public discourse is supposed to avoid? How can they avoid the task of having actually to reconstitute the sphere of public moral discourse? *If* Christians wish to do so, I can see no alternative than to restore natural law rhetoric to its true and adequate premises. At the very least, we should return to the older American custom of speaking of "higher law." This usage, employed by Martin Luther King, indicates the more than human ground for the public moral order.

The Church Fathers referred to pagan learning as the gold of Egypt, which can be melted down from the idols. But the modern ideologies of natural law and natural rights are quite different. For the moderns took the theological notion of natural law and reshaped idols. If it is necessary to take public discourse as it stands and by the arts of dialectic and rhetoric to move it away from the idols, this task must be done very cautiously. When the Christian theologian plays with the modern rhetoric of natural law, he should know that he is playing with something more than fire. *Ad extra*, he is apt to underestimate the anti-theological meanings of modern natural law (essentially, man as a free agent without God), meanings that are easily reinforced if

the rhetoric is not corrected; *ad intra*, he is liable to bring the idols back into the house of moral theology.

Both of these problems are addressed in recent encyclicals. To conclude, let us return to John Paul II's example. As I pointed out earlier, the Pope vigorously supports the modern experiment in constitutional democracy and human rights. But once he discerned that the rhetoric of natural rights was being used to justify killing the unborn and infirm, he took his readers in *Evangelium Vitae* back to the book of Genesis. The gentiles need and deserve the whole truth, even in order to preserve the rationality embedded in their own "secular" experiment. As for the use of natural law within moral theology, *Veritatis Splendor* reintegrates natural law into the dogmatic theology of revelation and Christology. It seems to me that these two encyclicals, one aimed *ad extra*, the other *ad intra*, get the problem of natural law situated just about right.

A Response

Carl E. Braaten

The perspective I bring to this conversation between Protestants and Catholics about natural law is that of the Lutheran tradition, which has had its own distinctive way of appropriating and transforming the Catholic natural law tradition, though not with a lot of success. Today, however, the Lutheran label doesn't mean much. Much of Lutheranism is entering the mainstream of liberal American Protestantism and is fast losing its distinctive marks of confessional identity. A minority movement within Lutheranism known as "evangelical catholic" is bent on reclaiming the original intent of Luther and the confessors at Augsburg, which was to reform the one holy catholic Church according to the Gospel, not to start anything remotely resembling a modern Protestant denomination. Luther's reforming thrust (*evangelische Ansatz*) tragically resulted in schism, breaking up the structural unity of the western Church. As evangelical catholics we believe that the only true expression of Luther's theological vision is the ecumenical path toward reclaiming the unity of the Church in continuity with the apostolic Gospel and catholic faith.

Natural law is a part of the Catholic tradition, a part that Luther retained, though not without transforming its place and meaning within the framework of his overall understanding of the Gospel. But natural law or any revised version of it has never played the same role in Lutheran theology as it has in Roman Catholic theology. This helps to explain why there is nothing in our Lutheran tradition that corresponds to the comprehensive body of social teachings, with varying

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degrees of binding authority, to be found within the Roman Catholic Church. Lutherans, like most other Protestants, are floundering in a culture of moral chaos with scarcely any substantial tradition of theological ethics to draw from. We have an authoritative confessional tradition regarding the doctrines of the Gospel (*doctrinae evangelii*) but none regarding moral issues. Many are happy about the absence of moral teaching, because it leaves them free to make up a new morality to accommodate current trends in science and secular ideologies. And that is exactly what is happening with regard to the most controversial debates within our church, on, for example, abortion, euthanasia, homosexual behavior, and the ordination of gays and lesbians.

Lutherans do produce social statements, to be sure; but compared to Catholic social teaching, they lack both a basis for argument from natural law and an appeal to the Church's teaching authority. We have no teaching authority and no substantive theological ethic, so pastors and lay people are easy targets of the *Zeitgeist*. The appeal to the Bible as the sole authority in matters of faith and morals has not worked and cannot work, apart from the hermeneutical function of church tradition and the Church's teaching authority. Although Protestant social statements draw together the seemingly most relevant biblical passages on any issue, the troublesome ones are easily dissolved in the acids of historical criticism, which can be used to relativize and even nullify biblical teachings by showing that they are tightly bound to the cultural situation of the time in which they were written and therefore have no universal applicability.

In this situation of moral confusion and ethical wobbliness, many of our people—pastors, laity, and theologians—have welcomed the magisterial ministry of Pope John Paul II in behalf of the whole Church. Drawing as he does on the Bible, the ancient creeds and councils of the Church, and the fathers and doctors of the great tradition, sources that they also would affirm as authoritative for their own ministries, the Pope fills a void that they keenly sense in their own denomination.

The Appeal of Natural Law

The effort to recover something of the natural law tradition is occurring in the face of a secularized culture in which both the theory and the rule of law are in deep crisis. The rise of the positivistic theory

of law prepared the way for the abuse of law by the totalitarian state, which manipulated law as a mere function of absolute power. Prior to the triumph of positivism, the law was thought to be a means of justice administered by the state, not a tool of arbitrary power. With the collapse of theological or metaphysical foundations of justice, there was no other ground of support, no other source, no other criterion of validity for the law than the will of those who held the monopoly of force. The twentieth century has witnessed the unforgettable horror of the "lawlessness of law." Legal positivism stands defenseless, stripped of the traditional appeal to transcendent norms beyond positive law. In positivistic theory, justice is determined by what the law says, rather than the law's being determined by what justice requires.

The fear of normlessness and its nihilistic effects in public life has sparked a revival of interest in the classical notion of natural law. Churches feel a sense of responsibility for the process of law in social life. Even when they cannot agree with Catholic natural law theory and its magisterial application from case to case, they secretly admire a church that knows where it stands on the issues and seems never short of reasons to explain why.

Protestants thought they could count on Catholics to hold the fort. But now Russell Hittinger tells us "it ain't necessarily so" and relates the sad tale of "how the concept of natural law became a serious problem in modern Catholic moral theology." Hittinger reminds us that in the Fathers and in Thomas Aquinas, natural law was always tethered to theology; it was never seen as an autonomous realm that functioned independently of the eternal law in the mind of God. But in the modern period, natural law declared its independence from theology as well as from the teaching authority of the Church. Here is a key conclusion by Hittinger:

Thus what began for the Christian theologians as a doctrine explaining how the human mind participates in a higher order of law is turned into its opposite. The natural law becomes "temporal," the temporal becomes "secular," and the secular becomes the sphere in which human agents enjoy immunity from any laws other than those they impose upon themselves.

The granite foundation of natural law in real theology has been surrendered in exchange for the quicksand of modern secular ideology.

Not God but man has become the measure of all things. That all this could happen in Catholic moral theology since Vatican II, in a Church that claimed dominical legitimation for the twin pillars of sacred tradition and official authority to bracket its moral discourse, makes it easier to explain the ethical debacle in Protestantism, which enjoyed the benefits of neither of these pillars.

Barth and Natural Law

Russell Hittinger comes close to siding with Karl Barth, for whom the whole idea of a "natural law" or a "natural theology" functions like a Trojan horse inside the walls of the Church, within its theology and ethics. Hittinger even says: "It seems to me that the expression 'natural law' ought to be avoided whenever possible in the Christian address to the world about worldly things." Barth would add, not only the expression but the matter itself (*die Sache selbst*) should be avoided. Why? Because in Barth's view there lurks a kind of latent deism in natural law theory. Its cradle is not biblical revelation but pagan metaphysics. The God behind the metaphysics of natural law is not the living God of the Bible. Natural law theory creates an autonomous locus of moral reflection completely separate from the revelation of God in Jesus Christ. It does not take sin seriously and is overly optimistic about the human condition.

Hittinger seems to agree that it has indeed worked out that way in modern Catholic moral theology, and cites Joseph Fuchs among others as evidence. But Hittinger, unlike Barth, believes that natural law can be baptized, and that it has been salvaged in principle in recent papal encyclicals by the reintegrating of natural law "into the dogmatic theology of revelation and Christology." He believes that two recent encyclicals, *Evangelium Vitae* and *Veritatis Splendor*, "get the problem of natural law situated just about right."

Hittinger's argument is not with Karl Barth but with his fellow Catholic moral theologians who have detached natural law "from the fundamental principles of theology," which is exactly what Protestant critics have charged all along. What would Karl Barth have to say about the latest papal encyclicals? I don't know. (There is a story about Barth and the pope: Barth was told that a reporter had asked the pope who in his estimation was the greatest theologian of the century. The pope

answered, "Why, Karl Barth, of course," to which Barth supposedly replied, "So the pope is infallible after all.") But while I cannot speak for Karl Barth, I myself agree with Hittinger's conclusion that to be useful in Christian moral teaching, natural law must be returned to its theological base, where, he claims, Thomas Aquinas firmly placed it. Hittinger is in good company in rescuing Thomas from Thomism, the kind of Thomism that separates what Thomas wrote about principles of law, reason, and nature from the wider framework of the Gospel, revelation, and the Church. For Thomas, what is first in the order of knowledge (*ordo cognoscendi*) is not necessarily first in the order of being (*ordo essendi*). It is no mere coincidence that the misuse of natural law and natural theology in Catholic theology is concomitant with a longstanding misinterpretation of Thomas Aquinas.

The Orders of Creation

Just as a basic disagreement appears on the use of natural law in Catholic moral theology, so also there exists a disagreement of a different sort in Protestant theology. This surfaced in a heated way between Karl Barth's *koinonia* ethics and the Lutheran theology of the "orders of creation." The orders of creation (*Schoepfungsordnungen*) doctrine is the new baptismal name given to natural law by Lutheran theologians of the Erlangen school. The expression *lex creationis* takes the place of *lex naturae*. What is the difference? The change is intended to transpose the entire discussion of human life in the earthly city from the "unbaptized God" (to use Robert Jenson's term) of Hellenistic metaphysics to the living God of the Bible, "Maker of heaven and earth"—that is, from philosophy to the theology of the first article of the creed.

Orders of creation and natural law do have something in common: both affirm that Christians, like all other human beings, exist in a framework of universal structures that are there prior to and apart from the fact that Christians believe in Christ and belong to his Church. The first article of the creed comes before the second and third for a good reason. God has placed all human beings in particular structures of existence that are common to all, such as sexuality, family, community, work, and government. However, it is important to stress that these universal structures are not autonomous entities that run,

as the deists thought, with a mind of their own. The law and commandments of the living God are revealed through these common structures of human existence, but this original and universal revelation is different from the special revelation of God in the history and gospel of Jesus Christ.

This means that there is a double revelation of God, and here lies my chief point of disagreement with the covenant theology of Karl Barth. For Barth there is only one revelation of God. There is only one Word of God, from which all structures, orders, commandments, and ethical norms for Christian living in the world must be derived. I do not agree with this approach. It empties the world of its meaning as a realm of divine providence and human involvement that goes on apart from knowledge of the Bible and outside the walls of the Church. People do not need to know Jesus Christ and accept his work of salvation to have some knowledge of what is right and good through the law of creation and through conscience, for God's "eternal power and divine nature . . . have been understood and seen through the things he has made" (Rom. 1:20).

Barth's attack on both Catholic natural law theory and the Lutheran theology of the orders of creation was so vehement that after World War II many Protestant theologians slid down the slippery slope of situation ethics. Theological ethics based on the orders of creation was aborted, and nothing arose to take its place. For a number of theological reasons Lutherans could not accept Barth's method of treating ethics, but after the war they could not come together on an alternative. Moreover, Barth now had the advantage of standing on high moral ground as the author of the Barmen Declaration. Anyone who attacked the Barmen Declaration for its faulty theology, its mono-Christological view of revelation, and its Christocratic view of the structures of common human existence would be accused of the "German Christian" heresy, of being a Nazi.

There is a connection between Barth's attack on natural theology and the "death of God" movement, as well as between his attack on natural law or the orders of creation and the parallel deconstruction of ontology, ethical norms, nomological principles, and traditional values. The churches have not yet recovered from the evacuation of serious moral discourse, from a free fall into antinomianism. Hittinger shows that antinomianism is the fate of natural law theory divorced

from theology, but the same fate awaits a theology that cannot muster a defense against the moral relativism of situation ethics. Our churches are mired in the amoral marshland of antinomianism.

Distinguishing Law and Gospel

In his commentary on *Veritatis Splendor* Hittinger speaks of "the essential unity of the law and the Gospel." The unity lies in God, and therefore the law as well as the Gospel is the province of theology proper. It is also salutary to observe the distinction. Luther taught that theology is the fine art of drawing the proper distinction between law and Gospel, neither separating nor equating them. Law and Gospel are two different modes of God's activity in the world. But law comes before Gospel in the history of salvation and in human experience. In Genesis 1-11 Israel wrote a preamble to her covenant history, involving the whole human race, placing Adam before Abraham and Noah before Moses—which is to say that the living God was at work among the nations of the world prior to the election of Israel. Similarly, today God acts in all realms of life without any necessary contact with the preaching of the Gospel. Law is the instrument of God's activity, both the unwritten law in the structure of things and the written codes of law that seek to embody principles of justice. Law is universal and inescapable. It provides the mesh and matrix of life, embracing all persons, communities, and nations in their actual empirical existence, creating a degree of order in spite of the destructive consequences of sin.

Atheists and agnostics and humanists somehow know the law of the hidden God (*deus absconditus*) without believing in the God who has revealed himself in Jesus Christ. There is no salvation in this knowledge, but without it life would come to a halt. There would be nothing to be saved. Law is not an autonomous structure of worldly life. A Christian understanding of law must be grounded in theology, because it is the living God who is active, often anonymously, through the law that is operative in the world. God's activity is not dependent on or limited by human awareness and knowledge. God carries out his purposes in the world through leaders, events, and institutions, whether they know it or not; there is no sphere of life where he is not active through the law to promote his will. Natural law theory

divorced from theology is the bad kind of natural law, because it does not reckon with the continuing presence and pressure of the living God through concrete demands that impinge inescapably on all human beings. In Luther's language this is the work of the left hand of God.

But then there is the work of the right hand of God. This is carried on through the election of Israel, through the life, death, and resurrection of Christ, and through the Church's ministry of preaching the Gospel and administering the sacraments, which mediate the divine promise of eternal life, hope, and salvation. The real casualty of the eclipse of law is the preaching of the Gospel. The law is the fundamental presupposition of the Gospel. The Gospel is not the word of God apart from the law. Each has a different function. The law of God meets every person somehow through the natural orders of life in history and society, and through the medium of conscience. The law is God's controversy with his creatures. The law is the power of negativity, in that it can terrify, accuse, condemn, punish, and kill. If this is not true, then the Gospel cannot comfort, strengthen, forgive, liberate, and renew. Thus there are two uses of the law: the political use within the public domain, to order society, to prevent chaos, and to punish crime, and the religious use, which accuses and drives toward the Gospel (*lex semper accusat*). The Gospel is the medicine for the condition the law diagnoses. The law has no power to heal of itself.

Antinomianism in the pulpit turns the Gospel into a sweet anodyne that lulls people to sleep, when they should be roused by the law. The twofold process of demythologizing and psychologizing has removed the negative symbols of the biblical worldview—sin, Satan, the wrath of God, the final judgment, and hell. H. Richard Niebuhr captured it well in his characterization of the preaching of liberal Protestantism: "A God without wrath brought men without sin into a kingdom without judgment through the ministrations of a Christ without a cross."

Through the law God tells us what we must do; the Gospel declares what God does. The law is expressed in the imperative mood, the Gospel in the indicative. The law demands and threatens; the Gospel gives and forgives. The law says you ought to be righteous. It is reasonable to assume, said Kant, that if you ought to you can. That

was the reasoning of Pelagius against Augustine and of Erasmus against Luther. The natural man is a born Pelagian. He hears the law and uses it as an occasion of pride and self-righteousness. But the law does more: it drives the self-reliant person into despair. It pulls the props from under a person and casts him or her into a slough of despondency, self-accusation, anxiety, and suicide. Thus the law prepares the way for the hearing of the good news of divine grace freely offered.

A Discarnate Logos

Russell Hittinger has told the story of how natural law has been misused, not only how it was "disembedded from moral theology," but how "moral theology was disembedded from the rest of theology." Yet to my mind this is only half the story. The other half concerns the *inner sanctum* of Christian theology, the Gospel of salvation on account of Christ alone. Karl Rahner was a dominant influence behind the scenes at Vatican II, and since then a kind of left-wing interpretation of Rahner's *logos* Christology has spread in the shape of a pluralistic theology of religions. Paul Knitter and other Catholic theologians have joined a parade of liberal Protestant theologians in affirming that Christ is a way of salvation, to be sure, but only for Christians; other religions have their own ways, equally valid and true. This pulls the plug on the universal mission of the Gospel to the nations.

In control of this pluralistic theology is the unbaptized *logos* of Greek metaphysics, the *logos asarkos*, which replaces the *logos* that became flesh in Jesus in a unique, definitive, and normative way. The mission of the Church has been radically redefined by the same sort of Catholic theology that secularizes natural law, only now it is the "scandal and stumbling block" of the Gospel itself that is demythologized.

The outcome of this idea of a discarnate *logos* salvifically at work in all the religions is that the missionary aim of the Church is no longer to bring the gentiles something they do not have, a gift of salvation. The Great Commission of Christ to his apostles and to all communities of faith that claim apostolic succession is effectually denied. The purpose of the Christian mission instead is to help Muslims be better Muslims, Hindus better Hindus, humanists better humanists,

through dialogue and cross-fertilization of ideas. These pluralists believe it is more interesting and important to communicate their ideas about religion than to preach the Gospel to people of other religions. Preaching the Gospel might bring about conversion; to attempt that would be arrogant, triumphalistic, colonialistic. They call their theory of religions a Copernican revolution. It is no such thing; it is plain old-fashioned heresy popularized by liberal Protestantism.

Russell Hittinger has shared with us an eloquent lamentation about the collapse of natural law in modern Catholic moral theology. Equally sad, at least for me, is to see how Catholic theologians have followed the liberal Protestant theologians, Ernst Troeltsch and company, in reaming out the Christological core of the Christian faith so that there is no Gospel left to tell to the nations. The Pope's encyclical *Missio Redemptoris* was right on target in taking aim at and hitting this pluralistic theology of religions and the new missiology that follows from it.

I believe that the underlying cause of the problem of a secularized natural law, and of the notion of salvation in non-Christian religions apart from Christ, is a theological method that approaches issues from a philosophical concept of the *logos* outside the framework of a Christocentric, trinitarian monotheism. This is the unbaptized *logos* of pagan philosophy that the Church Fathers transformed—but perhaps not radically enough—under the conditions of their belief in the incarnation of the *logos* in the concrete person of Jesus of Nazareth, the *logos* made flesh.

Comments

Russell Hittinger: What Barth had to say about modern liberal theology strikes me as pretty accurate. But I do think that the problem here is not just natural law, because you could pick up other themes in theology and find the same thing—a loss of theological perspective altogether. The missionary aim of the Church seems to have been lost, at least among Catholic moral theologians, since World War II. Quite likely, the cause of this loss dates largely from before that. Certainly after World War II it seems that man-without-God is treated as an ontological fact; it is one thing to observe that many people do not know God, but it is quite another thing to posit man-without-God as a normative fact for Catholic moral discourse. My quotation of Cardinal Roy and his “modern synonyms” is typical of the period. So at this point the Church seems to have no teaching mission.

Rarely does Catholic natural law theory today seek to teach the reader what natural law is in terms of all three foci—human mind, nature, mind of God. Almost always it's simply a matter of taking what people already know and trying either to clarify it logically or apply it to issues of public policy. The divine origin and end of natural law is discarded, perhaps because it is a stumbling block to political consensus. This is not just a neglect of natural law—it's the abandonment of the mission of teaching unbelievers something they don't already know.

Carl Henry: Russell Hittinger and Carl Braaten have given us a fine beginning. But what is this natural law that is in debate? I went to Loyola for a course on Thomas and a course on Scotus. I went to

Note: The participants in this conversation are identified on pages 173-74.

Indiana University and took a course with Henry Veatch, who later taught at Georgetown as well, specially on natural theology and Thomas's fivefold proof of the existence of God. Never was it questioned that Thomas *believed* in the self-revealing God. The issue seemed to be, rather, a specific philosophical formulation. Without any appeal to divine revelation, but simply on the basis of observation, one assertedly could give a logical demonstration of the existence of God and of the existence and immortality of the soul.

Now I'm told that this misrepresents Thomas. What I'd like to know is, precisely what is the natural law? Let's define it as closely as we can. I'm willing to learn.

Russell Hittinger: My paper claims that you cannot define natural law except through the third of the three foci: order in the mind of God. Natural law as real law is not order in the human mind; to define it that way would be to make a terrible semantic and ultimately metaphysical mistake. The pagans didn't have a doctrine of natural law, but they did have a concept of justice according to nature, conformity of the mind to what was the naturally just or honest thing.

Christian theologians upgrade this quite considerably, and that creates part of the problem. Christians talk about *lex*. From Tertullian onwards, natural law is defined as God's governance of the creature through indited, impressed law. Creatures are moved, even prior to their practical reason, to reason practically in a certain way, and that's called law. There's a legislator, there's an end, and there's a promulgation. Thomas never thought, however, that the creature being moved by the order of creation, or by the eternal law, must immediately *know* that he or she is being so moved. One of the ways in which natural law differs from positive law is that the creature is moved by God, sweetly—as said in Wis. 8:1, *suaviter*—through his own nature.

Carl Henry: Is there a body of universally shared moral knowledge that is conveyed through natural law?

Russell Hittinger: I think one overstates the case to say that anything but the rudiments of moral law are known *naturaliter*. According to Aquinas, one of the prices paid for sin is that the mind is separated from knowing God and therefore is governed by God only through

these effects. For us to cooperate with that divine governance and to develop a body of law that is congruent with it is very difficult without divine instruction known through Scripture and tradition.

Robert Royal: Just to clarify, because Carl Henry and I have discussed this point at other Ethics and Public Policy Center functions: In the *Summa* it says *quinque viae*—five ways—by which we approach the divine. Aquinas gives the impression that these are proofs. But would it be fair to say that they are *approaches* rather than proofs?

Russell Hittinger: Thomas certainly felt in principle that the existence of God could be demonstrated. But for Aquinas, most people know without demonstration that God exists. In *Summa Contra Gentiles* he says that you can infer but not necessarily demonstrate the existence of God from things that are seen. People who don't, he says, are guilty of plain stupidity. Natural reason, however, cannot know of special providence and that God is Trinity.

Carl Braaten: Well, I don't use the term "natural law." As I said in my paper, in the Lutheran tradition the concept is taken up into the first article of the creed, which does what you're saying must be done, namely, locate natural law within theology. Whatever term you're using, natural law or orders of creation, it refers to God's ordering of human life. God does this through some enduring structures, and that's the *humanum*—you could say human nature, or the imprint of God on the human being through creation. The human being is a social being, so that there are certain givens, certain common human structures of life and experience. It's possible for us to go to China and have a conversation with people from a totally different religious, cultural, and language background. There has to be some kind of common precondition for the possibility of human discourse. The epistemological question, "How do we know?," is another issue. But theology must affirm that before redemption there is a human being, fallen and sinful though he may be; there is a universal human condition that is the presupposition of the entire history of salvation.

When I went to Japan a missionary said, "How can we preach the Gospel here in Japan, since the people have no sense of sin? They have a sense of shame, but no sense of sin." But the Japanese are

human beings for whom Christ died and for whom he was raised from the dead. There is a common human predicament.

I think theology has something at stake in this whole discussion. We don't have to produce a definition once for all time, but we can keep working at it.

Carl Henry: I don't question that man comes into life epistemically loaded with certain baggage through the *imago Dei* and the whole structuring of the human situation with its transcendent roots in God's creation and revelation. None of that do I question. What I'm asking is whether natural law has a specific moral content that is universally shared, a body of truth that somehow survives the Fall and is universally shared. If not, then what I learned about even Thomas's view of natural law was not an accurate representation.

Robert George: I would like a crack at Dr. Henry's question. I think the natural law is a body of practical—including moral—principles that provide reasons, more than merely instrumental reasons, for action and for restraint. The natural law, then, is how God directs man, made in God's image and likeness and, as such, endowed with reason and freedom, toward his proper ends. Non-human animals God directs in a different way. Man, made in his image, with reason and freedom, is directed by God through the natural law. In that way, it seems to me, the natural law is a participation in the eternal law, as the natural law theorists say. Or, the natural law is the moral law or God's law insofar as it is available to unaided reason. I agree with Carl Braaten that *how we know* the reasons, including moral reasons, that taken together constitute the body of the natural law is another question. Those of us who believe there are such reasons can debate the epistemological and cognitional questions. But the common ground, it seems to me, is the belief that there are such reasons and that they do constitute a body.

Are they shared? Yes and no. Shared, yes, in the sense that in principle these reasons are available to all of us as possessors of a practical intellect that can grasp those reasons. But shared in that everyone knows all of them perfectly or that we all agree, or could in this vale of tears agree, on them? No, because reason and inference can miscarry in the practical sphere, as they can in any other domain

of inquiry, from mathematics to the sciences to historiography to logic itself. So it's true that we have broad differences over moral questions, and even over some practical questions that we wouldn't want to define as moral questions. But those differences themselves are no evidence at all for the proposition that no natural law exists.

I take Dr. Henry's question to be a request not for a definition but rather for an account of the natural law. Is it a body of principles? Yes. Are these principles "shared"? Yes, in one important way; but no, in another.

Daniel Westberg: The point has been made, but I think it's worth repeating, that the principles are not necessarily the equipment of every human mind. If we say we can appeal to people's natural knowledge, then people will falsify the theory of natural law by saying, "I don't accept that." The Thomistic view of natural law is that the principles are accessible; that doesn't mean that people have availed themselves of them. That's an important point.

James Schall: In revelation, as I understand it, there is a command that we believe that God exists. There are also certain indications that the existence of God could be shown in some fashion. It seems to me that what used to be called the preambles to the faith meant precisely that we have to have some grounding by which any revelation is credible to us. That credibility cannot itself, in my view, be revelation. We need some grounding for our ability to say that what is available to us by revelation is, in fact, not irrational. And so I think it is crucial that we defend the integrity of the intellectual experience as a set of questions that prepare us to receive the answers as given by faith.

David Smolin: I think there is a very serious Reformed/Catholic split there. The way I understand the Reformed faith, the only reason to accept revelation is God himself.

Russell Hittinger: Thomas would agree with you on that. Faith, if it is simply an epistemic exercise of believing something unseen, is not a theological virtue for St. Thomas. Anyone can have it. "Did you hear that the Cardinals won yesterday?" I didn't see it but I believe it. The virtue of faith is believing precisely on the authority of the

God who reveals himself. You were right on that point: there is no other way into that one but through the Holy Ghost, moving the heart that moves the mind to assent. That's Thomism 101. I think it may be Christianity 101.

James Skillen: Russ, after you've quoted Fuchs, you say in your paper, "The traditional words are still present, e.g., 'written on the heart' . . . but they now mean something different, and in fact the opposite of the tradition in Augustine and Aquinas. For the older tradition, there is a clear distinction between the agency of the mind *discovering* or discerning a norm and the being or *cause* of the norm." Part of what I want to get at is the distinction between the norm itself and the response. Hasn't a big ambiguity been present, ever since the Fathers began to absorb Aristotle or the Stoics or whatever, as to what this relation is?

For example, the first of the three foci you mentioned was natural law in the human mind. In this regard, it seems to me that quite often the discussion goes, does "in the human mind" mean being part of the subject? In a certain sense could one say that natural law means that the human being unavoidably reaches certain conclusions, because the structure of the mind is such that the mind is the law for itself? Part of what I'm getting at is that you see an antithesis between modern relativistic or antinomian . . .

Russell Hittinger: Well, no, because Kant is not a relativist or an antinomian, but he's the antithesis of what I'm trying to say about the Catholic tradition.

James Skillen: We're now saying that what most Catholics and Protestants mean by natural law and natural rights is the opposite of what the Christian tradition was saying by affirming that the mind is bound by a higher authority, by a law outside itself. How did we get to that situation? It seems to me that the whole movement toward the autonomous person grows out of the sense of being a law to myself. At a certain point in history humanism built up quite a head of steam in saying, "Neither God nor master! We'll be masters of ourselves." A pretty simple reply to that would be to say, "You're going to have to get back to God to be able to make sense out of life in this world."

That gets pretty close to a Barthian approach of saying, "Look, without God's grace breaking in to call people back in repentance to the proper will, there is no discerning of the law or being in tune with it." That in no way denies the validity of the continuing relevance of the law as binding on the person's conscience, but it certainly says that those who refuse to yield to it are out to lunch.

There's a kind of latent pantheism in some of the ancient thought that the Fathers picked up. If the mind of the person is that which is God in him, if there is such a close identity of the mind with what is divine, then you eventually get to the modern theme that we are God. Couldn't one of the tracks by which we try to correct this be to clarify how the meaning of divine law, divine normativity, creation order, whatever you want to call that complex of what the Creator puts to his creature, is always above and beyond them, never to be found in the mind? All we can say is that human beings, as we live in God's world, never escape the binding power of the law.

I'm trying to force apart this idea that somehow the law on the one hand is identified with the very subject itself and on the other hand is the norm beyond that subject. At that point we can also begin to make sense out of why it's so difficult to talk about natural law, when Protestant common grace doctrine and Catholic natural law doctrine were supposed to give us the common ground on which we could finally meet, all of us, simply as rational creatures.

Russell Hittinger: These words are very tricky, especially if you go through the three foci of natural law. For instance, the noun in its nominative case—*natura*—is not the best one theologically. The adverb—*naturaliter*—works better. It's not merely coincidental that the Church Fathers and even Aquinas used the adverb wherever possible to avoid the suggestion that nature *is* a law. They weren't stupid. They knew you can't just predicate a law of nature, except in the metaphorical sense. But nature can be a mode of promulgation by a divine legislator.

In modern terms, the fact that something is internal would mean that it is part of the very essence of the thing it is internal to. Aquinas has long discussions of this issue; in short, natural law is psychologically internal but metaphysically extrinsic to the person. So, for instance, desire is internal, but the final cause isn't.

By analogy, for Thomas, the natural law, insofar as it's real law, is an extrinsic principle. By the way, Thomas mentions three extrinsic principles of action: *diabolus, lex, gratia*—the devil, law, and grace. The natural law is extrinsic, but not external; whereas positive law is extrinsic and almost always external. Aquinas makes that distinction in his commentary on Aristotle's *Metaphysics*, but almost no one ever talks about it. It is crucial in Aquinas to sort out what these words mean so that you don't get lost in them. Because indeed, when you use nature in the nominative case, it can look as though you are predicating a law of nature. At that point you're in big trouble theologically. You may not be in big trouble epistemologically—just as you can go on counting while having an absolutely terrible theory of mathematics, I suppose. You can go on reasoning about this body of law while having a terrible theory about it. I would predict, though, that you won't go on reasoning well for very long. At a certain point the mind is going to want another reflective account of what it's doing. If we should start thinking of nature or the human mind as the law, we are in big trouble.

James Skillen: I still wonder how, if Aquinas is as clear as we think he is (I'm not trying to load this on Aquinas; I'm really talking about the whole tradition of Christianity, including the dilemma of the Reformers and modern liberal Protestants as well), if natural law puts us in such a position that we should have the ability to make these distinctions, at least within the framework of the Christian world, how can we have gotten to the point where it's so difficult to get agreement on what natural law means?

Russell Hittinger: But this happens all the time; it's not just natural law theory. You know something without immediate reliance on theories about it.

James Skillen: In the political world where I am right now, if, for example, you raise the question, "Shouldn't a congressman be concerned to do justice, rather than simply satisfying people so he can get elected?" the typical response today is, "Well, who can know what justice is? That's something for scholars." How can there be so little agreement on such fundamental matters?

Russell Hittinger: Because the human mind naturally wants something more than just flat-footed cognition. The human mind wants to know the reasons also. If it doesn't look for these in the clear light of theory, it's going to get into the dim corners of ideology. We don't need theology to explain how people know that murder is wrong. That's the point I make at the end of my paper. If someone says, "You need theology to know that," then we are really in different worlds. You need a theology to *explain*, maybe, but not to know, the rudiments of natural law. I am an old-fashioned natural law theorist in the sense that I believe that God is the cause of the natural law. Human minds are a proximate cause of the *knowing* of it; but God is the cause of *the law*.

Deal Hudson: What people want natural law to be is a body of axioms about morality. Carl Braaten's response reminded me of how in 1974 I went to Princeton Seminary as a Protestant and came out wanting to be Catholic. What we're arguing about here is precisely the thing in the Catholic tradition that is so attractive and draws so many into the Catholic Church. The concept of natural law was the fuel for much Protestant reflection until Catholics decided that it was more like a Cartesian window on the universe than a way of being instructed by God through his creation.

Clearly, Carl Braaten wants Catholics to represent the traditional account of natural law because he thinks there is something in it that is very important for public life, something that has been lost. But, even apart from the theoretical problems, the whole epistemological problem caused by the Fall, caused by sin, may still subvert this more traditional account of natural law.

A PRESERVING GRACE

*Protestants, Catholics,
and Natural Law*

Edited by
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