

**NATURAL LAW AS FACT, AS THEORY,
AND AS SIGN OF CONTRADICTION***

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Prior to election to the see of Peter, Joseph Cardinal Ratzinger had already called for renewed attention to natural law, the understanding of which is presently obscured not only in society at large but among scholars. He seems to view natural law under three aspects: First as a fact, reflecting the constitution of the human person and of created reality as a whole; second as a theory, an attempt to comprehend the fact; third, however, as a sign of contradiction, for it exasperates, offends, and enrages. The article explores the natural law under each of these three aspects.

Prior to his election to the see of Peter, Joseph Cardinal Ratzinger wrote to one of our Catholic universities¹ to propose that the school sponsor a series of scholarly talks on the topic of natural law. In his letter, he remarked that “The Catholic Church has become increasingly concerned by the contemporary difficulty in finding a common denominator among the moral principles held by all people, which are based on the constitution of the human person and which function as the fundamental criteria for laws affecting the rights and duties of all.” For centuries unquestioned, he says, these truths of the natural law “constituted a valid starting point for the Church’s dialogue with the world, with cultures and non-Christian religions.” The urgency of “renewing an understanding of the natural moral law” arises, he says, from the fact that its truths are now “obscured,” not only in secular dogma, but even sometimes in “the teaching which takes place in Catholic universities.” He clearly believes that renewing the understanding of natural law is not a task for philosophy alone, but for

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philosophy in partnership with revelation, because, as he explains, it requires “a deeper understanding of the theology of creation, as this flows from the unity of God’s salvific plan in Christ.” To guard against misunderstanding of this important point, he quotes John Paul II, to the effect that “it is not a case of imposing on non-believers a vision based on faith, but of interpreting and defending the values rooted in the very nature of the person,” “principles upon which depend the destiny of human beings and the future of civilization.”

Strong words. The Cardinal, now Pontiff, makes sharp observations not only about the moral confusion of the times, but also about our scholarship, which ought to help to rectify the confusion, but sometimes merely joins in the muddle.

I would like to call your attention, though, to three distinct aspects under which the Cardinal seems to view the natural law.

In the first place, he views it as a fact. Natural law is a feature of the world, having to do with the constitution of the human person, and behind that, with the constitution of created reality as a whole. The Cardinal’s expression “the constitution of the person” calls several things to our attention. One is that the human being is a person, not just a mess of chemicals and electrical impulses. Personhood is not a mystification but a reality, and persons are meant by God to know reality, including the reality of themselves. But the expression also emphasizes that the human person is constituted in a certain way. If we lost sight of this fact, true personalism would collapse into a personalistic relativism in which we could no longer tell what counted as using a person wrongly, as a means. After all, anyone can plead the second version of Kant’s categorical imperative. A woman denied an abortion might protest that she should not be reduced to a “means” to her baby’s survival; a man denied assistance in killing himself might complain that he should not be reduced to a “means” to the peace of his doctors’ conscience.

To say that natural law is a fact does not mean that theorizing about it is unnecessary. Calling attention to a fact is always an act of theory. Even so, we are apt to forget that before the theory must come the thing that the theory is about; natural law theorizing is about something that is already and unquestionably there. I use the word “unquestionably” with a qualification. Of course the “thereness” of natural law is questionable in a certain sense; one might maintain that it is *not* there. But insofar as we are serious about being Catholic thinkers, committed to an adequate view of the human person, a view which makes use of all of the resources of faith and reason as they co-illuminate each other, we should already know the answer to that

logically possible question. At this stage of the game it would be frivolous—a squandering of what has been given to us—to waste breath on the question of whether the human person has a constitution, just as it would be frivolous for a mineralogist to ask whether there are minerals, or an oceanographer to ask whether there is ocean. The mineralogist and oceanographer have better questions to ask. So do we.

Only in second place, then, does the Cardinal view natural law as a theory. We are to be realists. The theorist must humble himself before the fact, which in this case means the reality of human personhood. This is where those “better questions” that I mentioned come in: What do we actually know about the constitution of the human person? How are its principles “natural,” and how are they “law”? How can we explain them in a way that makes them intelligible even to the people of our time? I suggest that if theory does come in second place, not in first, then it will be a different sort of theory than the kind we have become accustomed to during the last several centuries. It will not be the belly-button-searching kind that demands exhaustive investigation of whether we can know anything at all before asking what, if anything, we know. Instead it will realize that we must already know something, and know that we know it, even in order to ask how it comes about that we do know it. And so, a truly adequate theory of the natural law will not always be turning into meta-theory of the natural law. It will resist that tendency. It will keep its eyes focused on the data, contemplating the constitution of the human person itself, rather than turning its eyes skull-inward in a futile attempt to catch itself at the act of contemplation that it was doing a moment before. Epistemology is important, even indispensable, but it is the maidservant of ontology, not its master.

In third place, the Cardinal seems to view natural law as a scandal, as a sign of contradiction. I take his remark that its truths have been “obscured” as a gentle way of saying that they have been widely repudiated. Whether or not he intended to make that point in his letter of invitation, it is certainly an aspect of his broader teaching, and it is certainly true. Natural law exasperates. It offends. It enrages. By the way, this gives us a reason—a serious reason—to consider the questions that I called frivolous a few moments ago. It would be frivolous for the oceanographer to ask *on his own behalf* whether there is ocean, but it would not be frivolous if he lived among people who denied water even though living on a raft. In the same way, it would be frivolous for us to ask *on our own behalf* whether the human person has a constitution, but it is not frivolous if we live among humans who deny the personal structure of their being.

The scandal of natural law is both chronic and acute. It is acute because of the suicidal proclivity of our time to deny the obvious, a proclivity, by the way, which itself cries out for explanation. We have reached that day that Chesterton foresaw when he wrote, "Everything will be denied. Everything will become a creed Fires will be kindled to testify that two and two make four. Swords will be drawn to prove that leaves are green in summer We shall be of those who have seen and yet have believed." The circumstance of living during an acute phase of the scandal makes it especially important that we not let the wool be pulled over our own eyes. Even today there is a common ground, because humans still bear a common nature; whether people are commonly willing to stand on that ground is another matter altogether. It is a slippery common ground, wet with the dew of our evasions. Therefore we must not suppose that the definition of "common ground" is "what everyone concedes" or "what no one denies." There is nothing that everyone concedes; there is nothing that no one denies. We must be willing to be bold.

I have commented on the acuteness of the scandal in our time. But the scandal is also chronic. Natural law is a sign of contradiction, not merely incidentally because of the times, but essentially because of all times. One reason is the Fall. Our condition contradicts our constitution; our state is out of joint with our nature. The natural law scandalizes us because our actual inclinations are at war with our natural inclinations, because our hearts are riddled with desires that oppose their deepest longings, because we demand to have happiness on terms that make happiness impossible. To understand the scandal at an even deeper level, natural law is a sign of contradiction because Christ the Redeemer is a sign of contradiction. The Cardinal is quite clear about this. Remember the remark that I quoted earlier, that an adequate understanding of natural law implicates "the theology of creation, *as this flows from the unity of God's salvific plan in Christ.*"²² Some people would say that in making such a claim, the Cardinal is no longer proposing philosophical ethics, but demanding the abdication of philosophy to theology. On the contrary, he is rejecting a false view of philosophy, a view which supposes a relationship of faith and reason which is ultimately insupportable. Yes, we can and must find ways to make ourselves comprehensible to those who do not share the insights of revelation, but this does not mean that we can do so without mentioning these insights. Nature presupposes supernature, and the present disorders of nature merely stun the mind when contemplated apart from the graces of creation and redemption. For this reason, a truly adequate understanding of nature's malaise requires some hint, some glimpse, some trace of its supernatural remedy.

How awful such reflections are for those of us who crave the approval of our secular colleagues. The timid flesh crawls at the thought of their skeptical glance. Yet in the long run, there is no other way to make headway. How could we expect natural law to be plausible to those whose nature experiences only its humiliation, and not its rising again? I realize too that these remarks risk scandal of yet another kind. I mean methodological scandal, and this is unavoidable. The philosophical method of our day is minimalist. It assumes that people can consider propositions about reality only in small doses, one dry pill at a time. I suggest that at least sometimes, the very opposite is true. The reason the pill goes down so hard is that it is *only* a pill, for the mind, like the stomach, desires a meal. Just as some foods are digestible only in combination with other foods, so also some ideas are plausible only in combination with other ideas. In order to stand firm they must have context, as the single stone requires the arch. So let us not worry about scandal, but go ahead and do the unminimalist and unsecularist thing.

Natural Law as Fact

The rest of this talk merely elaborates the three aspects under which we must view the natural law: Natural law as fact, as theory, and as sign of contradiction. First, then, as fact. As I conceded earlier, to call attention to a fact is always an act of theory. Even so, it is not the *same* act of theory as what we do about the fact afterward, so let us consider the pre-theoretical realities that provoke natural law philosophy and with which it has to deal. For convenience I will distinguish four categories of such experiences. First come those facts, those pre-theoretical realities, that provoke us to philosophize about practical reason as such; second come those that provoke us to do so in terms of natural law rather than in other terms. The former category can be subdivided into facts that provoke us to philosophize about practical reason *as practical*, and facts that provoke us to philosophize about it *as reason*. In turn, the latter category can be subdivided into facts that provoke us to philosophize about natural law *as law*, and facts that provoke us to philosophize about it *as natural*.

To begin at the beginning, the pre-theoretical reality that provokes us to philosophize about practical reason *as practical* is that we are, so to speak, *magnetized* toward other things, other persons, and other states of affairs. We are not just knowers, but seekers, who spontaneously incline toward certain realities other than ourselves. When I say that this inclination is spontaneous, I do not mean that it is arbitrary, because that is not the way that we experience it. One way of

saying this is that we do not merely experience ourselves as *drawn to* things; we experience the things themselves as being *such as to draw us*. Our word for their being so—and there is such a word in every language—is “good”; goodness is the quality of being such as to draw us. So another way to express what I am saying is that we experience certain things as good, and experience ourselves as drawn to them because of their goodness. With an air of demystification, subjectivists like Thomas Hobbes tell us that it is the other way around. They deny that we are inclined toward things because they are good. Instead, they say, we call them good because we are inclined toward them. Goodness is merely a name, and inclination does not point outside itself after all; it just is.³ But this is not just bad theory, it is a bad description of the experience. If you ask a man “Why do you love that woman?” he does not normally reply by telling you about himself—“I just do”—but by telling you about her—“Because she is wonderful.”

It might be objected that in answer to the question, some people do reply “I just do,” for example in country-western songs. Quite so, but country-western songs are more or less explicitly about disordered loves, not ordered ones, and the perception of the disorder is internal to the experience itself: “I’m crazy for crying, crazy for trying, crazy for loving you.” Even then the lover does not say that the beloved is *not lovable*. What he suggests is that her good is mixed with bad in such a way that by inclining toward the former, he ends up suffering the latter. “I knew you’d love me as long as you wanted/And then some day you’d leave me for somebody new.”

So much for the pre-theoretical reality that provokes us to philosophize about practical reason *as practical*; what then is the one that provokes us to philosophize about it *as reason*? Here I must apologize for my earlier metaphor of magnetism, for our inclination toward the good is only a little bit like actual magnetism. For animals, perhaps the resemblance is closer. The tom enters the field of influence of the estrous queen and is drawn in to mate, the wolf enters the field of influence of the unprotected fawn and is drawn in to devour. If an animal is inclined toward two objects at once, it pursues the most attractive. Everything is simple. For us it is not like that. We *deliberate* about which good to follow; the goods that attract us are not *causes* of action, but *reasons* for action. Deliberation is a strange and mysterious thing, not all like what an animal does.

It might be objected that this is untrue. The animal is drawn to the highest good as estimated by sense; we too are drawn to the highest good, but as estimated with the further help of discursive imagination. On this account, deliberation merely extends our senses by allowing us

to compare in our minds goods that are sensibly present with goods that are not. The animal glances back and forth between one thing and another with the eye of the body; we do the same, but with pictures in the mind. But this poorly describes what we actually do when we deliberate. In the first place, deliberation cannot be merely an extension of sense, for we are capable of being attracted by non-sensible objects like knowledge and justice. Still stranger is that we invest even sensible goods with non-sensible meanings; a meal, for example, becomes a reminder of my love for my family. Strangest of all—because perverse—is that although we agree that it is prudent to pursue the highest good, we often fail to do so. In fact we seem capable of pursuing things that *even in our own considered estimate* are not worthy of pursuit. Nothing like that is even possible among the animals. In view of the fact that the only way to be attracted to something at all is to see it as somehow good, it is hard to see how it is possible even for us.⁴ But let us pull back from the frontier of these mysteries and go on to the next thing to be examined.

The most important pre-theoretical reality that provokes us to philosophize about practical reason in terms of *natural law*—and specifically about natural law *as law*—are certain experiences that we later, as theorists, attribute to conscience. Not every culture has a word for conscience, arousing a suspicion among some people that these experiences are rooted not in the constitution of the human person *per se* but only in the constitution of the Western person, in fact the late Western person, his superego shaped by the Judeo-Christian tradition of a divine lawgiver. On the contrary, the distinction of the late Western person is not that he has these experiences, but that he has more ample resources to understand them. The universality of the experiences themselves is most famously illustrated by Sophocles, who, without any help from the traditions of his culture, nevertheless makes his heroine Antigone proclaim that the ordinances of the tyrant Cleon are invalidated by the laws of the gods—laws unwritten and unchanging, that are not only for today or yesterday, but for always. Indeed the wisdom traditions of peoples and nations across the globe acknowledge some such law.

The plot thickens, for we are really speaking of at least three different experiences of graduated intensity. Those who fail to heed conscience in the first mode meet it again in the second; those who refuse to acknowledge it even in the second mode meet it yet more darkly in the third. Antigone testified to its cautionary mode: She experienced the performance of her duties toward her dead brother not only as good but as obligatory. This may seem unsurprising, but there is

something remarkable about it. Theorists of practical reason often overlook the fact that the inclination to a thing as an object of duty is more than the inclination to it as good *per se*. The second mode of conscience is accusatory: It indicts us for wrong we have already done. Ordinary slips of prudence lead merely to disappointment; had I only done P or had I only not done Q, I could have enjoyed a certain good or avoided a certain bad. In hindsight, I wish that I had done differently; how stupid; how unfortunate; what a waste. Bad conscience is not that kind of disappointment. True, its occasion would seem to be the same; by doing something or failing to do something, I have unnecessarily brought about a result contrary to my desire. But the experience itself is not the same, for it is more than the awareness of a foolish mistake. I am conscious rather of trespass, of breach, of transgression.

There is another difference, too, for the emotional and behavioral corollaries of imprudence and bad conscience are not at all the same. In the one case I suffer mere regret, but in the other I suffer remorse. In the one case I may be angry with myself, but in the other I have the sense that I am under wrath. In the one case I probably hope to keep my foolishness a secret, but in the other I may have an urge to confess. In the one case I probably hope to escape paying the price of my foolishness, but in the other I may find myself impelled to seek atonement. I have the sense of having violated a boundary that I did not make, but that my deepest self agrees with utterly. The good that I betrayed was not merely *commended* by inclination, but *commanded* by authority. I am not only dismayed, I am accused.

No one always feels remorse for doing wrong; some people never do. Yet we see that even when remorse is absent, guilty knowledge generates objective needs for confession, atonement, reconciliation, and justification. These other Furies are the greater sisters of remorse: Inflexible, inexorable, and relentless, demanding satisfaction even when mere feelings are suppressed, fade away, or never come. And so it is that conscience operates not only in the first two modes but in a harrowing third: The avenger, which punishes the soul who does wrong but who refuses to read the indictment. I say more about the revenge of conscience in the final part of my talk. For now suffice it to remark only how exact is the correspondence between the supernatural experience of the sacrament of confession, and the natural experience of bad conscience. They both exhibit the same “moments,” the same stages, the same phases; it is really true that nature is a preparation for grace.

But I am getting ahead of myself, for I have not yet discussed the experiences that provoke us to philosophize about natural law *as natural*. Although we are speaking of more than one reality, we may

view them together briefly. One of them is that a propensity for the experiences that we have already been talking about is built into our design and woven into the fabric of the normal adult mind. Of course, to speak this way is to suppose that we do have a design, that our minds do have a fabric, that the way we are is not arbitrary or meaningless. Theoretically one may deny that this is so, but at the moment, we are enumerating facts, and it is a fact that human beings of all times and places perceive their lives as having such meaning. Natural law theory holds that they are right.

By the way, the experience of our lives as having meaning cannot be accounted for on grounds of so-called natural selection (which ought to be called accidental selection, because “nature” is precisely what it is not about). A subjective perception of meaning, reflective of nothing in reality, has adaptive value for an organism only if there is a pre-existing subjective *need* for meaning—and what would be the adaptive value of *needing* meaning? Within the context of accidental selection, that question seems to have no answer. Another provocation for philosophizing about natural law *as natural* is the spontaneous intuition of almost all people that moral experience is rooted in what really is. According to this intuition, a rule like the prohibition of murder reflects not a mere illusion or projection, but genuine knowledge. It expresses the actual moral character of a certain kind of act. If this is so, then in a certain sense the law is built not only into human nature but into the rest of nature too. Nature must be *a kind of thing that can sustain* the meanings that we find in the acts that we perform in it. And as though that were not enough, there is yet one more sense in which the law strikes us as built in. We all find in experience that when we cross the grain of the universe, the universe kicks back—and to that interesting fact I will return.

Natural Law as Theory

Enough with the pre-theoretical realities; let us turn to the theory, to our attempts to account for them. The central claim of natural law theory can be expressed in just a few sentences. Law has been defined as an ordinance of reason, for the common good, made by him who has care of the community, and promulgated.⁵ Nature is an ensemble of things with particular natures, and a thing’s nature may be thought of as the design imparted to it by the Creator; in traditional language, as a purpose implanted in it by the divine art, that it be moved to a determinate end.⁶ The claim is that natural law is both true law, and truly expressive of nature, in these senses.

Let us consider these matters step by step, starting with the definition of law. Legal positivists define law merely as the will of the sovereign. This definition simply misconstrues what is asked for. The legal positivist is answering the question, “What qualifies an enactment *as belonging to our system of enactments?*” His answer, by the way, is circular; he consults the sovereign to recognize the law, but then consults the law to recognize the sovereign. The natural lawyer is trying to answer the entirely different question, “What qualifies an enactment *as a rule and measure of human action?*” Truly human action is personal and rational rather than merely impulsive, so its norm must be personal and rational too. This norm must serve the common good, because it is a rule and measure for all, not just for some. It must be enacted by public authority, for otherwise it will not bind conscience; it will give rise not to a moral duty, but only to an inconvenient circumstance, a sanction, that cautious people will keep in mind. Finally, the norm must be promulgated, because it cannot be followed if it cannot be known. Does natural law really satisfy this definition? Evidently so; all four conditions are satisfied. Consider the natural law forbidding murder. It is not an arbitrary whim, but a rule which the mind can grasp as right. It serves not some special interest, but the universal good. Its author has care of the universe, for He created it. And it is not a secret rule, for He has so arranged His creation that every rational being knows about it. So it is that when we speak of natural “law,” we are not merely dropping into metaphors. It *is* law. It is not merely a *standard* for human law, although it serves as a standard too. Nor is it merely a consideration that *becomes* law when humans enact it, as in the theory of Thomas Hobbes. Rather it is *already* law, original law. Apart from it, the decrees of the powerful are not truly law, but only enacted frauds.

One might object that although a so-called natural law might either be really *natural* or really *law*, it could not be both *at once*. The argument would be that nature cannot contain ordinances of reason because it is mindless; that it cannot promote the common good because it has no ends; that it cannot be regarded as an enactment of authority because it “just is”; and that it cannot be regarded as promulgating anything because it isn’t a text. What gives this objection its apparent force is that it slips in a “ringer.” In place of the classical understanding of nature as meaningful and designed, it substitutes its own understanding of nature as blind fatality. It is talking about a different thing.

Benedict XVI has recently called attention to this ancient and dangerous mistake. In informal remarks following an address in St. Peter’s Square, he quoted St. Basil the Great, who said that some,

“deceived by the atheism they bear within them, imagined the universe deprived of a guide and order, at the mercy of chance.” Benedict remarked, “I believe the words of this fourth-century Father are of amazing timeliness. How many are these ‘some’ today?”⁷ His question, of course, was rhetorical; we know the answer all too well. Their number is legion. But why should we accept their view of nature? What arguments have they? Or what objections do they offer to our own?

One objection to the classical understanding of nature is that it is rubbish to talk about natural purposes, because we merely imagine them. According to this way of thinking, the purposes of things aren’t natural; they are merely in the eye of the beholder. But is this true? Take the power of breathing. When we say that its purpose—viewed from another angle, its meaning—is to oxygenate the blood, are we making it up? Evidently not. This purpose isn’t in the eye of the beholder; it is an inference from the design of the lungs. To say that the purpose of P is to bring about Q, two conditions must be satisfied. First, P must actually bring about Q. This condition is satisfied because breathing does oxygenate the blood. Second, it must be the case that *the fact that P* brings about Q is necessary for explaining why there is P in the first place. This condition is satisfied too, because apart from the oxygenation of blood there is no way to explain why the power to breath should have developed.⁸ We can ascertain the purposes of the other features of our design in the same way that we ascertain the purpose of breathing.

A second objection to the classical understanding of nature is that it doesn’t make any difference even if we can ascertain the purposes of natural things, because an *is* does not imply an *ought*. This dogma too is false. If the purpose of eyes is that they see, then eyes that see well are good eyes, and eyes that see poorly are poor ones. Given their purpose, this is what it *means* for eyes to be good. Moreover, good is to be pursued; the appropriateness of pursuing it is what it *means* for anything to be good. Therefore, the appropriate thing to do with poor eyes is try to turn them into good ones. If it really were impossible to derive an *ought* from the *is* of the human design, then the practice of medicine would make no sense. Natural law theory has contemptuously been called “metaphysical biology.” So be it; biology needs metaphysics too. But we are speaking of more than biology. In exactly the same way that we infer that the purpose of the eyes is to see and the purpose of breathing is to oxygenate the blood, we can infer the purpose of the capacity for anger, the purpose of the power of reasoning, and so on. Natural function and personal meaning are not alien to each other; they are connected. In a rightly ordered way of thinking, they turn out to be different angles of vision on the same thing.

The third objection to the classical understanding is the most radical. This time the objector holds that even if nature does generate a sort of *ought*, that makes no difference, because any such *ought* is arbitrary. Man, says the objector, is the product of a meaningless process that did not have him in mind. Had the process gone a bit differently—had our ancestors been carnivores instead of omnivores, had they laid eggs instead of borne live young, had they started watching television earlier than they did—then we would have had a different nature. As it is, we observe certain natural norms: Honor your parents, care for your children, tell the truth. But the norms might have turned out to be anything: Drive out your parents, eat your sons and daughters, lie about it. Call such norms “natural laws” if it pleases you, the objectors say, but don’t imagine that they mean anything. I think this third objection is the strongest, for nature is undoubtedly a contingent being, and one cannot ground meaning in a contingency. But on closer consideration, the objection answers itself, for contingent beings never “just are”; they must have causes. If their causes are contingent beings, then they too must have causes. To avoid endless regress, the chain of causes must end in a necessary being, and since the effects that this being produces are personal, He must be personal too. But if this is true, then natural law theory is not trying to ground meaning in a contingency after all. Nature takes meaning from supernature; creation, from its Creator; the created structures of personal goodness, from the uncreated personal Good Who is their source.

I remarked earlier that the natural law truly satisfies the promulgation condition—that it is not a secret rule, for the Creator has so arranged His creation that every rational being knows about it. This needs to be more fully spelled out. The claim here is not that everyone knows the theory of natural law. That is plainly false; not everyone has even heard the expression “natural law.” However, everyone is acquainted with the thing itself. To speak in the words of Thomas Aquinas, the foundational principles of morality are “the same for all, both as to rectitude and as to knowledge.” To say that they are the same for all “as to rectitude” means that they are right for everyone; in other words, deliberately taking innocent human life, sleeping with my neighbor’s wife, and mocking God are as wrong for me as they are for you, no matter what either of us believes. To say that they are the same for all “as to knowledge” means that at some level, everyone knows them; even the murderer knows the wrong of murder, the mocker the wrong of mockery, the adulterer the wrong of adultery. He may say that he doesn’t, but he does. There are no real moral skeptics; supposed skeptics are playing make-believe, and doing it badly.

To be sure, the game is played very hard, and not only by skeptics. I must not take innocent human life—but only my tribe is human. I must not sleep with my neighbor’s wife—but I can make my neighbor’s mine. I must not mock deity—but I can ascribe deity to a created thing instead of the Creator. These are the lies that we tell ourselves. In our time we are finding out just how hard the game can be played, and this fact puts natural law in a new theoretical situation. It might once have been thought sufficient to say that some moral knowledge is universal. It turns out, however, that the determination to play tricks on moral knowledge is universal too. A law is written on the heart of man, but it is everywhere entangled with the evasions and subterfuges of men.

But that is a problem for the final part of my talk, on natural law as a sign of contradiction. For now, let us return to how natural law is known. There are, I think, four ways. I like to call them the “witnesses” as a memorial of St. Paul’s remark to the pagans of Lystra that although in times past, God allowed the gentile nations to walk in their own ways, even then “He did not leave Himself without witness.”¹⁰ The context shows that he is not speaking of human witnesses, but of impersonal testimonies built into the very pattern of God’s providence. To be sure, these witnesses are wordless. The same thing might be said of them that the psalmist says of the heavens: “There is no speech, nor are there words; their voice is not heard; yet their voice goes out through all the earth, and their words to the end of the world.”¹¹

The first witness may be called conscience, but in a different sense than it bears in everyday speech. We think of conscience as one thing. The classical natural law tradition distinguished two things—I think rightly. One is *synderesis*—some prefer to call it *anamnesis*—which might be called “deep conscience.” Deep conscience is the interior witness to the most general norms of practical reason, including, by the way, not only principles like “good is to be done and evil avoided,” but also its proximate corollaries, well-summarized by the Decalogue. The other thing is *conscientia*, which might be called “surface conscience.” Surface conscience is the application of the knowledge that deep conscience provides. Like memory, that knowledge is not always in the mind “actually” but is always there latently; we are in the “habit” of knowing it, even though we may not be thinking of it, even though we may not be aware of knowing it, and even though we may even suppress it. The habit is natural, not acquired; it is a feature of the design of the created practical intellect.¹²

I have just spoken of design, and must now speak of it again, for the second witness is the evident designedness of things in general.

We perceive immediately that nature requires an explanation beyond itself; that the things in nature are indeed designed; and that design requires personal agency. Working out the logic of these perceptions is one of the tasks of philosophy, but the perceptions themselves are prephilosophical. St. Paul alludes to them when he says that the reality of God and of some of His qualities have been known “since the creation of the world,” having been “clearly perceived in the things that have been made.”¹³ It might be thought that although the perception of the designedness of things is theologically interesting, it is not *morally* interesting. On the contrary, it does at least three things for moral knowledge. In the first place it vindicates the previous witness, deep conscience, for if deep conscience is designed as a witness to moral truth by a God who knows what He is doing, then its witness to this truth is reliable.¹⁴ It also confirms that we have duties not only to neighbor but to God Himself, to whom we owe the very possibility of the experience of anything good. Finally it informs us that just as deep conscience is designed, so the rest of us is designed; we are a canvas for His purposes, a parchment of His meanings.

That leads us to the third witness, the particulars of our own design. Design is obvious not just in our bodies but across the whole range of human powers and capacities. The function of fear is to warn; of minds, to deliberate and know; of anger, to prepare for the protection of endangered goods. Everything in us has a purpose; everything is for something. A power is well-used when it is used for that purpose and according to that design. Nor is this just about the functions of things; as I have already suggested and as natural lawyers are coming to realize more deeply, it is also about the meanings of things. Our very bodies have a language of their own; they say things by what we do with them. Bone speaks to bone, organ to organ, skin to skin. A smile means something friendly; you cannot give that meaning to a slap in the face. You can use a kiss to betray, but only because the kiss, in itself, means something else. Conjugal sex means self-giving, making one flesh out of two.

Some of the most interesting features of our design show up not at the level of the individual but at the level of the species. A particularly striking example is the complementarity of the sexes: Short of a divine provision for people called to celibacy, there is something missing in the man which must be provided by the woman, and something missing in the woman which must be provided by the man. Indeed, complementarity is not *bypassed* by the celibate but provided with a higher fulfillment. When we speak of such things as being married to the Church, we are dealing with euphemisms but with profound realities.

Design features like complementarity establish conditions for human flourishing that would not have been deducible just from the fact that we are rational animals; they require observation of our personal existence.

The fourth witness to natural law is the natural consequences for its violation. Those who cut themselves bleed. Those who betray their friends are betrayed by their friends. Those who abandon their children have no one to stroke their brows when they are old. Those who travel from bed to bed lose the capacity for intimacy and trust. Especially interesting are the *noetic* penalties for violation, for those who suppress their moral knowledge become even stupider than they had intended. We see that the ancient principle that God is not mocked, that whatever a man sows he also reaps,¹⁵ is sewn into the fabric of experience. A clarification is necessary, for in calling natural consequences one of the witnesses, I should not wish to be misunderstood. Natural law theory is not “consequentialist”; the penalty for violation is not what *makes* the wrong act wrong. It functions rather as an announcement and form of discipline. In fact, the most intriguing thing about the natural consequences of things is that they point to the natural purposes and meanings of things. For example, the natural link between sex and pregnancy is not just a brute fact to be circumvented by latex; it declares that sex serves the meaning of self-giving and the purpose of procreation, of having and raising children in the love and fear of God.

An endless confusion of cross-purposes has been caused by the fact that different theories of natural law tend to focus on different witnesses. In hostile challenge to the scholastic thinkers, Thomas Hobbes zeroed in on the witness of natural consequences—indeed on just one such consequence, violent death. In ways that are often overlooked, and despite the thinness of his teleology, John Locke relied on the two witnesses of design.¹⁶ In suggestive and provocative ways, the “new” natural law theory of Germain G. Grisez, John Finnis, and Joseph M. Boyle gives central place to the design of deep conscience, but avoids *direct* reliance on the other aspects of our design.¹⁷ The classical tradition, epitomized by Thomas Aquinas, attempted to provide an integrated account of all four witnesses. Unfortunately his good example is rarely followed.

Natural Law as Sign of Contradiction

At last we return to the sheer scandal of natural law. By its scandal, I mean more than the fact that some things about it are very puzzling. But that fact causes difficulty too, so allow me to begin there.

There are a number of different things one can study about natural law. Some natural lawyers focus on its foundations in the common moral sense of the plain person. These are of course “dialectical” foundations, because the plain person knows all sorts of things that he doesn’t know he knows. A scholar, by contrast, may know very few things, but he is perhaps more likely to know how he knows them. If natural law theory is to be made plausible to its critics, then the whole problem of latent knowledge, of how we can know something, at one level, even though not knowing that we know it, needs to be more thoroughly investigated.

Other natural law thinkers focus on casuistry, on the solution of difficult moral problems. This enterprise is precariously balanced between two extremes. At one extreme is the oversimplified notion that if there really is a law written on the heart, there *could not be* any difficult moral problems. At the other is the overcomplexified notion that *every* moral problem is difficult. For young people, the most dangerous and tempting extreme is the former. They confuse what feels right at the time with the natural law, and if their feelings are confused, they become disillusioned and conclude that there is no natural law. For natural lawyers themselves, however, the most dangerous and tempting extreme is the latter. We make such circuitous paths to such obvious destinations that the destinations themselves come into doubt.

Still other natural law thinkers focus on metaphysics, on the study of what the world must be like for there to be a natural law in the first place. This project is indispensable, but it is prone to confuse the theory with the fact. We see this especially in our teaching. Which is the better way to explain the idea of natural law—to ask “Have you noticed that there are some things about right and wrong that we all really know and can’t help knowing?” or to say “It’s all about the convertibility of being and goodness?” I think the answer is obvious.

These scandals are avoidable. However, not all scandals are avoidable. Ultimately, the natural law is a sign of contradiction for much deeper reasons. Even in the prelapsarian state, their noetic powers intact, our first parents were tempted to “be like God, knowing good and evil”—to imagine that they could be First Causes of their own moral knowledge and their own constitution as persons. How much more are we postlapsarians liable to the temptation, our noetic powers damaged by the Fall, our wills no longer innocent but depraved. In speaking of “depravity” I am not embracing Calvinism. Calvin’s mistake was to think that we are totally depraved. If we were *totally* depraved, then we could not be depraved at all; bereft of all good, we would lose even the good of existence. Augustine’s insight is more profound. Evil is a deficiency, a perversion; the only way to get a bad thing is to take

something good and mar it. In order to be marred, it must be still there. Our problem is not ugliness, then, but sullied beauty. Our tragedy is twofold, for not only are we unable by our own powers to restore our loveliness, but we are wroth with the very offer of restorative grace. Such is sin.

For natural law theory, the Fall confronts us in the fact that we *don't want to hear* of natural law. On the one hand we cannot fully ignore it, because its first letters are written on our hearts. On the other hand, we resist the inscription, and the letters burn. Here begins the terrible game that I mentioned earlier. The crisis of natural law in our time owes partly to the deepening intensity of the game, but partly to the fact that we ignore it. We persist in taking pretended moral ignorance at face value, in philosophizing as though the problem of moral failure were merely cognitive. We suppose that when the opinionators of our time repudiate God, celebrate the destruction of life, and rejoice in sexual debasement, they simply do not know any better. We imagine that if only we present them with airtight arguments, they will change their minds. Not in that way will it happen. There is such a thing as motivated error. Indeed the problem is more grave still. We have not destroyed deep conscience, but suppressed it. That may sound better, but in a way it is worse. Like a man who is buried alive, conscience kicks against the walls of its tomb. The defiant intellect—which is that tomb—therefore fortifies the walls.

A single example will suffice. We *can't not know* the wrong of deliberately taking innocent human life. The appalling thing is that we make use of this knowledge even in order to defy it. The arguments for abortion amount to claiming either that the act is not deliberate, or that it is not a taking, or that the unborn child is not innocent, not human, or not alive. A moment, please: Not innocent? Yes, even that. There is no limit to what can be denied. Legal scholar Eileen L. McDonagh calls the unborn child a “private party” who uses “violence” to “coerce” the woman “to be pregnant against her will”; it is “objectively at fault for causing pregnancy.” The woman has a “right to consent to a relationship with this intruder,” and is entitled to “the use of deadly force to stop it,” even if it “acquires the highly charged label of ‘baby.’” “Some might suggest,” she says, “that the solution to coercive pregnancy is simply for the woman to wait until the fetus is born, at which point its coercive imposition of pregnancy will cease.” But “this type of reasoning is akin to suggesting that a woman being raped should wait until the rape is over rather than stopping the rapist.”¹⁸

What is one to make of such an argument? It is hard to know whether it is more horrible or more absurd. The difficulty is not that it

cannot be answered, for it can. Rather the difficulty is that in order to find it plausible in the first place, a person must already be beyond or very nearly beyond argument. The level of self-deception required is stupendous. Nor is this rare, for there are many such arguments-beyond-argument. Physician Warren M. Hern, M.D., has written a learned article explaining that pregnancy is “an illness requiring medical supervision,” which “may be treated by evacuation of the uterine contents,” but “has an excellent prognosis for complete, spontaneous recovery if managed under careful medical supervision.” If you can believe it, the article was published in a journal called “Family Planning Perspectives.”¹⁹

I remarked earlier that guilty knowledge sometimes generates remorse, and always generates objective needs for confession, atonement, reconciliation, and justification. Arguments like those of Hern and McDonagh illustrate the perversion of the need for justification. However, the perversions of the other four impulses are equally deadly to truth-seeking discourse, and this fact also calls for explanation. The normal outlet of remorse is to flee from wrong; of the need for confession, to admit what one has done; of the need for atonement, to pay the debt; of the need for reconciliation, to restore the bonds one has broken; and of the need for justification, to get back in the right. But if these Furies are denied their payment in wonted coin, they exact it in whatever coin comes nearest. We flee not from wrong, but from thinking about it. We compulsively confess every detail of our transgression, except that it was wrong. We punish ourselves again and again, offering every sacrifice except the one sacrifice demanded, a contrite and broken heart. We simulate the restoration of broken intimacy by recruiting companions as guilty as ourselves. And we seek not to become just, but to justify ourselves—to concoct excuses.

Each one of these perversions makes its own contribution to the distortion of scholarship and public discourse. I have spoken of justification; how about the other four? The confessional character of some of our intellectual enterprises is unmistakable; confession actually becomes a kind of advocacy. Or consider the way that recruitment becomes seduction to intellectual evil. One might suppose that I am tendentiously labeling the practice of persuasion as enlightenment when practiced by my side, but as seduction when practiced by the other side. On the contrary, the seducers themselves are often guiltily aware of their dark motives. Everyone knows scholars like an atheist of my acquaintance who boasts of the “fun” he had “ruining all the Catholic kids” at the liberal arts college where he taught. The verb “ruining” was precisely accurate even by his lights, for the fun lay not in liberating

these innocent and impressionable young minds from what he considered error, but in deflowering and desecrating them.

Perhaps the strangest impulse to incoherency in our intellectual discourse is the perversion of the need to atone. The dishonest intellect, at some level aware of having committed the sin against the truth, attempts to make up for its transgression by mortifying itself; ultimately it denies that is such a thing as the truth, or at least that truth can be known. “Here you shall pass among the fallen people,” Virgil said to Dante, “souls who have lost the good of intellect.”²⁰ It is not only in hell that we meet them.

Abortion is not the only issue that generates such levels of denial, nor are they found only among the professional advocates of evil. Denial is the normal response of the intellect that is tortured by its conscience but refuses to repent—“normal” in the sense that fever is the normal response to infection, or that unconsciousness is the normal response to a severe blow to the head. It is part of the system of natural consequences to which I alluded earlier—a noetic and personal, rather than a physical and biological, penalty for the violation of natural law. And it comes near to being the normal condition of our time.

An even grimmer consideration is that the inherent tendency of denial is to become deeper and deeper over time, and to express itself in graver and graver transgressions. Consider the argument that human personhood is not a category of being but a mere cluster of functional attributes, such as the ability to communicate and plan, so that those who lack these abilities are not persons. The original motive for adopting such a view may be to rationalize only one kind of killing, but inevitably it justifies others. Notice that functionalism also generates a caste system, for if personhood depends on attributes that vary in degree, then personhood itself must vary in degree. Good communicators and planners will be held to possess the highest degree of personhood; second-rate ones will be held to possess the next degree; and third-rate ones will hardly be held to be persons at all. Surely the interests of those who are more fully persons must trump the interests of those who are less, one reasons, so the range of mandated outrages grows ever broader. A functionalist might be dismayed by this implication of his premises. His dilemma is that he cannot give them up without admitting that the one cherished outrage which drove him to embark on this process of rationalization was wrong all along. If he continues to set his face against repentance, then by the very logic of the case he is compelled to be obstinate about more and more.

One might object that even if all this is true, my complaint is out of place. The objection would run like this: I seem to think that the

noetic consequences of the violation of natural law pose a problem for natural law thinkers, but if I am right about those consequences, then we are speaking of people who resist argument—and if they do resist argument, then philosophy has nothing to do. But this does not follow. In the first place, we can philosophize *about* denial even if we cannot philosophize with those who are *in* denial. In the second place, there are many ways of talking with people, and philosophy is only one of them. The various modes of public discourse have always been recognized as legitimate topics for philosophy. If the noetic consequences of transgression pose obstacles to sane public discourse, then why not philosophize about the obstacles too? Why not philosophize about *less* than sane public discourse and how it might be brought back to sanity?

Historically, one reason the natural law tradition has advanced is that new crises raised new questions. For our age, the crisis is an old one made newly acute, and the questions it raises are twofold: Why natural law is a sign of contradiction, and what can be done about the scandal. I am convinced that if we fail to grapple seriously with these questions, we will be derelict not only in intellect but in love. To Bernard of Clairvaux is attributed the epigram, “Some seek knowledge for the sake of knowledge: that is curiosity. Others seek knowledge that they may themselves be known: that is vanity. But there are still others who seek knowledge in order to serve and edify others, and that is charity.” The times are dark, and darkening. If ever there was a time for Catholic thinkers to exercise such charity, it is now.

Notes

1. Catholic University of America.
2. Emphasis added.
3. Thomas Hobbes, *Leviathan: Or, the Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil*, Part I.
4. My answer to the puzzle rests on the fact that in order to reach a comparative appraisal of different goods, the mind turns now to the right, now to the left, suspending consideration of each good in turn in order to contemplate the other. This very power of suspending consideration allows us to prolong the suspension, willfully short-circuiting the appraisal that is supposed to result. We say like Scarlett O'Hara, "I'll think about that tomorrow."
5. Thomas Aquinas, *Summa Theologica*, I-II, Q. 90, Art. 4.
6. Thomas Aquinas, Commentary on Aristotle's *Physics*, II.
7. For quotations, see "Creation Reveals God and His Love, Says Benedict XVI: Comments on Psalm 135(136) at General Audience," Vatican City, November 9, 2005, ZENIT (www.zenit.org/english/visualizza.phtml?sid=79681).
8. I adapt these two conditions from Robert Koons, *Realism Regained: An Exact Theory of Causation, Teleology, and the Mind* (Oxford: Oxford University Press, 2000).
9. Thomas Aquinas, *Summa Theologica*, I-II, Q. 94, Art. 4.
10. Acts 14:16-17 (RSV).
11. Psalm 19:3-4 (RSV).
12. See Thomas Aquinas, *Summa Theologica*, I, Q. 79, Art. 13.
13. Romans 1:20 (RSV).
14. Unfortunately, the same cannot be said of *conscientia*, which is why we must distinguish between well-formed and poorly-formed consciences.

15. Galatians 6:7.

16. John Locke, *First Treatise of Government*, secs. 53 and 86, and *Second Treatise of Government*, secs. 4-6 and 54; see J. Budziszewski, *Written on the Heart: The Case for Natural Law* (Downers Grove: Intervarsity, 1997), pp. 104-105.

17. See Germain G. Grisez, *The Way of the Lord Jesus*, 3 vols. (Quincy, Illinois: Franciscan Press, 1983-1997); John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980); Germain G. Grisez, John Finnis, and Joseph M. Boyle, 'Practical principles, moral truth, and ultimate ends', *American Journal of Jurisprudence* 32 (1987), pp. 99-151.

18. Eileen L. McDonagh, *Breaking the Abortion Deadlock: From Choice to Consent* (Oxford: Oxford University Press, 1996), pp. 6, 11-12, 36, 176-177, 188.

19. Warren D. Hern, M.D., "Is Pregnancy Really Normal?" *Family Planning Perspectives* 3:1 (January 1971). The full text of the article is available at the website of his abortion facility, <<http://www.drhern.com>>.

20. Dante Alighieri, *Inferno*, Canto III. My quotation is from the translation of John Ciardi (New York: Penguin, 1954, 1982), p. 42, lines 16-18.