

NATURAL LAW: FROM NEO-THOMISM TO NUPTIAL MYSTICISM

• Tracey Rowland •

“Catholic scholars need to go beyond a theologically neutered conception of natural law as a *lingua franca* with which to engage proponents of hostile traditions.”

1. Introduction: Toward a theological natural law

Fergus Kerr subtitled a recent survey of twentieth century theological trends “From Neoscholasticism to Nuptial Mysticism.”¹ While this subtitle may stand as a one-sentence summary of the sweep of twentieth-century Catholic theological tendencies, a similar trajectory can be observed at work in the more micro-level territory of natural law doctrine. For decades now natural law has been presented to Catholic undergraduates as a kind of *lingua franca* for dialogue with non-believers, precisely because it was deemed possible to sever it from its theological roots. This is notwithstanding

¹F. Kerr, *Twentieth-Century Catholic Theologians: From Neoscholasticism to Nuptial Mysticism* (Oxford: Blackwell, 2007). The terms “neoscholasticism” and “neo-Thomism” are often used interchangeably though the former is a little broader, encompassing the whole range of modern Christian retrieval of the thought of the medieval period. In this article the work of Jacques Maritain will be treated as the flagship of neo-Thomism.

the fact that Protestants have never really been all that keen on it, regarding it as something of Stoic, rather than biblical provenance, and notwithstanding the further fact that it depends on a conception of nature as something stable, and that this has been rejected by most contemporary post-moderns. When one eliminates Protestants and post-moderns, those left standing are usually Liberals. It is largely in order to find a common language with them that attempts have been made to formulate a version of natural law that does not rely on any particular theological framework. However, leaving aside all the theoretical objections that have been raised against this project, the sociological fact is that it has not been a strategic success. Liberals just don't buy the medicine, even when the theological ingredients have been expressly excluded and the principles have been repackaged in explicitly Liberal idioms.² This often leads to a situation in which Catholics talk to other Catholics in an idiom which was devised for dialogue with unbelievers, while the unbelievers are either not persuaded or so poorly educated as to be unfamiliar with the idiom. When natural law is marketed as universally reasonable without any accompanying theological baggage, it can begin to sound, in Russell Hittinger's memorable phrase, like "a doctrine for Cartesian minds somehow under Church discipline."³ It was perhaps for such reasons that Cardinal Ratzinger, as he was, described natural law as a "blunt instrument" in dialogues with secular society.⁴ This was not because he personally rejects belief in natural law, but because he believes that it presupposes a concept of nature in which nature and reason overlap, a view which he further claims was "capsized" with the arrival of the theory of evolution.⁵ Without a foundational belief in a divinely created cosmos, the doctrine falls on incredulous ears. It lacks persuasive force. Post-moderns will never buy it because they have rejected a notion of nature that includes stable essences, and

²For a partial analysis of this lack of strategic success see K. Lee, "Contemporary Challenges to Natural Law Theories," *The Catholic Social Science Review* 12 (2007): 41–50.

³R. Hittinger, *First Grace: Re-Discovering the Natural Law in a Post-Christian World* (Wilmington: ISI Books, 2003), 62.

⁴J. Ratzinger, *Values in a Time of Upheaval* (San Francisco: Ignatius Press, 2006), 38–39.

⁵J. Ratzinger and J. Habermas, *Dialectics of Secularization: On Reason and Religion* (San Francisco: Ignatius Press, 2006): 69–70.

Liberals will never buy it because individual autonomy occupies such a high place in their hierarchy of goods that it trumps any appeal to a notion of there being one single vision of a “good life.” For John Rawls, arguably the most influential Liberal theorist of the twentieth century, if people want to devote their lives to counting blades of grass, then *that is the good* for them.⁶ Reason has been truncated to finding efficient ways of achieving ends and nature is now subject to scientific manipulation, so neither reason nor nature is a strong foundation upon which to build a bridge to the contemporary Liberal tradition. Nonetheless, Catholic apologists for several decades have been attempting to defend a Catholic view of the good life in the forums of Liberal society using the vocabulary of natural law. Many have done so in an almost axiomatic belief that it is a *lingua franca* for dialogue with non-believers. They have been told that this was recognized at the Nuremberg trials and that it was a project promoted by the French Thomist and advisor of Paul VI, Jacques Maritain, who contributed to the drafting of the United Nations’ *Universal Declaration on Human Rights* (1948), which itself is upheld as the project’s greatest achievement, or at least an example of what can be achieved.

Nonetheless, between 1948 and the first decade of the twenty-first century, Western society underwent a cultural revolution. When Maritain was at the height of his academic career in the 1940s there were no contraceptive pills, no IVF babies, no embryo experimentations, no clonings, no internet and space satellites, to name but a few of the socially significant new factors. Christianity, though divided, and battered on every side by Freudians, Marxists, and Atheistic Existentialists, still provided something of a moral compass for the majority of people who lived and worked outside of intellectual and artistic circles. By 1968, however, in Maritain’s twilight years, the various alternative visions of what a human being is, and hence, what the meaning of life is, had captured the imaginations of the post-war generation, and with the expansion of higher education to the lower middle and working classes, an entire anti-Christian cultural revolution was effected. The preferred cocktail of the generation of 1968 contained ingredients from Freud (sexuality needs to be liberated from religious constraints), Marx (economics is the major factor determining life’s choices) and Nietzsche (the

⁶J. Rawls, *A Theory of Justice* (Harvard University Press, 1999), 379.

meaning of life is discovered in the quest for individuality and originality of lifestyle), and it was widely bought by people outside the artistic fringe or the intellectual avant-garde. It was taken into suburbia. Meanwhile, within the great universities, the Enlightenment project of formulating a universally acceptable ethical framework with recourse to reason alone was of dwindling interest. The project was kept alive in some philosophy and social science departments of British and American universities, particularly in places proud of their eighteenth-century philosophers, like Cambridge and Edinburgh, but nonetheless the ascendant view was that the quest for universal reason was oppressive, indeed it was even maligned as a factor contributing to two world wars, and the Romantic values of originality and individuality and the concomitant interest in traditions and cultures had taken its place. While Marx's ideal man was to hunt in the morning, fish in the afternoon and rear cattle in the evening, the ideal post-modern could be heterosexual in the morning, homosexual after lunch and bisexual in the evening. In other words, the post-moderns tended to be against both reason (understood in anything other than an instrumental sense) and nature (understood as a normative concept embodying stable essences). In such a culture (both intellectual and popular) it is hard to see how references to natural law could fulfill the function of a *lingua franca*.

By the 1990s at least some Catholic scholars were beginning to question whether the Maritainian project and its subsidiaries were still the most strategically viable options. Foremost among them was Alasdair MacIntyre. As a former Marxist, MacIntyre often showed a more acute understanding of the Church's intellectual enemies than cradle Catholics educated at elite Catholic institutions did. He wrote perceptively about the Liberal tradition's employment of ideological idioms to paper over or mask contentious theological fault-lines, and he was critical of the Kantian turn in Thomism.⁷ His reservations have been acknowledged in various ways by John Haldane, James V. Schall, Robert P. Kraynak, Thaddeus Kozinski, Graham McAleer, and a raft of other names among the youngest generation of Catholic scholars. In *Faithful Reason: Essays Catholic and Philosophical*, Haldane observed that "anyone reviewing the degree of ideological and moral diversity exhibited today, half a century after Maritain wrote *The Person and the Common Good*, must wonder

⁷A. MacIntyre, *Three Rival Versions of Moral Enquiry* (London: Duckworth, 1990).

how feasible is the project of a civil society and political culture based on natural law.”⁸ In *Jacques Maritain: the Philosopher in Society*, James V. Schall noted that “natural law assumes such importance for Maritain . . . because he takes it to be an objective and neutral way of talking about and understanding human activity on a philosophic basis that directly implies no revelational content.”⁹ This raises the question, however, of whether there is a theologically neutral account of nature, and it is this aspect of the project which has been receiving the most extensive criticism over the past decade. Note: this is not a statement against the idea of natural law per se, but a recognition that the Maritain project no longer appears viable or, in other words, that natural law is no longer, if it ever was, a *lingua franca* between Catholics and Liberals.

Even earlier, in 1969, in his extensive commentary on the notion of human dignity in *Gaudium et spes*, Cardinal Ratzinger described as nothing more than a “fiction” the notion that it is “possible to construct a rational philosophical picture of man intelligible to all and on which all men of goodwill can agree, the actual Christian doctrines being added to this as a sort of crowning conclusion.”¹⁰ While at that time such criticisms sounded like an off-key performance, much contemporary natural law thinking actually begins with the anthropological foundations set down in paragraph 22 of *Gaudium et spes*, the explicitly christocentric section preferred by Wojtyla and Ratzinger, which renders the Christian doctrine foundational rather than a “crowning conclusion.” For Ratzinger, and many contemporary Catholic moral theologians, natural law presupposes a trinitarian Creator God. The idea that a theologically neutral or merely theistically colored account of human nature and its dignity could provide an adequate foundation for its defense, is being explicitly rejected.¹¹ Cardinal Angelo Scola has argued that a

⁸J. Haldane, *Faithful Reason: Essays Catholic and Philosophical* (London: Routledge, 2004), 150.

⁹J. V. Schall, *Jacques Maritain: The Philosopher in Society* (Oxford: Rowman and Littlefield, 1998), 88.

¹⁰J. Ratzinger, “The Dignity of the Human Person,” in *Commentary on the Documents of Vatican II*, vol. 5, ed. H. Vorgrimler (New York: Herder and Herder, 1969), 119.

¹¹W. Kasper, “The Theological Anthropology of *Gaudium et spes*,” *Communio: International Catholic Review* 23 (Spring, 1996): 129–41; D. L. Schindler,

culture that does not accept the revelation of the trinitarian God ultimately renders itself incapable of understanding sexual difference in a positive sense.¹² In other words, the Church cannot ultimately defend her teaching on such subjects as marriage and the reservation of the priesthood to those of the male sex without recourse to trinitarian anthropology. This need not mean, of course, that reason can tell us nothing about human nature; it means, rather, that what reason can tell us is intrinsically open to, and finds its fulfillment in, the revelation of the triune God. The problem is not the idea of a stable, God-created nature; the problem is the de-theologizing construal of that stability as neutral to the Creator.

In his 1990 essay “Grace and the Form of Nature and Culture,” David L. Schindler concluded that “there is and can be—in the concrete historical order which is ours—no nature or natural laws which are neutral in religious form,” and consequently, that “the common ground for which the Christian seeks in his natural law argument, is and can only be within the concrete history of the dialogue partners.”¹³ In other words, the theological baggage that had been thrown overboard should be brought back into dialogues with non-Catholic parties. Rather than being dressed up as something fashionably Liberal, which will repel evangelical Protestants and almost all post-moderns and convince no Liberals into the bargain, natural law is now more often presented in the context of an explicitly trinitarian and largely christocentric anthropology and the moral theology that flows from it. The new theological idiom enveloping both is that of nuptial mysticism, which has received its most extensive treatment in the works of John Paul II,

“Christology and the *Imago Dei*: Interpreting *Gaudium et spes*,” *Communio* 23 (Spring, 1996): 156–84.

¹²A. Scola, “The Dignity and Mission of Women: the Anthropological Theological Foundations,” *Communio* 25 (Spring, 1998): 42–56 at 52. See also Cardinal Carter of Toronto: “The trinitarian and marital structure of reality, of humanity, demands that we dismiss those paradigms of social relation drawn from the nomadic, anti-trinitarian rationale . . . when we focus upon the Eucharistic presence of Christ in the Church, it is evident that the marital relation which the presence establishes at the center of the Church’s worship of the Trinity is at the same time the utterly radical structure of the common humanity.”

¹³D. L. Schindler, “Grace and the Form of Nature and Culture” in *Catholicism and Secularization in America*, ed. David L. Schindler (Indiana: Communio Books, 1990), 23–24.

Cardinal Angelo Scola and Cardinal Marc Ouellet.¹⁴ It has as its foundation the theological anthropology of *Gaudium et spes*, 22, which includes within it the notion of an epithalamic relationship between Christ and the human person. This will not make it any more palatable to Liberals, but it may mean that members of the Catholic laity who are not professional philosophers and theologians will be presented with a much more theologically enriched account of what the Church means by natural law in the many magisterial documents in which it appears. It may clear up the confusion while Catholic scholars put more energy into unmasking the metaphysical presuppositions of the Liberal tradition, bringing into sharper relief the relentlessly profane, and some would argue androgynous account of human dignity that pervades Liberal theory.¹⁵

Such an approach may be found in Eberhard Schockenhoff's *Natural Law and Human Dignity: Universal Ethics in an Historical World* (2003). Schockenhoff suggested that the life of the Christian churches must "bear witness to the inherent rationality of the high ethical teachings contained in the biblical history of revelation" and put them on offer in an "open contest about the *humanum*, where the various world religions, political utopias, and secular humanisms challenge each other."¹⁶ In such a contest, it becomes your god against our God, your vision of human dignity against our vision. The intellectual shadow-boxing is over and the practical consequences of the acceptance of different theological starting points can be pushed to the center of the debate. As Ratzinger wrote in an essay on inter-religious dialogue, "the point of dialogue is not simply to repeat nineteenth- and early twentieth-century scholarship in comparative religion, which, from the lofty height of a liberal-rationalistic standpoint, had judged the religions with the self-

¹⁴A. Scola, *The Nuptial Mystery* (Grand Rapids: Eerdmans, 2005); M. Ouellet, *Divine Likeness: Toward a Trinitarian Anthropology of the Family* (Grand Rapids: Eerdmans, 2006).

¹⁵For an account of Liberal metaphysics as fundamentally androgynous and gay see David S. Crawford, "Liberal Androgyny: 'Gay Marriage' and the Meaning of Sexuality in our Time," *Communio: International Catholic Review* 33 (Summer, 2006): 239–65.

¹⁶E. Schockenhoff, *Natural Law and Human Dignity: Universal Ethics in an Historical World*, trans. Brian McNeil (Washington, D.C.: The Catholic University of America Press, 2003), 284.

assurance of enlightened reason.”¹⁷ Since there is now a “broad consensus that such a standpoint is an impossibility” (that is, a broad consensus that we need to move beyond Kant), in order to understand religion “it is necessary to experience it from within, and indeed, that only such experience, which is inevitably particular and tied to a definite historical starting-point, can lead the way to mutual understanding.”¹⁸ Enlightenment Reason, as he says, has a wax nose! What follows offers a survey of recent scholarship on natural law from this or closely related strategic perspectives.

2. Natural law and theo-drama

Matthew Levering begins his *Biblical Natural Law* (2008) with the observation that “natural law doctrine does not become significantly more persuasive or effective once pluralism dictates the exclusion of biblical revelation.”¹⁹ He believes that “no matter how nuanced the schemes for exhibiting basic requirements of human flourishing or however much one attempts to provide an autonomous role for human practical reason apart from natural teleologies” implanted by the Creator there are insuperable difficulties: “the ‘human flourishing’ answers reduce to sophisticated pragmatism rather than real ‘law’; the ‘practical reason’ answers appear to be a premature restriction of the possibilities of human freedom in ever-evolving history.”²⁰ Accordingly, the focus of his *Biblical Natural Law* is on exploring three questions: whether there are biblical warrants for natural law doctrine, what kind of natural law doctrine biblical texts support, and what happens when natural law doctrine is left out of constructive ethics arising from the Bible. Levering proposes four constructive principles, centered upon biblical texts, for understanding the relationship between Christian ethics, biblical revelation and natural law doctrine.

¹⁷J. Ratzinger, “Interreligious Dialogue and Jewish-Christian Relations,” *Communio: International Catholic Review* 25 (Spring, 1998): 29–40 at 31.

¹⁸*Ibid.*, 31.

¹⁹M. Levering, *Biblical Natural Law* (Oxford University Press, 2008), 18.

²⁰*Ibid.*, 17. Levering is co-editor of *Nova et Vetera*, a foundation of the Dominican school of the University of Fribourg.

First, Scripture presents certain goods as constitutive of true human flourishing and thus of moral order. *Genesis* 1–2 provides one place where such teleological ordering, rooted theocentrally in God’s creative providence, can be seen. Here we find in germ the human natural inclinations God creates human beings so that they are naturally ordered to preserve the good of their human existence. Without the inclination to preserve this good, God’s warning about the tree of the knowledge of good and evil would not be intelligible God also inscribes within human beings an inclination toward the good of procreation and toward knowing the truth, ultimately the truth about the Creator.²¹

Second, Scripture does not countenance an absolute disjunction between divine positive law and natural law God in giving the Decalogue connects obedience to the Decalogue with a glorious new creation in justice—a renewed creation that reverses the Fall. . . . Jesus retains the Decalogue in the form given to Israel.²²

Third, the Bible’s understanding of law is theocentric. Law does not first pertain to “nature” or to human “reason” Law has its ground in God, not in human beings. Our participated wisdom cannot be understood without adverting to its divine source. We do not constitute wisdom, but rather we receive it by seeking to discern and participate in it.²³

Fourth, the grace of the Holy Spirit does not negate, but rather fulfills the law’s precepts.²⁴

Given these four premises, “the question cannot be whether Christian ethics must import an extrinsic system of natural law,” rather, “Christian moral theology requires a philosophically sophisticated natural law doctrine in order to do justice to the teachings of divine revelation.”²⁵ This is because “ultimately the work of Christ

²¹Ibid., 59–60.

²²Ibid., 61–62.

²³Ibid., 63–65. In this context Levering makes reference to material in the Book of Wisdom, Sirach, and Proverbs.

²⁴Ibid., 65.

²⁵Ibid., 67.

and the Holy Spirit fulfills the natural law in us and elevates us to Communion with the Trinity.”²⁶

This last principle sits well with the classically Thomist definition of natural law as a participation of the rational creature in the eternal law, a doctrine that opens natural law, in turn, to theological anthropology and nuptial mysticism. The link between the two is the notion of life as a theo-drama. In Balthasar’s terms, the natural law is perfected and fulfilled by the ecstatic movement of a person’s response to Christ’s love and hence participation in the life of the Trinity.

This placement of natural law within a theo-dramatic and explicitly trinitarian context helps to overcome the moralism or, to use Ratzinger’s more specific term, “Pious Pelagianism,” which had been fostered by the tendency to sever the study of spirituality from moral theology and a purely philosophical account of natural law from revelation.²⁷ There might be, in other words, a united Thomist-Balthasarian front on an account of natural law rooted in trinitarian anthropology, but this does entail a critique of elements of neo-Thomism.²⁸

Arguably the twentieth-century Thomist who came closest to offering a moral theology with an accent on theo-dramatics was the Belgian Dominican Servais-Théodore Pinckaers.²⁹ Against the neo-Thomist tendency to mute the theological dimensions of the

²⁶Ibid., 176.

²⁷Lorenzo Albacete has described moralism as a modern form of Pelagianism, a belief in salvation through good works and obedience which he suggests can only be overcome by a “proper theology of grace in which grace is not presented as something added to and external to the natural law itself, but rather as the possibility of a personal encounter with Jesus Christ.” See L. Albacete, “The Pope Against Moralism and Legalism,” *Anthropotes* (1994): 85.

²⁸In this context, for instance, Eberhard Schockenhoff has emphasized the importance of the distinction between the passive participation of irrational creatures in the divine reason that governs the world and the actively regulating participation on the part of the human person, and he has also acknowledged that this distinction was often “flattened” in presentations about the natural law by neo-Thomists. See Schockenhoff, *Natural Law and Human Dignity: Universal Ethics in an Historical World*, 159.

²⁹Pinckaers grew up in a Walloon region of Belgium, had a Dutch-speaking father and a Walloon mother, and was from 1983 until his death in 2008 based at the Albertinum at the University of Fribourg in Switzerland.

doctrine of natural law, Pinckaers emphasized that Catholic ethics transforms Aristotle, since “the advent of divine revelation has occasioned a profound transformation in the doctrine of virtue according to which the first source of moral excellence is . . . located in . . . God through Christ.”³⁰ He noted that this transformation is evident in the doctrine of the infused moral virtues, which are not acquired by unaided human effort, but are implanted in the human person by the Holy Spirit. Accordingly, “in moral theology, the point is not to observe the commandments of the Decalogue materially, to obey them so as to fulfill one’s obligations or through a sense of duty; the point is to observe them out of love, with the heart.”³¹ Pinckaers believed that the lack of attention to the Sermon on the Mount in much of twentieth-century Catholic moral thought can be explained by the fact that it is not easily integrated into a systematization of moral theology based on obligations. Whereas moral systems of obligation are by nature static, the teaching of the Sermon on the Mount is fundamentally dynamic: “it is animated by a continuous tendency toward exceeding and surpassing, a tendency toward the progress and perfection of love in imitation of the Father’s goodness.”³² Moreover, for Pinckaers “there is no real separation between the moral part of the *Summa* and its two dogmatic parts: the doctrine on the Trinity, in particular on the Word and on the Holy Spirit, found in the *prima pars*, pertains to the morality set forth in the *secunda pars* that we can thus identify as trinitarian and spiritual.”³³ He further claims that in a parallel way, the doctrine of the *tertia pars* on Christ and the mystical Body is intimately linked to Aquinas’s moral teaching, which is christological and ecclesial.³⁴ Pinckaers’ fundamentally trinitarian framework for moral theology and the treatment of natural law within it thus

³⁰S. Pinckaers, *Morality: A Catholic View* (South Bend., Ind.: St. Augustine’s Press, 2001), 71. Of course, one must add that there is a case to be made that Aristotle, too, connects ethics and the divine, since, even for Aristotle, nature depends on God.

³¹S. Pinckaers, in *The Pinckaers Reader: Renewing Thomistic Moral Theology*, ed. J. Berkman and C. Titus (Washington, D.C.: The Catholic University of America Press, 2005), 52.

³²*Ibid.*, 52.

³³*Ibid.*, 28.

³⁴*Ibid.*, 29.

provides an alternative from within the Dominican tradition to various currents of neo-Thomism.

In his *Aquinas, Ethics, and Philosophy of Religion: Metaphysics and Practice* (2007),³⁵ Thomas Hibbs takes things in a similar direction. He observes that the contemporary interest in the Trinity, in creation, in the bestowal of the gift of being, and in the primacy of the virtue of charity, is transforming our understanding of how metaphysics is related to practice.³⁶ In particular he believes that the ultimate foundation for Aquinas's account of natural law is precisely his understanding of the internal life of God as self-communicative love even if the trinitarian accent is not strong in his direct references to natural law.³⁷ He suggests that once one asks the question of how the eternal law is promulgated, and receives the response: "promulgation occurs through word and writing, through the Divine Word and the Book of Life," one is into the territory of natural law and a metaphysics of participation.³⁸ The latter in turn leads to the issue of the way in which the conditions of the soul make it more or less receptive to discerning the principles of the natural law. Here Hibbs argues that "even where there is the possibility of derivation of human laws from the natural law, Aquinas does not advocate anything like the abstract, context-free model of practical reasoning found in twentieth-century decision-making models."³⁹ Rather "for

³⁵T. Hibbs, *Aquinas, Ethics, and Philosophy of Religion: Metaphysics and Practice* (Indiana University Press, 2007), 102. See also T. Hibbs, "Divine Irony and Natural Law: Speculation and Edification in Aquinas," *International Philosophical Quarterly* 30 (1990): 426.

³⁶Hibbs, *Aquinas, Ethics, and Philosophy of Religion*, xiii.

³⁷Hibbs laments the eclipse of the more Platonic and Dionysian dimensions of Thomist metaphysics in neo-Thomism. Indeed he argues that "misconceptions of the nature of metaphysical enquiry have infected certain strains of Thomism for many centuries" and in particular, that "there has been an eclipse of the erotic appeal of metaphysics and its pervasive deployment of aesthetic language." These misconceptions omit Aquinas's notion of "reason as participant in an order that encompasses it and exceeds its grasp, the prominent role of erotic and aesthetic discourse throughout his metaphysics; the intimate connection, in his theology, between the Trinity as exemplar of human action and the development of a social ontology of individuals-in-relation, and the construal of ethics itself as a mimetic practice" (*ibid.*, 2).

³⁸*Ibid.*, 34.

³⁹*Ibid.*, 21.

Aquinas, the inherent deficiencies in any deductive model of morality underscore the indispensable role for prudence even in natural law.”⁴⁰

3. *The recovery of prudence*

The recovery of prudence that is currently underway signals another area in which the classical natural law tradition can be integrated into the notion of theo-drama. Prudence, after all, is good moral sense, which one exercises in light of the overall narrative thrust of one’s life-story, that is: in light of one’s role in the theo-drama.

St. Thomas identified no fewer than eight quasi-integral parts of prudence: memory, understanding, docility, ingeniousness, reason, foresight, circumspection, and caution. Pamela Hall argues that this catalogue shows that for the making of a prudential judgment, Aquinas required not merely deliberative skills but also an experience-gathering ability, and Kenneth L. Schmitz has drawn attention to the fact that not all experience is of the same wisdom-inducing quality.⁴¹ Some experiences are sapiential, while others can be destructive of the soul’s capacity to recognize the beautiful, the true, and the good and to be attracted to them. Education (or what the German Romantics called *Bildung*) and prudential judgment are interconnected. As Pinckaers expressed the idea, the “work of prudence is not limited to determining what is permitted or forbidden but searches for excellence, a certain perfection of action in the existing situation, it requires the involvement of all the subject’s faculties and the use of the external abilities acquired, among other things, by education.”⁴² The whole category of human experience and its significance for discerning the principles of the natural law is thus beginning to attract the attention of Catholic scholars who differ from those associated with the nihilist wing of

⁴⁰Ibid.

⁴¹P. Hall, *Narrative and the Natural Law: An Interpretation of Thomistic Ethics* (South Bend, Ind.: University of Notre Dame Press, 1994), 40, and K. L. Schmitz, “St. Thomas and the Appeal to Experience,” *Catholic Theological Society of America Proceedings* 47 (1992): 1–20.

⁴²Pinckaers, *The Pinckaers Reader*, 70.

the Romantic tradition in emphasizing that not all experiences are potentially sapiential.

A leading contribution in this context has been Robert Sokolowski's essay, "What is Natural Law? Human Purposes and Natural Ends," described as an attempt to "shed light on how natural law is promulgated in human experience."⁴³ With reference to the famous statement of St. Paul in his Letter to the Romans (2:14–15) regarding the law written on the hearts of the gentiles, Sokolowski writes that we should understand the full meaning of the words used for the heart (*cor* and *kardia*) in such passages: "they do not connote the separation of heart and head that we take for granted in a world shaped by Descartes."⁴⁴ He endorses Robert Spaemann's claim that in the New Testament the heart is taken to be a deeper recipient of truth than even the mind or intellect in Greek philosophy; it deals rather with the person's willingness to accept the truth.⁴⁵ Kevin O'Reilly makes a similar point in his essay "The Vision of Virtue and Knowledge of the Natural Law in Thomas Aquinas."⁴⁶ He acknowledges that for St. Thomas affectivity is integral to the perception of the human good, that "reason cannot escape the influences of social practices that furnish the context in which they necessarily operate," and accordingly that the virtue ethics and natural law theories presuppose the need for the other.⁴⁷

⁴³R. Sokolowski, "What is Natural Law? Human Purposes and Natural Ends," *The Thomist* 68 (2004): 507–29 at 526. Reprinted in R. Sokolowski, *Christian Faith and Human Understanding* (Washington, D.C.: The Catholic University of America Press, 2006), 214–37.

⁴⁴Sokolowski, *Christian Faith and Human Understanding*, 230. Michael Downey has also argued that for many of the medieval scholastics, including St. Bernard of Clairvaux, William of St. Thierry, Aelred of Rievaulx and St. Bonaventure, there was a notion of the heart as the locus of personal life and union with God through love, and importantly, the work of the heart was not separated from reason or *intellectus*. See his "Jean Vanier: Recovering the Heart," *Spirituality Today* 38 (Winter, 1986): 337–48. See also D. von Hildebrand, *The Heart: An Analysis of Human and Divine Affectivity* (South Bend, Ind.: St. Augustine's Press, 2007).

⁴⁵Sokolowski, "What Is Natural Law? Human Purposes and Natural Ends," 525. He recommends R. Spaemann, *Personen: Versuche über den Unterschied zwischen "Etwas" und "Jemand"* (Stuttgart: Klett-Cotta, 1996), 29–30.

⁴⁶K. O'Reilly, "The Vision of Virtue and Knowledge of the Natural Law in Thomas Aquinas," *Nova et Vetera* 5 (2007): 41–66.

⁴⁷*Ibid.*, 60.

The work of Alasdair MacIntyre is clearly seminal in this context. As early as *After Virtue*, he recognized that Kant had both a moral philosophy and a philosophy of psychology but he did not relate them each to the other in a satisfactory way.⁴⁸ One result of this schism between ethics and psychology was the replacement of the concepts of virtue and character with those of choice and autonomy. The Kantian system of duties and universally applicable principles did not include within its order a place for relating dispositions of character to the principles of right action. Some neo-Thomist projects mirrored this kind of post-Kantian schism. MacIntyre's work seeks to overcome the schism and to explore the social conditions of knowledge and character development. Without giving way to ethical relativism, he does acknowledge the importance of culture and practices for moral development, and he is acutely sensitive to the ways in which values are tacitly mediated to plain persons through institutional practices. His conclusions converge with aspects of the thought of Michael Polanyi, especially Polanyi's account of the tacit acquisition of knowledge.⁴⁹ In addition to MacIntyre's contribution, the earlier work on virtue by Josef Pieper is also seminal.⁵⁰ Along with the critiques of moralism presented in Balthasar's *Love Alone Is Credible*, Pieper's work has been a significant formative influence on the moral theology of Joseph Ratzinger. By bringing together contemporary virtue ethics and natural law scholarship, the objective is to provide a vision of moral theology that is sufficiently multi-dimensional to include a place for affectivity as well as the integral components of prudence (including the significance of memory, human experience, and education).

Thus, while the natural law is written on the hearts of the gentiles, as St. Paul observed, the spiritual condition of their hearts, which ebbs and flows in response to the movements of grace and the experience of love and evil, can make the natural law more or less legible. This awareness is often lost in neo-Thomist accounts from which one derives the impression that the human mind is something like a computer into which one can plug an ethical hypothetical and

⁴⁸A. MacIntyre, *After Virtue* (London: Duckworth, 1981), 79.

⁴⁹M. Polanyi, *The Tacit Dimension* (Chicago: University of Chicago Press, 2009). This edition is a reprint of the 1966 work with a new foreword by Amartya Sen.

⁵⁰J. Pieper, *Four Cardinal Virtues* (South Bend, Ind.: University of Notre Dame Press, 1966); *Faith, Hope and Love* (San Francisco: Ignatius Press, 1997).

receive the correct moral answer providing it deliberates upon a series of questions in a logical sequence. Such an approach, which explicitly ignores the condition of the heart, is in fact a very liberal-rationalist sort of approach and it is not surprising, therefore, as Levering observes, that it was precisely a rejection of the Thomist metaphysics of participation (which involves one's whole being) that has been the recurring motif in Liberal theories of natural law. In Levering's survey of eight of the most influential accounts of natural law in modern philosophy, there is no possibility of any participation by a creature with its whole being within an eternal law.⁵¹

4. Natural inclinations and the ecstatic

The focus upon the mode of participation of the natural law within the eternal law and the significance of prudence and human experience is also leading to a renewal of interest in natural inclinations and their attraction to the good. Inasmuch as this renewal tends to highlight the ecstatic character of nature, it is another area in which traditional natural law thinking opens from within to incorporation in theo-drama.

At the end of *The Sources of Christian Ethics* (1995), Pinckaers devotes a chapter entirely to the natural inclinations and argues that our understanding of the natural inclinations has been profoundly

⁵¹His succinct summary of this genealogy deserves citing in full: "Absent the biblical Creator's teleological ordering, what then are the various options that modern natural law tries to provide? To judge by our overview of eight of the most influential modern philosophers, the answers take the following directions: to distinguish between mind and its bodily machine, the former imposing its own laws and the latter with no *telos* outside itself (Descartes, Kant); to constitute a commonwealth that by sheer power instantiates laws of nature which are expressions of the desire for self-preservation (Hobbes); to rely upon self-interested human emotions to preserve order (Hume and Hobbes); to turn the focus to individualistic preservation of one's property (Locke); to throw off the violent bonds of civilization and return to a state of nature governed by pity and minding one's own business (Rousseau); to affirm the law-constituting role of each individual's practical reason (Kant) over against the threat of sub-human 'inclination' and 'nature'; to affirm the overcoming of all divisions by means of the necessary historical evolution of Spirit (Hegel); to master even history itself and freely reconstitute one's 'nature' at every moment (Nietzsche)" (Levering, *Biblical Natural Law*, 138–39).

distorted by nominalist polarities, especially the alleged opposition between freedom and nature. After Ockham, human nature and natural inclinations come to be seen as referring primarily to bodily inclinations, “impulses of the lower order, on the psychosomatic plane.”⁵² Levering concurs with Pinckaers and argues that one can see the beginnings of the modern split between anthropocentric and theocentric alternatives for articulating natural law doctrine in the divergence of Scotus from Aquinas.⁵³ In Levering’s reading, Scotus attempted to displace human-to-human relationships (distinguished from human-to-God relationships) from the ambit of the natural law and thereby opened the door to liberalism.⁵⁴ A similar argument has been advanced by Catherine Pickstock, who locates the decisive shift away from a metaphysics of participation in the work of Scotus, rendering Scotus, rather than Aquinas, the forerunner of the liberal tradition.⁵⁵

Levering identifies the understanding of natural inclinations as a major fault line across contemporary schools of natural law scholarship. He suggests that the three most significant approaches are found in the works of Martin Rhonheimer, Servais-Théodore Pinckaers, and Graham McAleer, and that while the latter two are capable of a higher synthesis, they are not compatible with the first.⁵⁶ He notes that Rhonheimer’s approach shares similarities with that of

⁵²Pinckaers, *Sources of Christian Ethics*, 333.

⁵³M. Levering, “God and Natural Law: Reflections on Genesis 22,” *Modern Theology* 24, no. 2 (April, 2008): 155.

⁵⁴*Ibid.*, 156.

⁵⁵C. Pickstock, “Duns Scotus: His Historical and Contemporary Significance,” *Modern Theology* 21, no. 4 (October, 2005): 543–74.

⁵⁶For example: M. Rhonheimer, *Natural Law and Practical Reason: a Thomist View of Moral Autonomy* (New York: Fordham University Press, 2000); *Die Perspektive der Moral. Philosophische Grundlagen der Tugendethik* (Akademie-Verlag, 2001); “Praktische Prinzipien, Naturgesetz und konkrete Handlungsurteile in tugendethischer Perspektive: Zur Diskussion über praktische Vernunft und ‘lex naturalis’ bei Thomas von Aquin,” *Studia Moralia* 39 (2001): 113–58; “The Cognitive Structure of the Natural Law and the Truth of Subjectivity,” *The Thomist* 67 (2003): 1–44; *The Perspective of the Acting Person: Essays in the Renewal of Thomistic Moral Philosophy* (Washington, D.C.: The Catholic University of America Press, 2008); G. McAleer, *Ecstatic Morality and Sexual Politics: a Catholic and Antitotalitarian Theory of the Body* (New York: Fordham, 2005); Pinckaers, *The Pinckaers Reader*, esp. chapters 4 and 18.

the “new natural law” theory proposed by John Finnis, Robert George, and Germain Grisez.⁵⁷ For Rhonheimer, natural law refers not to laws of nature known by speculative knowledge, but strictly to the judgments of practical reason about human acts. In Levering’s reading of Rhonheimer, the crucial aspect is that an “order of nature” does not establish the moral pattern for human reason, but rather human reason “establishes, formulates, or promulgates” its own moral pattern.⁵⁸ Levering raises the following critical questions about Rhonheimer’s approach:

First, does his account of the “*imago Dei*” as an image precisely in its *constitutive* power adequately appreciate the role of receptivity and contemplation in human rationality? Related to this question, does he separate the “practical” from the “speculative” aspect of reason too firmly, out of concern that human reason norm non-rational nature, rather than human reason receiving a norm from non-rational nature? Second, does his view of a level of “pure naturalness” in the human body, for example what he calls a “mere attraction between bodies,” properly understand the hylomorphic unity of the (hierarchically ordered) inclinations in the human person?⁵⁹

Levering believes that it is precisely the neglect of the more erotic dimensions of Thomism, to which Hibbs has also drawn attention, that is responsible for the inadequacies in Rhonheimer’s approach to the topic of human inclinations:

The work of humanization, for Rhonheimer, produces from the water of “nature,” the wine of “human nature.” But the water, as Pinckaers and McAleer show clearly, is already wine; the point of unity is the movement of *ecstasis* toward the good that belongs to the natural inclinations, a movement perfected by (not constituted by) the virtues. Their metaphysical work, following Aquinas, illumines the consistency of teleology, the attraction of the good in God’s creative artistry.⁶⁰

⁵⁷J. Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon, 1980); *Aquinas* (Oxford University Press, 1998); R. George, *In Defense of Natural Law* (Oxford University Press, 2001).

⁵⁸Levering, *Biblical Natural Law*, 154.

⁵⁹*Ibid.*, 162–63.

⁶⁰*Ibid.*, 186.

In contrast to Rhonheimer, Levering suggests that “Pinckaers engages the metaphysical fabric of natural law doctrine: the hylomorphic unity of the body and soul; the nature of the good and perfection, happiness, and friendship as constitutive of the doctrine of natural law and natural inclinations.”⁶¹ He further argues that Pinckaers’ deeply trinitarian foundations for the doctrine of natural law can be enriched by ideas presented in McAleer’s *Ecstatic Morality and Sexual Politics* (2005). In this work McAleer attempts to develop a theology of the body on the basis of St. Thomas’s analysis of matter (in the *Sentences*), theories of substantial composition and ecstatic being (from the *Summa contra gentiles*) and the understanding of concupiscence (found in the *Summa theologiae*). The word “ecstatic” in this context is a reference to the Thomistic insight that all the parts of creation (including the human body) are disposed toward service, one for another, and that the natural appetite seeks the divine likeness as its own perfection.⁶²

McAleer’s approach self-consciously builds on themes in John Paul II’s theology of the body and the encyclical *Veritatis splendor* (especially paragraphs 20, 21, and 24).⁶³ The influence of St. John of the Cross finds its imprint in the Wojtylian account of natural law as founded on Christ and “interiorly structured by the exemplar of Christ’s love on the Cross.”⁶⁴ Natural law “establishes a dynamism in the body that calls the person to participation in the eternal law of God’s wisdom and love.”⁶⁵ Moreover, since it is christological, natural law cannot be understood apart from the spousal relationship of Christ with his Church.⁶⁶ In a project which is in many ways parallel to that of Hibbs, McAleer thus tries to present a more “erotic” Aquinas. To that end he focuses upon the Thomistic treatment of the relationship between desire and its object,

⁶¹Ibid., 143.

⁶²G. McAleer, *Ecstatic Morality and Sexual Politics* (New York: Fordham University Press, 2005), 14.

⁶³For a sympathetic but critical review of this work, see J. Heffernan Schindler, “The Metaphysics of Love,” *The Review of Politics* 69 (Winter, 2007): 301–04.

⁶⁴McAleer, *Ecstatic Morality and Sexual Politics*, 81.

⁶⁵Ibid., 93.

⁶⁶Ibid., 63.

the relationship between matter and form. He notes that St. Thomas argued that matter and form are always already internally related:

Creatures are intrinsically structured to an other-directedness through which they yet attain their own proper power (*ST I*, q. 19, a. 2): they are thus internally ecstatic, a consequence of their being good and so interiorly propelled to communicating that good: *bonum est diffusivum sui*.⁶⁷

Paradoxically, McAleer's explicitly christocentric treatment of moral theology and natural law and the inclinations of human nature within it, is more readily able to engage with post-modern sensibilities, particularly the interest in eros, than earlier, more liberal-inclined, twentieth-century approaches. Contrary to the openness to Kant in some neo-Thomist accounts of natural law, McAleer believes that if St. Thomas were alive today he would join in with the post-modern attacks on Kantian rationality.⁶⁸

5. Political implications: Eros is not democratic

McAleer is also critical of the political dimensions of the Maritain project. He suggests that "rather than arguing that natural law is a controlling framework for the Catholic adoption of the Rights of Man and democracy, as Maritain promoted it, it would be better to understand natural law as a framework of privilege."⁶⁹ This is because the "logic of rights has for its *raison d'être* an equalitarianism that is at root a horror of privilege and its protection of diversity."⁷⁰ Catholic teaching on sex and marriage also relies upon ideas of privilege and hierarchy.⁷¹ Moreover, Maritain's project has been turned against the Church by contemporary liberals who argue that the attempted baptism of American-style liberalism inherent within it was but the first stage in what should be a more total democratic revolution encompassing the areas of sexuality and

⁶⁷Ibid., 15.

⁶⁸Ibid., 21.

⁶⁹Ibid., 161.

⁷⁰Ibid.

⁷¹Ibid., 176.

ecclesiology. McAleer believes that the Church cannot do this because her thinking on these two topics (sexuality and ecclesiology) is deeply christological. In this context McAleer's work is on the same trajectory as that of Robert P. Kraynak, who has also argued that Catholic scholars play a dangerous game when they baptize democracy as if it were an absolute good in one context, and then attempt to defend hierarchical privileges in others.⁷² However, whereas Kraynak has generally looked to the Augustinian tradition to provide antidotes for the political influence of Maritain, McAleer recommends the thought of Aurel Kolnai (1900–1973), whose anti-utopian disposition and concerns about totalitarian tendencies within the liberal tradition resonate well with the Augustinian reserve toward the notion of a perfect social order.⁷³ McAleer concludes that the values inherent in papal encyclicals such as *Veritatis splendor* and *Evangelium vitae* are “better defended through Aurel Kolnai's thought, for social and political privilege are more congruent with the christological body than are the isolationism and decisionism of rights.”⁷⁴ When placed within the framework of nuptial mysticism, morality becomes a matter of desiring to be more like Christ.

6. Conclusions

The conclusion to be drawn from the above brief survey of recent scholarship on natural law doctrine is that Catholic scholars need to go beyond a theologically neutered conception of natural law as a *lingua franca* with which to engage proponents of hostile

⁷²R. Kraynak, *Christian Faith and Modern Democracy: God and Politics in a Fallen World* (South Bend, Ind.: University of Notre Dame Press, 2001).

⁷³Kolnai came to academic prominence in the 1930s as a contributor of anti-Nazi articles to Dietrich von Hildebrand's *Der Österreichische Ständestaat* and as the author of *The War Against the West* (1938). After fleeing Austria he spent the 1940s and half the 1950s at the University of Laval where he found the regnant neo-Thomism insufferable. For a survey of Kolnai's thought, see D. J. Mahoney, “Recovery of the Common World: An Introduction to the Moral and Political Reflections of Aurel Kolnai,” in *Privilege and Liberty and Other Essays in Political Philosophy* (Lanham, Md.: Lexington Books, 1999). See also an essay by McAleer on Kolnai, “The Conservative and Moral Philosophy of Scheler and Kolnai,” *The Modern Age* 45 (Summer, 2003).

⁷⁴McAleer, *Ecstatic Morality and Sexual Politics*, 171.

traditions. However, nothing in the above should be construed as a call to abandon the Church's mission to those whom Alasdair MacIntyre calls "plain persons," who tacitly adopt the attitudes of the elite as they filter through and undergird the practices of the institutions in which they live and work. Rather, what is being argued is that the Church's scholars should not waste their energies performing all manner of linguistic gymnastics, transposing her teachings into the idioms of hostile traditions, in order to entice neo-pagan elites to buy their intellectual package.

The movement from a neo-Thomist account of natural law to one that explicitly acknowledges its trinitarian context is unlikely to make the notion of natural law any less acceptable to such elites. If they oppose a more Liberal-sounding version of it, then one might as well drop this project and concentrate on making the teaching more comprehensible and attractive to the Catholic faithful and plain persons of good will, especially Protestants.⁷⁵ Further work also needs to be done in recovering lost ground with those who are nominally Catholic and have never been presented with a comprehensive account of morality as filial participation in the life and love of the Trinity.

The work of providing a richer account of the natural law doctrine from within the nuptial mysticism framework may also have the effect of reconciling tensions between the younger generation of Catholic scholars working within the Thomist and Balthasarian traditions. In particular, it has been suggested above that the work of Servais-Théodore Pinckaers might stand as a bridge uniting the efforts of younger Thomists and Balthasarians because of its accent on the theo-dramatic nature of moral life and also because of Pinckaers' sympathy to the work of de Lubac which one finds in his licentiate dissertation and several subsequent essays.⁷⁶

⁷⁵The works of Ulrich Kühn and Per-Erik Persson are evidence of an interest in natural law (rooted in trinitarian anthropology) from within the Lutheran tradition, and the work of David Novak on Old Testament ethics exhibits a significant interest in natural law from within the Jewish tradition, which, though obviously not linked to a trinitarian anthropology, at least shares some of the elements of a Christian cosmology. There is much potential for successful diplomatic work with members of the Protestant communities who have been encouraged by the christocentric accent of the moral theology of the current and previous pontificates.

⁷⁶S. Pinckaers, *Le "Sumaturel" du P. de Lubac* (S.T.L. thesis, La Sarte, 1952).

The future direction of natural law scholarship would thus seem to be framed by the question: In what way(s) do the differences between Baroque Thomist and Lubacian-Balthasarian accounts of the trinitarian relationships and the grace-nature relationship bear upon the development of an account of natural law rooted within the theological anthropology of *Gaudium et spes*, 22?⁷⁷ Can indeed one have an account of natural law linked to the theological anthropology of *Gaudium et spes*, 22, without adopting at least some of the elements of de Lubac's criticisms of Baroque Thomism?

The strategic/political question also remains of how to engage intellectually with proponents of the Liberal tradition. The argument presented in this paper is that whatever the answer to that question, the attempted transposition of natural law into liberal idioms favored by Maritain and others in his tradition should be re-assessed against the empirical sociological data and legal and political history of the past four decades. Perhaps a better way to engage with liberals is to move the discussion away from nature, reason and natural law, to the idiom of freedom, self-development and self-realization, to offer, as it were, an immanent critique of particular liberal policy proposals. One example of a Catholic political philosopher who has approached the liberal tradition in this manner is the Jagiellonian professor and current Polish Secretary of State, Ryszard Legutko. Essays such as "Do Liberals Love Liberty?" and "The Temptation of Total Laissez-Faire" provide concrete examples of this strategy.⁷⁸ □

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⁷⁷The term "Baroque Thomist" refers to contemporary Thomists who continue to accept as authoritative accounts of the grace-nature relationship as presented by Cajetan and Thomists of the sixteenth-century Salamanca School.

⁷⁸R. Legutko, "Dylematy Kapitalizmu," *Libertas* 2 (Paris, 1986); "Do Liberals Love Liberty?" *Salisbury Review* 7 (1) (September, 1988); *Society as a Department Store* (Lexington, Mass.: Lexington Books, 2002); *On Tolerance: A Study of Strong Government, Law of Nature, Love and Conscience* (Krakow: Center for Political Thought, 1997); "What's Wrong With Liberalism?" *The Modern Age* 50 (Winter, 2008).