

## NATURAL LAW AND PUBLIC DISCOURSE: THE LEGACIES OF JOSEPH RATZINGER

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### I. INTRODUCTION

In 1988, Cardinal Joseph Ratzinger traveled to England to give the annual Fischer Lecture for the Catholic Chaplaincy at Cambridge University.<sup>1</sup> The title of his paper was “Consumer Materialism and Christian Hope,” suggesting that he would come prepared to speak about problems like drugs, AIDS, terrorism—important topics, to be sure, but relatively safe for a speech by the Prefect of the Congregation of the Doctrine of the Faith. At first, Ratzinger<sup>2</sup> politely tried to give *that* kind speech before abruptly changing course, proposing that the main crisis of our time is that “[w]hat is moral has lost its evidence.”<sup>3</sup>

Now the concept of a personal relationship between God and Creator and each individual person is certainly not missing from the religious and moral history of humanity; but it is limited in its pure form to the realm of biblical religion. *What was first of all common to all of pre-modern mankind, however, lies really along the self-same line: [was] the*

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1. Cardinal Joseph Ratzinger, *Consumer Materialism and Christian Hope*, in *TEACHERS OF THE FAITH, SPEECHES AND LECTURES BY CATHOLIC BISHOPS* 78 (Tom Horwood ed., 2002).

2. Henceforth, I shall use the name Ratzinger without his ecclesiastical titles.

3. Ratzinger, *supra* note 1, at 87.

conviction that in man's being there lies an imperative, the conviction that man does not devise morality itself by calculating expediencies; rather *he comes upon it in the being of things*.<sup>4</sup>

As it happened, Ratzinger had come to give a lecture on natural law. He put the question of "evidence" into a context where it once received an answer—the common patrimony and primeval testimony of wisdom—traditions, which, in different ways and with different emphases, affirmed "the necessity for harmony between human existence and the message of nature."<sup>5</sup> His audience must have understood that he was revisiting a theme famously developed by the scholar and former resident of Magdalene College (Cambridge), C.S. Lewis, whose *The Abolition of Man* (1943) included an appendix of universal moral propositions modeled on the Chinese Tao.<sup>6</sup> Ratzinger continued: "Actually, the moral vision of Christian faith is not something particularly Christian; it is rather the synthesis of the great moral intuitions of humanity from a new centre which holds them all together."<sup>7</sup>

What Christianity has in common with other wisdom traditions, he gathered, is the conviction that "[m]orality is not man's prison; it is rather the divine in him."<sup>8</sup> This is not merely an ethical so much as an anthropological conviction: namely, that the human person is "open to reality as a whole." Were this not true, the order of nature would amount to a mere aggregation of "details," and our interpretation of these details would be restricted to the domain of scientific materialism. Other evidences might count but only as the partial constructions of subjectivity or, what is more likely, the constructions of social, political, and legal forces. In that scenario, morality would be a "prison."<sup>9</sup>

Ratzinger concluded that, to the modern person, "moral[ity] has lost its evidence."<sup>10</sup> He can "see through" all things but not

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4. Ratzinger, *supra* note 1, at 87 (emphasis added).

5. *Id.* at 88-89.

6. *Id.* at 88.

7. *Id.* at 93.

8. Ratzinger, *supra* note 1, at 92.

9. "[T]he moral imperative is not man's imprisonment from which he must make his escape in order finally to be able to do as he wants." *Id.*

10. *Id.* at 87.

“see.”<sup>11</sup> Christianity has only very awkward points of entry into dialogue with a cultural world that recognizes only one universal, which, for us, is scientific materialism. In late modernity, only scientific materialism promises that human reason opens to reality as whole. But it succeeds at the cost of erasing all of the other “evidences”—not only moral evidence, but even the human knower himself, who is a useless cultural *meme* having no ground or role in nature.

On that scenario, it is better that Christianity dialogue with other moral traditions that have an *hodos*—a road, a way, a Tao, a pathway of evidence—so to speak.<sup>12</sup>

Ratzinger’s Cambridge paper turned out to be rather important. It was a paradigm for his contribution to two encyclicals (*Veritatis Splendor* and *Fides et Ratio*), it formed the nucleus for the International Theological Commission’s study of Natural Law (2008), and Ratzinger reworked it in several of his most important speeches when he became pope. Importantly, the Cambridge lecture represented Ratzinger’s conviction that natural law discourse belongs most fruitfully to something along the lines of inter-religious dialogue rather than to the more familiar contexts of public law and politics, which only recognize scientific materialism under the aspect of cost-benefit laws of utility.

I will to return to the issue of dialogue later.

For now, I should point out something surprising about his Cambridge lecture. As far as I can tell, it was the first time that

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11. Ratzinger, *supra* note 1, at 90 (quoting C.S. Lewis).

12. If I understand Ratzinger correctly, we are not speaking of raw evidence but of evidence already marked, or mapped for one who wants to search. Properly speaking, this is dialogue—human discourse in the midst of converging pathways of evidence. Put in Thomistic terms, we are not directly concerned with the first and most common principles of natural law, which constitute the condition of the possibility for any evidence whatsoever in practical matters. 8 ST. THOMAS AQUINAS, SUMMA THEOLOGICA pt. I-II, q. 94, art. 4, at 46-49 (Fathers of the English Dominican Province trans., Burns Oates & Washbourne 2d ed. 1927) [hereinafter SUMMA THEOLOGICA]. Rather, we are interested in different traditions that have derived from the *communia principia rationis*, which Thomas puts into the category “conclusions.” Some conclusions are relatively easy to draw while others depend on the experience and discernment of the wise. The main point is that conclusions represent a developed pattern of evidence. The moral precepts of the Decalogue fall into this category, and could be regarded as an *hodos*. *Id.* q. 100, arts. 1-3, at 113-19. The principles of morals that C.S. Lewis compiled in *The Abolition of Man* are nothing other than what Thomas calls “conclusions.”

Joseph Ratzinger, speaking in his own name and in the office of theologian, publicly addressed the subject of natural law in any sustained way.

*How could that be so?*

Ratzinger began serious theological studies after his ordination in 1951, first writing a dissertation on Augustine's ecclesiology at the University of Munich and then his habilitation on Bonaventure's theology of history and revelation.

When he entered the world of academic theology, the brighter students were channeled into dogmatic, scriptural, and historical theology. As it always has been and probably always will be, the politically ambitious clerics took degrees in canon law. Moral theology was not regarded as a speculative and synthetic discipline that tackled big and interesting theological problems. By and large, it was taught and studied by way of manuals and cases—ultimately to serve priests dealing with issues of law and conscience in the confessional. To be sure, it had a natural law foundation, but it expressed neither a full theological nor a philosophical line of thought.

Moral theology, circa 1953, was a half-lit moon in the firmament of theology. Had Ratzinger entered academic theology ten years later, the picture would have looked very different. The sexual and bio-medical issues had come to the fore by the late 1950s, and by the late 1960s, sexuality and conscience occupied the center stage of theology. Indeed, moral theology reinvented itself as a speculative and virtually freestanding discipline that treated ethical theories rather than cases and laws.

Many years later, Ratzinger would write: “[The] post-conciliar [aim was to go] beyond the natural law system in order to recover a deeper biblical inspiration,” and yet “it was precisely moral theology that ended by marginalizing Sacred Scripture even more completely than the pre-conciliar manualist tradition.”<sup>13</sup> “[T]he specialists’ debate in current moral theology,” he lamented, spun around deontological and teleological theories, thus becoming ever more remote from either the order of creation

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13. 1 POPE BENEDICT XVI, *The Renewal of Moral Theology: Perspectives of Vatican II and Veritatis Splendor*, in COMMUNIO: THE UNITY OF THE CHURCH 183, 187 (David L. Schindler ed., Michelle K. Borrás trans., William B. Eerdmans Pub. Co. 2010) [hereinafter *Renewal of Moral Theology*]. On casuistry and natural law, see *id.* at 184.

or redemption.<sup>14</sup> Rather than reforming a casuistical legalism operating on the margins of serious philosophy and theology, moral theology had become ethical theories detached from traditions.<sup>15</sup>

At the same time, the pastoral emphasis of the Second Vatican Council seemed to nudge the older speculative theological disciplines in the direction of praxis—sacramental theology, for example, became liturgical praxis. Ratzinger suggested that the modern age is marked by a shift away from a concern for “what is true” to a concern for “what can be done or made.”<sup>16</sup> He admonished theologians not to cooperate in “reason’s capitulation in the face of almighty praxis.”<sup>17</sup>

Systematic theology aspiring to become praxis, and moral theology insisting upon its right to become theory—in effect, Ratzinger’s world of academic theology had been turned upside down. Well into the 1970s, while at the peak of his academic career, he wrote and spoke extensively on the situation of systematic theology, but he postponed reckoning with moral theology. That would change in 1981 when he became Prefect of the Congregation of the Doctrine of the Faith (Prefect of CDF). Now an ecclesial theologian, questions of moral theology were unavoidable.

## II. THREE CONTEXTS

In 2004, as Prefect of CDF, Ratzinger invited Catholic educational institutions to organize symposiums or study days “in order to find constructive pointers and convergences for an effective deepening of the doctrine on natural moral law.”<sup>18</sup> In the symposium held at Notre Dame, Alasdair MacIntyre made a very astute observation about the relationship between revealed theology and natural law:

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14. Joseph Cardinal Ratzinger, *The Church’s Teaching Authority-Faith-Morals*, in *PRINCIPLES OF CHRISTIAN MORALITY* 45, 65 n.13 (Graham Harrison trans., Ignatius Press 1986) [Hereinafter *Church’s Teaching Authority*].

15. Here, anticipating some of the work soon to be done by Alasdair MacIntyre.

16. JOSEPH CARDINAL RATZINGER, INTRODUCTION TO CHRISTIANITY 57-69 (J.R. Foster trans., Ignatius Press rev. ed. 2004) (1968).

17. *Church’s Teaching Authority*, *supra* note 14, at 72.

18. Here, he refers to the invitations and subsequent history. Pope Benedict XVI, Address of His Holiness Benedict XVI to Members of the International Theological Commission (Oct. 5, 2007), available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2007/october/documents/hf\\_ben-xvi\\_spe\\_20071005\\_cti\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2007/october/documents/hf_ben-xvi_spe_20071005_cti_en.html).

It is not just that the natural law can be known by the exercise of the powers of reason, independently of revelation, but also that the knowledge of divine law afforded by revelation presupposes a prior knowledge of the precepts of the natural law. It is a revealed truth, that is to say, that the truths of the natural law can be known prior to and independently of any revealed truths, including this particular revealed truth.<sup>19</sup>

Even if the institutions of a given culture—universities, courts, the media, other churches and religions—had no further use of natural law either as a supposition or as an explanatory framework, the Church nevertheless would be bound to teach and affirm the natural law—both as doctrine and in terms of the philosophical infrastructure. Theologians presuppose—or better yet, recognize—a source of evidence that is not exclusively revealed by the Gospel.

It is really a double presupposition: (1) evidence open to everyone, and (2) evidence included in the Gospel, forming an organic part of theology. This double presupposition is deployed in Catholic moral theology in three ways—let's call them contexts:

Systematic. The doctrinal theologian works with the double presupposition in terms of the economies of creation and redemption. So put, the systematic theologian is not immediately concerned with making moral arguments, but rather with making coherent the sources of truth, including what is recognized or presupposed about the natural habitat of reason.

Dialectical. This is the province of moral theology strictly defined. Beginning with a disputed question, the mind works dialectically from common premises and authorities to fully practical conclusions about sexual conduct, bio-medical practices, warfare, and fundamental rights.

Dialogical. This is the search for common premises across religious and philosophical traditions. As Ratzinger put it in his Cambridge lecture, dialogue is a search for common and converging pathways of evidence.

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19. Alasdair MacIntyre, *From Answers to Questions: A Response to the Responses*, in *INTRACTABLE DISPUTES ABOUT THE NATURAL LAW: ALASDAIR MACINTYRE AND HIS CRITICS* 313, 341 (Lawrence S. Cunningham ed., Univ. of Notre Dame Press 2009).

In this essay, I am most interested in the dialogical discourse. But if we are to accurately estimate Ratzinger's legacy in this context, we need to consider his understanding of the first two contexts, especially systematic theology.

### III. SYSTEMATIC AND DIALECTICAL CONTEXTS

Ratzinger was a systematic theologian. The purpose of systematics is *coherence* of truths and teachings.<sup>20</sup> In the Catholic tradition, this work includes the infrastructure of philosophy brought to bear on the ordered inquires and expositions of sacred doctrine. Ratzinger's interest in natural law developed within this context.

In his first encyclical, *Deus Caritas Est*, for example, he insisted that the *humanum*, made unto the image and likeness of God that becomes by grace *imago Christi* "is not simply a matter of morality."<sup>21</sup> He means to say that moral theology presupposes the nature of the human creature, the scope and dignity of conscience, and the participation of human reason in first truth and divine providence. So put, natural law in the creature falls under anthropology before it comes under morality, but as to the source of the law, it first falls under natural theology, just as Thomas Aquinas insisted in the *Summa Theologiae*.<sup>22</sup> Since the

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20. See *Church's Teaching Authority*, *supra* note 14, at 72.

21. POPE BENEDICT XVI, ENCYCLICAL LETTER, DEUS CARITAS EST ¶ 14 (Dec. 25, 2005), available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20051225\\_deus-caritas-est\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20051225_deus-caritas-est_en.html).

22. This is the *ex professo* definition of natural law given by Thomas. SUMMA THEOLOGICA, *supra* note 12, pt. I-II, q. 91, art. 2, at 10-12.

I answer that, As stated above (Q[90], A[1], ad 1), law, being a rule and measure, can be in a person in two ways: in one way, as in him that rules and measures; in another way, as in that which is ruled and measured, since a thing is ruled and measured, in so far as it partakes of the rule or measure. Wherefore, since all things subject to Divine providence are ruled and measured by the eternal law, as was stated above (A[1]); it is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law. Hence the Psalmist after saying (Ps. 4:6): "Offer up the sacrifice of justice," as though someone asked what the works of justice are, adds: "Many say, Who showeth us good things?" in answer to which question he says: "The light of Thy countenance, O Lord, is signed upon us": thus implying that the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation of

systematic theologian incorporates—or as Ratzinger frequently says, “purifies”—natural theology, the systematic theologian has a stake in natural law quite independent of deliberation and judgment about particular matters of conduct.<sup>23</sup>

Moral theology presupposes human reason tutored by nature and by faith, as well as by wisdom traditions. Hence, Ratzinger’s long-standing criticism of the older casuistical-manualist method, which seemed like a piece of legalism detached from the living tradition of theology. But in much the same vein, he now criticizes the more recent bid of moral theology to be ethical theory detached from the deeper tradition of ethical thought.

Ratzinger’s generation of theologians (coming of age in the 1940s) wanted to reprimatinate theology by returning to the sources, chiefly to scripture and patrology. For these “Ressourcement” theologians, scholasticism carried a germ of rationalism, which is to say the primacy of dialectics over wisdom. If taken to extremes, their suspicion of scholasticism could subvert a renewal of natural law thinking, among other reasons, because for the better part of a millennium reflection on natural law within Catholicism evolved within various scholasticisms and neo-scholasticisms.

For his part, Ratzinger was a ressourcement theologian and a critic of rationalism—he had little confidence in the moral-judicial approach to natural law. That said, he set himself apart from his generational cohort because he was a staunch defender of the creative encounter of Christian faith and philosophy.<sup>24</sup>

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the eternal law.

*Id.* q. 91, art. 2, at 11-12.

23. In his dissertation, Ratzinger proposed without extensive commentary that just as revealed theology both recognizes and rehabilitates natural theology, revealed theology must do the same with the notion of natural right, which he says is in “crisis” (*Krisis des Naturrechts*). For the philosophical resources of late modernity are not sufficient to secure deep convictions about natural or human rights. JOSEPH RATZINGER, *VOLK UND HAUS GOTTES IN AUGUSTINS LEHRE VON DER KIRCHE* 312 n.6 (Eos Verlag U. Druck 1992). I am grateful to Daniel Burns for calling this passage to my attention.

24. In his work *Catholicisme: les aspects sociaux du dogme* (Catholicism: The Social Aspects of Doctrine), Henri de Lubac maintained that:

In this connection the combined influence of Aristotelian logic and Roman law on the formulation of theology during the Middle Ages has been pointed out more than once. These two excellent instruments of precision, which should have been the instruments of progress, were not in the event without their dangers. For in the second was inherent the danger of a legal outlook in expounding the

Going back to his Inaugural Lecture at the University of Bonn in 1959,<sup>25</sup> through the subsequent decades of his books and essays, and finally to his famous Regensburg Address in 2006, Ratzinger refused in no uncertain terms to equate “ressourcement” theology with dehellenization.<sup>26</sup>

Dehellenization stands for the project to emancipate or purify revealed doctrine by evacuating what was taken from philosophy (as well as from other Graeco-Roman patterns of thought—law, politics, art). This imperative crossed denominational boundaries in theology, and it could imply either very conservative or progressive theological agendas.

Ratzinger himself provided the best summary of dehellenization in his lecture at Regensburg.<sup>27</sup> In fact, it was the core of his Regensburg lecture but was unfortunately lost in the

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mysteries – an outlook entirely foreign to their nature . . . .

HENRI DE LUBAC, *CATHOLICISM: CHRIST AND THE COMMON DESTINY OF MAN* (Lancelot C. Sheppard & Sister Elizabeth Englund trans., Ignatius Press 1988) (1947). While de Lubac allowed that the Church has a mission to remind the world of the “moral law” (“Can we reasonably ask of the authority of the Church anything more than the assertion of the moral law, the careful control of private initiative, the support of all those efforts in which she recognizes her own Spirit, and, finally, such interventions as are necessary to settle eventual disagreements and to sanction what proves to be definitive in the solutions adopted?”), its main task is to elaborate the social aspects of the Trinitarian image of the Old Adam rehabilitated as *imago Christi*. *Id.* at 363-64. Ratzinger wrote a foreword to the new edition of *Catholicism*, and mentions it favorably in his encyclical *Spe Salvi*. POPE BENEDICT XVI, *ENCYCLICAL LETTER, SPE SALVI* ¶¶ 13-14 (Nov. 30, 2007) [hereinafter *SPE SALVI*], available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/encyclicals/documents/hf\\_ben-xvi\\_enc\\_20071130\\_spe-salvi\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20071130_spe-salvi_en.html). Interestingly, in his foreword, Ratzinger says nothing about the other side of the coin, namely the wisdom traditions other than Christianity. Joseph Cardinal Ratzinger, *Foreword* to HENRI DE LUBAC, *CATHOLICISM: CHRIST AND THE COMMON DESTINY OF MAN* (Lancelot C. Sheppard & Sister Elizabeth Englund trans., Ignatius Press 1988) (1947). The title was not only ineptly, but disastrously translated into English as *Catholicism: Christ and the Common Destiny of Man*. *Id.*

25. As Ordinarius of Fundamental Theology. “God of Faith and the God of the philosophers. A contribution to the problem of natural theology.” Newly published with commentary by Heino Sonnemans: JOSEPH RATZINGER-BENEDIKT XVI, *DER GOTT DES GLAUBENS UND DER GOTT DER PHILOSOPHEN: EIN BEITRAG ZUM PROBLEM DER THEOLOGIA NATURALIS* (Heino Sonnemans ed., Johannes-Verlag Leutesdorf, 2nd rev. ed. 2004).

26. See *SPE SALVI*, *supra* note 24, ¶¶ 5-6.

27. Pope Benedict XVI, Address at Regensburg: Faith, Reason and the University: Memories and Reflections (Sept. 12, 2006) [hereinafter Address at Regensburg], available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2006/september/documents/hf\\_ben-xvi\\_spe\\_20060912\\_university-regensburg\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/september/documents/hf_ben-xvi_spe_20060912_university-regensburg_en.html).

controversy over his remarks about Islam.

Here, in bullet points, is his schema:

“Looking at the tradition of scholastic theology, the Reformers thought they were confronted with a faith system totally conditioned by philosophy, that is to say an articulation of the faith based on an alien system of thought. As a result, faith no longer appeared as a living historical Word but as one element of an overarching philosophical system. . . . When Kant stated that he needed to set thinking aside in order to make room for faith, he carried this programme forward with a radicalism that the Reformers could never have foreseen. He thus anchored faith exclusively in practical reason, denying it access to reality as a whole.”<sup>28</sup> [Incidentally, this phrase, “open to reality as a whole” can be traced back to the Cambridge lecture, and will reappear in *Fides et Ratio*]. The first phase of dehellenization regards philosophy as a form of thought alien to faith.

“The liberal theology of the nineteenth and twentieth centuries ushered in a second stage in the process of dehellenization, with Adolf von Harnack . . . . [The] central idea was to return simply to the man Jesus and to his simple message, underneath the accretions of theology and indeed of hellenization: this simple message was seen as the culmination of the religious development of humanity. Jesus was said to have put an end to worship in favour of morality. In the end he was presented as the father of a humanitarian moral message.”<sup>29</sup> The second phase regards philosophy as alien to both the humanitarian praxis of Christianity and to modern science.

“It is well known that in our century Karl Barth sharpened this protest against the presence of philosophy in theology . . . . Against this continuity between philosophy’s search for the ultimate causes and theology’s appropriation of

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28. Address at Regensburg, *supra* note 27.

29. *Id.*; see, e.g., FRIEDRICH SCHLEIERMACHER, ON RELIGION: SPEECHES TO ITS CULTURED DESPISERS 27 (John Oman trans., Frederick Ungar Pub. Co. 1955) (“In order to make quite clear to you what is the original and characteristic possession of religion, it resigns, at once, all claims on anything that belongs either to science or morality. Whether it has been borrowed or bestowed it is now returned.”).

biblical faith, Barth sets a radical discontinuity.”<sup>30</sup> The Ten Commandments and the common moral truths of the Gentiles must “confront each other in a pure paradox.”<sup>31</sup> The third phase regards philosophy as antichrist, or a false religion.

[T]he third stage of dehellenization . . . is [currently] in progress. In the light of our experience with cultural pluralism, it is often said nowadays that the synthesis with Hellenism achieved in the early Church was an initial inculturation which ought not to be binding on other cultures. The latter are said to have the right to return to the simple message of the New Testament prior to *that* inculturation, in order to inculturate it anew in their own particular milieu.”<sup>32</sup> This phase of dehellenization regards culture as superior to philosophy: Ethos over Logos, which Ratzinger regarded as disastrous for natural law discourse.

He refused to go down these rabbit holes. For one thing, he contended that they misunderstand the emergence of Christian theology:

From the beginning, Christianity has understood itself as the religion of the “Logos,” as the religion according to reason. In the first place, it has not identified its precursors *in the other religions*, but in that philosophical enlightenment which has cleared the path of traditions to turn to the search of the truth and towards the good, toward the one God who is above all gods.<sup>33</sup>

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30. JOSEPH CARDINAL RATZINGER, *Faith, Philosophy and Theology, in THE NATURE AND MISSION OF THEOLOGY: ESSAYS TO ORIENT THEOLOGY IN TODAY'S DEBATES* 13, 19 (Adrian Walker trans., Ignatius Press 1995) [hereinafter *Faith*].

31. *Church's Teaching Authority*, *supra* note 14, at 58.

32. Address at Regensburg, *supra* note 27 (emphasis added).

33. On April 1st 2005, the day before Pope John Paul died, Cardinal Joseph Ratzinger took a few hours for a short trip out of Rome to fulfill a long-standing engagement. He went to the Benedictine monastery of Santa Scholastica in Subiaco where he delivered an address on “Europe’s Crisis of Culture.” Joseph Ratzinger, Cardinal, Roman Catholic Church, Europe’s Crisis of Culture (Apr. 1, 2005) [hereinafter Europe’s Crisis of Culture], available at <http://chiesa.espresso.repubblica.it/articolo/27262> (English translations available at <http://popebenedictxvi.blogspot.com> and <http://www.catholiceducation.org/articles/politics/pg0143.htm>). Ancient Christian art, he points out, depicts Christ as the philosopher, “the prototype of the *homo christianus*.” *Faith*, *supra* note 30, at 14; see also, SPE SALVI, *supra* note 24, ¶ 6.

For another thing, sacred scripture does not lay out a complete system of ethics but rather presupposes a common morality and purifies it.<sup>34</sup> “Scripture does not offer us a theological system, and still less a system of moral theory, with a systematic and orderly presentation of the main principles of action. To the contrary, Scripture is a path, a history, the multiple re-readings of which converge on Christ, who, for his part, cannot adequately be understood without retracing the path of all the narratives converging on his person.”<sup>35</sup>

In the third place, “[Christianity] defends philosophy because it needs it.”<sup>36</sup> Rather than demanding closure, it encourages faith seeking understanding, reason seeking enlightenment.<sup>37</sup> “The universality of faith, which is a basic presupposition of the missionary task, is both meaningful and morally defensible only if this faith really is oriented beyond the symbolism of religions toward an answer meant for all, an answer which also appeals to the common reason of [all] mankind.”<sup>38</sup> To dismiss Christianity’s assimilation of Logos traditions does not purify the Gospel but amputates its roots in the natural habitat of reason.<sup>39</sup>

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34. *Renewal of Moral Theology*, *supra* note 13, at 185.

35. *Id.* Here we have the example of the rich young man, which frames the first part of *Veritatis Splendor*:

Then someone came to him and said, “Teacher, what good deed must I do to have eternal life?” And he said to him, “Why do you ask me about what is good? There is only one who is good. If you wish to enter into life, keep the commandments.” He said to him, “Which ones?” And Jesus said, “You shall not murder; You shall not commit adultery; You shall not steal; You shall not bear false witness; Honor your father and mother; also, You shall love your neighbor as yourself.” The young man said to him, “I have kept all these; what do I still lack?” Jesus said to him, “If you wish to be perfect, go, sell your possessions, and give the money to the poor, and you will have treasure in heaven; then come, follow me.”

Matthew 19:16-21. Thus, to the Bundestag in 2011, Ratzinger insisted that moral bases for dignitarian rights in the German constitution are presupposed both by Church and polity—they are not alien to either party. Pope Benedict XVI, Address of his Holiness Benedict XVI, The Listening Heart: Reflections on the Foundations of Law (Sept. 22, 2011) [hereinafter *Listening Heart*], *available at* [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2011/september/documents/hf\\_ben-xvi\\_spe\\_20110922\\_reichstag-berlin\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2011/september/documents/hf_ben-xvi_spe_20110922_reichstag-berlin_en.html). The Church does not ask temporal governments to legislate the radical call to discipleship, but rather to remain intelligently alert to its own insights regarding human dignity.

36. *Faith*, *supra* note 30, at 29.

37. *Id.* at 17, 29.

38. *Id.* at 25.

39. Far from correcting rationalism, but makes Christianity more vulnerable to it, for rationalism is nothing other than reason that is not open to reality as a whole.

This is how Ratzinger found his groove with regard to natural law. He didn't go through the front door of moral theology, nor was he instigated by any particular moral dilemma. Nor did he get there as some many other Catholic scholars did by studying and reconsidering Thomas's presentation of human action in the *Secunda Pars* of the *Summa*. Instead, he found his way to the topic as a systematic theologian.

After taking the position as Prefect of CDF, he had to render judgment on issues of moral theology. I call this work dialectical because CDF is often tasked to resolve a disputed issue in sacraments, discipline, or morals. Unlike the first context, which draws the mind back toward sources for the purpose of coherence, clarity, and integration, dialectics moves *from* common sources (dogmatic, philosophical) to conclusions proximate to human action. In his position of Prefect, Ratzinger proposed the topic, assigned the team, and signed the finished product. Many of these fell squarely in the area of moral theology, requiring treatment according to what I called the "double presupposition" of natural law. Here, it is impossible to give an account of his work at a proper level of detail. There are too many documents representing a wide array of issues.<sup>40</sup> For example:

Liberty of Conscience (1986), on why history does not constitute a moral law or the norm proximate to the act of conscience;<sup>41</sup>

Gift of Life (1987), on in vitro fertilization, heterologous

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That's the gist of his speech at Subiaco (one day before the death of Pope John Paul II), and then a year later his address to the faculty at the University of Regensburg. Christianity and the children of the Enlightenment need philosophy in different, but complimentary ways.

40. Moreover, he tasked the International Theological Commission to undertake two important studies: Propositions on the Dignity and Rights of the Human Person, and Communion and Stewardship: Human Persons Created in the Image of God. See INTERNATIONAL THEOLOGICAL COMMISSION, PROPOSITIONS ON THE DIGNITY AND RIGHTS OF THE HUMAN PERSON (1983), *available at* [http://www.vatican.va/roman\\_curia/congregations/cfaith/cti\\_documents/rc\\_cti\\_1983\\_dignita-diritti\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_1983_dignita-diritti_en.html); INTERNATIONAL THEOLOGICAL COMMISSION, COMMUNION AND STEWARDSHIP: HUMAN PERSONS CREATED IN THE IMAGE OF GOD (2004), *available at* [http://www.vatican.va/roman\\_curia/congregations/cfaith/cti\\_documents/rc\\_con\\_cfaith\\_doc\\_20040723\\_communion-stewardship\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20040723_communion-stewardship_en.html).

41. JOSEPH RATZINGER, CONGREGATION FOR THE DOCTRINE OF THE FAITH, INSTRUCTION ON CHRISTIAN FREEDOM AND LIBERATION (Mar. 22, 1986), *available at* [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19860322\\_freedom-liberation\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19860322_freedom-liberation_en.html).

fertilization;<sup>42</sup>

On Sterilization (1993);<sup>43</sup>

On Legal Recognition of Same-Sex Unions (2003);<sup>44</sup>

On Participation of Catholics in Public Life (2002).<sup>45</sup>

Here, I only wish to say that these documents are hardly rationalistic in the fashion of the manuals or canonical verdicts. They display a keen attention to multiple premises, complex lines of reasoning, with expositions that are given enough air in which to breathe.

During these decades at CDF, Ratzinger quietly gave considerable work to two encyclicals, each bearing upon natural law from different directions: *Veritatis Splendor* (1993) and *Fides et Ratio* (1998). To better understand the importance of these encyclicals, let us briefly consider the historical context.

In 1963, Pope John XXIII issued *Pacem in terris*. Rhetorically, it was a most extravagant appeal to natural law for grounding some twenty-five discrete rights. Inside and outside the Church there was hardly a murmur of complaint. The Pope had taken the 1948 UN Declaration on Human Rights and laid it out in the language of natural law.<sup>46</sup>

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42. JOSEPH RATZINGER, CONGREGATION FOR THE DOCTRINE OF THE FAITH, INSTRUCTION ON RESPECT FOR HUMAN LIFE IN ITS ORIGIN AND ON THE DIGNITY OF PROCREATION, REPLIES TO CERTAIN QUESTIONS OF THE DAY (Feb. 22, 1987), available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).

43. JOSEPH RATZINGER, CONGREGATION FOR THE DOCTRINE OF THE FAITH, RESPONSES TO QUESTIONS PROPOSED CONCERNING "UTERINE ISOLATION" AND RELATED MATTERS (Jul. 31, 1993), available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_31071994\\_uterine-isolation\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_31071994_uterine-isolation_en.html).

44. JOSEPH RATZINGER, CONGREGATION FOR THE DOCTRINE OF THE FAITH, CONSIDERATIONS REGARDING PROPOSALS TO GIVE LEGAL RECOGNITION TO UNIONS BETWEEN HOMOSEXUAL PERSONS (June 3, 2003), available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20030731\\_homosexual-unions\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html).

45. JOSEPH RATZINGER, CONGREGATION FOR THE DOCTRINE OF THE FAITH, DOCTRINAL NOTE ON SOME QUESTIONS REGARDING THE PARTICIPATION OF CATHOLICS IN POLITICAL LIFE (Nov. 24, 2002), available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20021124\\_politica\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html).

46. The word "sex" was used only once and in reference to equality in the workforce. POPE JOHN XXIII, ENCYCLICAL LETTER, PACEM IN TERRIS ¶ 43 (Apr. 11, 1963), available at [http://www.vatican.va/holy\\_father/john\\_xxiii/encyclicals/document\\_s/hf\\_j-xxiii\\_enc\\_11041963\\_pacem\\_en.html](http://www.vatican.va/holy_father/john_xxiii/encyclicals/document_s/hf_j-xxiii_enc_11041963_pacem_en.html).

Three years later, Pope Paul VI issued *Humanae Vitae*, which made a rather terse natural law argument against contraception. It immediately met with the most severe disapproval, both by Catholics and non-Catholics. And what made the event all the more embarrassing was that the encyclical was addressed to “all men of good will.”<sup>47</sup> The teaching was not just politely ignored but resisted. Paul VI would live for ten more years, but he never wrote another encyclical.

Many, if not most, people rejected the natural law argument on the simplest ground: The conclusion—that contraception for whatever purpose is *malum per se*—seemed completely implausible. Criticism from those more learned in philosophy and theology rejected the premises on the ground that the terms nature and law were used equivocally with regard to moral and physical (biological) aspects. Still others—mostly in the Church—complained that the Pope had flaunted the recommendation of the majority of his own committee. It was a perfect storm: A natural law argument rejected on its conclusions, its premises, and as contradicting not only the opinion of experts but the *sensus fidelium*.

The most striking thing, however, was that even those who agreed with the position understood that *Humanae Vitae* exposed a weakness in Catholic moral theology, especially regarding the natural law component. Joseph Ratzinger and Karl Wojtyla were among them.

Indeed, the weakness could be detected on the surfaces of the document. It was rather short, one-fifth the length of *Pacem in Terris*. Its entire treatment of matrimonial acts amount to about 500 words. It had the appearance of a verdict issued in the fashion of the older manualist-casuistical method: Almost no theology, philosophy, or anthropology. References to scripture were mostly decorative, except for the conclusion, where the Pope referenced Luke 2: “But it comes as no surprise to the Church that she, no less than her divine Founder, is destined to be a ‘sign of contradiction.’”<sup>48</sup>

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47. POPE PAUL VI, ENCYCLICAL LETTER, HUMANAE VITAE: ON THE REGULATION OF BIRTH (Jul. 25, 1968) [hereinafter HUMANAE VITAE], available at [http://www.vatican.va/holy\\_father/paul\\_vi/encyclicals/documents/hf\\_p-vi\\_enc\\_25071968\\_humanae-vitae\\_en.html](http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html).

48. HUMANAE VITAE, *supra* note 47, ¶ 18. Cardinal Karol Wojtyla would give a set of Lenten conferences for Paul VI one year before Wojtyla’s election as pope.

The use of natural law needed to be reconsidered—not just the issue of contraception, but natural law deployed in its multiple contexts. Ratzinger brought two things to that task: first, his long-standing suspicion that moral theology was legalistic, rationalist, and situated not just in the suburbs but the exurbs of theology; and secondly, his resistance to theological currents that wanted to evacuate a higher tradition of Logos. For his part, John Paul II brought expertise in philosophical and theological anthropology, and much else besides. After his election, he went on to give 129 conferences, amounting to some 160,000 words on the very topic that *Humanae Vitae* attempted to cover tersely in a mere two paragraphs.

This long slog moved toward a deeper and more nuanced understanding of natural law culminated in two encyclicals. *Veritatis*, issued in 1993, took six years to write. *Fides et Ratio*, issued in 1998, took at least six years (reports, which I have been unable to confirm, claim that from first sketch to final draft amounted to twelve years). Going back to the birth of modern magisterial teaching via encyclicals in the nineteenth century, no previous encyclicals took so long to write.

*Veritatis* is the first encyclical in history to address moral theology as such. It was addressed not to all persons of good will, but to the bishops. *Veritatis* turned to the question of what kind of component natural law is in moral theology, and how it relates to the other sources of doctrine: sacred scripture, christology, theological anthropology, ascetical theology, and ecclesiology. Because it addressed (according to the subtitle) “fundamental questions” rather than fully practical ones, the encyclical was free to make more explicit and to give a more nuanced account of the assumptions that govern the magisterium’s use of natural law theory.<sup>49</sup>

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Those conferences were published in 1977 under the title “Sign of Contradiction.” KAROL WOJTYLA, SIGN OF CONTRADICTION (Seabury Press 1979).

49. I shall make no effort to summarize this very rich encyclical. Instead, I call attention to one of the assumptions that *Veritatis* was at pains to clarify. Namely, that natural law forms an organic part of moral theology:

In their desire, however, to keep the moral life in a Christian context, certain moral theologians have introduced a sharp distinction, contrary to Catholic doctrine, between an “ethical order” which would be human in origin and of value for “this world” alone, and an “order of salvation” for which only certain intentions and interior attitudes regarding God and neighbor would be significant. This has then led to an actual denial that there exists, in Divine Revelation, a specific and determined moral content, universally valid and

The encyclical explains that moral truths—in principle accessible to human reason—not only constitute a “preparation for the Gospel,” but are also situated within it.<sup>50</sup> The moral law, thus understood, is presupposed in two ways by moral theology. First, as principles of moral order derived from human nature; second, as those very same principles clarified and integrated in the teachings of Christ. “[T]he Magisterium does not bring to the Christian conscience truths which are extraneous to it; rather it brings to light the truths which it ought already to possess, developing them from the starting point of the primordial act of faith.”<sup>51</sup>

Important, too, is the encyclical’s emphasis upon the ethics of an image bearer.<sup>52</sup> The created image bearer participates in God’s wisdom and providence. This is a primary theme of Thomas’s natural law theory, but, remarkably, just here, where the philosophical and theological aspects of natural law most deeply overlap, *Humanae Vitae* was silent. Imagine an encyclical on procreation failing to deal with created “image and likeness,” given that the ethic of procreation is situated prominently in the first command of Genesis to be fruitful and multiply in imitation of the divine creation of multiple goods, and then in the human participation of the divine providence by way of stewardship!<sup>53</sup>

For its part, *Fides et Ratio* (1998) is the first encyclical since Leo XIII’s *Aeterni Patris* (1879) to treat the relationship between faith and reason. Ratzinger’s imprint on this encyclical is even

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permanent.

POPE JOHN PAUL II, VERITATIS SPLENDOR ¶ 37 (Aug. 6, 1993) [hereinafter VERITATIS SPLENDOR], available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_06081993\\_veritatis-splendor\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor_en.html).

50. VERITATIS SPLENDOR, *supra* note 49, ¶¶ 3, 29.

51. *Id.* ¶ 64.

52. Indeed, in the opening sentence of the encyclical: “The splendour of truth shines forth in all the works of the Creator and, in a special way, in man, created in the image and likeness of God (cf. *Gen* 1:26).” VERITATIS SPLENDOR, *supra* note 49. And referred to and discussed more than twenty times. *See, e.g., id.* ¶ 10.

53. *Genesis* 1:26-28. *Veritatis Splendor* also moves the subject of natural law into the ancient and medieval context of wisdom and providence. VERITATIS SPLENDOR, *supra* note 49, ¶ 41. Providence is mentioned only once in *Humanae Vitae*. HUMANAE VITAE, *supra* note 47, ¶ 23. Tellingly, this is the mark of Ratzinger’s Logos theory that had been steadily developing since 1959. Moreover, Ratzinger tasked the International Theological Commission to undertake two important studies: *Propositions on the Dignity and Rights of the Human Person* (1983), and *Communion and Stewardship: Human Persons Created in the Image of God* (2004). *See sources cited supra* note 40.

more evident. One needs to look especially at Chapter IV on the appropriation of philosophy by the Fathers<sup>54</sup> and the treatment of Wisdom literature in Jewish scripture<sup>55</sup> to appreciate Ratzinger's hand. The word "Search," so important to Ratzinger's account of wisdom traditions, is used more than sixty times to characterize the relationship between faith and reason. On this score, we are back to where we began: the 1988 Cambridge lecture runs like dotted lines through *Fides*.<sup>56</sup>

I say that Ratzinger left the tradition better off than he found it. The estate of moral theology and its presentation of natural law was immeasurably better than it was in 1953 when he began his academic studies. Most people do not appreciate the steady process of upgrading that was funneled into and expressed by those encyclicals. I suspect that this is due to the fact that the learned and the vulgar alike look at the conclusions, which did not change very much from 1953 to 2013 on issues of marriage, sex, life, and death.

Whether you agree or disagree with the conclusions, the

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54. POPE JOHN PAUL II, ENCYCLICAL LETTER, FIDES ET RATIO ¶¶ 36-42 (Sept. 14, 1998) [hereinafter FIDES ET RATIO], available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_15101998\\_fides-et-ratio\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_15101998_fides-et-ratio_en.html).

55. *Id.* ¶¶ 16-23.

56. For one thing, registering Ratzinger's conviction that marks late modernity is not a surfeit but a deficit of reason. "This is why I make this strong and insistent appeal—not, I trust, untimely—that faith and philosophy recover the profound unity which allows them to stand in harmony with their nature without compromising their mutual autonomy. The *parrhesia* of faith must be matched by the boldness of reason." FIDES ET RATIO, *supra* note 54, ¶ 48.

If the *intellectus fidei* wishes to integrate all the wealth of the theological tradition, it must turn to the philosophy of being, which should be able to propose anew the problem of being—and this in harmony with the demands and insights of the entire philosophical tradition, including philosophy of more recent times, without lapsing into sterile repetition of antiquated formulas. Set within the Christian metaphysical tradition, the philosophy of being is a dynamic philosophy which views reality in its ontological, causal and communicative structures. It is strong and enduring because it is based upon the very act of being itself, which allows a full and comprehensive openness to reality as a whole, surpassing every limit in order to reach the One who brings all things to fulfillment. In theology, which draws its principles from Revelation as a new source of knowledge, this perspective is confirmed by the intimate relationship which exists between faith and metaphysical reasoning.

*Id.* ¶ 97. See, of course, Ratzinger's final encyclical issued by Pope Francis, *Lumen Fidei*. POPE FRANCIS, ENCYCLICAL LETTER, LUMEN FIDEI (June 29, 2013) [hereinafter LUMEN FIDEI], available at [http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20130629\\_enciclica-lumen-fidei.html](http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20130629_enciclica-lumen-fidei.html).

Catholic understanding and presentation of natural law during the Wojtyla/Ratzinger era became much more supple and deep. Not a minimalist ethic of the manualists but rather expositions that display: (1) A proper complexity of sources, reasons for the teachings;<sup>57</sup> and (2) A closer tie to anthropology and theology, along with the new emphasis on natural law not merely as a set of legal prohibitions but also as a search or path.

Ratzinger also left the tradition in a quandary. As the first two contexts of theological reflection on natural law were expanded and deepened, the dialogical context became difficult in the secular public sphere. While the magisterial improvement of natural law discourse was much appreciated by churchmen who were already learned in such matters, the “upgrade” did not make natural law concepts any more accessible or agreeable to either post-modern secularists or to Catholics in-the-pew—especially on issues pertaining to the public square, which, in our time, invariably are magnetized around sex and politics.<sup>58</sup>

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57. According to what *Fides et Ratio* calls the circularity of theology and philosophy. *FIDES ET RATIO*, *supra* note 54, ¶ 73.

58. In February 2014, the German bishops mention both facets of this problem in their summary of the responses from German Catholics in preparation for the General Assembly of the Synod of Bishops to be held in Rome in fall of 2014. The German bishops report that:

Very few people are familiar with the term “natural law”. It has virtually no role to play at institutional and educational level or in everyday culture. The term natural law is also only rarely used in academic ethics and legal justification. At the same time, there is a great deal of sympathy for the general validity of human rights, but this normally takes place without consideration for their theoretical foundation. . . .

. . . .

Most of the baptised are also not familiar with the term “natural law”. Many baptised categorically refused to answer this question in their responses, stating that they simply had never heard the term before. . . .

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The natural law dimension is not explained at all in civil institutions. The idea of natural law in the sense of a normativity that can be derived directly from certain natural particularities runs counter to a rather constructivist understanding of reality in the Modern and Post-modern ages. Natural law is also hardly elaborated on or detailed within the Church, and it is frequently decidedly rejected as being historically out of date and not compatible with modern ethical discourses. In particular, there is sharp criticism of a narrow, biological determinism-based view of “natural law” because it is said not to do justice to the Christian understanding of man.

Pressemitteilungen Der Deutschen Bischofskonferenz, *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses to the questions contained in the preparatory document for the III Extraordinary General Assembly of the Synod of Bishops 2014* §§ 2(a)-(c), at pp. 4-5 (Feb. 3, 2014), available at <http://www.thetablet.co.uk/UserFiles/Files/2014-012b-ENG-Fragebogen-Die-patoralen-Herausforderungen-der-Familie.pdf>.

## IV. CAPSIZED—DIALOGICAL QUANDRIES

The quandary was in view during the year leading up to and the year following his election to the papacy in spring 2005. I will flag three papers that represented the 1988 Cambridge lecture *redivivus*.

In 2004, Cardinal Ratzinger had a much celebrated exchange with Jürgen Habermas, published in 2005 under the title *The Dialectics of Secularization*.<sup>59</sup> Ratzinger's essay was titled: "That Which Holds the World Together: the Pre-Political Moral Foundations of a Free State."<sup>60</sup>

He proposed that reasonable people will agree that the moral foundations of human law cannot be up for a vote carried by the majority, for the human rights project depends upon the principle of "self-subsistent values that flow from the essence of what it is to be a man, and [which] are therefore inviolable . . ." <sup>61</sup>Ratzinger writes:

The natural law has remained (especially in the Catholic Church) the key issue in dialogues with the secular society and with other communities of faith in order to appeal to the reason we share in common and to seek the basis for a consensus about the ethical principles of law in a secular, pluralistic society. Unfortunately, this instrument has become blunt. Accordingly, I do not intend to appeal to it for support in this conversation. The idea of the natural law presupposed a concept of nature in which nature and reason overlap, since nature itself is rational. . . . [T]his view of nature has *capsized*. . . .<sup>62</sup>

This is a startling remark. What did he mean to say?

In the western tradition, natural law ethics depended upon how we resolved the distinction between nature and convention (*physis/nomos*). Granted that our animality proceeds from the

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59. JURGEN HABERMAS & JOSEPH CARDINAL RATZINGER, *THE DIALECTICS OF SECULARIZATION: ON REASON AND RELIGION* (Florian Schuller ed., Brian McNeil, trans., Ignatius Press 2005).

60. Joseph Cardinal Ratzinger, *That Which Holds the World Together: The Pre-political Moral Foundations of a Free State*, in *THE DIALECTICS OF SECULARIZATION: ON REASON AND RELIGION* 53 (Florian Schuller ed., Brian McNeil, trans., Ignatius Press 2005).

61. *Id.* at 61.

62. *Id.* at 69 (emphasis added).

hand of nature, the question is whether the “rational”—to use Aristotelian terms, the specifically “human”—belongs in the first instance to nature or to convention? Clearly, conventions of all sorts (laws, symbols, procedures, policies, machines) proceed from reason, or from implicit or express compacts among those who exercise reason. But reason must have some ground in human nature as a condition for the possibility of rational artifacts, namely conventions. The ancient proponents of natural law (or the natural right, *ius naturale*) advanced the position one further step. Human nature is a norm for what can count as rational in the domain of conduct and conventions or contracts. Conventions, it is plain to see, can also be norms, provided that they do not contradict the implicit and discoverable norm of human nature. Epictetus’s famous fragment makes this point clearly enough:

Were I a swan, I should do after the manner of a swan. But now, since I am a reasonable being, I must sing to God: that is my work: I do it, nor will I desert this my post, as long as it is granted me to hold it; and upon you too I call to join in this self-same hymn.<sup>63</sup>

Human conventions presuppose the rudiments of a natural human dignity consisting in the form, the ends, and the operations of human nature. Only thus can nature be a norm with respect to convention.

For the post-Enlightenment secular world, however, the distinction is turned upside down—Ratzinger says, “capsized”—with the result that the specifically human stands mainly in the domain of convention: cultures, human laws and “values” which are missing from nature. The “ought” cannot belong to the habitat of “is.”<sup>64</sup> If this is the case, then human rights legislation and its various instruments are only another species of human convention, more or less in the fashion of international law, and perhaps with a value-added emphasis on ethical issues. The norms, however, would reside in the agreement, not in the nature of things. Therefore, just as Ratzinger pointed out, to insist upon the adjective “natural” conveys the idea of an order lower, rather

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63. *The Golden Sayings of Epictetus*, in 2 THE HARVARD CLASSICS 117, 117 (Charles W. Elliot ed., Hastings Crossley, trans., Collier & Sons 1909).

64. In this respect, *Humanae Vitae* was the canary in the coal mine. That is to say, *Humanae Vitae* assumed that reason and freedom stand in a natural habitat not bereft of moral norms.

than higher to what is specifically human. Usually, this is taken to mean human biological fundamentals, which have yet to be humanized by convention.

He made the same point in his 2011 speech to the German Bundestag: “The idea of natural law is today viewed as a specifically Catholic doctrine, not worth bringing into the discussion in a non-Catholic environment, so that one feels almost ashamed even to mention the term.”<sup>65</sup> Once again, to the post-modern ear, the “natural” signifies the protohuman—what awaits humanization in the domain of culture and values. It must be shameful, then, to speak of human freedom and rationality as natural, for the natural, in this sense of the term, is not a sign or a pathway of evidence for conduct so much as pre-given material on which we impose “values.”

One day before John Paul II died, Cardinal Ratzinger gave a lengthy paper at St. Scholastica’s original convent at Subiaco. Of the many replays of his 1988 Cambridge lecture, this is the most complete reworking of that lecture.<sup>66</sup>

The Enlightenment, he proposes, was a Logos tradition that was not only in dialogue with Christianity but helped to lead Christianity to appreciate more deeply its own tradition of reason.

In this connection, the Enlightenment is of Christian origin and it is no accident that it was born precisely and exclusively in the realm of the Christian faith, whenever Christianity, against its nature and unfortunately, had become tradition and religion of the state. Notwithstanding the philosophy, in so far as search for rationality also of our faith, was always a prerogative of Christianity, the voice of reason had been too domesticated. It was and is the merit of the Enlightenment to have again proposed these original values of Christianity and of having given back to reason its own voice.<sup>67</sup>

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65. Listening Heart, *supra* note 35 (note Ratzinger, the Augustinian theme of listening; and the Bonaventorean theme of signs, evidences).

66. Europe’s Crisis of Culture, *supra* note 33.

67. *Id.* Not a *hodos* for wisdom, but a mere convention—put in another way, authority without creative reason. “In the pastoral constitution, On the Church in the Modern World, Vatican Council II underlined again this profound correspondence between Christianity and the Enlightenment, seeking to come to a true conciliation between the Church and modernity, which is the great heritage that

He singled out Hugo Grotius's famous claim about the natural moral law: common moral norms that would be true, valid, even if God did not exist. Ratzinger regards this dictum as an achievement, *at least in this respect*:

In the opposition of the confessions and in the pending crisis of the image of God, an attempt was made to keep the essential values of morality outside the contradictions and to seek for them an evidence that would render them independent of the many divisions and uncertainties of the different philosophies and confessions. In this way, they wanted to ensure the basis of coexistence and, in general, the foundations of humanity.<sup>68</sup>

The Enlightenment, Ratzinger insists, is not secularism—rather, secularism is the enlightenment *after* it evacuated its Logos tradition. The one universal remaining is the science of matter, all the rest given over to convention, culture. This is what Grotius could not accept—nor could the Church. The Church's appeal to natural law in the public form of modern times had assumed some significant overlap with the Enlightenment, or at least certain sectors of it, which retained a Logos tradition. This assumption can no longer hold.<sup>69</sup>

Remember that, in the three public lectures I have just summarized, Ratzinger was not referring to the first two contexts of natural law discourse, which are internal to the theology of the Church: natural law in the context of systematics and natural law in the context of moral theology. He was speaking rather of the dialogical context in which natural law is used across institutions and traditions. His estimation of the former is confident, but his estimation of the latter is diffident, to say the least, for the least. Indeed, he sounds like the German bishops in their rather bleak report about the understanding that ordinary Catholics have of natural law. Both Ratzinger and the bishops, each in their own way, wonder if the words “natural law” ought to be used.

What is the solution to the quandary of having a high doctrine of natural law for purposes internal to Catholic theology that has almost no useful connection to the discourse of a post-Enlightenment legal and political culture? Perhaps it can be

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both sides must defend.” *Id.*

68. Europe's Crisis of Culture, *supra* note 33.

69. This, of course, is his Regensburg theme less than one year later.

found in inter-religious dialogue, which is what he proposed in his 1988 Cambridge lecture.

We come, finally, to *The Search for Universal Ethics: A New Look at Natural Law*.<sup>70</sup> As Prefect of the CDF, Ratzinger gave the topic to the International Theological Commission (ITC) in 2004, just when he himself was working on the exchange with Habermas. The ITC labored on the project for two years, from 2006 to 2008. In the meantime, of course, Benedict XVI had become the Prefect. So, Cardinal Levada signed the document in 2009. But the purpose and the intellectual “attitude,” so to speak, of the document is Ratzingerian to the bone.

The ITC study endeavors to orient and enrich a dialogue outside of the immediate environs of moral theology: “[I]n this document we intend to invite all who ask themselves about the ultimate foundations of ethics and of the juridical and political order, to consider the resources that a renewed presentation of the teaching of the natural law contains.”<sup>71</sup>

The *Search* treats natural law in the light of what the Catholic tradition has cumulatively discovered and formulated over the centuries, including what it has learned from shortcomings in its own experience. On the latter score, the authors note recurring problems: emphasizing too strongly biological nature at the expense of freedom; having in other ways emphasized too strongly reason, with the inevitable pitfall of rationalism; of having made anthropological assumptions, which needed to be adjusted in view of historical and cultural contexts; suggesting that the precepts of natural law are an already-assembled system, even down to the most proximate level of precepts governing a problem or case; and not always making sufficiently clear the processes of formation needed for a mature appropriation of the natural law.<sup>72</sup>

Offering our contribution to the search for a universal ethics, and proposing a rationally justifiable foundation, we desire to invite experts and the spokespersons of the great religious,

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70. INTERNATIONAL THEOLOGICAL COMMISSION, IN SEARCH OF A UNIVERSAL ETHICS: A NEW LOOK AT NATURAL LAW (2009) [hereinafter SEARCH OF A UNIVERSAL ETHIC], available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/cti\\_documents/rc\\_con\\_cfaith\\_doc\\_20090520\\_legge-naturale\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html).

71. *Id.* ¶ 9.

72. *Id.* ¶¶ 10, 38, 52, 56, 59, 99.

sapiential and philosophical traditions of humanity to proceed to an analogous work, beginning from their sources, to reach a common recognition of the universal moral norms based on a rational approach to reality.<sup>73</sup>

Wisdom traditions, on this view, recognize and make explicit (in different ways and in various degrees): (1) that there is a “common patrimony” of moral values, (2) that certain moral actions are required by human nature itself, and (3) that human life stands in a “creative and harmonious manner in a cosmic or metaphysical order that surpasses it and gives meaning to his life.”<sup>74</sup> Wisdom traditions, in other words, are open to reality as a whole, even if their vision is partial in this or that aspect.<sup>75</sup> In this special sense of the term, interreligious means discourse among traditions that are open to reality as a whole.

The document begins by endorsing the 1948 United Nations’ the *Universal Declaration of Human Rights* as an authentic expression of conscience, but laments that it has now collapsed into a quagmire of revisions, procedures, and moral posturings that avoid reckoning with an anthropological and moral grounding.<sup>76</sup>

The *Search* does not mean by dialogue either the Habermasian or Rawlsian methods for reaching norms are mutually acceptable to the parties of the discussion.<sup>77</sup> It eschews dialogue that is a “purely inductive search, on the parliamentary model, of a minimal, already existing consent.”<sup>78</sup> This is a dialogue, in fact, without a “search.” As the *Search* remarks, the dialogue has not proven adequate either to secure foundations for the post-1948 human rights project or to win support of religions and wisdom traditions, which need more than a “minimal ethic.”<sup>79</sup> The *Search* envisages a dialogue different than what is

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73. SEARCH OF A UNIVERSAL ETHIC, *supra* note 70, ¶ 116.

74. *Id.* ¶¶ 11, 12.

75. As the ITC recalls, Catholic theology fed upon the bread of sapiential traditions as a *praeparatio evangelicae*, and once assimilated to theology the two to “form a whole” in the Catholic mind. *Id.* at ¶ 26; *see also* FIDES ET RATIO, *supra* note 54, ¶¶ 81, 82. (explaining that philosophy lacks its sapiential function if it is addressed only to “particular and subordinate aspects of reality—functional, formal or utilitarian”).

76. SEARCH OF A UNIVERSAL ETHIC, *supra* note 70, ¶ 5.

77. *Id.* ¶ 8.

78. *Id.* ¶ 6.

79. *Id.*

usually meant by “public reason.” Rather than holding back one’s best-considered reasons, it puts the mature line of reasons on the table, inviting others to do the same.

Although the authors give due weight to the prephilosophical experience and appropriation of the rudiments or seeds<sup>80</sup> of moral truth, they do not limit consensus to what is primitive in experience.<sup>81</sup> Appropriation of the “evidences” of natural law, either by the individual or by a culture, is a slow process requiring action and reflection—in a wisdom tradition, an “apprenticeship.”<sup>82</sup>

Whereas a wisdom tradition is open to reality as a whole—a natural transcendence<sup>83</sup>—the modern, western mind does not view nature or the “natural” as “impregnated with an immanent wisdom,” but rather, to use the *Search’s* own language, it is “stripped of every immanent teleology or finality.”<sup>84</sup> This is only to acknowledge that prior to choice and prior to satisfying procedures of consent, “the natural” is *merely* immanent, along the lines of what Charles Taylor has called “closed world structures.”<sup>85</sup> Purpose is assigned rather than discovered within the ordinary frame of things.

By shifting the problem of authority to the moral authority of a “common patrimony” implicit in many wisdom traditions, the *Search* does not relieve the problem—at least not for secular interlocutors. For example, when it proposes that there are moral “messages” in the nature of things and that natural law is not imposed on creatures from without but is inscribed in their very nature,<sup>86</sup> it summons a quite different meaning of the “immanent” than what will be obvious to most agents formed in the institutions of western secular culture. For them, nature is not obviously a semiotic (a book or a ladder) in the sense that we have inherited from Paul, Augustine, Bonaventure, or Thomas. The immanent rather is a domain of freedom just for the reason that it does not require transcendent messages, much less

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80. orientations de la loi naturelle

81. SEARCH OF A UNIVERSAL ETHIC, *supra* note 70, ¶ 60.

82. *Id.* ¶¶ 38, 53.

83. *Id.* ¶ 97.

84. *Id.* ¶ 72.

85. CHARLES TAYLOR, A SECULAR AGE 589 (Belknap Press 2007).

86. SEARCH OF A UNIVERSAL ETHIC, *supra* note 70, ¶¶ 11-12, 63.

messages, which arrive so intimately with authority.<sup>87</sup> The immanent, for all practical purposes, is nothing other than what is bereft of, or perhaps still waiting for, authority.<sup>88</sup> When ITC expresses the “urgent” need to reach common foundations (of a natural law sort) for the human rights project, it will have to anticipate a response that, on its view, is terribly inadequate if not irrational. Namely, that public reasons for rights, as Rawls would put it, must prescind from “the whole truth.”<sup>89</sup> “[P]olitical liberalism,” he insists, not only leaves comprehensive theological and moral doctrines to individual rather than public reason but “applies the principle of toleration to philosophy itself.”<sup>90</sup>

While the problem of liberty unseated from nature is more likely to be bridged in dialogue with wisdom traditions, it remains the tougher problem in the familiar world of secular modernity. In one place, the ITC remarks: “In order that the notion of natural law can be of use in the elaboration of a universal ethics in a secularized and pluralistic society such as our own, it is therefore necessary to avoid presenting it in the rigid form that it assumed, particularly in modern rationalism.”<sup>91</sup> This prescription strikes me as a good way to facilitate dialogue among wisdom traditions that tend to have a greater affinity for what we in the West would call the intellectualist rather than a rationalist anthropology. It is much harder to see how the prescription has medicinal value for dialogue with a “secularized” society. Its denizens are not bothered by rationalism so much as by appeals in the public order to transcendent values—not only the supernatural, but also what the *Search* means by natural law.<sup>92</sup>

Tellingly, the *Search* makes clear enough that the Church often invokes natural law (moral truths antecedent to faith)

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87. TAYLOR, *supra* note 85, at 543-44 (“The immanent order can thus slough off the transcendent. But it doesn’t necessarily do so. . . . It is something that permits closure, without demanding it.”).

88. This is why the sciences and contemporary institutions of civic formation, education, and economic activity are deemed useful, and indeed legitimate. Precisely by not requiring a sapiential philosophy or religion to interpret transcendent “messages,” freedom is protected.

89. JOHN RAWLS, *POLITICAL LIBERALISM* 243 (Columbia Univ. Press 1993).

90. *Id.* at 10.

91. *SEARCH OF A UNIVERSAL ETHIC*, *supra* note 70, ¶ 33.

92. *Id.* ¶ 97. Not surprisingly, C. S. Lewis’s illustrations of the *Tao* in *The Abolition of Man* include quotations from only two modern western authors, Hooker and Locke, and only the latter is a modern in the relevant sense of the term.

defensively, against a belligerent secularism that dismisses a natural law foundation of moral choice and conscience as a purely confessional subversion of civic dialogue.<sup>93</sup>

For instance, take note of § 35, where the *Search* outlines four dialogical uses by the Church. Tellingly, two, if not three, are apologetical, defensive, or both. “Today the Catholic Church invokes the natural law in four principal contexts”:

In the first place, facing the spread of a culture that limits rationality to the positive sciences and abandons the moral life to relativism, it insists on the natural capacity of human beings to obtain by reason “the ethical message contained in being . . . .”<sup>94</sup>

In the second place, in the presence of relativistic individualism, which judges that every individual is the source of his own values, and that society results from a mere contract . . . .<sup>95</sup>

In the third place, facing an aggressive secularism that wants to exclude believers from public debate, the Church points out that the interventions of Christians in public life on subjects that regard natural law . . .<sup>96</sup> are not in themselves of a confessional nature, but derive from the care which every citizen must have for the common good of society.<sup>97</sup>

In the fourth place . . . the Church recalls that civil laws do

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93. The *Search* authors are anything but naïve about who is their main antagonist on questions of natural law.

94. SEARCH OF A UNIVERSAL ETHIC, *supra* note 70, ¶ 35. Continuing, “and to know in their main lines the fundamental norms of just action in conformity with their nature and their dignity. The natural law thus responds to the need to provide a basis in reason for the rights of man and makes possible an intercultural and interreligious dialogue capable of fostering universal peace and of avoiding the ‘clash of civilizations.’” *Id.*

95. *Id.* (“In particular, the democratic form of government is intrinsically bound to stable ethical values, which have their source in the requirements of natural law and thus do not depend on the fluctuations of the consent of a numerical majority.”).

96. *Id.* (“the defence of the rights of the oppressed, justice in international relations, the defence of life and of the family, religious freedom and freedom of education”).

97. *Id.* See also the most recent ITC document, INTERNATIONAL THEOLOGICAL COMMISSION, DIO TRINITÀ, UNITÀ DEGLI UOMINI: IL MONOTEISMO CRISTIANO CONTRO LA VIOLENZA (2014), available at [http://www.vatican.va/roman\\_curia/congregations/cf\\_aith/cti\\_documents/rc\\_cti\\_20140117\\_monoteismo-cristiano\\_it.html](http://www.vatican.va/roman_curia/congregations/cf_aith/cti_documents/rc_cti_20140117_monoteismo-cristiano_it.html).

not bind in conscience when they contradict natural law, and asks for the acknowledgment of the right to conscientious objection, as well as the duty of disobedience in the name of obedience to a higher law.<sup>98</sup>

## V. CONCLUSION

The *Search* intelligently and faithfully adjusts the dialogical context of natural law discourse in ways that reflect the deeper upgrade already given to the systematic and dialectical contexts in recent Catholic theology. Catholic natural law theory, especially at the magisterial level, had become more robust, more complex, and more integrated with theology proper. The *Search* answered Ratzinger's question: "[How] to find constructive pointers and convergences for an effective deepening of the doctrine on natural moral law."

The post-Enlightenment, as Ratzinger said, "capsized"—turned upside down—the distinction between nature and convention. The *Search* suggests, perhaps even requires, that the dialogical use of natural law can succeed only in the context of inter-religious dialogue.<sup>99</sup> Recall the double presupposition of Catholicism: evidence available to all, evidence appropriated to become an organic part of the theology. The dialogical partners would have to be other religious traditions that do the same. Absent some surprising philosophical recovery of, or spiritual grounding for, the human rights project, what remains of dialogue with the post-Enlightenment culture would seem to be a defensive maneuver rather than a "search."

Just as post-Enlightenment civic life protects itself from the intrusion of Logos traditions into public policy (other than the

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98. SEARCH OF A UNIVERSAL ETHIC, *supra* note 70, ¶ 35.

99. Recall MacIntyre's challenge: "appeals to natural law of what was traditionally one of their two central features, features that gave such appeals their distinctive point and purpose. What the natural law was held to provide was a *shared* and *public* standard, by appeal to which the claims of particular systems of positive law . . . could be evaluated" – evaluated, that is, not just by experts but also by plain persons. MacIntyre, *supra* note 19, at 103. But MacIntyre himself does not see the full implications. For it is not just natural law discourse that fails to satisfy such requirements, but also what Rawls calls "comprehensive doctrines" (including those of the Enlightenment, such as a comprehensive Liberal doctrine). RAWLS, *supra* note 89, at 243. If we rule out, with Rawls, the public authority of any and all comprehensive doctrine, what could experts and plain persons share by way of evaluation? Perhaps the answer is some social-science correlations supplemented by a mild cost-benefit norm of utility?

science of mathematized matter), so too Catholicism will seek to protect its liberty to exist as both a revealed religion and a Logos tradition, and it will do so by appeal to human rights flowing from natural law. This is not a dialogue, or a search oriented toward discovery of truth, so much as a loggerheads. What is worse is that the Church can be seen as adopting the opposite of its own position: namely, using the discourse of human or natural rights as political-cultural tactics of defense of a certain cultural strand of opinion.

So, should the Catholic Church instead engage in inter-religious dialogue as the main forum for natural law discourse *ad extra*? The answer depends on what is meant by “inter-religious.”

On Ratzinger’s own terms (I am less sure about ITC), such dialogue is not inter-religious in the usual senses given to the term. It is not, for instance, ecumenical in the fashion of a Catholic-Lutheran dialogue, which depends upon a shared revealed theology. Nor is it “religious” in the ordinary sociological manner of comparing traditions of religious cult and practice. Going back to the Cambridge lecture, when Ratzinger referred to C.S. Lewis’s account of the *Tao* as a model for dialogue about natural law, he did not emphasize the specifically religious aspects so much as the Logos component contained in and transmitted by religions, i.e. human reason “open to reality as a whole.” Not all religions have this conviction, but those that do share a Logos tradition and therefore have a basis for dialogue.<sup>100</sup>

Recall Ratzinger’s understanding of how early Christianity oriented itself with regard to other traditions: “[Christianity] has not identified its precursors *in the other religions*, but in that philosophical enlightenment which has cleared the path of traditions to turn to the search of the truth and towards the good, toward the one God who is above all gods.”<sup>101</sup> Ratzinger’s understanding of the dialogical context of natural law, therefore, is keyed to the philosophical and sapiential components. This is

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100. In *Dominus Iesus*, Ratzinger and his team of writers contrast the assent of faith to a revealing God to religious belief. The latter is a search under the aspect of divinity as the Absolute. JOSEPH RATZINGER, DECLARATION: “DOMINUS IESUS” ON THE UNICITY AND SALVIFIC UNIVERSALITY OF JESUS CHRIST AND THE CHURCH ¶ 7 (Aug. 6, 2000), available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20000806\\_dominus-iesus\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20000806_dominus-iesus_en.html); see also Gerard Bradley, *Pope John Paul II and Religious Liberty*, 6 AVE MARIA L. REV. 33, 36-37 (2007).

101. Europe’s Crisis of Culture, *supra* note 33 (emphasis added).

what Karl Jaspers meant by spiritual movements of the Axial Age arising in the sixth century BCE.<sup>102</sup> This certainly fits the C.S. Lewis theme that Ratzinger developed in his Cambridge lecture and that the ITC emphasized in *The Search*.

This option, however, seems hopelessly antiquarian, at least for any practical purpose, unless we include the European Enlightenment. Ratzinger held the Enlightenment in high esteem but certainly not for its religion. Rather, the Enlightenment, as he understood it, defended and advanced the dignity of human reason. The dialogical context for natural law, therefore, needs to reconnect with that commitment of the Enlightenment rather than the truncated version that he calls scientific materialism. While much diminished today, the dignitarian humanism of the Enlightenment is within living memory and continues to exist as a module in our post-modern institutions and practices. Ever since the pontificate of Leo XIII, Rome has endeavored to integrate this human rights project with natural law. *Pacem in terris* (1963) was the high tide of that ambition. Only a week after the encyclical, Dr. Martin Luther King Jr. issued his Letter from Birmingham Jail, quoting Thomas Aquinas, “an unjust law is no law at all.”<sup>103</sup> Ratzinger’s speech to the German Bundestag evinces a position of conflict rather than convergence.

Catholic theology can keep alive the first two contexts of natural law discourse simply by using the resources of its own tradition. Discourse about natural law in the public square, however, needs the Enlightenment. The quandary is ironical, to say the least. The Church needs the voice of its former opponent, the voice that declared the rights of man and the dignity of reason. But this is not the first time the Church has found itself on the terrain of such historical irony.<sup>104</sup>

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102. KARL JASPERS, *WAY TO WISDOM: AN INTRODUCTION TO PHILOSOPHY*, 99-100 (Ralph Manheim, trans., Yale Univ. Press 2d ed. 2003).

103. MARTIN LUTHER KING, JR., *Letter from Birmingham City Jail*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 289, 293 (James M. Washington ed., 1986), available at <http://www.thekingcenter.org/archive/document/letter-birmingham-city-jail-0>.

104. See Pope Benedict XVI, Address of His Holiness Benedict XVI at the White House Welcoming Ceremony (Apr. 16, 2008), available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2008/april/documents/hf\\_ben-xvi\\_spe\\_20080416\\_welcome-washington\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/april/documents/hf_ben-xvi_spe_20080416_welcome-washington_en.html).