Natural Law in the Church Today

George M. Regan, C.M.
THERE IS A deep ferment in recent Catholic writings on natural law. Some authors attack the basic validity of the doctrine. Many critics object to specific aspects of traditional approaches. Finally, some are striving to rethink and reformulate natural law in line with contemporary insights.

For centuries now there have been disputes between the Thomistic and Suarezian interpretations of natural law. These divergent views show that even older Catholic authors never agreed on a univocal understanding of the doctrine. Current controversies, however, reach deeper than such differences of interpretation to the very heart of the theory. In addition, they sometimes question certain teachings of the Church based on natural law. Hence they merit serious consideration.

I shall first summarize and briefly comment upon a few criticisms raised in current discussions. I shall then survey several significant efforts at renewal in natural law. Finally, I shall treat some historical and theological aspects of the Church’s teachings on natural law.

Criticism of Natural Law

The contraception controversy has occasioned considerable writing on natural law. In rejecting the conventional arguments against contraception, some authors have directly criticized or rejected the basic theory of natural law. Some have branded traditional natural law as

* A.B. (1956), Mary Immaculate Seminary; J.C.D. (1963), Pontifical Latern University; Professor of Moral Theology, Pontifical College Josephinum, Worthington, Ohio.
being reactionary instead of progressive, biologistic instead of personalistic, essentialistic instead of existentialistic, static instead of dynamic. Suggested substitutes include personalistic ethics, an ethics of process, or an ethics of relationships. The theme of a developing natural law, based on a dynamic and changing human nature, runs throughout the current literature.¹

Most authors have outlined their revised versions of natural law in articles or chapters of books. This failure to elaborate their proposals constitutes a basic weakness. Many suggestions possess great attraction within the narrow confines of the contraception debate. When applied to other moral problems, they usually lack universal validity. By way of exception, Germain Grisez proposes in two lengthy studies an elaborated theory of natural law.² His views merit attention by the specialist in natural law. In his opinion, the conventional natural law theories and the newer trends of “situationism” prove defective as general ethical theories. His own explanations of natural law and of the immorality of contraception have not, however, received approval.

Discussion on natural law extends beyond the contraception question and into the level of Christian ethical principles. The Protestant difficulty of reconciling natural law with Christ’s preaching of a morality of love as the New Law occupies some Catholic scholars. Franz Böckle inquires whether the “morality of the New Covenant tolerates the inclusion of, or at least the limiting recourse to, a natural moral law.”³ Böckle’s response affirms this possibility. The novelty of his treatment lies in his asking this fundamental, yet necessary question. Only several years ago, an affirmative reply entered as a supposition into Catholic writings on natural law. Böckle’s comparisons between Protestant and Catholic views on natural law provide a valuable contribution in the ongoing ecumenical dialogue.

Most recently, Bishop Francis Simons of Indore, India, has proposed a totally revised interpretation of the natural moral law.⁴ He intends to establish a form of natural law which remains true to the morality of brotherly love preached by


⁴ Simons, The Catholic Church and the New Morality, 16 Cross Currents 429-45 (1966). In a similar vein, see Lepp, The Authentic Morality (1965); Oraison, Une Morale pour notre temps (1964).
Christ. "The welfare of mankind" forms the sole criterion and goal of this fundamental Christian obligation to love. This perspective might hopefully bring "the traditional Catholic moral teaching up to date and in line with the responsible convictions of modern mankind." The Bishop's proposed "consensus ethics" based on man's common good would reconsider lying, divorce, therapeutic abortion, and sterilization. His novel presentation, in my opinion, lacks sufficient substantiation. It nevertheless typifies the revolutionary nature of some gropings for a more relevant moral theory to replace traditional natural law.

One might dismiss these criticisms by questioning the writers' familiarity with material defending natural law. Such suspicions sometimes do arise when there is no mention of authors such as Maritain, Fuchs, Rommen, Murray, Lottin, or Delhaye. To generalize a possible ignorance as the underlying cause of discontent would be, I believe, to overlook well-founded objections of obviously competent critics.

It is my conviction that some current discontent with natural law traces back to questionable presuppositions in the theoretical foundations of the traditional presentations. In fact, the underlying theory of natural law has not received sufficient attention. Many Catholic authors have concentrated on clarifying specific moral problems by applying commonly accepted natural law teachings as unquestioned premises. Traditional Catholic moral theology abounds with assumptions about the epistemological basis of moral perception, the establishment of objective, inviolable moral values, and the meaning of human nature itself. "The ultimate validity of my premises has been proven elsewhere" has seemed a rather prevalent attitude. As a result, many difficulties which most trouble modern critics of traditional natural law have received insufficient treatment in past Catholic writings on morality.

An excessive reliance by Catholic authors on arguments drawn from authority has contributed greatly, I believe, to this situation. The presumably valid conclusions of Catholic moralists and the moral teachings of the Church apparently rendered superfluous extensive probings into the theoretical foundations of natural law. The task of serious inquiry into this theory fell to specialists in natural law. Though these specialists actually disagreed about essential aspects of the doctrine, this did not occasion uncertainty about the conclusions based on its premises. In reality, there exists no single, commonly accepted exposition of natural law.

This brief resume merely indicates the general tone of some current attitudes toward natural law. The reborn natural law proclaimed in relatively recent times has at least lost much of its vigor. Rather than rest on laurels already won, proponents of natural law should heed these

---


increasingly widespread objections. Admitting the need for a profound rethinking of the doctrine, they should work toward a more solidly based and convincing presentation.

Contributions toward Renewal

Significant reconsiderations of natural law have recently appeared, but with less frequency than criticisms of the doctrine. I shall present a bibliographical survey of contributions in two areas: the meaning of human nature and an ethics grounded on the human person.

The Meaning of Human Nature

Dissatisfaction with traditional natural law often stems from its understanding of human nature as an invariable, determinate, and universal standard of moral conduct. This conception of human nature may lead to a rationalist construction of an abstract and purely deductive system of conceptualized morality. Some contemporary critics rebel at this static view of man and his moral codes. They see man as an open, dynamic being who should freely fashion his own incessant progress, moral perfection, domination of the material world, and a personalized existence in community. Josef Fuchs, Charles Fay, Columba Ryan, and Louis Monden, among other authors, have attempted to re-establish natural law according to this contemporary view of man.

Josef Fuchs defines human nature as "the essence of man, either according to his metaphysical Being (‘rational animal,’ with all the consequences which necessarily flow from this) or according to his physical Being, by which from the Creator’s will the metaphysical Being is actually real, together with any additional relations." Fuchs’ discussion of the historicity of natural law takes a more nuanced and dynamic view of human nature than this definition first indicates. He says that “natural law is more historical than positive law, even though the latter is made precisely for historical conditions.” Morality is based on man’s Being. However, this Being is either that of man as such or that of a particular man, including the external and internal circumstances in which he exists.

Changes in the concrete circumstances of human nature may lead to changes in moral obligations. Modern social and economic conditions found a duty to pay a family living wage. In different circumstances men might not have this obligation, for it is a conditional duty based on concrete circumstances. They would always have the obligation to pay a just wage, for that is an absolute duty.

In his longer work, Natural Law. A Theological Investigation, Fuchs explains

7 Delhaye, Permanence du droit naturel 9-21 (1960) discusses twenty meanings of the term “nature.”
8 Crowe, Human Nature—Immutable or Mutable?, 30 Irish Theological Quarterly 204-31 (1963). Crowe presents the views of Josef Fuchs and Charles Fay on the mutability of human nature and analyzes the legitimacy of their interpretations of St. Thomas. His own understanding seems overly cautious.

10 Fuchs, Natural Law. A Theological Investigation 85, 90-91, 111-13, 118, 134 (1965). Aubert, Loi de Dieu. Lois des hommes 44, 48-51, 87-92 (1964) depends greatly on Fuchs’ basic themes. However, his overall treatment presents a more static view of human nature and natural law.
more clearly and at greater length his understanding of human nature. He distinguishes repeatedly between man’s metaphysical, absolute, and fixed nature, and his physical, existential, accidentally changeable nature.

Human nature and its likeness to God are immutable in their essentials. . . . The Catholic theologian thinks precisely of man’s absolute and metaphysical nature. Nature, taken in this sense, is indeed something fixed yet remains open in many respects to an accidental determination and actualization. Insofar as man’s nature is something complete and fixed its meaning and corresponding moral and juridical order are naturally laid down permanently.

On the other hand,
even within each stage of salvation-history there exist continuous and accidental changes in human nature. . . . Human nature is the primary foundation of all norms differentiated according to the peculiar character of different circumstances which, as a result, influence the normative power to this same extent. . . . Man’s nature, being substantially unchangeable, is accidentally in constant movement. . . . The natural law must be considered as an internal law comprising the totality of that moral norm which corresponds to the totality of man’s being.

Fuchs clearly maintains the substantial invariability of metaphysical human nature. Concrete circumstances nevertheless play an important part in his doctrine. The concrete judgment of natural law relates to “the totality of man’s being,” that is, man’s being as it exists here and now in its concrete reality. Emphasis on this aspect might allow a more dynamic understanding of human nature to be ascribed to Fuchs’ total exposition.

Charles Fay, a philosopher-anthropologist, shows that St. Thomas’ concept of human nature and natural law can apply with analogical flexibility to fit variant cultural contexts.11 His general position is that “human morality has universal and invariable features and at the same time is relative to culture.” He says that this paradox results from viewing human nature either abstractly and universally as univocally common to the entire species, or concretely and realistically as it actually exists in individual men. In this latter sense, human nature is subject to bio-cultural evolution as well as to individuation by determined (signate) matter.

These two conceptions of human nature have great implications for natural law. By stressing the abstract and universal conception, natural law is judged to be absolute and immutable. By stressing the concrete and realistic conception, natural law becomes variable within limits and subject to evolution. “Today, in a Thomism brought up to date,” he suggests, “the variability of human nature will occupy a much more prominent position in ethical theory.”

Alterations introduced by bio-cultural evolution are accidental modifications of human nature, considered in its ontological sense. This does not make these modifications simply accidental moral determinants. “Accidents make a big difference, as for instance when a man has sexual relations with someone who is ac-

cidentally not his wife.” Some changes so alter the meaning of human knowledge and power (the agricultural and industrial revolutions), or so transform the relations between men (the urban revolution) and between men and nature (atomic energy, polymer chemistry) that certain acts which were formerly good become bad, and vice versa. I do not deny that the species of morally significant acts are determined in the light of universal human needs which are stable: lying, stealing, and murder are bad of their very nature, precisely because they frustrate universal human appetites. But I do deny that the species of moral acts is determined exclusively in the light of such needs: the species of good and bad acts are also determined by a constellation of biological and cultural conditions and emergent needs which are both variable and relative.

Fay sees implications for natural law in the evolutionary vision of Teilhard de Chardin.

Man is now on the verge of exercising human dominion over the bio-cultural modifications of human existence. It belongs to man that he complete, in the light of the finalities or evolutionary tendencies of his nature, his imperfect biocultural structures, his largely potential principles of action. . . . The evolutionary world entails a moral transformation since it bears on man’s distinctive nature in relation to God. . . . We are witnessing at present, in our own time, a formally new degree of participation in the eternal law inasmuch as humans are now exercising human providence not merely in the alteration of human institutions for the improved satisfaction of human needs but even with regard to an artificial selection of genes which will create in our descendants a greater capacity for immanent action and a still more adequate image of God.

Fay’s conclusion provides valuable material for further reflection.

Human nature considered universally and abstractly may be regarded as an immutable standard enduring throughout the variable relations of man to his environment, to his fellow man, to himself, and to God. If, however, we consider human nature as it actually exists in place and time, we discover that human potentialities and inclinations rooted in it vary within limits, and these variations are ethically significant. Furthermore, progress is made with regard to the existence of the natural moral law in man inasmuch as human knowledge and power, considered as a created participation of the eternal law, tend to expand in time with the result that man enjoys a greater fullness of life, a higher level of immanence on successive evolutionary levels. . . . Even on one cultural plateau . . . variable adjustments are made in view of unique historical, ecological, and social factors. Hence the value orientation of a people is necessarily relative to their culture.

Nevertheless, “the evolutionary vision of human moral life reveals universal and necessary features which underlie the humanly created value systems and which constitute a continuing framework for further moral progress.”

Columba Ryan wants to update the traditional concept of natural law in line with modern thought.12 He insists that “to be human” must be understood in the total human context. Man is not simply a complex of organs. Human beings define themselves in relation to the world and to those around them. Man must not

be considered simply as a biological object. Sufficient account must be taken of the specifically human dimension in which he enters into communication with others at a human level. That is "natural" to man which constitutes him not merely in isolation, but in relation to the whole world-for-man which he creates around him, that is, the highly artificial world of civilization, and in relation to other persons who stand not simply as objects but as subjects around him.

It follows that human fulfillment is to be judged not simply in biological terms, but in terms of the full realization of a man's personality in relation with other persons against the background of this network of communications. That will be right for him which enables him to fulfill himself in this dimension, and that wrong which does not. There is a sense in which the existentialist affirmation that man creates his essence by the decisions he takes rather than comes into the world with a ready-made essence represents a profound insight. To be forever progressing is a characteristic of man; the world around him is his world, the world-for-him, the world of his own ceaseless making and realization.

This relational and developing concept of human nature implies that, as new situations arise, new conclusions must be drawn from the general principles of natural law. Some earlier conclusions may have no further application, or only a modified application.

While admitting the validity of a metaphysical conception of human nature, therefore, Ryan emphasizes, as does Fay, the existential or concrete conception of human nature. Human nature as it actually exists in time and space, including all the relational aspects of the individual, forms the basis of natural law.

Louis Monden presents a valuable analysis of situation ethics. He first presents views of Henri Bergson, A. Hesnard, and existentialist ethics on an ethics of law as opposed to an ethics of creative freedom. He also outlines some key elements of evolutionary morality and of trends toward situation ethics within Catholicism. In concluding this introductory section Monden cites the note of the Holy Office in 1956 which summarized and disapproved of certain assertions of situation ethics. He then states:

According to the same authors, the traditional notion of 'natural law' no longer satisfies; one must appeal to the notion of 'existing nature,' which generally represents no absolute and objective value, but only a relative, hence a changeable value, with the possible exception of a few data and principles referring to 'metaphysical' (that is, absolute and unchangeable) human nature. The traditional notion of 'natural law' stands on the level of this merely relative value.

Monden outlines some elements of a solution to this problem of legal ethics versus situation ethics. What is the authentic meaning of law on the moral level of man's existence? Mere creative arbitrariness cannot be identified with freedom in a philosophy inspired by Christianity.

This philosophy conceives man's deepest nature as a relation to God; the fact of being a creature, of existing by and in relation to Another, must affect man's whole unfolding self-realization. Although human freedom does indeed really create value out of itself, it is never only a free-

13 MONDEN, SIN, LIBERTY AND LAW 73-144 (1965).
dom 'towards' an intended fullness of possible self-realization. That fullness is not prefigured as an abstract scheme, a blueprint to be reproduced, but as a dynamically inviting possibility, a concrete project to be carried out in the midst of the concrete situation in which man's 'self' presents its demands to an 'ego' consciously realizing itself. 'Become what thou art' is, on the moral level, the fundamental law by which the authenticity or unauthenticity of a human development, and of the separate actions in which that development takes shape, can be measured.

He now enters into the heart of his treatment of natural law and human nature.

That inner law of growth has traditionally borne the name 'natural law.' Hence in its classical meaning the term 'natural law' has no connection with the physical or biological concept of 'nature,' formerly in frequent use in the positive sciences and in ethics, with which it is often wrongly identified even nowadays (for instance, in the treatment of sexual problems). Thus some actions are supposed to be 'according to' or 'against' nature. But an action which is biologically 'according to' nature may very well be morally in conflict with the 'natural law.' Hence the fact that the notion of 'nature' is outmoded in the positive sciences cannot be used as an argument against the natural law in the moral sense, since it has no connection whatsoever with it.

Historically . . . the natural law . . . appealed to an unwritten law, an inborn knowledge of what man ought to do and ought not to do in order to be and to become authentically himself. . . . In its original meaning the natural law is a dynamic existing reality, an ordering of man towards his self-perfection and his self-realization, through all the concrete situations of his life and in intersubjective dialog with his fellow man and with God.

. . . It is precisely man's becoming which is prefigured in it. The norm of man's action is not so much what he is as what he is to become.

Monden denies that this dynamic conception of natural law based on "a dynamically inviting possibility, a concrete project to be carried out in the midst of the concrete situation" implies "a variability in that law in the sense that it might be arbitrarily modified under the influence of individual or collective feeling." Though regressions and modifications may temporarily occur, the Teilhardian vision of an increasing interiorization of consciousness eventually assures that the general law of development will be in accord with the awareness of what developing man ought to become. This growing moral awareness of authentic human possibilities will inevitably lead to man's evolving and developing in the direction of greater reverence for human life and authentic human love.

These words show clearly that Monden seeks a reconciliation of modern trends and contemporary criticisms of natural law through a basic reformulation of the concept of human nature. His key working premise is that human nature is open, evolving, developing as "a dynamically inviting possibility." That view of man which Fuchs calls "man's physical nature" becomes Monden's sole stress in presenting natural law in terms relevant to contemporary thought. While holding out for objective morality, he uses contemporary insights into man's existential reality. His retention of objective moral norms distinguishes his opinion from modern trends of situation ethics based exclusively on "existing nature." He does
not sufficiently clarify, I believe, the manner whereby "the Teilhardian vision of an increasing interiorization of consciousness" assures the authenticity of man's moral development. His treatment does, however, offer valuable insights and reflections for those who want to reformulate natural law.

This survey indicates the diverse meanings attached to the term "human nature" by some recent authors. Fuchs and Fay distinguish explicitly between abstract and concrete human nature. The former refers to man's metaphysical being and is consequently realized in an univocal, universal, and essentially immutable way in all men. Concrete or real human nature refers to man's physical being as realized existentially in different historical eras and in specific situations. In this latter usage, all man's being at a given moment becomes morally relevant. Thus his metaphysical qualities, such as his creatureliness, body-soul unity, and relatedness to society, retain vital importance as moral determinants. In addition, man's concrete and individual qualities, such as temperament, bio-cultural development, intellectual acumen, working profession, and intersubjective relations, enter as factors for moral judgment. They offer sources of "dynamic inviting possibilities," inclinations, and tendencies for moral self-realization.

I agree with Fay that the concrete conception of human nature, whereby its variability is stressed, should occupy a more prominent place in natural law theory. Man's total being in his concrete situation, his "existing nature," correctly understood, should enter more into our expositions of morality. This would retain the relevance of universal norms based on metaphysical human nature. At the same time, it would provide a more acceptable explanation of the role of cultural and historical determinants. Fuchs presents the basis for such developments. Fay, Ryan, and Monden explain this viewpoint more explicitly. By continuing to emphasize this more concrete understanding of man, proponents of natural law may carry greater weight in the contemporary world.14

Personalist Trends

The modern trend to emphasize the unique, ineffable, and incommunicable worth of the individual human person has many implications for natural law theory. Some authors prefer to ground their ethics in direct relation to the concrete human person in his interpersonal relationships. The individual person is not classed merely as one realization of "human nature" as accidentally and contingently modified.15 Instead, the person's


15 LOTTIN, MORALE FONDAMENTALE 114-28 (1954) and Aubert, op. cit. supra note 10, at 52-54, take this point of view by considering the human person as "human nature concretely considered."
singular dignity becomes the point of departure for ethical inquiry.

J. Lotz sees this ontology of existence ruled over by the concept of person as confronting the Western tradition of an ontology of being under the dominance of material reality. Instead of departing from the general concept of being and then working down to the individual person as a class of beings, he attempts to begin with the person. A system of values will be set up only and precisely through the communication of existence to person. In this perspective, even the positively individual factors of the person's existence belong to concrete moral judgments, not as a mere "case" or application of a general law nor even as a merely typical instance, but as an individual mediation of God's call demanding response.

In the United States, Robert Johann has stressed a more personalized view of man and its ethical implications. In his approach, man's ethical task is one of creative responsibility, whereby he fulfills his role as a being free of the determinisms of physical nature and as one for whom environment exists on his own terms. Man's objective awareness puts him in the presence of other persons as others, making his life fundamentally a matter of encounter and interaction. Life becomes a task of responding to actions of others in terms of our understanding of them.

What is the ultimate horizon of man's responsibility? Being itself. This constitutes for man the supreme value which he is called to promote in all his interactions through the use of his discerning intelligence. By being responsive to the demands of this value in all he does and encounters, man achieves his integrity as a personal subject. The dynamic relation of the human self to Absolute Being is thus the foundation of man's moral life. In Johann's views, morality is a matter of invention and creativity. It looks forward to the enhancement of patterns already achieved and not merely backwards to their retention. The ultimate norm in the moral realm and its only absolute law is, therefore, the law of intelligent responsiveness: to be for Being by seeking it always in all situations.

This promotive response to Being must necessarily be embodied in our relationships to the things and persons who surround us. Hence, traditionally articulated values and disvalues can serve us as objectively valid guidelines in the making of our moral decisions. Such codes of behavior embody the cumulative growth of moral insight into the consonance of certain types of deportment with man's fundamental dynamism as Being's agent and the dissonance of certain other types. Such codes are not, however, finally decisive in our moral choices. We must rather look to the election of that course of action which in the light of all its foreseeable consequences is most consistent with our vocation to promote Being. Johann believes that what alone is moral-

---

\(^{16}\) See Bockle, op. cit. supra note 3, at 107-09.

ly decisive is the total sense of an action as seen in the concrete situation to which it is a response and as judged in the light of man's fundamental vocation as a person.

I have sketched in broad outline some recent positions concerning the basis of natural law. Most authors seem more than aware of the insights of existentialism, evolution, and modern thought in general into the dynamic, historical, and changing being of man. Some prefer to discuss the basis of natural law within a more traditional framework and terminology. They stress the immutability of human nature, taken in its metaphysical sense. At the same time, they admit concrete historical modifications of a contingent and accidental sort in existing human nature. Others put almost their entire emphasis on this latter aspect of human nature, calling it the only ethically relevant aspect for concrete moral decisions. Finally, some authors are trying to found ethical judgments on the more concrete basis of the human person himself in his interpersonal relationships. This rather broad trend toward a "personalism" may simply restate in individualized or concrete form the traditional approach to natural law. On the other hand, authors such as Johann use the human person himself as the starting point for ethical considerations. We are clearly in the midst of a development toward a personalist and existentialist ethics which has yet to be worked out in all its dimensions.¹⁸

The Church and Natural Law¹⁹

Disagreements among contemporary Catholic authors about natural law do not prove that the Church herself finds difficulty with the traditional doctrine. One possible reaction to the present controversies, therefore, might involve casting suspicion on the orthodoxy of innovators who deny, doubt, or criticize the usual explanations of natural law.

Allusions to authoritative Church statements may occasion a certain hesitancy in Catholics who favor sweeping revisions or at least a reassessment of natural law. How far can a Catholic go in tampering with natural law theory? Does the Church propose an officially accepted doctrine of natural law? Accurate discussion of these questions requires important nuances. Approaches which disregard the historical background or the theological interpretation of the Church's pronouncements on natural law risk essential distortions. These necessary tools of theology allow one to reach the reality of the Church's position on natural law.

A striking contrast confronts one who studies the Church's statements on natural law. In comparison with recent times, the Church spoke rather infrequently about natural law in past ages. Before the mid-nineteenth century, in fact, references to natural law occur only rarely in

¹⁸ For further reading, see Walgrave, Is Morality Static or Dynamic?, in Moral Problems and Christian Personalism, 5 Concilium 22-38

¹⁹ For a general view, see Fuchs, op. cit. supra note 10, at 3-13; Aubert, op. cit. supra note 10, at 38-41; Reed, Natural Law, Theology, and the Church, 26 Theological Studies 40-64 (1965); Favara, De Iure naturali in doctrina Ph Papae XII (1966); Calvez-Perrin, The Church and Social Justice 1-100 (1961).
ecclesiastical documents.

The Synod of Arles (473 A.D.) makes the earliest authoritative statement about natural law, but only in a general way and when discussing grace and predestination during the times preceding Christ's coming. Much later, in the fifteenth and seventeenth centuries, several papal documents allude to natural law as the standard for condemning specific vices, such as fornication, masturbation, and the extra-marital use of sex. These statements simply mention the term "natural law" in passing, without clarifying its meaning. Though the Scholastics, notably St. Thomas Aquinas, had written a great deal about natural law, one cannot read any such systematic interpretations of natural law into any of these early official texts.

Since about 1850, official Church statements rely increasingly upon natural law perspectives. Pope Pius IX initiated this modern tendency by referring to natural law in connection with a variety of disparate topics, such as communism, onanistic intercourse within marriage, clerical immunity from military service, the origins of the binding force of civil laws, the indissolubility of marriage, and the possibility of salvation for an unbeliever in good faith. His many references to natural law did not, however, construct an official philosophical or theological system of natural law. Following the practice of earlier papal statements, his pronouncements merely mention the reality of natural law as the moral basis for condemning specific errors and vices.

From the pontificate of Pope Leo XIII onward, the popes, with the exception of Pope St. Pius X and Pope Benedict XV, have continued this dependence on natural law begun by Pope Pius IX. Various papal statements have repeatedly expressed the Church's competence to teach authoritatively the natural law, both in principles and in concrete applications. Appealing to natural law, the popes have made pronouncements on the moral aspects of political structures, the social order, race relations, the conduct of war, conjugal morality and the extra-marital use of sex, medico-moral problems, and the education of youth.

References to natural law enter so frequently into the official documents of Pope Pius XII that a recent doctoral thesis was devoted entirely to an analysis of natural law in the teachings of this pope. More than any other pope in history, his many statements about natural law cover almost every aspect of the doctrine and reflect significantly an underlying systematic theory of natural law.

Pope John XXIII also spoke of natural law in his two major social encyclicals, Mater et Magistra and Pacem in Terris. While emphasizing to a remarkable degree the historicity and temporality of man, Vatican II did not terminate this modern phenomenon of the Church's reliance on natural law argumentation. The two conciliar documents which discuss the relationships between the Church and the secular order, the Declaration on Religious Freedom and the Pastoral Constitution on the Church in the Modern World, refer fairly frequently to natural law perspectives. Without doubt, therefore, the

20 Favara, op. cit. supra note 19.
doctrine of natural law has assumed in modern times a role of prime importance in official Church documents.

What explains this growing reliance upon natural law which so contrasts with earlier practice of the Church? Josef Fuchs cites several plausible reasons: the early Church generally exhibited less concern in moral problems than does the modern Church; contemporary secularized culture opens itself only to Church teachings drawn from reason, rather than from ecclesiastical authority or divine revelation; and finally, the teachings of positivism, which became so widespread in modern times, have required refutations based on reason.21 In addition, I would say, the Church's involvement in the so-called "social question" has demanded a greater dependence on natural law. From sheer necessity, one might think, papal statements on wages, unions, private property, just taxation, and similar issues present argumentation founded for the most part on the dignity and rights of man discoverable by human reason.

Despite this abundant material which mentions natural law, no single ecclesiastical document contains a thorough systematic development of the doctrine. This does not deny that many pronouncements of recent popes speak precisely of various theoretical aspects of natural law. For example, Pope Pius XII's extensive statements treat nearly every facet of natural law. He spoke on such specific details as the relationship between the divine order in the world and natural law, the philosophical and theological meaning of human nature, and the qualities of objectivity, immutability, and universality of natural law.

What proves rather interesting, on the other hand, is the official silence about major difficulties raised today against natural law. A person who believes that the Church teaches officially a fully elaborated system of natural law must face the perhaps surprising fact that there exist no developed treatments by the Church's teaching office of the Humean problem of the passage from "Is" to "Ought" in moral theory or of the relevancy of cultural and historical determinants. In effect, the Church's official documents bypass some controverted issues in the establishment of natural law, leaving this material to the free inquiry and discussion of philosophers and theologians. The Church thus presents many specific moral conclusions based on natural law, but she has not fully elaborated an official system.

Though gaps exist in the Church's teachings on natural law, this has not prevented some authors from using the actual teachings of the Church. Works on medical ethics and social morality, for example, frequently cite pertinent papal statements on specific issues.22 Such summaries do not, however, present a systematic theory of natural law. On the other hand, some authors have analyzed basic elements in the Church's teachings.23

21 FUCHS, op. cit. supra note 10, at 3-4.
22 CALVEZ-PERRIN, op. cit. supra note 19; CRONIN, SOCIAL PRINCIPLES AND ECONOMIC LIFE (1964); MCFADDEN, MEDICAL ETHICS (1962).
23 FUCHS, op. cit. supra note 10, at 6-13; AUBERT, op. cit. supra note 10, at 40.
These major proposals, gleaned from a variety of papal documents, prove particularly important for these authors because of their exceptional doctrinal value. They may be briefly stated as follows:

1. Together with the revelation communicated in Christ's person, words, and deeds, natural law constitutes one of the two major sources of the moral teaching of the Church. A frequent distinction drawn between natural law and divine positive law contrasts natural law with that found in divine revelation. In a broader sense, both natural law and the teaching of revelation are sometimes called divine law.

2. The Church's documents view natural law as deriving from God as Creator and divine positive laws contained in revelation as deriving from Him as Redeemer. The Creator-natural law dimension is at times differentiated from the Redeemer-revelation dimension, in much the same way as nature is differentiated from the supernatural.

3. As the guardian of the Christian moral order to which all men are called in Christ, the Church is likewise the guardian of the natural moral order. This latter forms an integrating element of the uniquely existing supernatural order and does not exist apart from it. Consequently, in accordance with its divinely appointed mission, the Church clarifies the prescriptions of natural law and defends its exigencies.

4. The nature of man, as God's own work, is the ontological basis of natural law, which forms the rational standard for moral activity and expresses the moral order willed by God. Natural law thus refers to an objective order of morality based on man's nature. Various social institutions, such as the family and the state, find their foundation in natural law.

5. The ontological basis of natural law establishes its absolute value. This precludes relativism in morals, for this absoluteness applies to more than a few general norms of natural law. Natural law serves as the criterion of all human laws, for no just law can contradict man's being. In addition, the ontological foundation of natural law implies that it remains substantially intact and unchangeable throughout all times and in all places.

6. The Church never understands natural law as a naturalistic or merely rationalistic creation of an autonomous man. The being on which reason reflects and the reasoning power itself flow from God's creative work in man. Both participate in the divine Being and in the divine Intelligence.

7. Many pronouncements use the Pauline theme found in Romans 2. The popes say that natural law is found within man, "written in his heart." Man has the power to discover this law of his being, at least if he is not blinded by sin or passion. In this sense, reason itself is sometimes termed
natural law, for reason discovers the concrete good and evil in proposed human activity. In short, the objective basis of the moral order, which is man’s being, has its subjective complement in man’s rational ability to discover this objective order in the ontological structure of his being.

When examined more closely this body of papal teaching provides mostly a skeletal doctrine of natural law. It does not resemble St. Thomas’ systematic exposition. No mention occurs of the manner of deriving the precepts of natural law or of their specific content. These propositions state little more than the continuing, valid existence within the Christian moral order of a divinely ordained, universal, substantially immutable, and objective moral order, based on man’s nature and discernible by man’s reason. On the other hand, when considered against the background of relativism and subjectivism so evident in modern ethical thought, this core content of the Church’s teachings on natural law theory makes a substantial contribution.

The doctrinal value assigned to these teachings assumes some importance. Some theologians imply that it constitutes a “matter of faith.” In their opinion, the Church infallibly proposes this core content of natural law theory in contradistinction to many other, less doctrinally important statements about natural law. How do theologians reach this conclusion? Why do they not attribute equal doctrinal value to all the Church’s statements on natural law? To answer these questions is to clarify further the reality of an official position of the Church on natural law theory.

A tendency exists among many Catholics to ascribe equal weight to nearly all teachings of the Church. This tendency stems from the laudable esteem attributed to the pope, the bishops, and other ecclesiastical authorities by Catholics. While acknowledging the good aspects of this attitude, one should not overlook its basic naivete and sometimes erroneous foundation. Even a superficial acquaintance with the history of theology would establish the reality of development, progress, and differences of opinion in the teachings of popes, bishops, and even councils.

Another tendency toward oversimplification has recently been termed “creeping infallibility.” Some theologians have inclined toward maximizing papal infallibility by attributing this quality to more pronouncements than seems justifiable by the restricted terms of Vatican I’s definition of papal infallibility. Even passing remarks of the Holy Father are sometimes viewed on a par with more solemn statements.

The frequency and qualitative differences of papal statements should lead Catholics to a certain sophistication in evaluating their authoritative character. Pope Pius XII made over a thousand statements during his pontificate, the majority of which treated matters dealing

---

24 See Noonan, Tokos and Atokion: An Examination of Natural Law Reasoning against Usury and against Contraception, 10 NATURAL LAW FORUM 215-35 (1965).

with faith and morals. He delivered these statements in encyclicals, allocutions, radio messages, and audiences of scientists, nurses and parishioners of country districts. The range and variety of the pope's statements indicates the basic weakness in any univocal conception of their doctrinal value.\(^\text{26}\)

According to Catholic doctrine, infallible pronouncements of the Church preclude the possibility of doctrinal error. Vatican II states succinctly the narrow extent of this infallible authority:

The Roman Pontiff, as the head of the college of bishops enjoys (infallibility) in virtue of his office, when, as the supreme shepherd and teacher of all the faithful . . . he proclaims by a definitive act some doctrine of faith or morals.

The infallibility promised to the Church resides also in the body of bishops when that body exercises supreme teaching authority with the successor of Peter . . . . This is so, even when they are dispersed around the world, provided that while maintaining the bond of unity among themselves and with Peter's successor, and while teaching authentically on a matter of faith or morals, they concur in a single viewpoint as the one which must be held conclusively. This authority is even more clearly verified when, gathered together in an ecumenical council, they are teachers and judges of faith and morals for the universal Church.\(^\text{27}\)

Has the body of bishops or the pope issued any statement on natural law which of itself constitutes an infallible pronouncement? Gregory Baum would simply deny the possibility of the Church's defining any material drawn from natural law alone.\(^\text{28}\) In his opinion, only the data of revelation and what is absolutely necessary to explain or defend revelation in a given situation falls under the Church's prerogative of infallibility. One need not, however, hold this minority view in order to give a negative response to the question as posed. Examination of the teachings of the Church presents no certain example of a statement on the existence, essence, or application of natural law which of itself constitutes an infallible definition. As will be seen, this initial conclusion does not exclude the possibility that the constant reliance of the Church's teaching office on natural law perspectives implies that its existence and basic value are articles of faith.

One main area of investigation for an infallible statement on natural law is Vatican I's definition that man can know God by his natural reason.\(^\text{29}\) Two widely respected moral theologians, John Ford and Gerald Kelly, comment in this connection: "The Vatican Council taught that, although supernatural revelation is not an absolute requisite for knowing the natural truths of religion, yet it is a moral, or practical, necessity for knowing such truths with ease, with certitude, and without any admixture of error. The Vatican Council did not expressly mention the natural law as a part of the

---


\(^{27}\) DOGMATIC CONSTITUTION ON THE CHURCH, n.25.


\(^{29}\) "The same Holy Mother Church holds and teaches that God, the beginning and end of all things, can be known with certitude by the natural light of human reason from created things." Denzinger, 1785.
truths of natural religion.”

This last sentence rightly implies that Vatican I did not directly define anything about the natural law as such. Two later papal encyclicals, Pope Pius XI’s Casti connubii (1930) and Pope Pius XII’s Humani generis (1950), furnished official commentaries on this definition of Vatican I, “extending to the natural moral law what the Council has affirmed about knowledge of God.” This extended interpretation does not, however, share in the infallible character of the original conciliar definition.

Besides Vatican I, no other council has taught anything about natural law as the direct object of an infallible definition. Vatican II, as I mentioned previously, employs natural law perspectives fairly frequently. These conciliar statements presume the existence of a natural moral order and specify moral teachings consonant with this order. The Council does not elaborate beyond this minimum presumption any general theory of natural law. From the expressed intention of the Council, moreover, none of its statements, except those which refer to prior infallible statements of the Church, are proposed infallibly.

The recent popes consider many specific moral problems on the basis of natural law. Many examples could be cited where the existence of the natural law is simply presumed. In fact, the popes follow this as their usual procedure. Despite these presumptions about the existence and the essence of the natural law, no single statement is infallibly proposed. Only Pope Pius XI's encyclical Casti connubii contains material which some theologians have thought to be infallibly taught. The controverted material in this encyclical, however, treats contraception and not the existence or essence of natural law.

Theological inquiry should not end here. Vatican I's solemn definition of papal infallibility proclaimed that the pope enjoys the prerogative of infallibility when, acting as head of the college of bishops and as the supreme shepherd and teacher of all the faithful, he proclaims by a definitive act some doctrine of faith or morals, that is, when he speaks ex cathedra. Since this definition in 1870, many theologians have tended to extend its rather narrow limits to include the canonization of saints, the approval of religious orders, and the doctrinal sub-

---

30 FORD-KELLY, op. cit. supra note 26, at 4-5.
31 AUBERT, op. cit. supra note 10, at 93.
32 “Since, therefore, openly departing from the uninterrupted Christian tradition some recently have judged it possible solemnly to declare another doctrine regarding this question, the Catholic Church, to whom God has entrusted the defence of the integrity and purity of morals, standing erect in the midst of the moral ruin which surrounds her, in order that she may preserve the chastity of the nuptial union from being defiled by this foul stain, raises her voice in token of her divine ambassadorship and through Our mouth proclaims anew: any use whatsoever of matrimony exercised in such a way that the act is deliberately frustrated in its natural power to generate life is an offence against the law of God and of nature, and those who indulge in such are branded with the guilt of a grave sin.” (N.C.W.C. translation). See Dewart, Casti Connubii and the Development of Dogma, in CONTRACEPTION AND HOLINESS 202-310 (Roberts ed. 1964).
33 Denzinger, 1839.
stance of canon law. Furthermore, many manuals in dogmatic theology and theological articles have proposed that, besides ex cathedra definitions, “the ordinary teaching authority of the Church” is also infallible. This term applies especially to the regular teachings of the popes through encyclicals, allocutions, and decrees. Theologians who attribute infallibility to this ordinary teaching of the pope obviously go beyond the explicit terms of Vatican I’s definition.

Some recent writers have attacked the extended concept of papal infallibility. They contend that Vatican I defined a rather limited understanding of infallibility. No Catholic needs to believe more or less than the narrow terms of the conciliar definition. In their opinion, the extended concept of papal infallibility is another instance of “creeping infallibility.” Since this position seems perfectly orthodox, a Catholic may hold freely either the restricted concept of papal infallibility as defined expressly by Vatican I or the extended concept as proposed by some theologians.

By applying the restricted notion of papal infallibility to the popes’ statements about natural law, a person might conceivably conclude that a Catholic has no obligation to believe as matters of faith any papal statements on natural law. No individual conciliar or papal pronouncement has taught the doctrine infallibly, and even a concatenation of papal statements would not be infallible. Some theologians have applied this reasoning to the Church’s teachings on contraception, concluding that the immorality of this practice has not been taught infallibly. To my knowledge, however, no Catholic theologian would deny the existence and basic value of natural law on exactly these grounds.

Acceptance of the extended concept of papal infallibility leads to important consequences. Some authors assert that the popes have spoken so frequently and clearly about the existence, essence, and application of natural law that the doctrine has been taught as a matter of faith. Jean-Marie Aubert writes: “The recent popes . . . have treated of natural law (or of natural right) with such abundance and precision that one cannot doubt that this is a truth of faith.” In his book *Natural Law: A Theological Investigation*, Josef Fuchs speaks in a similar vein: “These testimonies to natural law and valid natural rights which are given by the teaching authorities of the Church put it beyond all doubt that this is a question of a truth of faith.” Neither author develops this point made in passing. From their contexts, however, both statements could be taken as proceeding from the extended concept of papal infallibility, whereby the ordinary teaching authority of the Church possesses the prerogative.

Fuchs seems to qualify his view to some extent in another work, *Theologia moralis generalis*, when he states: “One can easily concede that, because of its proposal by the Church, the doctrine of natural law, at least in its substance, pertains to faith; especially if we consider

---

34 Baum, supra note 28.
at the same time the tradition of theologians developing under the vigilance of the magisterium and the teaching of sacred scripture.” Fuchs here views the papal teaching office in conjunction with traditional theological writings and with the words of divine revelation, and not in isolation.

Various reasons lead me to favor this latter explanation of Fuchs, who maintains that the existence and substantial value of natural law are articles of faith. The frequency of the popes’ recourse to natural law in modern times would be a major factor in leading to this position. In addition, as Fuchs has stated, the longstanding teaching of this doctrine by theologians bears witness to its authenticity within Christian tradition. Finally, the majority of Catholic scriptural exegetes hold that Sacred Scripture teaches the existence and basic value of natural law as a perduring reality within the Christian order.38

Not every position on natural law taken by the Church’s teaching office is likewise a matter of faith. Quite the contrary is true. Only the core content of the Church’s teaching, which is a witness to and expression of the belief of the college of bishops and of the Christian faithful, constitutes infallible doctrine. This core content includes the existence of an objective moral order ordained by God and man’s capacity to discern the substantial elements of this moral order. The core content does not include the refinements and disputed aspects of natural law theory to be found in the Thomistic or Suarezian interpretations.

One might draw a parallel between the doctrinal value assigned to the Church’s teachings on natural law and her teachings prohibiting contraception. In the former case, the Church has asserted positively the existence, essence, and practical application of this moral standard. In the case of contraception, the Church has formulated mostly negative prohibitions concerning a specific practice. Both these doctrines have a long history within Christian theology. Neither of them has formed, I believe, the direct object of a specific infallible pronouncement. Some Catholic writers limit the core content of the infallibly proposed doctrine on contraception to the basic values which must be respected within marriage.39 Others say that the Church’s doctrine asserts basic-


39 NOONAN, CONTRACEPTION. A HISTORY OF ITS TREATMENT BY THE CATHOLIC THEOLOGIANS AND CANONISTS 532-33 (1965) sums up this approach as follows: “At the core of the existing commitment might be found other values than the absolute, sacral value of coitus. Through a variety of formulas, five propositions had been asserted by the Church. Procreation is good. Procreation of offspring reaches its completion only in their education. Innocent life is sacred. The personal dignity of a spouse is to be respected. Marital love is holy.”
ally that the essence of marriage is incompatible with the basic decision to exclude positively all children from marriage.\textsuperscript{40} Similarly, in my opinion, the core content of the infallible teachings about natural law theory concerns only the existence of an objective moral order willed by God and discernible by man’s reason.

Besides this kernel of infallible teachings, all other statements of the Church on the theory of natural law come under the category of authentic teaching. Pope Pius XII applied to this kind of teaching Christ’s words: “He who hears you, hears me.”\textsuperscript{41} Vatican II states that Catholics are to show a “religious submission of mind and will . . . to the authentic teaching authority of the Roman Pontiff,” and a “religious assent of soul” to the teachings of bishops concerning faith and morals. The conciliar texts specify further that religious submission to the authentic teaching of the Pope includes reverent acknowledgement of his supreme teaching office and sincere adhesion to his judgments, according to his mind and will. The context of these conciliar statements indicates clearly that this authentic teaching is an exercise of the preaching of the gospel carried out by teachers endowed with Christ’s authority, in order to clarify matter pertaining to faith by the light of the Holy Spirit.\textsuperscript{42}

Most teachings of the Church on natural law fit under this classification of authentic teaching. It becomes relevant, therefore, to ascertain the meaning of the “religious submission of mind and will” required in response to this teaching. John J. Reed has competently investigated this question at some length and I shall summarize his conclusions.\textsuperscript{43} I shall then make some additional comments.

From a teaching of this sort, two consequences follow, one external and absolute, the other internal and conditional. In the external order, there results the obligation not to contradict the doctrine in public speech or writing. One would certainly not be entitled either singly or in company with other private theologians to enter into open conflict with the magisterium established by Christ. All this would not exclude speculative discussion on the part of theologians, supposing a discrete audience and method of discourse, with a view to clarifying the issues and finding the answers to difficulties involved. The question is not, however, to be approached as something on which either side is of equal standing or could be equally followed. In the internal order, there results ordinarily the obligation of intellectual assent to and acceptance of the authentic teaching. Certain nuances must be introduced here. In the supposition, the teaching is not infallible and the opposite remains possibly true. The absolute possibility thus remains that an exceptionally qualified person may have grave reason to think that the proposition is not certainly true. In this hypothesis, the individual would remain bound by the teachings in the external order. He would

\textsuperscript{40} See Böckle, supra note 1, for the opinion of E. Schillebeeckx.

\textsuperscript{41} HUMANI GENERIS, n.20 (N.C.W.C. translation).

\textsuperscript{42} DOGMATIC CONSTITUTION ON THE CHURCH, n.25.

\textsuperscript{43} Reed, supra note 19.
not, however, be obliged to yield internal assent. Reed also states that

in matters of one's own purely private conduct... it would seem that he might act according to his own opinion, unless it is clear that the authority teaching intended not only to teach a point of natural law, but also, insofar as necessary, to impose a norm of conduct in virtue of its jurisdictional authority. . . . But it must be emphasized that the exception contemplated here is a rather extraordinary thing, more likely to be verified when questions of fact enter in than in matters of principle. . . . It will not easily nor commonly happen that the ordinary faithful, the ordinary priest, or even the ordinary theologian will be in a position prudently to depart from the sort of authentic teaching at issue here.

This explanation by Reed represents the traditional interpretation of "religious submission of mind and will." Since Vatican II, however, some theologians stress more positively the Catholic's freedom of thought and inquiry both in the internal and external orders. They base this more extensive freedom on its intrinsic merits and on such conciliar statements as the following: "Let it be recognized that all the faithful, clerical and lay, possess a lawful freedom of inquiry and thought, and the freedom to express their mind humbly and courageously about those matters in which they enjoy competence." 44 In addition, they cite various passages of the Council's documents on the right of religious freedom and the general obligation to seek religious truth as tending to support the logic of their position.

This broader interpretation has become widely operative today. Particularly in the enormous literature on contraception and the pill, many Catholic authors call openly for a revision of past authentic papal teachings. Whatever be the actual merit of these authors' opinions, they imply a different practical interpretation of "religious submission of mind and will" than Reed's. When applied to the Church's statements on natural law, this broad interpretation would allow an almost unlimited freedom of thought, inquiry, and explicit expression of disagreement.

Working within the context of the more stringent interpretation, moreover, far more freedom of thought and inquiry emerges than at first glance. Must a Catholic show "religious submission of mind and will" to all the Church statements on natural law? Theologians answer this question negatively, for not all ecclesiastical pronouncements possess the same obligatory force. Some authentic teachings are purposeful and create an obligation of acceptance. Other statements made without professedly intending to teach the doctrine as Catholic are not obligatory.

Vatican II provides several helpful criteria for discerning this difference: "His [the pope's] mind and will in the matter may be known chiefly either from the character of the documents, from his frequent repetition of the same doctrine, or from his manner of speaking." 45 John

(Continued on page 91)

44 Pastoral Constitution on the Church in the Modern World, n.62.

45 Dogmatic Constitution on the Church, n.25.
NATURAL LAW

(Continued)

Ford and Gerald Kelly, writing at an earlier date, proposed three criteria: the verbal formulas used in the pronouncements, the intention of the speaker, and the historical context of the document. Utilizing these various criteria, which overlap to some extent, one can readily conclude that many teachings of the Church based on natural law possess strong binding force. Pope Pius XII's condemnations of therapeutic abortion, euthanasia, and artificial insemination, and Vatican II's condemnation of indiscriminate acts of war directed against entire cities or extensive areas together with their civilian populations fall into this category.

---

46 Ford-Kelly, op. cit. supra note 26, at 28-32.
47 See Address to the Italian Catholic Union of Midwives on October 29, 1951; Address to the National Congress of the Family Front on November 26, 1951; Pastoral Constitution on the Church in the Modern World, n.80.

As a general rule, greater stress falls on such specific moral conclusions based on natural law than on the systematic explanation of the principles from which they are derived. Certain theoretical teachings, it is true, receive repeated emphasis; for example, those on the objectivity, substantial immutability, universality, and basic knowability of natural law. The core content of these teachings, as I have said, constitutes an article of faith. Besides these rather basic assertions, another body of statements on specific moral conclusions demands "religious submission of mind and will." In my opinion, most statements about the derivation of specific natural law obligations and about the philosophical explanation of natural law are non-obligatory, for they do not professedly intend to teach the doctrine as Catholic.