DISCOVERY AND OBLIGATION IN NATURAL LAW

Robert Sokolowski

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The lecture series that begins today was prepared as a response to a request from Cardinal Ratzinger, a request made when he was Prefect of the Congregation for the Doctrine of the Faith. In a letter to the President of The Catholic University of America, dated October 2004, Cardinal Ratzinger observed that the Catholic Church was “increasingly concerned by the contemporary difficulty in finding a common denominator among the moral principles held by all people. . . .”

He said that the Congregation “has undertaken a study aimed at assessing the presence of essential contents of the natural law in contemporary society.” He remarked that, despite the Universal Declaration of Human Rights in 1948, “there has been an obscuring of natural moral truths regarding, for example, respect for human life and the transmission of life within marriage, human love, family rights, social justice and freedom, which for centuries were unquestioned ethical principles for the life of society.” The letter spells out some of the reasons why this obscuring has occurred and says that a “renewed understanding of creation” would be helpful in responding to the problem, in conversation with both other Christian groups and with nonchristian communities. He quoted John Paul II as saying that it is not a matter of the Church imposing her view on non-believers, but of “interpreting and defending the values rooted in the very nature of the human person.”

The letter said that the Congregation was expanding this study to include the work of universities, with the goal of identifying “currents and points of agreement which may be productive in renewing an understanding of natural law.” It specifically asked The Catholic University of America, among other institutions, to contribute to this effort, and this lecture series is part of the university’s reply.

Since the series is sponsored by the School of Philosophy, our lectures will focus on the philosophical side of the question and on the relationship between the philosophical and theological aspects, as opposed to aspects such as the historical, sociological, legal, catechetical, and ecumenical, all of which are mentioned in the letter as areas that should be addressed in this project.

A series of distinctions

There are two kinds of question one can raise in regard to natural law; one is to determine its content (what does it prohibit, what does it enjoin, what are its precepts?), and the other is to speak about natural law as such (what exactly is it, how is it different from other kinds of law, in what way does it command or enjoin at all?). In my talk, I will address mainly the second type of question.

We can get at the notion of natural law by working out a network of distinctions. (1) The first of these distinctions deals, not with natural law, but with positive, established, human law. No human beings can live together without some agreed-upon rules guiding their conduct, whether these rules be explicitly formulated by legislative decisions or generated more implicitly by the slow growth of custom. Laws and customs come to be
because of the need to accomplish some corporate good through corporate action. The members of the corporate body are elevated into higher accomplishments by those rules. Once there are such rules or laws, it is possible for people either to break them or to obey them; rules come to light because they can be broken or obeyed. When people obey the laws they act not just for themselves but for and with the community, and when they break the established laws they act against the community. Such corporate conduct is the normal way for human beings to act and to live; from the beginning of our lives we act with others, with family members and people around us. In the beginning we are not Hobbesian; Hobbes’s state of nature is accessed only by philosophical thinking, not by experience or memory.

Some of our patterns of conduct, therefore, settle into laws or rules, and we can act contrary to them. This is the first distinction I wish to introduce: the contrast between the laws and someone’s conduct in violation of the laws. We can break the rules, and we do so because we want something that seems good to us but is prohibited by the rules. We act for our own gratification in contrast with the laws. I should also mention that this breaking of the rules does not only occur when I as an individual want something that is prohibited; more often than not it is we—my companions and I—who want it. Even rule-breaking is usually corporate and thus involves some public reason, but this public reason is not the same as the established public reason. When the rule-breaking becomes serious its perpetrators are called criminals. So the very concept of law already involves a distinction, between those who follow the law and those who break it and act for their own gratification, between the law and the lawbreakers.

(2) The introduction of natural law involves a second distinction. We distinguish the law as it has been set down and a law or custom, a “way of being,” that is in some sense “deeper” than the one that has been established. Consider how this natural law looks to the agent who thinks he sees or knows it. He understands himself to be obliged by this deeper law, but he also is obliged by the law that has been established by his community. He therefore must draw a distinction between these two kinds of law. The difference between the two kinds of law is most striking when they are in conflict, when the “deeper” law is opposed to the established law. This deeper law has been usually understood, by both Christians and pagans, as a law set down by God or by the gods; it is divine in some sense as contrasted with the human. This is the second distinction I wish to introduce.

(3) The agent who sees himself in the uncomfortable position of being obliged by two conflicting laws must draw yet another distinction. This will be the third distinction I wish to introduce. In it, we contrast the deeper law of nature and the agent’s own merely individual wishes (or the wishes of his companions in this action). If the agent claims to be acting according to the deeper law, he cannot be acting simply for his own gratification. He must distinguish between the deeper law and his own wishes. The deeper, natural law, therefore, has to be positioned against two parameters: the established law and my own wishes. I have to be able to say that what I am obliged by when I propose breaking the established law is not just what I want—in this case, one would not really speak of obligation—but the way things should be, for everyone and not just for myself. Thus, the agent who breaks the established law might be either a criminal or a moral witness. He is a criminal if he breaks the law in view of his own wishes or those of his group, and he is a witness if he breaks it in view of the deeper law of nature. It is not
unusual for there to be differences of interpretation here: other people may consider him and his colleagues to be criminals, whereas he and they consider themselves to be exemplars. The fact that different people might interpret him and them differently, however, does not mean that there is no real difference between being the one and being the other.

At this point I would like to mention the encyclical *Veritatis splendor*. In sections 90 to 94, it speaks of martyrdom as a witness to God’s law, but also as a witness to the moral truth that is deeper than human law. It says, “Martyrdom rejects as false and illusory whatever ‘human meaning’ one might claim to attribute, even in ‘exceptional’ conditions, to an act morally evil in itself.” It observes that Susanna, in the story in the Book of Daniel, “bears witness not only to her faith and trust in God but also to her obedience to the truth and to the absoluteness of the moral order.” The encyclical also appeals to “the moral sense present in peoples and . . . the great religious and sapiential traditions of East and West, from which the interior and mysterious workings of God’s spirit are not absent,” and it quotes the Latin poet Juvenal as saying, “Consider it the greatest of crimes to prefer survival to honor and, out of love of physical life, to lose the very reason for living.” [Summum crede nefas animam praefere pudori et propter vitam vivendi perdere causas. *Satirae*, VIII, 83-84.] The phenomenon of martyrdom engages the distinction between the established law and the natural law.

In speaking about the difference between the established law and the natural law, we have focused on the more vivid case, in which the two are in conflict. One can also draw this same distinction when the two laws are in agreement with one another. One might be able to see a harmony between the two, and yet be able to see that the same good action is recommended, or the same bad action is prohibited, by both the established and the natural law. We might think that it is harder to draw this distinction when the two kinds of law are in agreement than when they are in conflict, but this need not be the case. We often appreciate the congruence of the two laws. Suppose a stranger comes into a town. He gets into a brawl and kills someone. In his defense, he pleads ignorance. He says that he did not know that such killing was prohibited by the established laws of the community. He was new to the place and had not yet been instructed about the local laws. But this defense would obviously not work, because anyone should know, and he should have known, that killing other human beings is the kind of action that is prohibited in any settled community. It is the kind of thing that should be legislated. Everyone should know this, and he, the stranger, should know it, not because he has made a survey of many societies but because of his appreciation of what it is to kill a human being. Anyone should know that murder is wrong under two aspects, under the aspect of established law and under the aspect of something deeper than established law, something that calls for an established law. There may be many kinds of actions for which the defendant’s argument will hold, but if there are at least some for which his argument does not hold, it would show that the distinction between established and natural law can be recognized even when the two are not in conflict.

I have elaborated three distinctions in order to identify natural law: the distinction between the established law and the agent’s own wishes, the distinction between established law and the law of nature, and the distinction between the agent’s own wishes and the law of nature. All three concern the relationships between a moral
community and its members. Two more distinctions are needed to round out my analysis; they will concern the relationships among communities themselves.

(4) My fourth distinction is between our established laws and the established laws of other people. This distinction arises when a community enters into contact with other communities and realizes that people can live according to very different patterns of conduct and still be human. This exposure further enlarges human reason, but of course it calls our own laws and customs into question. The shock of such cultural relativism might lead us into sophistry, in which we think that ultimately there just are many incongruous ways of life. On the other hand, it might lead us to appreciate that the differences are not all that there is; beneath the differences there is something common, the law prescribed by nature or the gods: it may never be available just by itself, but it comes to light in contrast to any particular established law.

(5) This discovery of a natural law introduces us to our fifth and final distinction, between the natural law and the many established laws. In the face of a multiplicity of legal codes and customs, with their varieties and contradictions, we come to see that there is something the same “in” all these laws but “deeper” than any of them. This access to the law of nature is different from the access experienced by the member of a community who discovers an incongruity between the community’s way of life and the way things should be, but both modes of disclosure are manifestations of the same law. It would be interesting to develop this topic and to show how and why these two avenues lead to the same place. For our purposes here and now, we conclude with the claim that five distinctions are in play in bringing natural law to light. These distinctions make up the domain of political and ethical prudence. We have here a network not only of distinctions but also of dimensions within which the problematic of natural law can be formulated.

**Nature and grace**

I must introduce yet another distinction to this network, but this one comes from an entirely new dimension. It is not just added to the others the way they are added to one another, and so I do not want to list it as number six. I will leave it unnumbered. This distinction is special to Christianity. It is the distinction between divine positive law and natural law. Within Christian faith, divine positive law is manifested to us through revelation and natural law through reason, but natural law can also be confirmed and illuminated by revelation. This distinction comes into play in regard to Cardinal Ratzinger’s letter, but it is important to have the other distinctions in mind when we deal with it. It would be a disservice to the study of natural law to let the revealed law become so dominant that it eclipsed the differences we have spelled out in the natural order itself.

An ambiguity arises in the use of the term *nature* when we enter into the distinction between what is by nature and what is by grace. In ancient philosophy, nature was contrasted with convention or legality, *physis* was contrasted with *nomos*. In Christian theology, nature is contrasted with grace. But the term *nature* is being used equivocally, or at best analogously, in these two settings, because what we mean by the theological term *nature* includes within itself both nature and convention as described by the philosophers. The word is defined partly by
what it is opposed to. In this setting, the theological use of nature includes convention. Human conventions are part of what occurs in human nature.

To bring out the relationship between natural law and grace or revelation, let us consider a concrete example, the question of polygamy. St. Thomas Aquinas discusses bigamy and polygamy in *Scriptum super Sententias*, IV, d. 33, a. 1 (see also *Summa Theologiae*, III Supplement, q. 65, a. 1). He lists three ends of marriage: the procreation and education of children, the mutual devotion between the spouses, and the expression of the relation between Christ and the Church. The first two ends are evident by nature, but the third obviously comes to light in revelation, and Aquinas says it applies only to Christian faithful. He then says that a multiplicity of wives would neither necessarily destroy nor impede the first end, it would not destroy the second but it would seriously impede it, and it would totally destroy the third. Monogamy, therefore, is already enjoined by the law of nature because a plurality of spouses would seriously impede the devotion and peace of the married partners, but it is more strongly enjoined by the revealed relationship of Christ and the Church. In that relationship, the very idea of bigamy or polygamy is entirely unthinkable. Thus, the contribution of revelation is not to introduce an obligation that had previously been unheard of, but to clarify and confirm something that had already been known in a less certain way. I would suggest that a similar confirmation and clarification occurs in regard to issues dealing with the beginning and end of life, such as infanticide, abortion, contraception, euthanasia, and embryonic stem-cell research, as well as homosexual marriage. We already know that, say, infanticide or abortion have something shameful and wrong about them, but we have a clearer grasp of this when we understand ourselves to be created and redeemed by God.

When we introduce the Christian theological dimension into this moral network, we must be careful to avoid smothering the distinctions that bring out natural law and the naturally good and just in the human, worldly, “natural” order. We must maintain the natural intelligibility of the goods in question and must bring out this intelligibility on its own terms, with its own moral syntax. The revelation and grace present in the Church may make us more sensitive to this intelligibility, but it must also be argued or disclosed through itself if we wish to make it clear to those who do not accept Christian revelation. Christian revelation brings nature into a sharper light, but it does so at least in part on nature’s own evidence and on its own terms. This is the interplay of faith and reason that is so characteristic of the best in Christian understanding.

**Human purposes and natural ends**

A resource that is very helpful in dealing with the natural evidence of moral intelligibilities is Francis Slade’s distinction between purposes and ends, between human purposes and natural ends. Purposes are what we as human beings set down; they are our intentions, what we wish for and set out to attain. It is true, as Aristotle shows in book 3 of the *Nicomachean Ethics*, that we can wish for things that can never come about, neither through our efforts nor the efforts of other people; we can wish for the impossible. We can also wish for things that we cannot achieve but that others can; in this case we wish for things that are possible but not through our own agency. And finally we can wish for things that we ourselves can indeed bring about. When such wishes begin guiding our
deliberation and conduct, they become purposes. Purposes or intentions are wishes that have kicked into action. Purposes, therefore, can exist only in human beings (and perhaps in a limited and analogous way in the higher animals, as Alasdair MacIntyre maintains¹). There are purposes in the strict sense only when there are men. Ends, in contrast, belong to things apart from any human projection. They are the perfection of things, the way things are when they are working at their best. There are ends to trees, spiders, and butterflies, but there are also ends to human beings and even to human institutions, such as the arts of medicine and architecture, as well as the human family, grammar schools, high schools, and colleges, and also theaters and museums. There are ends for human nourishment and sexuality, as well as for human thinking. These ends are beyond or more basic than our human purposes. It is in the interplay of natural ends and human purposes that the natural law gets disclosed. Morality itself arises in this interplay. In Slade’s formulation, the natural law is the ontological priority of ends over purposes.⁶

Ends bring out the full intelligibility of things. Even when we experience a defective instance of a given entity, we see it against what it could and should be. The best of an entity is always present in any experience we have of the thing, provided that we are rational in our experiencing. When we give names to things, when we enter things into language and the human conversation, when things become enlisted into syntax, they do not enter this game as merely static items; they enter into the game of language as intelligible, and their intelligibility involves not only a static formal pattern or a mathematical presence; they show up to our reason as more than a shape. They are also profiled against their best, their telos or their perfection, as Plato was able to glimpse and Aristotle was able to articulate when they spoke of the “idea” that was behind and in and above each thing that enters into our human conversation. Our speech goes toward the thing, but also toward the idea of the thing. When we learn our native language, the one in which we live as human beings, our mother tongue, we also learn the names for things and actions, and in doing so we are introduced to those things as they can and should be. A sense for ends is built in to human language, but it is there not as something that language inserts—we and our language do not project the thing into its optimal condition. Rather, it is the thing itself insofar as it is captured into speech (by being named) that shows what it can be. When we define what a thing is, we also imply what it should be.

We can make this claim about language and telos because we know that names and language express not a mental copy of the thing, not a representation of the thing, but the thing itself with its potentialities as well as its present actuality. Names express the thing in its full actuality or telos as well as the snapshot we might have of it at any given moment. This is what names and speech do: they let things come to light in their completion as well as what they at the moment manifest to us. In fact, a present snapshot of a thing, shorn of the thing’s dynamics, would not present the intelligibility of the thing at all. It would only present its shape. There is a natural evidencing of things, and it presents the telos of the thing in contrast to the purposes we may have when we enlist the thing into our service.

The advent of revelation does not annul this natural evidencing. In our discussion of moral truth we must avoid appealing too quickly to the force and apodicticity of revelation, with its ability to reason deductively to the moral obligations we have. If we were to appeal immediately to a theological argument, what we say will seem not
to be anchored in the way things are on their own. What we say will seem to be a personal opinion derived from a religious and moral tradition and not from the evidence of things.

**The distinction between modern and premodern thought**

We have a special problem in dealing with this issue nowadays, because of what occurred in the origin of the modern age, when the natural ends of things were eliminated from the philosophical understanding of the world and man. Natural ends had been visible and prominent on the philosophical screen, but Machiavelli, Bacon, Descartes, and Hobbes collectively hit the delete button, and natural ends have been gone ever since. That is, they have been gone from *philosophy* and the universities attached to it, but not necessarily from the way people spontaneously understand themselves and the world. Natural ends are still there on the hard drive of humanity; we cannot talk about ourselves and the world without bringing in the telos of the things we name. The semantics of language and speech cannot avoid shadowing forth the good, even though mathematics may not do so. But for the philosophers, natural ends have departed with no hope of return, and the only things left to give meaning and orientation to life have been human purposes. Philosophers have been trying ever since to make sense of this new situation, trying to help us to cope with a “world without ends”: by legislating for ourselves, creating values, making fundamental options, carrying on experiments in living, and existing before we have any essence.

I have taken the phrase, a “world without ends,” from a book by Dennis Des Chene. It is the title of the final chapter in the book, where the author writes, “In this concluding chapter I consider what becomes of finality in the new world of *res extensae*. The brief answer is: nothing . . . . Not just final causes, but the directedness essential to the Aristotelian concept of change, are absent.” Des Chene says that the loss of finality, which I would call the deletion of the ends of things, is closely related to the quantitative interpretation of the world: “To hold that the nature of corporeal substance is constituted by extension is to deny that corporeal substance could have active powers. . . .” He also says that Descartes thought that any finalities in things would have to be caused by God’s will, and hence they would be unknown to us, because we have no way of knowing the mind of God. In addition, Descartes wanted to avoid postulating “little souls” in bits of matter. The upshot was the elimination of final causality and reliance on efficient causation alone in our attempt to explain things and their motions. Toward the end of the chapter Des Chene writes, “The only morality, it would seem, to be gleaned from the natural world so understood consists in the unique admonition: do what you will.” Unmonitored, endless purposes are all there is.

I think Des Chene is correct in seeing a connection between the quantification of material substances and the loss of ends, but there was another reason for this loss, namely, the innovation brought about by Machiavelli and then Hobbes in regard to political philosophy. In Machiavelli, philosophy changed from being that which transcended politics into being that which ruled politically. Philosophy began to seek the effective truth of things and not the contemplative truth. It ceased to transcend politics, and the modern state was born, and this in turn led to the modern individual as a subject of that state. The political forms of premodern thought, the various shapes that political societies could take on, were replaced by the single form—an almost mathematical form—of the modern state, and if the various cities described by Plato and Aristotle could be seen as “man writ large,” the modern
autonomous individual could be seen as the “state writ small.” Neither the state nor the modern individual are measured by the nature of things. What Francis Slade calls the “decontextualized rule” of the modern state has its mirror image in the “deracinated or rootless individual” that tries to live in that state.\textsuperscript{11}

This is the problem we have to face when we approach the issue of natural law and natural reason in our day and age. We have to restore the very concept of natural ends, and while we might think that we could address this as a problem in moral philosophy and the philosophy of nature, I would suggest that political philosophy plays a greater role than we might have thought in both generating the problem and offering a solution.

The search for a rehabilitation of natural ends, furthermore, should not move too quickly to the theological context. It is important to bring out the distinction between ends and purposes on their own terms and with their own evidence. They can subsequently be brought into the domain of revelation and grace. It may be the case that the deletion of natural ends at the beginning of modernity occurred at least in part because ends were understood too simply as God’s purposes, and the theological sense of divine purposes and finalities overrode the natural evidence of the ends of things. It may be that in principle the distinction between ends and purposes was already dissolved in this theological context; natural ends became the purposes of the Creator. It need not have been so; in Thomistic theology and philosophy, the natures of things are not chosen by God; they are expressions of the divine ideas, which in turn are the divine essence insofar as it can be participated in by creatures. Such natures and essences, therefore, have a necessity and an intelligibility of their own, now grounded in the necessity and intelligibility of \textit{esse per se subsistens}. It would be misleading to assimilate them simply to the kinds of purposes or intentions that are part of human actions. The nature of divine teleology must be distinguished from both natural ends and human purposes.

To illustrate what I mean when I say that we should not move too quickly into the theological order, I would like to comment on a passage from a book by Leo J. Elders, \textit{The Ethics of St. Thomas Aquinas}.\textsuperscript{12} I admire this book, which is a comprehensive and authoritative analysis of Aquinas, but I must differ on the point that I now raise. Elders criticizes some ideas of John Finnis who, according to Elders, denies that the precepts of natural law have their basis in man’s natural inclinations. Finnis denies this because he thinks it would be illicit to deduce an “ought” from an “is.” Elders goes on to say, “It is cause for wonder why authors such as Finnis shy away from an ‘ought’ based on the ‘is,’ since the ‘is’ is obviously the order of creation, and one can hardly think of a better way to live morally than by conforming oneself to this order.”\textsuperscript{13} It seems to me that one should not restore the validity of an “ought” by appealing first of all to creation; it would be better to show that things have their own ends, different from our purposes, and to show that when language captures things and actions, when we name things and actions, we understand them in their value-laden intelligibility and not just in their static entity. Their “is” is only artificially separated from their “ought.” Creation can be brought into the argument for reinforcement, but it should not be the first step.

I would also like to quote Descartes to show how his understanding of God’s “intentions” led him to reject finality as an explanation in human science. In the Fourth Meditation, he says that his own nature is “very weak and limited,” whereas God’s nature is “immense, incomprehensible, and infinite,” and God is “capable of countless
things whose causes are beyond my knowledge.” The upshot of these recognitions, Descartes says, is the following: “For this reason alone I consider the whole genus of causes that we are accustomed to seek from the end of things [quod a fine peti solet] to be totally useless in physics; there is considerable rashness in thinking myself capable of investigating the [impenetrable] purposes [finès] of God.”

The theological context, according to Descartes, leaves no room for the natural ends of things to evidence themselves to us.

In dealing with this problem, we should not simply try to recover the premodern state of things. Such an attempt would show that we have accepted the dichotomy between the modern and the premodern. We would become “antiqued” if we proceeded in this way. Instead, our course should be to question the very distinction between modern and premodern and to move toward philosophy as transcending that difference.

**Discovery and obligation in natural law**

I would like to offer an example of how one might argue on the basis of natural law. You might think that I should take some urgent contemporary topic, such as embryonic stem-cell research, but I will not do so, because the very importance of the issue would prevent us from reaching the contemplative detachment we need. Instead, I propose to examine a more light-hearted topic, the granting of tenure to members of a university faculty.

There is an established law or custom in place in the United States in regard to this. A new faculty member is given seven years’ probation. During his sixth year he is evaluated in regard to his teaching, research, publication, service, and other factors. A complex system of documentation, references, and committee screening occurs. It is my considered opinion that this established practice is against the natural law. Seven years is too short a time to permit a newly-minted faculty member to prove himself adequately. The time period should be ten years, or perhaps there should be a period of three years at the beginning during which the tenure clock is not ticking, with a seven year probationary period starting after that.

How do I argue my case on the basis of natural law? I do not argue on the basis of the rights of the faculty member or of the faculty or students. Also, I do not have an intuition of natural law prior to or separate from the established custom. It just seems to me, on the basis of long experience and evaluation, that more time is needed for this purpose, but I have this moral insight in view of what a faculty member is, in view of what students are, and in view of what teaching and scholarly research are. My evaluation comes on the basis of these various natures and their ends. Furthermore, you may disagree with me. You may think that seven years are perfectly sufficient and that ten years would be too long a time to wait for making a decision about tenure, but you too will argue on the basis of the ends of teaching and research, and the arguments based on such ends are also arguments based on the common good. The common good in question is made up of the ends involved in the community in question.

The issue whether the academic probationary period should be extended is, of course rather remote from the primary precepts of natural law, and that is why there can be such argument about it. If the denial of tenure were to involve, say, the dispossession of the faculty member, the issue would be much closer to the primary precepts and the argument would involve less uncertainty. The very primary precepts themselves are not arguable. The maxim that good is to be pursued and evil avoided, or that each should be given what is due to him, are not principles that
we first hear about and only subsequently see as obligations. How could someone be persuaded to obey them? They are components of our conduct from the beginning of our rational lives. We awaken to them in the way we awaken to the principle of noncontradiction. What sense would it make to tell someone, “You must learn to stop contradicting yourself in your thoughts”? We might tell him to stop lying, but we can’t tell him to stop thinking in violation of the principle of noncontradiction, because if he truly does not follow this principle he would not be thinking and would not get the point of what we are trying to tell him. Likewise, we cannot inform someone, “There is this thing called goodness, and you have to start wanting it.” We seek the good and shun the evil as soon as we start acting; the problem is, not to begin wanting the good, but to determine what is truly good and truly bad. We cannot tell someone, “You should give each person his due,” because if he is not already involved in discriminating between what is due to himself and to others, he would not know what those words mean. The precepts are constitutive of human conduct; they are not particular applications made within it.

Discovery of the natural law is precisely the awareness that in a situation calling for action there is an issue of rendering something that is due to someone. The problem is to see that the precept does apply. It takes a certain amount of virtue or self-control, or at least *akrasia*, to see that here and now an issue of acting appropriately arises. A vicious person, an unjust agent, will not see that such an issue is at play. He will simply act as he wishes. The obligation in the circumstances does not come to light for him. That is why the natural law alone is not sufficient for human intercourse; the strong arm of the law is needed as well, to coerce or force the malefactor to follow the primary precept of justice, and also to strengthen the resolve of the virtuous, the self-controlled, and the weak.

The discovery of the natural law’s application here and now is at the same time the dawning of an obligation. We do not first discover the law and its application and only later see that we should follow it. It surfaces as obliging us. The overtones of the word *oblige* can be used to bring out the kind of command involved in natural law. It is not that we receive decrees that we must follow. Rather, we realize that we are obliged to act in the light of this or that end, and we are obliged in the sense conveyed by the phrase, *noblesse oblige*. It is the thing to do, the thing to be done, the thing that is worthy of us and makes us honorable as human agents. We ourselves, after all, to the extent that we are rational agents, are the promulgators of natural law. We do oblige ourselves, but in a way different from the self-legislation described by Kant. We oblige ourselves because we are able to see the telos of the things we are dealing with and can recognize the ontological priority of these ends over our purposes and wishes. We become witnesses to the truth of things, that is, witnesses to what the things should be. Thus, when I campaign for the extension of academic probation, I bear witness to the truth of academic life and its telos and also exhibit my own virtue and prudence—or lack of them—in these matters.

When we turn to more urgent issues, such as abortion or euthanasia, the witness is much more serious and the costs associated with it are that much higher. Here again, the worst thing in such established practices is not the harm done to the victim but the moral harm done to the perpetrator, who destroys himself and his community more severely than he damages the targets of his actions. (Hence, people who work against abortion, for example, are striving not only to protect the unborn but also to preserve ourselves and our community from a degrading practice.) No one can break any kind of law without incurring a punishment. It is unworthy of people to kill in such ways and
to let these purposes override the ends that are at issue. We are obliged to preserve life, and the established laws have in the past strengthened this obligation, but our newer practices and laws break that obligation. Christian revelation and God’s grace certainly reinforce the natural evidence at play here, but they do not install the evidence for the first time. The issues evidence themselves to the rational agent.

Now, assume that my proposal to change the probationary period for tenure is adopted. It will then become part of established law and custom. It will oblige us not just because of the nature of the things involved in this situation, but also because of the force of established law. It will be good and obligatory under two aspects, the natural and the conventional. The conventional order will have been brought more into line with the natural order of things, but the two dimensions remain distinct.

The role of human rights

How do human rights fit into this picture of nature and convention? I have not mentioned the role of natural rights in my exposition, except to note at one point that I was not arguing on the basis of the rights of the untenured faculty member, or those of the students or other members of the university. I said I was arguing only on the basis of the natures of things.

But suppose that the change that I propose has not yet been introduced and that I am agitating for it. Among my arguments would be the claim that we are being unfair to the untenured faculty member. Why? Because he needs more time to show what he is capable of doing. One might also argue that the students and perhaps other faculty members have a right to have their incoming faculty evaluated in a more appropriate way.

My point is this: the issue of rights arises when we enter into polemics, when we start claiming what is due to certain people, on the basis of the natures of the things involved in this situation. Rights come into play, not at the first stage of moral reflection, when we try to understand things in view of their ends, but at a later stage, when litigation begins. At that point, people start making claims. This is how Bertrand de Jouvenel puts it: “As ‘mine’ and ‘thine’ do not matter in marriage except when divorce occurs, ‘rights’ become valuable in proportion to the loss of affinity between Ego and his environment.” Litigation causes each person to look to his own interests. Thus, natural human rights arise in the context of what we could call natural law litigation. Seeing rights in this context helps us avoid the danger of postulating innumerable natural human rights, and it also helps us determine rights in the light of the natures of things, not just as absolute claims.

Imagine, for example, that a child is born into a family in which the mother and father are lawyers and hence professionally concerned about rights. A few weeks after the birth, the parents are with the child and are talking about him. They begin to reflect on what rights the child has, and the mother says, “And you know, he also has the right to a sufficiently long probationary period for tenure.” Are we in fact born with such a right? Are we also born with the right to an education up to, say, a master’s degree or even a doctorate? Are we born with a right to a good night’s sleep? Are we born with a right to nourishment? Are we born with a right to life?

To develop this a bit, imagine that the child hears what the parents are saying and responds, “Well, I’ve got a right to live, to be brought up, to get adequate nourishment and shelter, and if you provide these things to me, you
in turn will have the right to get social security from me, long-term nursing care, and a decent burial, and I won't do
anything to harm you when you are old and weak.” The very imagination of this is ludicrous, and yet this is how
Hobbes sees the relationship between parents and child, or at least between mother and child. As he puts it in De
Cive, “It is manifest that he who is newly born is in the mother’s power before any others; insomuch as she may
rightly, and at her own will, either breed him up or adventure him to fortune. If therefore she breed him, because the
state of nature is the state of war, she is supposed to bring him up on this condition: that being grown to full age he
become not her enemy; which is, that he obey her.” It is easy to see how these rights become prominent when we
move into contestation and have to claim our rights, but in normal and healthy human relationships the telos of the
persons in questions is more basic than the rights. The good of each person and the common good, sought in
friendship, predominate over the claims we make on one another and serve to guide our prudence.

Any of these things—life, nourishment, shelter, education, probationary periods for tenure, a good night’s
sleep—can become something that is due to us, given the proper circumstances and based on what we and the
circumstances are, but the rights are not there in us a priori as a list of enumerable claims that we have as we enter
into the courtroom of this world. They are rights that can be claimed if an appropriate issue arises, but they are
derived from what we are. Not everybody gets into the circumstances of applying for tenure, but if they do, certain
rights come into play, even in the order of nature. Certain things will show up as good by nature and not just by
convention. However, there are certain features that practically everyone is engaged in from the beginning, just by
virtue of what we are, such as being allowed to live, or being given nourishment, and being brought up as a human
being, and these could be listed as natural human rights, because there is no one who is not involved in them. Even
these rights, however, are based on what all of us are and what our telos is. They arise when the telos becomes
engaged in questions of vindication. Thus, the more primary precepts of natural law deal with those things we can’t
help be involved with and they issue in the basic human rights. The more remote precepts of natural law deal with
issues that might arise but may not; they deal with aspects of our nature that are not as central to us as human beings
as are the aspects related to the primary precepts.

I think that this is one way that we could work toward showing how a morality based on rights can be
integrated into a morality based on ends and the common good. These remarks show that there is something deeper
to morality than human rights, namely the natural law that we discover through our rational agency and the
obligation that this discovery places upon us. Christian faith can serve to enlighten this exercise of practical
understanding.

Endnotes

1 In a discussion concerning Aquinas, Russell Hittinger observed that Thomas’s claim that the first two ends of
marriage might possibly be compatible with polygamy was motivated in part by his desire to come to terms with the
practice of the patriarchs in the Old Testament.

2 When we move into the theological context, we seem to argue in a more deductive and probative manner than we
do when we argue about issues in natural law within the more purely natural order. We start with something
“above” the issue in question and “come down” on it; we conclude more forcefully to the good or bad in the issue in
question. In the natural order, it is not so much a question of proving that something is good or bad as bringing its
goodness or badness to light, and of refuting those who propose something bad. (The refutation proceeds by showing that what they propose is contradicted by something else that they must acknowledge as good.) The character of the agents involved in the argument is essential to such disclosure.


8 Ibid., p. 391.

9 Ibid.

10 Ibid., p. 398.

11 Slade uses these terms in a lecture entitled, “Versions of Political Philosophy,” given at Fordham University on November 11, 2003. I am grateful for his permission to quote them.

12 Leo J. Elders, The Ethics of St. Thomas Aquinas (Frankfurt am Main: Peter Lang, 2005).


14 René Descartes, Meditations on First Philosophy, translated by John Cottingham, in The Philosophical Writings of Descartes (New York: Cambridge University Press, 1984), volume 2, p. 39 [55]. I have amended the translation. Note that Descartes uses the same term, finis, in both cases, to name the ends of things studied in physics and to name God’s purposes. The word impenetrable is found in the French but not in the Latin text of the Meditations.
