

Evidence, Lost and Found: A Concluding Unscientific Postscript

RUSSELL HITTINGER

University of Tulsa
Tulsa, Oklahoma

Introduction

IN 1988, Cardinal Joseph Ratzinger traveled to England to give the annual Fischer Lecture for the Catholic Chaplaincy at Cambridge University.¹ With a paper entitled “Consumer Materialism and Christian Hope,” he came prepared to speak about the “characteristic signs of the times.” The most troubling sign, he averred, is that “what is moral has lost its evidence.”

Only a small number of people in modern society will believe in the existence of commandments come from God; and still fewer are convinced that these commandments—if there are such—are handed down without error through the Church, through the religious community. The idea that another’s will, the Creator’s will, has a call upon us and that our being becomes as it should be through the harmony of our will with his will is a concept foreign to a great part of mankind. In any case . . . [t]he idea of his being active in our midst or of man being under his will seems to most to be a naïvely anthropomorphic image of the divine by which man himself is over-rated. Now the concept of a personal relationship between God and Creator and each individual person is certainly not missing from the religious and moral history of humanity; but it is limited in its pure form to the realm of biblical religion. *What was first of all common to all of pre-modern*

¹ Cardinal Joseph Ratzinger, “Consumer Materialism and Christian Hope,” *Teachers of the Faith: Speeches and Lectures by Catholic Bishops*, Foreword by Cardinal Cormac Murphy-O’Connor, ed. Tom Horwood (Catholic Bishop’s Conference of England and Wales, 2002), 78–94.

mankind, however, lies really along the self-same line: the conviction that in man's being there lies an imperative, the conviction that man does not devise morality itself by calculating expediencies; rather *he comes upon it in the being of things*.²

The Cardinal's speech is an important documentary antecedent to the International Theological Commission's report, *The Search for a Universal Ethics: A New Look at Natural Law* (2009). He put the question of "evidence" into a context where it once received an answer—the common patrimony and primeval testimony of wisdom traditions which, in different ways and with different emphases, affirmed "the necessity for harmony between human existence and the message of nature."³ He quoted C. S. Lewis's discussion in *The Abolition of Man* (1943) of the Chinese Tao. The Tao, Lewis said, is the "way, the road" which every man "should read in imitation of that cosmic and supercosmic progression, conforming all activities to that great exemplar."⁴

Cardinal Ratzinger pointed out that among wisdom traditions Christianity has the advantage both in the complexity and the intensity of the "evidence": The incarnate word, the scriptural word, the liturgical word, and the cosmological word. Christianity is not Gnosticism, and therefore there is no Christian theological evidence "cut off" from the primeval testimony of nature. "The impossibility of a human existence cut off from this," he proposes, "is *indirect proof for the truth of the Christian faith and its hope*."⁵ Just as the eternal Logos engenders signs in created nature, so too the incarnate Logos uses these evidences in order to institute signs for the mysteries of redemption.

The key point is reached at the conclusion of the Cardinal's prepared remarks. Referring to wisdom traditions in general, he proposed that "Morality is not man's prison; it is rather the divine in him."⁶ This conviction implies that the whole man is open to reality as a whole. Were this not true, the order of nature would amount to a mere aggregation of "details," and man's own interpretation of these details would amount to partial constructions of his own subjectivity—or, what is more likely, the constructions of social, political, and legal forces. Morality, then, would be a "prison." Perhaps we should go even further to say that whatever is "divine" in man demands that the individual be emancipated from this prison of mere partialities which can force but only pretend to bind his

² Ibid., 87. Emphasis added.

³ Ibid., 89.

⁴ Ibid., 88, quoting C. S. Lewis.

⁵ Ibid., 94.

⁶ Ibid., 92.

conduct.⁷ Thus, for the modern person, “morality has lost its evidence.” He can “see through” all things but not “see.”⁸

That “seeing through” is not the same as “seeing” is a problem that Augustine raised in connection with natural law.

Is not this appearance of the universe evident to all whose senses are not deranged: Then why does it not give the same answer to all? Animals, small and great, see it, but cannot ask the question. They are not gifted with reason to sit in judgment on the evidence brought in by the senses. But men can ask the question, so that *the invisible things of God are clearly seen, being understood by the things that are made*; but by loving these things, they become subject to them, and subjects cannot judge. And these things will only answer the questions of those who are prepared to judge. . . . They look just the same to both, but to one man they say nothing and to the other they speak. O it would be truer to say that they speak to everyone, but are only understood by those who compare the voice which comes to them from outside with the truth that is within. (Conf. X.6)⁹

What could be more human than to “see through” but not “see”? It is not only a modern problem. Surely, all wisdom traditions are familiar with this phenomenon, and, each in its own way, offers counsel and discipline to correct such inattentiveness. To be at this point is already to be fairly well along the path.

If we begin a dialogue or a “search,” as *The Search* characterizes it, we need to know where to begin. Should we begin in what is allegedly man’s prison, or *in rerum naturam*, or in a wisdom—or perhaps somewhere in between?

Dialogical Considerations

The Search begins with a dialogue with those who are at least somewhat advanced, who see some things, see through others, but who can profit from discourse. In the case of dialogue among wisdom traditions, this presupposes not merely a common pool of propositions to which dialogical partners are ready to give assent once they understand the meaning of what is proposed, but also that they enjoy some common patterns of consent within their respective social, moral, juridical, and religious institutions. The moral is not in a theory, much less in a future yet-to-be-realized. Moral evidence is

⁷ “[T]he moral imperative is not man’s imprisonment from which he must make his escape in order finally to be able to do as he wants.” Ibid., emphasis mine.

⁸ Ibid., 90. Quoting C. S. Lewis.

⁹ *The Confessions of Saint Augustine*, trans. Rex Warner (New York: Signet Classic, 2001), 208.

already lived. This would be a very favorable situation for the “search” for natural law components of a universal ethics.

We are working today within a less favorable situation. As Cardinal Ratzinger worried, modern times evince both a fracturing and a homogenizing of perspective about moral evidence. To enter a dialogue is to find oneself “confronted all at once by a determined defense of the fundamental judgments of modernity”¹⁰—namely, that there are facts which still need to be organized by human experimentation, and that the moral will make its appearance when the disparate material of nature is fully humanized by human choice. And, as it is, everyone knows this to be true. In his homily at the *pro eligendo summo Pontifice* Mass (19 April 2005), he famously characterized this movement from pieces of evidence to a uniform truth: “We are moving towards a dictatorship of relativism which does not recognize anything as for certain and which has as its highest goal one’s own ego and one’s own desires.”

Although his appraisal is not as bleak as the Cardinal’s, J. Budziszewski brings out both the opportunities and the perils of dialogue about natural law today, which he neatly captures with the terms “diplomacy and theology.” In the face of such a diverse public, he warns, it is a tricky thing to know what scarcely needs to be said, what can be said in terms of “placeholders,” and what can be said in expectation of serious disagreement—or worse yet, of disagreement that can hardly be articulated.

I will restrict my comments to his term “placeholders.” Any project that is both diplomatic and theological, which is to say both dialogical and doctrinal, will make use of placeholders. A placeholder is a term that readily invokes assent while leaving the depth of meaning out of view. For instance, Budziszewski tags a sentence in §87 of *The Search*: “Such a natural order of society in the service of the person is connoted, according to the social doctrine of the Church, by the four values that derive from the natural inclinations of the human being and which designate the contours of the common good that society should pursue; these are: freedom, truth, justice, and solidarity.”

One can agree that these four values—freedom, truth, justice, and solidarity—look “suspiciously like platitudes.” Interestingly, however, *The Search* here quotes another document which paraphrases (out of order) the very subtitle of Pope John XXIII’s *Pacem in Terris* (1963). In the original, the four terms were proffered not as “values” but principles upon which peace is achieved: truth, justice, charity, and liberty. Placeholders might represent a rhetorical point of departure, as a word or phrase can

¹⁰ Id. 78.

signify the conclusionary meaning of a whole line of thought. Placeholders might also signify a gap in a particular line of thought, to which the interlocutors can return later. Principles on the other hand are points of departure in a normative sense of the term. I make this observation not to criticize Budziszewski but rather to buttress his point. What was once meant to be an argument, driven at each step by four principles, had become a placeholder fifty years later.

Let us consider for a moment *Pacem in Terris*. It is a touchstone for contemplating the dual aims of diplomacy and theology. *Pacem* is both dialogical and doctrinal. Most importantly, for our purposes, it is the first papal encyclical to treat natural law in general terms for a general audience—for men of good will—and even more significantly for the express purpose of mobilizing collaboration along a wide front of moral, social, and political issues. Pope John distinguished quite clearly between “error as such and the person who falls into error,” as well as between “a false philosophy of the nature, origin and purpose of men and the world, and economic, social, cultural, and political undertakings, even when such undertakings draw their origin and inspiration from that philosophy.”¹¹ Hence, he hoped that there might emerge a legitimate sphere in which Catholics can collaborate with Protestants, with those who hold no religion, and possibly with those who hold an anti-religious ideology, in social and political endeavors¹²—insofar as these undertakings express “morally lawful aspirations,”¹³ especially collaboration in defense of “man’s natural rights.”¹⁴

Pacem in Terris locates evidence in and for a very specific dialogue that was one notch below the dialogue between wisdom traditions—not so far below that the exercise would have been in vain. In his opening allocution to the Second Vatican Council, Pope John reminded the bishops that “history is the teacher of life.”¹⁵ A common historical experience can have

¹¹ *Pacem in Terris* §§158–159.

¹² Despite the fact that these sections of *Pacem in Terris* were framed with several qualifications of both a moral and doctrinal nature, they ignited more debate in the external forum of domestic politics than any other part of the encyclical. Qualifications, e.g.: Catholics should do nothing that compromises morality and religion (§157); that one must not forget the possibility and need for conversion (§158); that fruitful cooperation is not a foregone conclusion but must be discerned according to prudence, which is itself measured by the principles of natural law and the directives of ecclesiastical authority (§160); and that gradual growth is better than the impetuosity of political revolution (§§161–162).

¹³ *Pacem in Terris* §159.

¹⁴ *Pacem in Terris* §157.

¹⁵ *Gaudet Mater* (October 11, 1962), *Sacrosanctum Oecumenicum Concilium Vatican II, Constitutiones, Decreta, Declarationes* (Vatican City: Libreria Editrice Vaticana, 1993), 858.

a useful winnowing effect for interlocutors of good will. Some options are recognized almost immediately as dead ends, while others remain what William James called “live options.” Thus, discerning the “signs of the times” enables one to know where, *in medias res*, a dialogue ought to begin. For Pope John, the experience of the post-war generation created an opportune moment for setting forth natural law principles governing peace as tranquility of order. The pathologies of totalitarian states were in full evidence; western Europe was still being rebuilt from the devastation of the war; the Cuban missile crisis had made everyone aware of the need for at least some limits to use of lethal force, even in defense of a good cause; and the rapid pace of decolonization made it imperative that the new polities be founded on the four principles comprising the encyclical’s subtitle. The Pope did not need to convince his reader that morality is not “man’s prison.” Enough people had been sent to real graves and been in real prisons for the difference to be evident.

It is precisely in this kind of situation that placeholders can be used temporarily in a benign way to capture important dimensions of the moral order which were already being learned by experience. This certainly was Jacques Maritain’s view. Referring to the drafts in process for a U.N. Declaration of the Rights of Man, he observed in 1947 that “the perspectives open to men, both on the planes of history and of philosophy, are wider and richer than before.”¹⁶ Put to one side Maritain’s somewhat specious argument about connatural affectivity as the way that natural law is first known. It is irrelevant to the case in point, which is that both assent and consent (truth and feasibility of agreement) sometimes are more favorable under certain conditions of shared experience. Between what is first in the order of cognition and what is final in the order of philosophical explanation stand other “evidences” that point toward both. This is no more surprising than the fact that many Catholics could make little sense of the morality of contraception until faced with the problem of abortion.

For its part, *Pacem in Terris* provides a rather traditional picture of natural law, beginning with the encyclical’s opening sentence: “Peace on Earth—which man throughout the ages has so longed for and sought after—can never be established, never guaranteed, except by the diligent observance of the divinely established order.” The encyclical’s list of some twenty-five natural or human rights (§§8–36) stands between two discussions of divinely created order (§§2–7, 37–38) which serve as bookends. The first is a substantive prelude, while the second is a forceful reminder

¹⁶ Jacques Maritain, “Introduction” to the UNESCO document, *Human Rights: Comments and Interpretations* (1948).

and admonition. In the prelude, the Pope speaks of the whole created universe, marked by order, intelligibility, and beauty. He distinguishes carefully between the order of nature as a whole and the excellence of human participation in eternal law. After enumerating the rights, he quotes St. Thomas: “Human reason is the standard which measures the degree of goodness of the human will, and as such it derives from the eternal law, which is divine reason. . . . Hence it is clear that the goodness of the human will depends much more on the eternal law than on human reason” (§38).¹⁷

In its own time and place, *Pacem in Terris* attempted a fairly high level dialogue, making use of Budziszewski’s notions of diplomacy and theology. The Pope takes note of contemporary *desiderata*—what men want and hope to achieve regarding justice and peace. The word “value” (*valor*) is not in the encyclical.¹⁸ Instead, we find *animorum appetitiones* and other such phrases to indicate what people are trying to accomplish (§§79, 159). These, in turn, are judged “lawful” in light of the four principles. When the dialogical and doctrinal aims are conflated, the placeholders come to include more than the historical and social evidence.

History might be the “teacher of life,” but it also teaches that opportune moments for dialogue are often short-lived. Indeed, very short-lived. Take, for example, Maurice Cardinal Roy’s remarks sent to Paul VI in 1973 on the “Occasion of the Tenth Anniversary of the Encyclical ‘Pacem in Terris’.” Cardinal Roy was a distinguished churchman of his time, to say the least.¹⁹ In a section entitled “A Method for Our Times,” the Cardinal admits to being somewhat puzzled by John XXIII’s theme of order, especially as it relates to cosmological, metaphysical, and anthropological matters. He asks, “Is this answer still valid, ten years later?”

For today, this idea of nature is very much questioned, if not rejected. There is argument concerning the word itself, which could lead one to suppose that there is a strict parallel between man and his morality and biological laws and behavior. There is argument also about its content, negative (what nature forbids) or positive (what nature permits). The

¹⁷ Citing *ST* I–II, q. 19, a. 4.

¹⁸ The *valori* were superimposed, first in Italian, as headings for newspapers, and through this venue entered into other translations.

¹⁹ Having been the Archbishop of Quebec, subsequently the first President of the Pontifical Council on the Laity, then of the Pontifical Council on Justice and Peace, and finally the President of the Pontifical Council on the Family. Pope Paul VI addressed his letter, *Octogesima Adveniens*, on the Eightieth Anniversary of *Rerum Novarum* (May 14, 1971), to Cardinal Roy, who, in turn addressed his thoughts to the Pope on the subject of *Pacem in Terris*.

concept also seems too “essentialist” to people of our time, who challenge, as being a relic of Greek philosophy, the term “Natural Law,” which they consider anachronistic, conservative and defensive. They object further that the expression was defined arbitrarily and once and for all in a subjective and western manner, and is therefore one-sided and lacking in any oral authority for the universal conscience. . . .

Although the term “nature” does in fact lend itself to serious misunderstandings, the reality intended has lost nothing of its forcefulness when it is replaced by modern synonyms. . . . Such synonyms are: man, human being, human person, dignity, the rights of man or the rights of peoples, conscience, humaneness (in conduct), the struggle for justice, and, more recently, “the duty of being,” the “quality of life.” Could they not all be summarized in the concept of “values,” which is very much used today?

Admitting that the very first sentence of *Pacem* asserts that peace is “diligent observance of the divinely established order,” Cardinal Roy was unable to contain his dismay: “[T]his word [nature] jars the modern mentality, as does, even more, the idea that it summons up: a sort of complicated organic scheme or gigantic genealogical tree, in which each being and group has its predetermined place.”²⁰

These well-intentioned suggestions for how the magisterium might improve and expand the dialogue unfortunately allow diplomacy to get the better of theology. Pope John’s *Pacem in Terris* proceeded quite differently. He began with what men of good will, in a certain time and place, seem prepared to affirm about morality and its institutions. He gives no argument that they ought to do so, for they are already trying to do so. Nor is there need to tamper with the evidence. Allowing the generation to speak for itself, Pope John draws what is “sound” and “lawful” into a framework of principles in which they can be better understood and stand some chance of succeeding. Rather than smuggling into the dialogue “synonyms” of the sort Cardinal Roy had in mind, *Pacem* draws the common experience back into a picture in which the traditional terms remain intact.

In his Cambridge lecture, Cardinal Ratzinger proposed something similar with regard to Christianity and the wisdom traditions:

Practical reason also needs the guarantee of an experiment, but a greater kind of experiment than can be conducted in the laboratory. It

²⁰ “Reflections by Cardinal Maurice Roy on the Occasion of the Tenth Anniversary of the Encyclical ‘Pacem in Terris’ of Pope John XXIII” (April 11, 1973), in *The Gospel of Peace and Justice: Catholic Social Teaching since Pope John*, presented by Joseph Gremillion (New York: Orbis Books, 1976), 557–58.

requires the experiment of successful human existence which can come only with subsequent history itself. For this reason, practical reason was always ordered towards the grand enterprise of experiencing and testing the collective visions of ethics and religion. Just as science, on one hand, depends upon the brilliant breakthroughs of great individuals, so, on the other hand, the construction of a systematic ethic depends upon the particular vision of individuals who were given a glimpse of the whole. The grand ethical developments of Greece and of the Near and Far East, about which we spoke a moment ago, have forfeited nothing in terms of the validity which lies at the heart of their assertions. We may look upon them now, however, as tributaries, which flow towards the grand river of Christianity and its explanation of reality.²¹

Cardinal Ratzinger's picture, however, is importantly different from *Pacem in Terris*, at least as it regards dialogue. What he means by the "grand enterprise" presupposes wisdom traditions that outlast the occasional moral insights of a generation. Pope John hoped that such would be the case for the post-war generation, for whom "the truth of life" among the honest discussants would be sufficient to achieve a common law grounded in human dignity.²² Roy's perplexities, however, indicated that this hope needed to be moderated. Indeed, with respect to natural law foundations, the story of that generation is better described as evidence that was found, and then frittered away. We ought to read *Veritatis Splendor* (1993) in this context.

Philosophical and Theological Considerations

When Cardinal Ratzinger spoke of men having lost evidence of what is moral he was referring to the general moral estate of society in the late twentieth century. We are reminded of Walker Percy's book, "Lost in the Cosmos." The perennial tradition of natural law however will not agree, without important qualifications, that what is moral has lost its evidence. Remarking on Romans 1:20, Augustine said: "O it would be truer to say that they speak to everyone, but are only understood by those who compare the voice that comes to them from the outside with the truth that is within." Thomas famously contended that there are self-evident (*per se nota*) propositions which "can be exteriorly denied by the mouth but not interiorly denied by the heart."²³

²¹ Ratzinger, "Consumer Materialism and Christian Hope," 92–93.

²² *Veritas vitae*, which St. Thomas says is not the truth of speech but the rectitude of one's existence in conformity to divine law. *ST* II–II, q. 109, a. 2, ad 3.

²³ . . . etsi exterius negentur ore, nunquam interius negari possunt corde. *Super Sent.*, lib. 1, d. 3, q. 1, a. 2, s.c. 1.

Let us consider four aspects of evidence corresponding to different acts of intellect. They are arranged along a spectrum: immediate grasp of a principle, spontaneous inferences, reasoned out implications for action, and philosophically justified accounts. Although each has its own salience, the first two can prove especially difficult to describe because of their simplicity. Simple things are foundations for dialogue, but they are not easy to dialogue about. Regarding first evidences, we should rework Thomas's dictum: things which cannot be internally denied but which are *usually* reported confusedly by the mouth.

Stephen Brock and Lawrence Dewan develop different but overlapping lines of questions about Thomas's understanding of the first stirrings of knowledge of the natural law. What is present to the intellect, explicitly and implicitly, prior to either a fully practical or a properly scientific appropriation of the evidence? They critically press the distinction between natural law as discovered in the immediate givens of consciousness and natural law as it is presented and affirmed in an adequately justified account or theory (§§27, 31–33, 37, 44, 59, 113).

Some distinction of this sort is unobjectionable. Indeed, it is required if we are to express the difference between what is first in the order of learning and what is first in the order of being, and to mark the different deployments of the intellect—making spontaneous inferences and judgments from what it first grasps of certain principles, and attempting to achieve, and perhaps arriving at, a properly ordered account.

The question, then, is whether *The Search* transfers—at least in some sections of the report—evidence that belongs in the experiential starting point (or very close to it) over to what can only be grasped and understood through a theoretical justification? This is a rather tricky problem. But much stands or falls on getting it right, not only for the purpose of interpreting Thomas, but for the authors' own project of locating a common knowledge expressed by the wisdom traditions.

Two passages of *The Search* report draw Brock's attention:

This natural law is not at all static in its expression; it does not consist in a list of definitive and immutable precepts. It is a source of inspiration that always springs up in the search for an objective foundation for a universal ethics. (§113)

Once we posit the basic affirmation that introduces us to the moral order—"One must do good and avoid evil"—we see how there arises in the subject the recognition of the fundamental laws that should regulate human action. Such recognition does not consist in an abstract consideration of human nature, nor in the effort to conceptualize, which would be proper to theoretical philosophy and theology. The

perception of fundamental moral goods is immediate, vital, based on the connaturality of the spirit with values and engaging both affectivity and intellect, both the heart and the spirit. It is a grasp often imperfect, still obscure and dim, but it has the profundity of immediacy. It deals with the data of the most simple and common experience, which are implicit in the concrete action of persons. (§44)

The main point of these passages is clear enough. The ITC wishes to correct the caricature that natural law is an already-assembled, static, or conceptually abstract program—in the fashion, say, of pure practical reason or a completely rehearsed philosophical justification. Either way this caricature should be corrected because it collapses the spectrum of evidence into the starting point. Brock agrees that natural law is neither a “closed set” nor, at first, a “list.” First precepts of natural law engender conclusions unfolded by reason and determinations fashioned by jurisprudence, so it is true that the natural law *in man* is not static. Moreover, he points out, to speak of a list (of goods and precepts) is to put concepts into a proper order, and thus it is already to think of first evidence philosophically.

Having insisted that one extreme must be avoided, does *The Search* swing in the other direction—finding too little evidence in the first stirrings of our knowledge of natural law? If there is no conceptualization, then what is first given might have the “profundity of immediacy” but it would not stand firmly in the cognitive, and therefore the veridical, order. Brock proposes that the order of precepts presented in *ST* I–II, q. 94, a. 2 (can be read in tandem with Thomas’s treatment of happiness in the first three questions of I–II. It is telling, for instance, that the first precept of law in q. 94, a. 2—the good is to be done and pursued and what is contrary resisted—directs action to the human good in which the parts (its various dimensions) are aspects of an intelligible whole. This certainly seems to imply conceptualization, albeit one that is not complete in a philosophical sense. “The other precepts,” Brock writes, “rest on concepts of certain particular good things. As goods, these things share in the truth of the first precept. They are things to be done or sought, and their contraries are bad and to be avoided.” Thus, the particular goods belonging to natural law are goods that the intellect naturally understands to be included in the end, that is “our last end, happiness, in a sketchy way.”

What is immediately given are not just desires, needs, inclinations, and “nudges” of nature but an intellective act that naturally grasps an intelligible whole. This interpretation preserves *The Search*’s interest in correcting a caricature of natural law. At the same time, it preserves a conceptual

purchase on what is most “common” and universal. In §37 of the document we can make good sense of the assertion that “independently of the theoretical justifications of the concept of natural law, it is possible to discover the immediate givens of consciousness of which it wants to give an account.” But we would have to correct at least the language in what follows: “We will then see how the concept of natural law is based on an explanatory picture that founds and legitimizes moral values, in a manner that can be shared by many.” Put in this way, what is conceptually shared is put much too far toward the philosophical side of the picture.

Just here I want to make four points. Although in no way complete, they might be useful for gathering strands of earlier discussion and pointing toward issues to be discussed more thoroughly.

First, consider the price to be paid for speaking of the first evidences of natural law as an “inspiration” or a pre-conceptual avidity (if, indeed, such is meant by *The Search* §§27, 37, 59, 113). What is most “common” loses its location in what is naturally known. If the first evidence of natural law is understood as an “inspiration” prior to the intellect’s grasp of the true and the good, how could there be precepts (in the strict sense of the term) which obtain at the very outset? A conceptual natural law would have to ensue upon a pre-conceptual one, and therefore precepts could emerge only in crossing that threshold. Doesn’t this picture conflict rather directly with Thomas’s teaching that the participation in Eternal Law proper to man is in the created light of the intellect (*ST* I–II, q. 91, a. 2)? In his detailed and philosophically challenging essay, John McDermott reminds us that nature is “an analogous concept.” In a composite creature like man, different dimensions of nature are simultaneously operative. Even so, we do not want to describe what is *proper* to the human grasp of natural law as a transition from a condition lacking that *proprium*.

Second, unless great care is taken, a concept itself might not suffice for being under a precept. One could argue that first and ‘most common’ moral concepts are indeterminate with respect to particular actions. This is the problem that arises in Kevin Flannery’s careful and contained exegesis of *The Search* §53/59 and *ST* I–II, q. 94, a. 4. If indeed the most general practical principles—the most common precepts—are tokens of precepts still-to-be-constructed, then we would seem to be put once again in a strange transition from a natural law that is directive (not merely affectively nudging but in some way rationally indicating) but not obligating, to a natural law that is fully and adequately preceptive. If precepts of the latter sort are the work of conscience or prudence, then natural law properly speaking can emerge only rather late in the game. What, then, becomes of the distinction between antecedent law and the

application of the law in certain circumstances? In a lengthy footnote (note 4), Steven Long also worries about the ITC language, which could suggest to some readers that the ethical life is chiefly or wholly a matter of *determination* or ad hoc verdicts of prudence. That position stands in at least the suburbs of the moral theology criticized by *Veritatis Splendor*.

Third, we recall the anthropological question that Cardinal Ratzinger spoke about in his Cambridge lecture—openness to reality as a whole. This depends upon intellect and rational appetite. To sharpen the question: Does the good first manifest itself as practical, which is to say under the restriction of what we do or make? If so, then the intellect is first open and ordained to a good only under a certain aspect: that of directing the will—a very important aspect, to be sure. As Brock notes, “Thomas says that the good is the first thing to fall in the apprehension of practical reason. But he does not say . . . that what the good first falls into is the apprehension of practical reason.” Thomas preserves a praxis-transcending ordination to the truth of the good. The intellect is ordered to the true, irrespective of whether it terminates in directive action. Steven Long puts it deftly. “No matter what I may wish to order my knowledge to practically, *whether* it is true is not merely a function of *what I plan to do*.” If, as Long contends, the inception of rational appetite is in knowledge of reality, then morality is not “man’s prison.”

A fourth point can serve as a segue to Laurence Dewan’s essay. Suppose that Thomas is correct, that what the good first falls into is the apprehension of practical reason. This leaves standing the possibility of the operational primacy of practical reason in the order of finality, which is nothing other than the pursuit and possession of happiness. Thomas himself raises the question. Human happiness is a good for man himself. Whereas speculative acts chiefly reach things *extra hominem*, practical acts are concerned with things *ipsius hominis*, such as how he acts and is acted upon. Therefore, human happiness consists more in the excellence of practical virtue. Thomas concedes that such would be the case if man were himself [objectively] his own ultimate end (*ST* I–II, q. 3, a. 5, ad 3). For a battery of reasons, which we will not rehearse here, Thomas denies that the *finis cuius*, the very end for which one ultimately acts, is the excellence of self-directive acts.²⁴ But if it were the case, that would have an important implication for natural law, for natural law would be a law directing man to his own good precisely as final, both as *finis cuius* and *finis quo*. One might be puzzled about what kind of a law orders a rational

²⁴ More strongly, Thomas denies that any act of the human soul can count as the *finis cuius*. The speculative operation, however, is more agreeable to a final good *extra animam*. *ST* I–II, q. 2, aa. 7–8.

creature merely to its private good. But this is only the beginning of difficulties which will arise in the train of that premise. My point is that more than one very important issue intersects with the question of the relationship between speculative and practical reason.

We are here in the domain of a philosophical problem that also stands rather close to our theme of first evidences. Can the intellectual creature be under natural law without some inkling of what he is being directed to, and by whom he is being directed? Lawrence Dewan also worries that *The Search's* depiction of the spectrum running from experience to philosophical explanation is not quite right. How do we align a conceptual grasp, a spontaneous inference, and a theoretical justification of natural law? And when we speak of being under the natural law, are we in the sphere of experience or justification? ITC is clear about the latter question, but in some passages it is not so clear about the former. Homing in on "the experience of being subject to natural law as law," Dewan proposes that "*we should not exclude from 'the immediate givens of consciousness' in this matter the divinity of the source of the experience.*" We recall that this was one of Cardinal Ratzinger's concerns in his Cambridge lecture: "Morality is not man's prison; it is rather the divine in him."

Two passages from *The Search* strike a note that seems discordant with other sections. In each case, the ITC appears to be trying to correct a certain caricature of natural law by widening the gap between experience and justification.

To be able to be recognized by all men and in all culture, the norms of behavior in society should have their source in the human person himself, in his needs, in his inclinations. (§115)

The moral obligation that the subject recognizes does not come, therefore, from a law that would be exterior (as a heteronomy), but affirms itself from within the subject itself. In fact, as indicated by the maxim we have cited—"One must do good and avoid evil"—the moral good determined by reason "imposes itself" on the subject. . . . This law is normative in virtue of an internal requirement of the spirit. It is born in the very heart of our being as an invitation to the realization and transcending of ourselves. It is not therefore a matter of subjecting oneself to the law of another, but of accepting the law of one's own being. (§43)

These and other such passages underscore the traditional teaching that natural law is not *in us* in the fashion of a positive law. It is not imposed. But it cannot be true that the human soul is the "source" of the law, at least not if one wishes to affirm, on the explanatory side of things, that

natural law is “participated theonomy” (§§60, 62, 63). If a self-originating ground of natural law is false on the explanatory side, why should it seem true on the experiential side?

From these words (in §43) we could draw two different conclusions. The first is that participation in the Eternal Law is not a matter of being subjected merely to the law of another creature. This conclusion is compatible with a rough and philosophically untutored insight that we are dependent upon a prior or higher law that is distinct from the conventions of the city. The second is that natural law is not in any way a law received from another, a teaching more or less along the lines of Kant. Clearly, these are quite different conclusions.²⁵ Depending on which one we follow, the notion of “transcendence” in morals will differ considerably. If the divine is the source of the law, transcendence is implied at the very outset of “being subjected.” On the other view, the divine could be an upshot of the moral life, coming into view as we transcend ourselves.

As *The Search* itself recognizes (§§31–32), in modern times the divine source of natural law usually is dismissed at both ends of the experience-concept-explanation spectrum. Modern natural law theory prescind from reason informed by faith, along with the confessional expressions and justifications of such experience. It also holds that reference to God at the experiential and at the purely philosophical level is “optional” because the concept of morality and duty is coherent in itself. Surely, the ITC does not want to paint itself into either of these corners. What are the options?

One option is to move the issue of the “divinity of the source” completely to the side of philosophical explanation. The problem with this option is twofold. In the first place, the explanation will have little or no resonance in ordinary experience. I am afraid it will look like the rabbit pulled out of an empty hat. In the second place, the explanation might contradict ordinary experience, or at least one’s initial estimation of it. For ordinary experience, why not say that it is enough to understand (to use the ITC’s words) that as regards natural law one is not subject “to the law of another, but of accepting the law of one’s own

²⁵ The translation is not always reliable. For example, the French text at §38, “Ce n’est que progressivement que la personne humaine accède à l’expérience morale et devient capable de se dire à elle-même les préceptes qui doivent guider son agir,” in the Bolin translation reads: “The human person only progressively comes to moral experience and becomes capable of giving himself the precepts that should guide his action.” *Se dire* and *se donne*, however, are not the same. To say or to formulate does not imply a legislative act.

being.” Perhaps this is what we earlier discussed as a “placeholder.” Surely, one’s nature is not a “law.” Eventually, a proper explanation will have to uproot the placeholder. Is this a mode of explanation, or is it rather a correction or negation?

Another option is to approach the issue in the way suggested by Dewan. Usually, evidence for the theological dimension is put either in the domain of faith or in the domain of demonstration. Dewan warns that the intermediate terrain should not be passed over too quickly. Treating the natural law obligation in religion, Thomas held that “*Natural reason* declares to man that he is subject to some higher being, because of the deficiencies that he experiences in himself, with respect to which he needs to be helped and directed by some higher being. And whatever that is, it is that which everywhere is called ‘a god’” (*ST* II–II, q. 85, a. 1). Thomas, Dewan explains, “is not presenting a scientific demonstration of the existence of God, but is reporting and attempting to describe what is some universal spontaneous *natural inference*. Man’s experience of himself is as of a being which cannot stand by itself, without aid, and which cannot survive without steering, without direction, from some source of intelligent direction, moving things along for man’s protection and welfare.”

Where does this dictate of reason stand in the scheme of evidence? It is the created intellect declaring to itself, in a rough way, how it stands in a scheme of things. This manner of taking stock needs to be distinguished on the one hand from God speaking about Himself (revelation) and on the other hand from a demonstration. Dewan contends that this dictate of reason, as “*a type of natural knowledge*,” needs to be put closer to what *The Search* calls “moral awareness.”

... not the fruit of deliberate study and method, but given in the way that eyes and ears are given, and yet a knowledge which is not merely the intellectual insight into starting-points, whether of simple terms like “the good” or of propositions like “the good is to be done and promoted, and the bad avoided,” but a naturally occurring, spontaneous *reasoning process*.

The position developed by Dewan seems especially useful for understanding an implicit consensus among wisdom traditions. For one thing, it leaves intact the other points along the spectrum: what is given by nature, the first intellective vision of the good, philosophical explanations and justifications, and the data of faith. “Natural law,” he writes, “is possessed by the human being primarily through the vision of what goodness is, a vision that attests to our immediate relation to the univer-

sal cause of being and goodness.” This seems to be the experiential soil for wisdom traditions.

Conclusion

None of the authors in our collection of essays impeaches the ITC for ignoring the metaphysical aspects of natural law (for example, §§34, 77). Dewan notes favorably the document’s references to St. Thomas, Leo XIII, and the *Catechism of the Catholic Church* on natural law as participation in the Eternal Law. It is surely a strong suit of the document. For his part, Steven Long applauds its “affirmation of the strategic importance of a non-competitive account of divine and human causality for the understanding of natural law as a mode of the divine providence.” He continues: “If human freedom is subtracted from the effect of divine agency, then of course human freedom lies outside the divine providence, and accordingly wholly outside the eternal law, outside the divine providential ordering. Thus natural law would be impossible, because natural law is nothing other than the rational participation in eternal law, and eternal law and divine governance generally extend only so far as divine agency extends.”

Undoubtedly, this is an issue of singular importance for systematic and philosophical theology. A non-competitive relationship between divine and human agency is also implicit in the wisdom traditions. Getting the account right, therefore, will at least partially constitute an answer to Cardinal Ratzinger’s question of whether morality is “man’s prison.” Neither the essayists nor the ITC report hold that such an account is merely “optional” at the level of theoretical justification. While this is under dispute everywhere else, it is so not here. But in these essays, the issues do not so much gravitate toward the work of a fully philosophical justification, but stand instead at the beginning, in what we can call the role of concepts in initial experience. I would not have predicted this tendency of the debate. But here it is. I have learned much from both *The Search* and the essayists in this volume. For whatever errors and misconceptions that have entered the debate through my postscript, I have only myself to blame.