

Why Should Naturally Given Moral Laws Exist?

Reconsidering Theological Arguments for Natural Moral Laws

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This article is not discussing all traditions of the idea of natural moral law. It is focusing only on the idea that there are certain naturally *given* moral laws in that sense that there are universal moral obligations for every human being which have (1) *a specific content*, which is (2) *unchangeable* and which (3) everybody can *discover* by reason or conscience, because it helps to protect or develop (4) *nature* – either (4a) in the sense of some *cosmic order* of the world or (4b) in the sense of the *ontological nature* of an object, especially of *human beings*. An example for this concept would be “a man should be married only to one woman and vice versa.”

Of course there are also concepts of natural moral law which don't assume that concept of givenness. For example they understand natural moral law as some kind of general moral capacity which every human being has – and which by historical circumstances may be shaped in this or that way. Natural moral law is then understood as the idea of a constant feeling of being somehow morally obliged to do something – while the content of this obligation could vary by circumstances and time. Kant's concept of natural law is different from what is discussed in the following as well. For Kant “nature” in his idea of natural law is not something in the outside world, some empirical quality, or some metaphysical order, but pure reason. “Natural law” for Kant is the “law of reason” which is recognized a priori through reason alone, without any reflection on empirical or metaphysical “nature.”¹

As there is an interesting analogy between the discussion in the natural sciences if physical, biological and chemical laws of nature are *discovered* by human beings² through observation of nature or are *invented* by humans I will focus in this article on that concept of natural moral law which uses

¹ Cf. Immanuel Kant, “Metaphysik der Sitten,” in *Schriften zur Ethik und Religionsphilosophie*, vol. 4 of *Werke in sechs Bänden*, 5th ed. (Darmstadt: Wissenschaftliche Buchgesellschaft, 1983), AB 44.

² On this issue see the article by John Polkinghorne in this volume.

the idea of *discovering* certain laws which have an *invariable* concrete content and which understands them not as product of human reason or human communication but as already there because they are only consequences of some empirical constant characteristics of human beings or of a given world order (= definition of “naturally given moral laws above, (1)–(4)).

It has often been argued in questions of morality that if we don't assume naturally given moral laws then human morality cannot be upheld because then human beings would just live as they want; the assumption of natural laws seems to be the only guarantee for a binding and obliging content-filled morality. In the following I will not argue that naturally given moral laws *don't exist*. On a meta-level I will analyze the aim which arguments for naturally given moral laws pursue in order to understand *why* scholars use this concept. So my question is: What are those arguments good for? Put differently: Why should naturally given moral laws exist? I will argue that the assumption of naturally given moral laws is not necessary for reaching the aim which arguments for naturally given moral law pursue.

To avoid misunderstandings: I will not argue that moral laws are superfluous. We do still need them. But we don't need to assume any natural *givenness* of them in the sense defined above.

In discussing this very specific issue I will not consider the *juridical* request for natural law arguments which is derived not only from the problem of validity and legitimacy of positive laws, but also from the need for a critical norm for them. As there has been an increasing interest in natural moral law theory especially in the theological field in recent years,³ I will discuss why *theologians* argue for naturally given moral laws. In the first part of this article, after having shortly summarized the classical theological natural law theory of Thomas Aquinas, I will pick out three representatives for a protestant theological discussion of naturally given moral law: Luther, Melanchthon, and Barth.⁴ Luther, because he used the idea of naturally given moral laws, but not emphatically so and because his “Two Kingdoms Doctrine” outlined an interesting framework for his natural law

³ Cf. e.g. Klaus Tanner, *Der lange Schatten des Naturrechts: Eine fundamental-ethische Untersuchung* (Stuttgart: Kohlhammer, 1993); Eberhard Schockenhoff, *Naturrecht und Menschenwürde: Universale Ethik in einer geschichtlichen Welt* (Mainz: Matthias Grünewald, 1996); Friedrich Lohmann, *Zwischen Naturrecht und Partikularismus: Grundlegung christlicher Ethik mit Blick auf die Debatte um die universale Begründbarkeit der Menschenrechte* (Berlin: de Gruyter, 2002); Russell Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World* (Wilmington, DE: ISI Books, 2003); Stephen J. Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics* (Grand Rapids: Eerdmans, 2006); Ingolf U. Dalferth, *Naturrecht in protestantischer Perspektive* (Baden-Baden: Nomos, 2008).

⁴ For Calvin see the articles of Strohm and Witte in this volume.

theory; Melanchthon, because he developed a fully fledged natural law theory, and Barth, because no other protestant theologian criticized the theory of naturally given moral laws with greater emphasis. In the second part I will focus on the renewed protestant and catholic theological interest in natural law theories and discuss concepts of naturally given moral laws which are present there.

I. Thomas Aquinas, Luther, Melanchthon, and Barth and Their Attitude towards Natural Moral Law

1. Thomas Aquinas

The classical theological natural law concept was developed by the scholastic theologian Thomas Aquinas (1224/5–1274).⁵ It can be found in his main work *Summa theologiae*, part I–II, in the treatise *De Lege* (On Law) (q90–105). Thomas uses both the idea of a natural God-given order of the world and the idea that human beings have a special nature as both are related to each other (because of their human nature, human beings have their function in the order of the world), and as both together are the source for recognizing the content of the naturally given moral laws.

Thomas distinguishes several types of law; all of them are teleological, oriented towards the respective goal: The first and most important one is the *lex aeterna*, which is God's governing wisdom and reason, directing everything towards the right goal (q93.1) and from which all rational laws of the world derive (q93.3).

The second type of law is the *lex naturalis*, the natural moral law which is the participation in the eternal law of God in a rational creature (q91.2). Natural law is a manifestation of the eternal law of God. Human beings are not confronted with it bluntly. It is constituted by human beings' reason through which human beings participate in God's reason. "Natural law is something constituted by reason" (q94.1). The main principle of natural law is this: One should do the good and avoid the bad (q94.2). What this concretely means has to be developed by considering the *nature* of a being, more precisely the *inclinationes naturales*, the natural inclinations of a being. For they express what the characteristic good for a certain being is. The deduction of natural laws from the natural inclinations of human beings for example works as follows: Like all substances human beings have

⁵ Cf. to the following Dalferth, *Naturrecht*, 10; Wolfgang Huber, *Gerechtigkeit und Recht: Grundlinien christlicher Rechtsethik*, 3rd ed. (Gütersloh: Gütersloher Verlagshaus, 2006), 112–3; Lohmann, *Naturrecht*, 177–182; Friedo Ricken, "Art. Naturrecht I. Altkirchliche, mittelalterliche und römisch-katholische Interpretationen," *TRE* 24 (1994): 142–5.

a natural inclination for self-preservation; therefore they have the right to life and limb. Like all animals human beings have a natural inclination to procreate, raise children, etc.; therefore there is the necessity of monogamy. And finally and most specifically for human beings, they have inclinations which correspond to their rational nature: the inclination to recognize God's truth, which leads to the right and the duty to educate one's mind – and the inclination to live in community with others, which leads to certain social laws, e.g. not to insult those with which you have to live (q94.2). These basic contents of natural laws are present in every human being's consciousness and cannot be erased; but the application of these principles in concrete cases can be mistaken (q94.6).

The third type of law is the *lex humana*, the positive law with its two parts of *ius gentium* and *ius civile*. It is derived from natural law through practical reason. It has the value of a law only if it is derived from natural law: "Therefore every law set up by humans has the authority of a law insofar as it is derived from natural law" (q95.2).

The fourth type of law is the *lex divina*, the revealed law of the old and new covenant which leads human beings towards their final, supernatural goal.

Thomas argues that all just laws are rational ("law is something belonging to reason," q90.1). Thus the claim that they are God-given does not contradict the idea that human beings can access them through reason. Thomas's natural law theory with its focus on rationality includes that the moral laws discussed here are plausible to everybody, not only to believers, because their validity can be made plausible on rational and not only with religious grounds. Yet of course Thomas uses a metaphysical assumption as well, namely that *inclinationes naturales*, certain unchangeable given characteristics of human existence, do exist.

2. Martin Luther

For the reformers of the sixteenth century, the existence of naturally given moral laws was not in question. In accordance with Paul (Rom 2:14–16), Martin Luther⁶ (1483–1546) states that the natural law is written into every human heart and conscience by God: "There is only one law, true for all times, known to everybody, inscribed in every human heart, which makes any excuse impossible." (WA 2, 580) The existence of natural law explains

⁶ Cf. to the following the article of Christoph Strohm and Mathias Schmoeckel in this volume as well as Ulrich Nissen, "Martin Luthers und Phillipp Melanchthons Verständnis vom natürlichen Gesetz," in *Luther between Present and Past: Studies in Luther and Lutheranism*, eds. Ulrich Nissen, Anna Vind, Bo Holm, and Olli-Pekka Vainio (Schriften der Luther-Agricola-Gesellschaft 56; Helsinki: Luther-Agricola-Society, 2004), 208–34.

the guilt of every human being, none of whom lives up to God's expectations (*usus theologicus legis*).

Natural law is universal and not dependent on a special cultural or religious background. The heathens know natural law as well as the Christians do (cf. e.g. WA 16, 379). In principle, godless people not only know natural moral law but can also live in accordance with it (cf. WA 39/I, 82). "Pagans have been found to be much wiser than Christians. They have been able to order the things of this world in a far more capable and lasting way than have the saints of God. . . . It is because of this that the ancient Romans had such glorious laws and ordinances . . . without any counsel or guidance from Holy Scripture or the apostles." (WA 16, 354–55)

As regards content, natural moral law basically consists in the knowledge that one should love God as well as the neighbor (cf. e.g. WA 18, 80, the Ten Commandments just explain how to do that); do good and avoid evil (cf. WA 10/I.1, 203), follow the Golden Rule to do to others what one wants to be done to oneself (cf. e.g. WA 18, 80), and use equity (*aequitas*) (cf. WA 10/I.2, 174). As all this describes more or less a general moral obligation, it is worth mentioning that for Luther natural moral law also contains the order of the three "estates," of the *status politicus*, *ecclesiasticus* and *economicus*. Marriage for example, which belongs to the *status economicus*, is a natural order instituted by God in which (almost) everybody should live. The political order of government authority over people is a divine order as well (but has become necessary only after the fall). Every human being participates in each of these estates as they describe different areas of human life. They are ordinances set up by God to structure the relationships in a society and give human beings certain duties. Those three stations are unchangeable: "[T]hese divine stations continue and remain throughout all kingdoms, as wide as the world and to the end of the world" (WA 31/I, 410).

Why does not everybody live in accordance to natural law? Several deficiencies in human beings lead to this. Some human beings simply are not bright enough to know about it. One needs to be reasonable to recognize natural law: "If natural law and reason would be in every head, if human heads were equal, then fools, children, and women could reign as well as David, Augustus, Hannibal . . . the noble jewel of natural law or reason is a strange thing among souls" (WA 51, 211–13). Others neglect their knowledge of the law. Even if they know about natural moral law, sin and the devil prevent them from living up to it. Finally there are people who know about the content and fulfill it but don't know about the *causa efficiens* and the *causa finalis* of these orders, so they don't understand their reasons (WA 40/III, 202). This is the mistake of the morally good heathens. The heathens' deeds do not stem from a pure heart, they don't act for the glory of God but act for their own benefit. After the fulfillment of the law they

proudly say: “ego feci” – “I did it”! (WA 40/III, 222) Thus they use natural law wrongly in thinking that their fulfillment of the law justifies them.

The assumption that nevertheless every human being has some knowledge about God’s concrete will makes it possible for Luther to use natural moral laws as a basis for the political realm (*usus politicus legis*). Luther has developed this idea in his so called “Two Kingdoms Doctrine.” It distinguishes between two realms: the worldly and the spiritual realm. Christ reigns in the spiritual realm through the gospel and forgiveness; here one is free from the reign of the law and only guided by love. At the same time God reigns in the worldly realm through law and order. The spiritual realm and the gospel have to do with the inner reality of faith and love, the worldly realm’s laws apply no farther than to body, property and everything external on earth (cf. WA 11, 262). Only Christians belong to the spiritual realm, but all human beings belong to the worldly realm.

When setting up law and order in the worldly realm, the rulers should be oriented towards natural moral laws (cf. e.g. WA 11, 279). For this orientation the rulers need only reason. “Here you must separate God from man, eternal matters from temporal matters. Involving other people, man is rational enough to act properly and needs no other light than reason. Consequently, God does not bother to teach men how they are to build houses, or make clothes, or marry, or make war, or sail a boat. For all such matters, man’s natural light is sufficient.” (WA 10/I.1, 531)

Why does Luther argue for natural law? Why should natural moral law(s) exist? In two regards Luther needs law(s) given to everybody. First, Luther needs a universal law which makes people aware of their sin and consequently of their need for redemption (*usus theologicus legis*); only because natural moral law in the sense of a general moral obligation towards God and other human beings exists, every human being can be *addressed* as guilty sinner and as needing salvation. And secondly, Luther needs natural moral laws given to everybody to make the distinction between the two reigns of God possible; only because naturally given moral laws with a certain content exist, politicians don’t need to refer to revelation when arguing for their ethical opinions about the moral duties of their people (*usus politicus legis*). This non-necessity of revelation for politics is important because otherwise the gospel would be misused for political governing and the force of its spiritual liberation would be destroyed.

In the view of later criticism of Lutheran natural law theory it is relevant to note that in Luther’s view naturally given moral laws don’t endanger the validity of the gospel because they either directly serve its purpose (in preparing human beings for the gospel in the *usus theologicus legis*) or only have to do with external things (in the *usus politicus legis*), thus do not interfere with the gospel.

3. Philipp Melanchthon

From Luther's theology of Christian freedom in the spiritual realm, some of his contemporaries drew the consequence that education, political order, or any other ethical regulations for Christians are no longer necessary. Luther tried to react to these misunderstandings with modifications of his earlier thought. Yet Philipp Melanchthon (1497–1560), Luther's friend and the first Lutheran dogmatic theologian, developed his later theology in many aspects as a response to this situation and tried to prevent these misconceptions from the very beginning.⁷ He hoped that through the idea of natural law an integration of the humanistic concern into the theology of the reformation could be achieved. Therefore, in this regard his later theology differs decisively from his earlier theology.

In his early *Loci communes* (1521), Melanchthon uses natural law, like Luther, to show that every human being knows about God's command. God has chiseled it into the human mind. It includes the knowledge of God and of good and evil. This is why human beings have no excuse for not living up to God's expectations. Yet because of sin, reason is darkened, and deriving the content of natural moral law only through reason is impossible. What natural moral laws say concretely must be derived from scripture and has to be revealed to human beings by God. In this early text, Melanchthon is not arguing for a recognition of ethical laws by reason alone. The only function of natural law at this point is to reveal the sinner's sinfulness – for which an act of God is necessary.

Later on, Melanchthon recognized that preaching the gospel only is not enough for helping human beings to live a good life. Therefore he looked for an orientation of humans towards law much more strongly than before. Around 1525 he claimed that natural moral laws with a certain content have been inscribed in human souls and become known if God *inspires* selected people (philosophers, statesmen) to ethical recognition.

Since 1529 Melanchthon argued emphatically that Christ did not bring a new ethics; ethics is a matter of reason and natural moral laws. Natural moral laws can be known by everybody through reason and because God has given humans a spark of his wisdom. Thus in Melanchthon's theology, natural moral laws are much more subjectively grounded than in the scholastic theory of a derivation from the *lex aeterna* and the *inclinaciones naturales*. For Melanchthon it is creation in the image of God (*imago Dei*) which includes knowledge about God and the possibility to distinguish

⁷ Cf. to the following the article of Christoph Strohm in this volume as well as Christoph Strohm, "Philipp Melanchthon: Reformator und Humanist," in *Philipp Melanchthon: Exemplarische Aspekte seines Humanismus*, ed. Gerhard Binder (Trier: Wissenschaftlicher Verlag, 1998), 9–46; Lars Klinnert, "Verheißung und Verantwortung. Die Entwicklung der Naturrechtslehre Philipp Melanchthons zwischen 1521 und 1535," in *Kerygma und Dogma* 50 (2004): 25–56.

between good and evil. Through the fall this knowledge has become obscured, but not deleted. The main problem after the fall is that human beings lack agreement on this knowledge.

Why is Melanchthon so strongly interested in natural moral laws? What made him search for a solid theological foundation of worldly authority and civil laws was the threatening experience of revolting peasants, Anabaptists, and enthusiasts who claimed to be driven by the Holy Spirit and not to need worldly authority and education. For example, government itself is one element of natural moral laws. In Melanchthon's view government is not, like for Luther, something which only became necessary after the fall. For Melanchthon, government is an original order of creation. At the same time ideas of natural moral laws enable Melanchthon to argue for education and sciences which are necessary for acting responsibly in the world. While the gospel contains only what is relevant for salvation, natural moral laws contain everything necessary for dealing rationally with and shaping the world. With this clear distinction Melanchthon tries to avoid consequences drawn from Luther's theology which lead to a withdrawal from the world or to revolt and chaos grounded in faith.

4. Karl Barth

Neither Melanchthon nor Luther were afraid that the idea of natural moral laws and the demand to obey them could endanger the importance of the gospel. The value of the idea of naturally given moral laws lies in the outer realm, in nothing more – but also in nothing less. Therefore there is no need to inveigh against naturally given moral law in the interest of the gospel. Yet this is what the reformed theologian Karl Barth (1886–1968) thought to be necessary. He uncompromisingly objected to any form of “natural theology,” which of course included an objection to the concept of natural moral laws as well. Barth argues that there “is no law of nature [Naturanrecht] which is both recognizable as such and yet also has divine character and authority” (*Church Dogmatics* [CD] IV/1, 140). Whoever argues for this presupposes that it is possible to know something of God revealed through the law apart from his self-revelation in Christ – which for Barth is the worst theological mistake because it assumes a human capacity for God and tries to destroy God's autonomy and freedom. Correspondingly, for Barth, knowledge of sin cannot be derived from some inward law, but only from the encounter with the word of God.

Because in Barth's view God's grace as such and nothing else defines what is good, every attempt to develop a general ethics through naturally given moral laws, without reflection on that grace, is the attempt to escape from God's grace and thus is identical with sin. It “is characteristic of sin of man . . . that man should think he can know such a law of nature and

direct and measure himself and others in accordance with it" (CD IV/1, 140). Barth's anthropological theory behind naturally given moral laws is this:

"At bottom, man is quite able to cope with himself even as the man of sin. . . . In so far as this law [*lex naturae*] is in our own hearts it gives us the competence, in so far as it is eternal it gives us the authority, and in so far as we ourselves are the men of sin we have the need and desire and the self-confidence, to arrange and deal with ourselves as the men we are in this very comfortable way." (CD IV/1, 374)

If there is anything which can be understood as ethically true and which is not directly derived from Christ, it can only be conceived as "truth imposed on all men as such by the divine wisdom active and revealed in Jesus Christ" and therefore not as "a knowledge which belongs to man, which man controls, but . . . a knowledge addressed to him and controlling him" (CD IV/1, 523). Every true human ethical enquiry and reply has its roots in God's christologically understood command.

Nevertheless Barth acknowledges that it is fundamentally necessary to use *reason* in the public sphere. He states that Christian convictions in the political sphere can be best recognized as *Christian* convictions if they are presented in a way which makes plausible that they are "politically better" in that sense that they are more beneficial for the polity. He even admits that the *civil community* itself should use concepts of natural law. It "has no other choice but to think, speak, and act on the basis of this allegedly natural law, or rather of a particular conception of this court of appeal which is passed off as *the* natural law. The civil community is reduced to guessing or to accepting some powerful assertion of this or that interpretation of natural law. All it can do is to grope around and experiment with the convictions which it derives from 'natural law,' never certain whether it may not in the end be an illusion."⁸ Here natural law is no theological concept any more, and its recognition is fallible. But it nevertheless is useful for human reason.

Yet the *Christian community* should not *base* its policy on natural law arguments, for it then would

"no longer be the salt and the light of the wider circle of which Christ is the center. . . . it would be . . . withholding from it [i.e. the civil community] the very things it lacks most . . . a firmer and clearer motivation for political decision than the so-called natural law can provide."⁹

Fighting against Adolf Hitler for example with naturally given moral laws would be dangerous. All arguments based on naturally given moral law are "Janus-headed" – as the use of natural law theory by National Socialists

⁸ Karl Barth, "The Christian Community and the Civil Community," in *Community, State, and Church: Three Essays*, ed. Will Herberg (Garden City, NY: Anchor Books, 1960), 164.

⁹ *Ibid.*, 163.

shows (see below). Clear opposition is only possible “when we resist him unequivocally in the name of peculiarly Christian truth, unequivocally in the name of Jesus Christ.”¹⁰

All in all, for Barth the opinion that natural moral laws exist is an expression of human sin, for it suggests the ability to come to terms with one’s own sin by oneself, through recognizing in detail what is good. Thus it is an escape from God’s grace as well as from his concrete commandment. Nevertheless the civic society may live by the assumption of natural law.

II. A Renewed Theological Interest in Naturally Given Moral Laws

1. Renewed Catholic Interest

After the Second World War, because *positive law theory* was seen as tragically problematic in having “prepared the way for the abuse of law by the totalitarian state,”¹¹ a renewal of natural law theory in the catholic world took place. It is quite surprising that this renewal did not reflect the problematic use which was made of natural law theory to *support* the German National Socialist system. As it is important to not forget that highly problematic use I will dwell on this first before mentioning the new catholic development.

In a catholic study *Zur Frage des Naturrechts bei Martin Luther* from 1937, one can read that especially today, in this situation of National Socialism, there is the need of a new natural law theory. This theory should refer positively (!) to the fact that the Führer, for securing the national necessities of life against contracts which ignore natural law, refers to an “eternal morality” and to the National Socialist philosophy of law which determines law as an “eternal moral entity which stands above state powers and cannot be changed by them.”¹² Natural law theory is here understood as “the foundation on which a catholic Christian can ground his approval to the Third Reich.”¹³ Protestant theologians supporting the ideology of the

¹⁰ Karl Barth, *This Christian Cause: A Letter to Great Britain from Switzerland*, ed. John A. Mackay (New York: Macmillan, 1941), n.p.

¹¹ Carl E. Braaten, “A Response,” in *A Perserving Grace: Protestants, Catholics, and Natural Law*, ed. Michael Cromartie (Grand Rapids: Eerdmans, 1997), 32–3.

¹² Franz Xaver Arnold, *Zur Frage des Naturrechts bei Martin Luther. Ein Beitrag zum Problem der natürlichen Theologie auf reformatorischer Grundlage* (Munich: Hueber-Verlag, 1936), v. This preface was dropped in editions after the war.

¹³ Cf. the preface, where one can read how much Arnold found it flattering how a review of another book of Arnold acknowledges “how the author in a natural law philosophy of state and law ‘finds the foundation on which a catholic Christian can ground his approval to the Third Reich’” (ibid., vi).

Third Reich as well argued with concepts of natural law.¹⁴ The Third Thesis of the *Ansbacher Ratschlag* (1934) used natural law: “The law that is God’s unchangeable will . . . encounters us in the whole reality of life as it is illuminated through the revelation of God. It binds everybody to the estates to which he or she is called by God, and obliges us to the natural orders to which we are subject, as there are family, people, race (i.e. connection of blood).” Thus, very concrete moral laws and responsibilities are included here in the idea of natural moral law. Or, to give another example of the problematic use of natural moral law: The totalitarian ideology of Social Darwinism tried to justify their antidemocratic resentment by arguing with the concrete natural laws of the battle for existence and the survival of the fittest – which not only describe certain facts, but also morally legitimize this battle and that survival.¹⁵ This shows that arguing with naturally given moral laws does not necessarily lead to convictions which, from our historical and cultural standpoint today, we would judge as morally right. Sometimes the idea of naturally given moral laws was used for supporting moral positions which we would consider bad today. The morality of naturally given moral laws is not unambiguous.

New catholic concepts of natural law of course try to use the idea of naturally given moral law for positive ends. In the United States, John Courtney Murray’s book *We Hold These Truths* was most prominent. He first of all used natural law theory to argue for the possibility of catholic Christians to participate in democracy. He brought out three presuppositions of natural law concepts: “that man is intelligent; that reality is intelligible; and that reality, as grasped by intelligence, imposes on the will the obligation that is to be obeyed in its demands for action or abstention.”¹⁶ He was convinced that because naturally given moral laws can be understood by reason, they are independent of religious faith and thus can lead to a broad moral consensus on concrete moral issues which would unite citizens in a pluralistic world. Nevertheless Murray, as Thomas, needed a metaphysical premise for his argument, namely a “metaphysic of nature, especially the idea that nature is a teleological concept . . . [and] that there is a God who is eternal Reason or Nous, at the summit of the order of being.”¹⁷ Murray considered this premise non-controversial in his days, yet this is obviously not true in ours. His idea of a teleological order in the

¹⁴ Cf. the article of Christoph Strohm in this volume.

¹⁵ Eberhard Schockenhoff, “Stärken und innere Grenzen. Wie leistungsfähig sind naturrechtliche Ansätze in der Ethik?” in *Herder Korrespondenz* 62 (2008): 239.

¹⁶ John Courtney Murray, *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960), 109. Cf. to the following Stephen J. Pope, “Natural Law and Christian Ethics,” in *The Cambridge Companion to Christian Ethics*, ed. Robin Gill (Cambridge: Cambridge University Press, 2001), 88.

¹⁷ Murray, *We Hold*, 327–8.

world, set up by God, is not a “natural” assumption that all human beings, that also nonreligious people share. Furthermore the concept of a God who as eternal Reason is ordering the world is controversial among Christians; the reality of incomprehensible suffering in this world contradicts the idea that everything in this world follows an eternal order which we can understand and from which we can deduce moral laws.

During the past few decades, there has also been a development in catholic theology which weakened natural law theory and argued only with common reason. Josef Fuchs for example gives up the concept of natural law and instead considers that it is the *human* responsibility “to *investigate* what can and must count as a conviction” in ethical questions. “When . . . nature-creation does speak to us, it tells us only what it is and how it functions on its own. . . . the Creator shows us what is divinely willed to exist, and how it functions, but not [!] how the Creator wills the human being qua person to use this existing reality.”¹⁸ Thus Fuchs claims that there is no possibility to proceed from “is” to “ought,” from observation of nature to moral obligations.

In his encyclical *Veritatis Splendor* (VS) from 1993, pope John Paul II responded to this critique of natural law theory. He argued for the existence of “a specific and determined moral content, universally valid and permanent” of which God is the author (VS §§ 36–37). Thus human autonomy can *not* be understood as having “a freedom which creates moral norms, on the basis of historical contingencies or the diversity of societies and cultures” (VS 40). Instead, “. . . man, by the use of reason, participates in the eternal law, which it is not for him to establish” (VS §36), but part of God’s providence. “Law must therefore be considered an expression of divine wisdom.” (VS §41)

Almost similarly David McIlroy argues for a theological version of naturally given moral law because it “establishes the justice of God, and thereby provides a criterion by which both human beings and therefore by extension human legal regimes may be judged. . . . If the essentials of the moral order really are self-evident, then God is justified in condemning all violations of them.”¹⁹

2. Renewed Protestant Interest

Mostly because of Karl Barth’s critique it has until recently been almost a consensus in protestant theology that natural law is merely a catholic concept and that protestant theology has to be critical of it. The fact that

¹⁸ Josef Fuchs, *Moral Demands and Personal Obligations* (Washington, DC: Georgetown University Press, 1993), 55, 100 (my emphasis).

¹⁹ David McIlroy, “What’s at Stake in Natural Law?” in *New Blackfriars* 89 (2008): 509–10.

catholic encyclicals – by claiming that certain things contradict human nature – not only argued for just wages or duties of solidarity, but also against dueling, communism, divorce, contraception, or in vitro fertilization, nurtured the protestant suspicion against natural law. The question of how Christian ethics and naturally given moral laws relate has become the litmus test of protestant ethics.²⁰ The idea of naturally given moral laws was seen as devaluing the exclusivity of the revelation in Christ, in whom exclusively the nature of human beings can be seen. Helmut Thielicke for example notices strictly: “God’s Law cannot be known this way [i.e. by nature],” for “there is, on the level of natural cognition, i.e., apart from the revelation of the one man Jesus Christ (*ecce homo*), no way of knowing the nature of man.”²¹ The relation between God and man which can only be known by faith defines what the nature of man is. Furthermore natural law theory is seen as “overly optimistic about the human condition” and “does not take sin seriously,”²² which darkens the human capacity of recognition and thus hinders human beings to really acknowledge how they should live. Finally natural law theory ignores the difference between “the natural imperative” and “the radicalness of the Law of God”²³ which challenges human beings much more strongly than supposedly common insights about morality.

Nevertheless there has also been a re-consideration of natural law theories in Protestantism in recent years, especially since 1990.²⁴ Several reasons can be given for this: On the one hand there is the search for a justification of universal human rights and the attempt to reject the notion that human rights as they are formulated e.g. in the UN declaration are not simply Western ideas but are valid for all human beings worldwide.

On the other hand and especially in the USA, there is the new need for a foundation of a theological ethics as it can be found among certain US-American Evangelicals who want to impose Christian convictions on society as a whole and want to apply God’s law to modern pluralistic society in a direct way. They want to work with a natural law theory which includes the assumption “that everyone knows God and has a moral conscience, at least at some level” and that in public discourse, therefore, Christians “can appeal to what people already know deep down.”²⁵ The new interest of Evangelical Protestantism in politics, which started as a reaction to the Su-

²⁰ Cf. Peter Bubmann, “Naturrecht und christliche Ethik,” *Zeitschrift für Evangelische Ethik* 37 (1993): 267.

²¹ Helmut Thielicke, *Theological Ethics*, vol. 1, trans. William H. Lazareth, (Philadelphia: Fortress, 1966), 420–1.

²² Braaten, “A Response,” in *A Perserving Grace: Protestants, Catholics, and Natural Law*, ed. Michael Cromartie, 34–5.

²³ Thielicke, *Theological Ethics*, 1:383.

²⁴ Cf. Grabill, *Rediscovering*, 6 with the literature mentioned there.

²⁵ William Edgar, “A Response,” in *A Perserving Grace*, 129.

preme Court's prohibition of prayer and Bible readings in public schools in the 1960s and the Court's decision in 1973 about a constitutional right to abortion, forced Protestants to think anew about foundational questions of theological ethics.

At the same time, these Protestants "find themselves in dialogue with Catholics, with whom they share many common interests in matters of culture and politics – interests that would seem amendable to natural law discussion."²⁶ Thus it is also the ecumenical dialogue which demands for a new openness to the topic.

Some of these new protestant concepts argue that it is not enough to "baptize" secular concepts of natural law but that it is instead necessary to return the natural law argument "to its theological base."²⁷ They disagree with the liberal assumption that there is a some neutral common ground for public discourse in which common positions are achieved by argument. The return to a theological natural law theory in their view helps the church take a stance against a merely relative morality, a mere situation ethics, with "only relative obligations, imposed by the conventions of a particular society."²⁸

III. Is It Necessary to Assume That Naturally Given Moral Laws Exist?

The assumption of naturally given moral laws has the appeal of being convincing to everybody, not dependent on any distinct worldview, universal and absolute (unconditional) and thus being useful for grounding and shaping morality. The defenders of *naturally given*²⁹ moral laws search for a constant obligation in the face of the *cultural* diversity of *positive* law traditions.

1. *The Cultural Shape of "Nature"*

What that "nature" is from which natural moral laws can be derived, is not as obvious as one might assume. When we consider the use of naturally given moral laws, we recognize that throughout human history very different concepts of human nature were developed. Some argued that it is unnatural for some human races to be free but natural for them to be slaves. Others said that it is unnatural for human beings to live in same sex rela-

²⁶ Hittinger, *The First Grace*, 34.

²⁷ Braaten, "A Response," 34–5.

²⁸ John Macquarrie, *Three Issues in Ethics* (New York: Harper and Row, 1970), 238.

²⁹ The following comments refer only to concepts of naturally given moral laws as defined above (see (1)–(4) at the beginning of this article).

tions; this is immoral and should be punished. To put it precisely: What is “natural” is culturally shaped. This is even true for something as basic, at first sight, as the right to property; some might claim that the idea that human beings have the right to property is a human constant; human beings always used this idea – even when for example only white men had the right to have property. But I would argue that it is a substantial difference in regard to this right if only white men have that right (and other human beings don’t) or if all human beings have it; thus it is not an anthropological constant.

We could also discover the cultural dependence in the use of natural moral law in the Third Reich. Thus “naturally given moral law” is a cultural product as well. But contrary to concepts of culturally created moral laws which acknowledge their cultural foundation, concepts of naturally given moral laws hide it and thus conceal their true character.

The ambivalence of the content of naturally given moral laws throughout human history renders problematic an argument like “that natural moral laws are useful just shows that they are given.” This usefulness is culturally relative as well. What people at a certain time thought to be useful we now think to be no longer acceptable. Accordingly there can’t be any corresponding unchangeable “being given” of certain moral laws.

2. Contradictory Aims of Assuming a Naturally Given Moral Law

Furthermore we discovered above that current arguments for naturally given moral laws have quite different expectations in regard to its usefulness. Some theologians hope that because of their rational character independent of faith, they help to enter into a dialogue with secular society and with people from other religions; so they could help to achieve a broad moral consensus in society. Because they refer to the deepest moral aspirations of mankind, they could also create a link between religion and morality. Others argue the opposite that their usefulness lies in their non-secular, but purely theological identity; they show God’s authority and reign over the world and the universality of his claims. Because these universal claims are reflected in naturally given moral laws imprinted in all humans they can in a justified manner be imposed on society as a whole. While some see the existence of naturally given moral laws as the guarantee against ethical relativism and against the dependency of ethics on historical and cultural contingencies, others understand naturally given moral law only as a “touchstone” (Macquarrie) for determining the justness of current laws and expect its concrete shape to be dynamic.³⁰

³⁰ Cf. Tanner, *Ethik*, 52.

We can summarize this with stating that naturally given moral law *should* exist for obviously quite contradictory aims. This result, unfortunately, does not give support to the thesis that they *do* exist.

3. Not To Assume Naturally Given Moral Laws Does Not Lead to Ethical Relativism

Many argue for naturally given moral laws because they are expected to be effective against an ethical relativism which is thought to arise if we understand moral laws as invented and not as discovered. The discussion in the natural sciences if human beings discover laws of nature or make them up thus is repeated here in an analogous way. The important difference to the discussion in the natural sciences seems to lie in this: Nature (very probably) will function in accordance to physical laws in both cases; whether we understand laws of physical nature as made up or as given does not make a difference to the “behavior” of nature, only to our concept of nature. Yet in the moral realm those who make up (or discover) the laws are the same who obey the laws. Thus how they understand laws will (very probably) have a consequence for how they are obeyed. The suspicion is: If the content of moral laws is made up by human beings then they are not as binding as concrete laws given to human beings because they could also be made up differently. Given laws seem to have authority, invented laws seems to be merely relative. Is this true?

Let’s have a closer look at the two *functions* Luther thought natural moral law has, in convincing human beings of their sin on the one hand and in securing the political and societal order of the world on the other. For the reformers the decisive question of moral laws was not their *origin* (*given or set up*) but their *function*.³¹ Can these functions be substituted?

Firstly, for the function of convincing human beings of their sin – and showing them their need for salvation – we don’t necessarily need the idea of natural moral law. Barth argued that the *gospel* is the way to make people aware of their sin. Human beings become aware of their sin by the encounter with the *gospel*. For if they become aware how comprehensive God’s grace is then they realize how grave their sin must have been and how little their former life has been in conformity with the grace of God. The benefit of this concept: If it is the *gospel* which makes people aware of their sin – and not the law – then the focus of the church’s preaching is on God’s love to the world and not on the sins of the world.

Secondly, for the political realm we don’t necessarily need the idea of naturally given moral laws. Of course, to argue that moral laws are already given is one way to try to bind human beings to morality; the *givenness* of

³¹ Cf. Martin Honecker, “Grundwerte und christliches Ethos,” in *Sozialethik zwischen Tradition und Vernunft* (Tübingen: Mohr, 1977), 154.

the laws then guarantees their authority. But whenever you argue that *reason* is the means to discover these laws – and Thomas, Luther and Melancthon did – then the insight is included that these laws are *reasonable*. From this follows that reason can *convince itself* that these laws should be valid. That human beings can discover these laws by reason means that they can *convince* themselves and others that the human community is better off by living in accordance to these moral laws.

Thus human beings would also give themselves these laws if they hadn't been given. The idea of their givenness becomes superfluous. The argument that they are given by nature or by God is not necessary any more. If, for example, they can convince themselves that certain norms are "politically better" then it doesn't make any difference in regard to their authority to add that these norms are also "given by God." They can also be understood as *set up* by humans. Their *persuasiveness* guarantees their authority. It might even become dangerous to add that these norms are also "given by God" because this could seduce people to simply follow them out of fear of punishment but not out of their inner conviction.³² They would then do things without wanting to do them from the bottom of their heart.

If instead we think of moral laws as set up by humans, then we treat human beings as subjects who have come of age. Human beings should do things not because they are commanded to do so but because they consider it to be right (i.e. useful, just, responsible etc.) to do so. Human beings should be treated as individuals who can convince themselves that certain things should be done by them. Any argument like: We don't have enough reasons for this ethical concept, yet we know that it is set up by God, uses God as a stop-gap for missing ethical arguments.

What is the criterion for the persuasiveness of moral laws? The German philosopher Jürgen Habermas has argued that the only criterion for this is the process of communication. Human beings have to argue with each other as long as necessary to reach a consensus about the best morality and the best moral laws. When all agree to this then it has become binding. Only those ethical convictions can become norms which can find (or could find) the consensus of all persons affected.³³ This is not a morality grounded in relativity, it is a morality grounded in equal relations. Superfluous to mention that there is an important analogy between this and the Christian message of every human being as a beloved creature of God.

³² Cf. Wang's paper on the difference of Law and Li in this volume.

³³ Cf. Jürgen Habermas, "Diskursethik: Notizen zu einem Begründungsprogramm," in *Moralbewußtsein und kommunikatives Handeln* (Frankfurt: Suhrkamp, 1983), 103.