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## Natural Law in Pope Benedict's Thought<sup>2</sup>

This paper aims to show that there is a substantial teaching of natural law in the work of Joseph Ratzinger, the late Pope Benedict XVI. Benedict has a rather detailed and complex oeuvre about the law, collected in Pope Benedict XVI's Legal Thought. A Dialogue on the Foundation of Law, edited by Marta Cartabia and Andrea Simoncini (CARTABIA–SIMONCINI 2015). Although it is impossible to give a detailed account of that teaching here, I would like to show that the pope has a detailed teaching about Natural Law. In what follows I hope to substantiate four points beyond the simple claim that there is such a teaching in this oeuvre. The first one is that Ratzinger offers us a clear distinguishing mark, to separate positive law from natural law. Secondly, that this natural law teaching closely links to the Bible and the Catholic Catechism. Thirdly, that it connects to our moral conscience. And finally, that Benedict connects the notion to key concepts of his time, human dignity, introduced in the German Grundgesetz after WW2, and human rights, the key concept of the United Nations, taken over, among others, from Jacques Maritain's relevant ideas.

The paper will use the following texts written by Ratzinger: Address to Members of the International Theological Commission (2007, AM), Address to the Participants in the International Congress on Natural Moral Law (2007, AP), Caritas in Veritate (2009, CV), The Listening Heart, Reflections on the Foundations of Law, Address to the Reichstag (2011, AR). Certainly, there would be a number of other texts, where the author touches upon the problem of natural law, but for the sake of the clarity of the argument, I choose to select these four ones for further examination.

Let us start with the last point above, the relationship between positive law and natural law, with the help of AR.

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## Positive Law and Natural Law

To talk about natural law requires a certain courage, claims Benedict, because the mainstream theory of law stigmatises this terminology, claiming that it is based on an exclusively Catholic understanding of law. “The idea of natural law is today viewed as a specifically Catholic doctrine, not worth bringing into the discussion in a non-Catholic environment, so that one feels almost ashamed even to mention the term” (AR). This is because the rather radical positivist view of the law propagated by Hans Kelsen, came to become the dominant voice of legal theory. In this framework, “an ‘ought’ can never follow from an ‘is’, because the two are situated on completely different planes”. Behind this conception, and the radical separation of the two planes, is a novel understanding of nature, based on an account of the objective world, in the rather reductive language of the ideology of the natural sciences. This description takes nature as “an aggregate of objective data linked together in terms of cause and effect”.<sup>3</sup>

The courage of Benedict is that he provokes and challenges this understanding of nature. In fact, Benedict positions himself in direct opposition to the Kelsenian account of the objective world. Or, to be more precise, he is able to show an internal contradiction in the oeuvre of the Austrian scholar. As he sees it, the late Kelsen realised that one cannot distinguish reason and nature the radical way he used to do. “Let us come back to the fundamental concepts of nature and reason, from which we set out. The great proponent of legal positivism, Kelsen, at the age of 84 – in 1965 – abandoned the dualism of ‘is’ and ‘ought’” (AR). Benedict does not give evidence for this claim, but he seems to imply that the late Kelsen accepts the Kantian anthropology, according to which the human being is nature and reason at the same time: “Man is not merely self-creating freedom. Man does not create himself. He is intellect and will, but he is also nature, and his will is rightly ordered if he respects his nature” (AR). In Benedict’s interpretation, Kelsen cannot help but to accept this anthropological insight, and if that is accepted, adds Benedict, one cannot easily stop without also accepting the fact that this will in nature, like it or not, lead us to reflect on the intention of a God.

In order to substantiate this point, Benedict has some harsh words criticising not simply the substance of a positivist kind of thinking, but also its tendency to present all alternatives as invalid or insufficient. This criticism is specifically aimed at in Europe. It is here emphatically true that lawyers claim that

<sup>3</sup> This is an expression used in WALDSTEIN 2010.

a positivist *Weltanschauung* is the only legitimate basis of the law. A natural science-based positivism seems to be in a hegemonic situation, dispensing with any and all alternatives. While cultures are usually characterised by a diversity of perspectives, and Europe especially was a hotbed of different and competing explanations of the world, positivism does what it accused the Church to do: it tries to monopolise the right to determine the norms of acceptability. Positivism wants to have the exclusive right to say what is legitimate, and it wants to say that the only source of legitimacy is itself.

Culture is a wide and colourful tapestry, which is turned into a black-and-white and narrow one by this self-understanding of positivism about its own role within Europe. This claim of exclusivity threatens to demolish variety within culture, which requires freedom of thought and the free choice between different ways of life and forms of thought. The arrogance of positivism may cause a spiritual vacuum, which may lead to the spread of unwanted and unwelcome “extremist and radical movements” (AR).

So variety is crucial within cultures – and also among them. Variety, however, of a culture, or of cultures should not mean divergence or disintegration. In fact, humans need within cultures and even among cultures, a kind of convergence. Benedict calls it “ethical convergence”. The readiness for this convergence is there in all of us, the consequence of our common human nature: “In all cultures there are examples of ethical convergence, some isolated, some interrelated, as an expression of the one human nature, willed by the Creator; the tradition of ethical wisdom knows this as the natural law” (CV par. 59). In the sense Benedict refers to it, natural law is the expression of the one human nature, and it consists of examples of ethical convergence. Benedict also identifies natural law as “universal moral law”. He finds it universal in the sense that it appears in all different cultures, due to the common human nature of members of different human communities. Of course, Western, multicultural societies represent a challenge in this sense, too. They, too, however, have the preconditions to enable the operation of natural law: “The multi-faceted pluralism of cultural diversity does not detach itself from the common quest for truth, goodness and God” (CV par. 59). Neither does cultural diversity, Benedict claims, exclude the possibility of a common quest for truth. Even a secular culture does not detach itself from the common quest for truth (CV par. 59). To be sure, Benedict makes use of another formulation of natural law, when he refers to “the law etched on human hearts” (CV par. 59). This is, of course, a direct reference to the text of the Bible: “the law is written on their hearts” (Roman 2:15) or, with

the words of God: “I will put my laws on their hearts, and write them on their minds” (Hebrew 10:16). This formulation of natural law does not represent it as something external to humans, as a supernatural control over human behaviour, but as an internal drive, something close – but not quite similar – to our present day concept of conscience – “...while their conscience also bears witness...” (Roman 2:15). While conscience is closely linked to a modern understanding of the human personality, or even individualism, the Biblical law written on the hearts of people is not dependent on an anthropology of individualism. On the contrary: this voice helps to bring one closer to the other, by teaching to take into account the other’s perspective.<sup>4</sup> This is why Benedict says: “Human freedom is always a freedom shared with others [...] the harmony of freedom can be found only in what is common to all” (AP).

The major point in importing the external concept into the heart and mind of the human being is not at all subjectivism, or relativism. Rather, to ensure that one’s final judgement should not be simply determined by cultural contexts, but based on the individual’s own responsibility. This move makes it, indeed, “a sound basis for all cultural, religious and political dialogue” (CV, par. 59). Benedict’s view is crucial, in this respect, as it opens up the concept of natural law, beyond the truth of philosophy and the God of theology, to cultural and political issues, and allows it to thrive in rather different local cultures, as well.

The theme of the internalised natural law, the law written on the hearts and minds of people, brings up the question of the relationship between heart and mind, if you like, that of “fides” and “ratio”.<sup>5</sup> The crucial point here, as for John Paul II, for Benedict XVI is the harmonisation of the two sources of knowledge, instead of the conflict between them, traditionally supposed: “Reason and faith work hand in hand to demonstrate to us what is good, provided we want to see it” (CV par. 75). One can translate this statement as a defence of the harmonious cooperation of faith and reason. But it also reveals a certain tendency towards disharmony inbuilt in human nature. Natural law, in this respect, helps to arrive at a proper balance between opposing inclinations. In fact, Benedict tries to connect the listening heart to reason, “open to the language of being” (AR). It is this crucial connection, which guarantees that fides and ratio can arrive to the same conclusions, which he found endangered in Europe, after the Second World

<sup>4</sup> Benedict refers to the work of WALDSTEIN 2010.

<sup>5</sup> See the *Encyclical Letter Fides et Ratio of the Supreme Pontiff* by John Paul II (1998) to the Bishops of the Catholic Church on the Relationship between Faith and Reason.

War.<sup>6</sup> The “positivist approach to nature and reason” does not allow to make the connection between heart and reason. This is why we find in this framework ethics and religion assigned to the subjective field. With the establishment of the monopoly of the positivist account of the law Benedict diagnoses in Europe a state of “culturelessness” (“Kulturlosigkeit”).

What is missing is a consideration of the external world, human and natural. Positivism functions like a “concrete bunker with no windows” (AR). It does not accept the fact of the external world, or does not take it into account. Benedict wants us to turn towards nature – hence to natural law. Yet nature is not only outside us, it is also inside us. If we carefully consider nature as it manifests itself in us, this will help us avoid subjectivism. For we find objective reason in it, as in the external world of nature. We have to regain that perspective which looks at the inside and the outside of our being as a continuum, with its objective reason. Once we are ready to do so, we can regain the most valuable treasure of our culture, our religious belief in a Creator God. In fact, it was kept intact until the drawing of the Declaration on Human Rights and the German Basic Law. Our well-defined sense of justice grew up in “the encounter between Jerusalem, Athens and Rome”, in other words, “the encounter between Israel’s monotheism, the philosophical reason of the Greeks and Roman law”. These are all crucial pillars of “the inner identity of Europe” (AR). Without the listening heart of King Solomon, we are still unable “to discern between good and evil” (AR). In other words, without the connection between reason and heart, external and internal nature, we cannot “establish true law, to serve justice and peace” (AR).

### **The Bible and Natural Law**

Benedict addressed this issue in particular in his Address to Members of the International Theological Commission.<sup>7</sup> As he put it: “I would like here to reflect in a special way on the theme of natural moral law.” The occasion for these reflections was the meeting of the international theological commission. The effort of the commission was part of the project to “justify and describe the foundations of a universal ethic that is part of the great patrimony of human

<sup>6</sup> For Benedict’s late views on faith and reason see BENEDICT XVI 2006. Here, too, he wishes that “we overcome the self-imposed limitation of reason to the empirically falsifiable”.

<sup>7</sup> It took place in the Hall of Popes, on Friday, 5 October 2007.

knowledge” (AM).<sup>8</sup> Yet, although he finds this topic universal, and not “a theme of an exclusively or mainly denominational kind”, he focuses on its Christian understanding, and in particular, on its explanation in the Catechism of the Catholic Church, which “sums up well the central content of the doctrine on natural moral law” (AM). The Catechism hinges partly upon one’s belief in God (this is a simplification of Benedict’s own terminology), and “upon the sense that the other is one’s equal” (AM). Here we arrive at a major point: Benedict claims that there is an implanted sense operating in us, which makes it possible for us to see that the others are our equals. Benedict has a long quote, where the Catechism explains what natural law means. With it, he wants to show two things. First, that what is natural is not necessarily outside of us. On the contrary, nature is also in us, and we are part of nature. So when we say that the moral law is in us, we do not say anything else than when we say the moral law is natural, “a norm inherent in human nature itself” (AM). Secondly, as it stands, this moral natural law, being part of the universal order, which is open to rational enquiry, this moral law is open to rational enquiry. Which fact prepares the ground for the rational dialogue of the believer and the “civil and secular society” (AM).

In the same address, Benedict achieves something else, as well. He shows that in contrast with the prevailing opinion, the key values of the law should not be taken as open to majoritarian choice. While democracy has a very powerful legitimacy in the contemporary Western world, Benedict daringly claims that there are certain crucial social-political-legal values, which should not be made the subject of majority votes. Votes on those issues might result in ethical relativism. Now ethical relativism represents a real danger, because it could question such unalienable basic rights as “the fundamental requirements of human dignity, of human life, of the family situation, of a fair social order” (AM). In this sentence we find not only a reference to one of the central concepts of the social teaching of the church (i.e. human dignity), but it reveals the encyclical’s connection with the key value of the basic document of the United Nations, The Universal Declaration of Human Rights. Now this document was born as an effective response to the shameful laws that the Nazi party in Germany accepted in a formally legitimate manner, after its victory in the elections of 1933. This is why Benedict’s proposal that a natural moral law should exercise a controlling power over positive law sounds so convincing: “No law devised by

<sup>8</sup> See my own overview of the possibility of a universal morality in HÖRCHER et al. 2015.

human beings can subvert the law that the Creator has engraved on the human heart without the indispensable foundations of society itself being dramatically affected" (AM). In this line of thought Benedict achieves to identify "the law that the Creator has engraved on the human heart" and what he calls "collective conscience" (AM). In this way, Benedict not only defends the moral foundations of a Christian religious view of the world and human life, but also defends "the foundations of the democratic order" against the voluntarism and relativism that might come from a simple positivistic logic of majority vote. His address is also an encouragement of moral activism for all well-informed citizens, irrespective of their ideological orientation, to "create the necessary condition for the inalienable value of the natural moral law in culture and in civil and political society to be fully understood" (AM). This way the pope reaches out to the world beyond the Church, finding the means to identify the moral foundations, as prerequisites of the democratic order. He also urges not only Christians, but also all those who want to ensure the survival of democratic regimes to return to what he calls the moral natural law as the safeguard of such a regime.

### **Natural Law as moral conscience**

Benedict very consciously tried to build up the doctrinal foundations of an up-to-date concept of natural law during his reign. It is to push forward this issue that he called together the International Congress on Natural Moral Law.<sup>9</sup> It took place in the same year as the document we dealt with above, in 2007. The two documents read together show the dedication and devotion of the pope for this cause.

As we see from the concept he uses to refer to *lex naturalis* (natural moral law), the pope's ambition is to fuse the concepts of moral law and natural law.<sup>10</sup> His further invention is to connect this theme with the problem of natural and environmental preservation. He is aware of the anxiety among the younger generations caused by the destruction of nature. He attributes the destruction to a misconception of nature, "a concept of nature that is no longer metaphysical, but only empirical" (AP). He means that contemporary humanity disregards

<sup>9</sup> See the Address of His Holiness Benedict XVI to the Participants in the International Congress of Natural Moral Law, Clementine Hall, Monday, 12 February 2007.

<sup>10</sup> The term is translated into Italian and German as *legge morale naturale*, *Natürliche Sittengesetz*.

the inherently normative dimension of nature. This failure of recognising the normative dimension is the more severe as our own intellectual makeup enables us to sense that dimension. Benedict refers to the Apostle Paul, who famously refers to the law written on the heart of man.<sup>11</sup>

Among the basic virtues, which determine our way of life, Benedict mentions the following ones: to do good, to respect human life, to seek the truth and the freedom shared with others. This last point is particularly remarkable. Freedom is most often seen as belonging to the individual, while for Benedict, the fact that you can share it with others is crucial to make sense of freedom. He talks about the “harmony” of freedom, which he identifies as “what is common to all: the truth of the human being, the fundamental message of being itself, exactly the *lex naturalis*”.

But why exactly should the *lex naturalis* consist of these values? Benedict proposes that the above values, together with such other ones, as justice and solidarity, are “unbreakable and contingent” norms, “norms that precede any human law”. In this sense, no legislator or State can override them.

But how do we know them, and how are we sure that they are indeed so valuable? It is in this context that moral conscience appears in Benedict’s argument. As it is inscribed on our heart, it is indeed our first guide to judge values. This is something born with us, but we have a responsibility to cultivate it, in order to allow its maturation. Benedict talks about a “progress of the moral conscience”, a very specific understanding of the progress of human character.

To be sure, an argument to lean on one’s own moral sentiment seems to be a slippery slope towards subjectivism and relativism. It is not so in Benedict’s own line of argument. For him, if the moral law is written on the human being’s heart, it means that it is part and parcel of human nature. In other words, it is there, factually, and even natural scientists can study it. His example is marriage. The institution of marriage gets its support from the confirmation of divine law, which makes it, as *Gaudium et Spes* makes it clear, a “sacred bond”. On the other hand, as such, it is not simply dependent on “human decision”. As members of our communities we have got our responsibility, which cannot be eliminated: we are responsible for our actions, and for others who depend on us. Interestingly, Benedict adds that “scientists must also contribute to help understand the depth

<sup>11</sup> “...the requirements of the law are written on their hearts, their consciences also bearing witness, and their thoughts sometimes accusing them and at other times even defending them” (Romans 2: 14–15).



of our responsibility for man". Moral conscience is not simply a free choice, but something which is part of our nature, of which we cannot get rid, and which offers us a direct link to the values which serve human needs and guarantee the thriving of our community.

### **Natural Law, human dignity, human rights**

If a mistaken notion of the relationship between Natural Law and moral conscience might lead to a sort of moral relativism, we can commit a mistake on the opposite pole as well. Natural law is by its very definition universal. But as soon as we suppose that there is a universal moral standard, we seem to destroy the particular mores and traditions on which our different communities and societies are built. How can Natural Law fulfil its function, to provide a universal standard, without questioning and destroying the local traditions?

In this section we look at Pope Benedict's *Address to Members of the International Theological Commission*. This brief reflection from 2007 makes an effort to think about natural law in the context of what Benedict calls "the great patrimony of human knowledge". Let us reflect on the notion of patrimony (in the German language version "Erbe") for a moment. The concept comes from Roman Law, meaning the heritage or donation coming from one's father. While obviously when Benedict calls Natural Law as part of the great patrimony of human knowledge, he refers to its God-given nature. Yet equally importantly, he identifies the whole human kind as inheritor of this heritage, which means that it is indeed part of a "universal ethic", which can find its place in all forms of human culture, even if "the doctrine of natural moral law is illuminated and developed to the full in the light of Christian revelation".

A further move of his argument, beyond identifying the whole of humanity as the inheritor of that patrimony, to which Natural Law belongs, is to identify Natural Law with human reason as such. Rationality is not culture specific, as far as its basic notions and operations are concerned. Human rationality by definition belongs to all humans. It is, just like moral conscience, a "norm inherent in human nature". It means that rationality is "accessible to any rational creature", irrespective of their particular culture and religion or disbelief. What is more, it is not only accessible to rational beings, but it is "inherent in human nature".

It is at this point that Pope Benedict brings in his most surprising, but also most promising argument. He connects Natural Law with two of the most widely

held political-legal ideas of his age, the concepts of human dignity and human rights. The connection is this. Human dignity and the basic human rights belong to the “indispensable foundations of society”. They need to be protected. Natural Law is there to guarantee them. If any man-made law questioned the content or legitimacy of Natural Law, the mentioned function of guaranteeing these indispensable foundations, including human dignity and human rights, would be endangered. Further on, natural law helps people to live in freedom, and protects them from “ideological manipulation” or “arbitrary [...] power”. He supposes the existence of a “collective conscience”, without which a “crisis of human civilization” is inevitable. This point certainly refers to the totalitarian regimes of the 20<sup>th</sup> century, including both Nazism and Communism. The German *Grundgesetz* and the *Universal Declaration of Human Rights* both reacted on WW2, the responsibility of the Nazi regime. On the other hand, Pope Benedict was John Paul II’s successor, and the two had an intimate friendship, which also opened Benedict’s eyes to the destruction caused by Communism. By connecting natural law with human dignity and the human rights, Pope Benedict offered a platform on which all the different cultures and religious or non-religious denominations could find a common ground. As he puts it: “With this doctrine the foundations are laid to enter into dialogue with all people of good will.” In order to achieve this desirable goal, he is ready to make one more concession, and talks about the vista opened by this dialogue as “the advance of individuals and society on the path of authentic progress”.

## Conclusion

This paper argued that Pope Benedict XVI had an elaborate view on Natural Law, which tried to make it defensible in the context of contemporary secularism, as well. It presented the following four points. First, that in spite of the contemporary preference for positive law, in fact there are certain, unalienable barriers in front of human legislation, and those barriers are set up by Natural Law. Secondly, it showed that according to Pope Benedict Natural Law is part of the teachings of the Bible, and therefore that it can be derived from our revealed religion. Thirdly, it showed that on the other hand it is revealed by every individual’s moral conscience – while also referring to the existence of a collective conscience, too. Fourthly, it showed that the fact that Natural Law practically operates as an individual’s moral conscience does not make it subjective or

relativistic. On the contrary, it relies on the rational part of every human being, which leads logically to the claim that certain things are rationally excluded from what is morally right. This way Benedict connects natural law with human values, especially the moral demands of human dignity and the establishment of basic human rights.

It is regrettable that despite its nuanced and dialogue-opening stance, Pope Benedict's arguments in defence of Natural Law failed to convince or at least to encourage reflections on it by most believers of non-Christian religions or non-believers.

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