

An integral Natural Law for the global Commons

Un derecho natural integral para los bienes del patrimonio mundial

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Abstract: Integral natural law is a way forward, a “green” approach, that reinvigorates the natural law tradition by providing an ethical foundation, common vocabulary, and shared vision for systems of governance for the whole global commons by integrating Thomistic natural law principles with environmental ethics, legal principles, and stratagems.

The introduction shows that Pope John Paul II originally crafted the term “human ecology” to underscore the plight of vulnerable human beings given less consideration at law than flora and fauna. Part One then explains that nature is normative in environmental ethics. Environmental ethics moves from the *is* of the facts of nature to the *goods* that flourish those facts (their composition and telos) and then to our human *duty* to flourish and not wither those goods.

Part Two shows that human nature being a part of nature is, also, normative but that flora and fauna share only two of the six basic inclinations of human nature. They strive to continue in existence and to reproduce their own kind, but human beings must do so in a rational way and not contravene the other basic inclinations of human nature (to know truth, honor beauty, live in society as friends and make a gift of self in human work). Therefore, human nature deserves no less respect and legal consideration than flora and fauna, but even more.

Part Three suggests that environmental law principles – the public trust doctrines’ precautionary and natural use principles and the rights of nature paradigm – may be used to protect vulnerable human beings. For example, if courts may enjoin human activity that imperils the biodiversity of a species, then courts may also enjoin human interventions that threaten human biodiversity such as transgender ideology. If nature unable to speak for itself is recognized as enjoying legal personality and has guardians to speak on its behalf, then the legal personality of prenatal children unable to speak for themselves must also be recognized.

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Part Four critiques a false notion of human autonomy that posits human dignity rests on the freedom to create one's own values independent of human nature. Pope John Paul II notes that a "rightful autonomy", a "participated theonomy" respects the normative image of God inscribed deep within the human mind and heart. In conclusion, the speculative reason can, indeed, read normative values from "the book of nature" whereas the practical reason of children, poets, and mystics grasp immediately in a "visionary gleam" the "inscape" of God's normative designs in nature and human nature for systems of governance for the whole global commons and an integral human ecology.

Key Words: Natural law, environmental ethics, human nature, autonomy, rights of nature

Resumen: El derecho natural integral es un camino a seguir, un enfoque "verde" que revitaliza la tradición del derecho natural proporcionando un fundamento ético, un vocabulario común y una visión compartida de los sistemas de gobernanza para el conjunto de los bienes comunes mundiales mediante la integración de los principios tomistas del derecho natural con la ética medioambiental, los principios jurídicos y las estrategias.

La introducción muestra que el Papa Juan Pablo II acuñó originalmente el término "ecología humana" para subrayar la difícil situación de los seres humanos vulnerables a los que la ley presta menos atención que a la flora y la fauna. La primera parte explica que la naturaleza es normativa en la ética medioambiental. La ética medioambiental pasa de los hechos de la naturaleza a los bienes que hacen florecer esos hechos (su composición y telos) y luego a nuestro deber humano de hacer florecer y no marchitar esos bienes.

La segunda parte muestra que la naturaleza humana, al ser parte de la naturaleza, también es normativa, pero que la flora y la fauna solo comparten dos de las seis inclinaciones básicas de la naturaleza humana. Se esfuerzan por seguir existiendo y reproducir su propia especie, pero los seres humanos deben hacerlo de forma racional y no contravenir las otras inclinaciones básicas de la naturaleza humana (conocer la verdad, honrar la belleza, vivir en sociedad como amigos y hacer un don de sí mismo en el trabajo humano). Por tanto, la naturaleza humana no merece menos respeto y consideración jurídica que la flora y la fauna, sino incluso más.

La tercera parte sugiere que los principios del derecho ambiental -los principios de precaución y de uso natural de las doctrinas del fideicomiso público y el paradigma de los derechos de la naturaleza- pueden utilizarse para proteger a los seres humanos vulnerables. Por ejemplo, si los tribunales pueden prohibir actividades humanas que pongan en peligro la biodiversidad de una especie, también pueden prohibir intervenciones humanas que amenacen la biodiversidad humana, como la ideología transgénero. Si se reconoce que la naturale-

za incapaz de hablar por sí misma goza de personalidad jurídica y tiene tutores que hablan en su nombre, también debe reconocerse la personalidad jurídica de los niños prenatales incapaces de hablar por sí mismos.

La cuarta parte critica una falsa noción de autonomía humana que postula que la dignidad humana descansa en la libertad de crear valores propios independientes de la naturaleza humana. El Papa Juan Pablo II señala que una "legítima autonomía", una "teonomía participada" respeta la imagen normativa de Dios inscrita en lo más profundo de la mente y el corazón humanos. En conclusión, la razón especulativa puede, en efecto, leer los valores normativos del "libro de la naturaleza", mientras que la razón práctica de los niños, los poetas y los místicos capta inmediatamente en un "destello visionario" el "paisaje interior" de los designios normativos de Dios en la naturaleza y en la naturaleza humana para los sistemas de gobierno de todo el patrimonio común global y una ecología humana integral.

Palabras clave: Derecho natural, ética medioambiental, naturaleza humana, autonomía, derechos de la naturaleza.

Recibido: 30-6-23
Aceptado: 26-1-24

“What is needed... is an agreement on systems of governance for the whole range of so-called ‘global commons.’” – Pope Francis, *Laudato Si’*¹

1. Introduction

An integral natural law provides an ethical foundation and a common vocabulary for systems of governance for the global commons. This article distinguishes what is proper and just for the promotion of an ecology of nature and an integral human ecology from the perspective of Thomistic natural law jurisprudence.

Cardinal Jorge Maria Meja who worked with Pope John Paul II in drafting *Centesimus Annus*, recalls the genesis of the term “human ecology” to promote and defend the dignity of the human person and the integrity of marriage and family:

“When the encyclical [*Centesimus Annus*] was written it was well remembered that in ‘Sollicitudo rei socialis’ the theme of general ecology had been well developed from the theological and pastoral point of view. The Pope [John Paul II] insisted this time that this was very well and it was necessary to insist on the subject. But he himself suggested to extend it to what he called human ecology and which consisted in the respect and promotion of what is proper and necessary for the life of persons according to the demands of their nature. In that was included too, and especially, the family as a unit of man and woman with its own demands”².

Cardinal Meja’s recall of the crafting of the term would seem to be confirmed by a quick glance at the writings of John Paul II. The concept of “human ecology” entered the canon of Catholic social teaching in *Centesimus Annus* (1991) in between his encyclicals *Familiaris Consortio* (1981) and *Letter to Families (gratissimam sane, 1994)* and just before *Veritatis Splendor* (1993). Although it is beyond the scope of this article, suffice to say that the overriding concern of John Paul II to promote and defend marriage and family and the foundations of moral theology expressed in these encyclicals is transposed to a new key in the vibrant motif of “human ecology”.

¹ POPE FRANCIS, *Laudato Si’* (2015), n. 174 “What is needed, in effect, is an agreement on systems of governance for the whole range of so-called ‘global commons’”.

² J. AMBROZIC, citing J. M. MAJIA in “Human Ecology in the works of John Paul II and Benedict XVI”, *Aspects of Doctoral research at the Maryvale International Catholic Institute*, Vol. 3 ed. Andrew B. Morris, Cambridge Scholars Publishing, 202, pp. 180-236, 182.

This is not to say that John Paul II was unconcerned with the destruction of the natural environment, but he also wished to draw attention to the more serious destruction of the human environment and how the two are inseparably interrelated:

“In addition to the irrational destruction of the natural environment, we must also mention the more serious destruction of the *human environment*, something which is by no means receiving the attention it deserves. Although people are rightly worried — though much less than they should be — about preserving the natural habitats of the various animal species threatened with extinction, because they realize that each of these species makes its particular contribution to the balance of nature in general, too little effort is made to *safeguard the moral conditions for an authentic “human ecology”*. Not only has God given the earth to man, who must use it with respect for the original good purpose for which it was given to him, but man too is God’s gift to man. He must therefore respect the natural and moral structure with which he has been endowed”³.

John Paul II represents the family founded upon the marriage of man and woman open to procreation as the natural environment for human flourishing, an ecology that society must promote and defend:

“The first and fundamental structure for “human ecology” is the family, in which man receives his first formative ideas about truth and goodness, and learns what it means to love and to be loved, and thus what it actually means to be a person. Here we mean the *family founded on marriage*, in which the mutual gift of self by husband and wife creates an environment in which children can be born and develop their potentialities, become aware of their dignity and prepare to face their unique and individual destiny”⁴.

In his address to the Bundestag Pope Benedict XVI continued to develop the theme of human ecology insisting that “the Book of Nature is one and indivisible”⁵. In *Caritas in Veritate* he also emphasized the link between the spoilage of nature and the corruption of ethics: “If there

³ POPE JOHN PAUL II, *Centesimus Annus* (1991), n. 38 (emphasis in the text).

⁴ *Ibid.*, n. 39.

⁵ POPE BENEDICT XVI, “Address to the Bundestag”, Berlin, September 22, 2011. Note the similarity between the Book of Nature and the United Nations *Vienna Declaration and Programme of Action* (1993), part I, par. 5: “All human rights are universal, indivisible, and interrelated and interdependent”.

is a lack of respect for the right to life and to a natural death, if human conception, gestation and birth are made artificial, if human embryos are sacrificed to research, the conscience of society ends up losing the concept of human ecology and along with it, that of environmental ecology”⁶.

Pope Francis in his encyclical *Laudato Si'* also linked the deterioration of the natural environment with that of the human environment, the cry of vulnerable human beings with the cry of nature exploited: “When we fail to acknowledge as part of reality the worth of a poor person, a human embryo, a person with disabilities – to offer just a few examples – it becomes difficult to hear the cry of nature itself; everything is connected”⁷.

To hear and heed “the cry of nature” one must first recognize its normative status, otherwise this metaphor falls on deaf ears. The next section considers an environmental epistemology that allows one to hear the cry of nature and discern how to behave towards nature and towards human nature due to our primary obligation to honor God and, so, respect creation’s *telos* as a gift from God.

2. Nature is Normative: Environmental Epistemology

A long held cross-cutting, transversal Thomistic principle of ethics and morality is that nature is normative.⁸ Wounded and subject to futility, decay, and death due to the fall of our first parents, nature still provides the only sure path of law and a return to God. However, a dominant positivist conception of nature makes us blind and deaf so that we can no longer read the Book of Nature nor hear nature’s cry as we torture its *telos*. Exacerbating the situation, to even suggest that one learns moral truths from nature is considered by many as not simply erroneous but intellectually felonious, if you will, tantamount to a smuggling operation in value trafficking for political purposes:

⁶ POPE BENEDICT XVI, *Caritas in Veritate* (2009), n. 53.

⁷ POPE FRANCIS, *Laudato Si'*, n. 117.

⁸ However, in the mid to late twentieth century Germain Grisez and John Finnis collaborated to develop a jurisprudence in the natural law tradition referred to as “New Natural Law” that concedes nature is not normative but that objective moral norms are still knowable. They argue that the practical reason apprehends the first principles of morality directly, that is, not mediated through consideration of human nature by the speculative reason. In doing so they hope to allay the skepticism of deriving prescriptive moral norms from a descriptive analysis of nature. For an insightful defense of this philosophy of law, see R. P. GEORGE, “Recent Criticism of Natural Law Theory”, *The University of Chicago Law Review*, 55 (1988), pp. 1371-1429.

“[S]ince at least the nineteenth century, powerful voices –John Stuart Mill, Thomas Henry Huxley, Emile Zola– have insisted that there are no values in nature. Nature simply is; it takes a human act of imposition to projection to transmute that “is” into an “ought”. On this view, there is no legitimate inference that can be drawn from how things happen to be (equated with natural regularities) to how things should be (equated with human norms), from the facts of the natural to the values of the moral order. To try to draw such inferences is to commit what has come to be called the ‘naturalistic fallacy’ – a kind of convert smuggling operation in which cultural values are transferred to nature and nature’s authority is then called up to buttress those very same values. This sort to value trafficking can be politically consequential...”⁹.

Pope Benedict XVI in his address to the Bundestag explained that the rejection of nature as normative in favor of a so-called scientific functional understanding of nature is due to an opaque theory of knowledge that no longer sees nature as normative due to the supposed impossibility of drawing an “ought” from an “is” creates an epistemological cataract:

“The idea of natural law is today viewed as a specifically Catholic doctrine, not worth bringing into the discussion in a non-Catholic environment.... Fundamentally it is because the idea that an unbridgeable gulf exists between ‘is’ and ‘ought.’ An ‘ought’ can never follow from an ‘is’, because the two are situated on completely different planes. The reason for this is that in the meantime, the positivist understanding of nature has come to be almost universally accepted.... A positivist conception of nature as purely functional, as the natural sciences consider it to be, is incapable of producing any bridge to ethics and law, but once again yields only functional answers”¹⁰.

Mary Taylor comments that the “ruthless division of fact from value” has developed into an ideology that “does not merely deny that it can answer ultimate questions of value and meaning, but says that the questions themselves are either meaningless or unanswerable”¹¹.

The repercussions of an instrumental logic that disregards nature’s telos, Pope Benedict warned, has resulted in the instrumentalization of

⁹ L. DASTON, “The Naturalistic Fallacy is Modern”, *Isis*, 105 (2014), pp. 579-587, 579-580.

¹⁰ POPE BENEDICT XVI, “Address to the Bundestag”, September 22, 2011.

¹¹ M. TAYLOR, “A Deeper Ecology: A Catholic Vision of the Person in Nature”, *Communio* 38 (2011), p. 592.

human beings and a political instrumentalization of human society for special interests, not the common good: “It is not surprising that the same lack of reverence which blinds the instrumental logic of modernity to teleology in this ‘scientific’ approach to nature, also blinds the instrumental logic employed by political liberalism to a teleology in the human person and society”¹².

St. Paul explained that nature’s design leads to wonder and awe and a duty to honor the Creator unless one stultifies reason¹³. Pope John Paul II in *Centesimus Annus* explained that the wonder we experience in visible things of nature (facts) leads to reverence and awe (good/value) that impels us to comply with nature’s God-given message (duty) but first, he said, one must acquire clear vision, i.e., an “unselfish and aesthetic” perspective:

“In all this, one notes first the poverty or narrowness of man’s outlook, motivated as he is by a desire to possess things rather than to relate them to the truth, and lacking that disinterested, unselfish and aesthetic attitude that is born of wonder in the presence of being and of the beauty which enables one to see in visible things the message of the invisible God who created them”¹⁴.

This aesthetic perspective is an epistemological imperative in environmental ethics that transitions “from *is* to *good* and thence to *ought*”¹⁵. In his article “The Move from *Is* to *Good*”, John Nolt explains one may argue that from the attributes of a species (facts) one may discern the goods that flourish a species and from those goods that flourish a species one may conclude a moral duty to promote the goods of a species:

More generally, the class of such arguments can be characterized by the following schema:

All *F* has good (or value) *G* (*is* to *good*),

We ought to *V* whatever has *G* (*good* to *ought*),

We ought to *V* whatever has *F* (*is* to *ought*).

¹² POPE BENEDICT XVI, “Address to the Bundestag”, cit.

¹³ See *Rom* 1, 20.

¹⁴ POPE JOHN PAUL II, *Centesimus Annus*, n. 37.

¹⁵ H. ROLSTON, III, *Environmental Ethics: Duties to and Values in the Natural World*, Temple University Press, Philadelphia 1988, pp. 230-31, cited by J. NOLT, “The Move from *Is* to *Good*” in *Environmental Ethics*, Faculty Publications and Other works – Philosophy, 2009. http://trace.tennessee.edu/utk_philpubs/1, accessed 6/26/23.

Where *F* is some attribute that defines a class of natural entities, *G* is a good or value, and the variable *V* is to be replaced by a transitive verb specifying a moral attribute or action (e.g., ‘protect,’ ‘promote,’ ‘respect,’ ‘consider the consequences of our actions for’). Arguments of this form are common in the literatures of both environmental ethics and animal ethics – though, of course, not all arguments for environmental ethical principles have this form¹⁶.

Of course, an evaluative conclusion requires an evaluative premise otherwise “purely factual premises about the naturalistic features of things do not entail or even support evaluative conclusions”¹⁷. However, given the evaluative premise in environmental epistemology, Nolt concludes, the “form itself is valid. Any controversy must therefore lie with the premises”¹⁸. Thus, environmental ethics provides a “solution to Hume’s *is-ought* problem”, which is better understood as an *is to good* skepticism¹⁹.

Having addressed Hume’s *is to good/facts to value* skepticism, Nolt next considers *good to ought* skepticism. The gist of this objection is that “you can’t get an *ought* conclusion, even from assumptions about what is *good* (for some natural entity), unless you also assume an *ought* premise”²⁰. Nolt then considers three types of arguments that may meet the objection of deriving an *ought* from *good*: 1) Direct obligations to natural entities; 2) Indirect obligations to natural entities that follow from obligations to humans; and 3) Obligations to natural entities due to entities that are not natural, i.e., either “artifactual or *supernatural*”²¹.

Each of these three possible remedies for *good to ought* skepticism raise objections. He concludes saying, given the widespread consensus concerning the existence of a wise and benevolent God, obligations to God is the most appealing way to ground our obligations to nature. Why? Because “[s]uch a creator would, presumably, value the goods of entities that He or She has created, and that valuing could plausibly impose

¹⁶ J. NOLT, “The Move from *Is* to Good”, cit., pp. 135-154, 136.

¹⁷ “Moral Non-Naturalism”, in *Stanford Encyclopedia of Philosophy*, First published Feb1, 2002; substantive revision Aug. 21, 2019. Last visited 6/23/2023.

¹⁸ J. NOLT, “The Move from *Is* to Good”, cit., p. 136.

¹⁹ J. NOLT, “The Move from *Good* to *Ought*” in *Environmental Ethics*, 28 (2006), pp. 355-374, 358, 360.

²⁰ *Ibid.*, p. 360.

²¹ *Ibid.*, pp. 361-374, 373 (emphasis in the original).

obligation on us”²². As appealing as this approach may be, however, Nolt doubts that we can “establish the requisite theological assumptions”²³.

It appears that Nolte’s notion of god is Deistic, that is, god (as he says, “He or She”) is one being among other beings. Therefore, it is not surprising that Nolte despairs of valuing creation due to our obligation to honor its creator, a being different in degree but not in kind from ourselves. However, the foundational belief of JudeoChristian civilization is that God is not one being among other beings but exists from all eternity. He then creates in time and space all finite beings that he sustains in existence: “In the beginning God created the heaven and the earth”²⁴. The Apostles’ Creed affirms: “I believe in God the Father almighty, creator of heaven and earth”²⁵. Once Nolte’s categorical mistake about God’s nature is corrected, environmental ethics stipulates nature is normative.

1st Principle of an Integral Natural Law of Human Ecology – Nature is Normative

Nature is normative because one can reason from the facts of nature to the goodness of nature’s designs to a duty to flourish the goodness of nature’s designs.

3. Human Nature

Although Nolt specifically excludes anthropocentric goodness from his considerations of the goods of nature²⁶, divine revelation demands the contributions of a philosophy that extends the logic of nature’s normativity to the goods of human nature revealed fully in Jesus Christ and, therefore, to human nature:

“The Bible, and the New Testament in particular, contains texts and statements which have a genuinely ontological content. The inspired authors intended to formulate true statements, capable, that is, of expressing objective reality. It cannot be said that the Catholic tradition erred when it took certain texts of St.

²² *Ibid.*, p. 373.

²³ *Ibid.*

²⁴ *Genesis* 1, 1.

²⁵ The beginning of The Apostles Creed quoted in the *Catechism of the Catholic Church*, n. 198. The commentary of which goes on to explain that “This first affirmation of the Apostles’ Creed is also the most fundamental. the whole Creed speaks of God, and when it also speaks of man and of the world it does so in relation to God”.

²⁶ J. NOLT, *The Move from Is to Good*: “To keep the discussion manageable, I limit it primarily to *is-to-good* moves in which good *G* is conceived as nonanthropogenic”, cit., p. 137.

John and St. Paul to be statements about the very being of Christ. In seeking to understand and explain these statements, theology needs, therefore, the contribution of a philosophy which does not disavow the possibility of a knowledge which is objectively true, even if not perfect”²⁷.

Pope John Paul II explained that Christ not only reveals God to man, but he also “fully reveals man to himself”²⁸. Therefore, the divinity and anthropocentric goodness of the human nature of Christ, body and soul, provides the requisite theological assumptions and reveals not only the existence of a wise and benevolent God but, also, the normativity of human nature²⁹. Moreover, an environmental logic that supports the normativity of both nature and human nature may provide a common language with which to engage the modern world on matters of public policy ranging from climate change to eugenics.

Richard Neuhaus remarked that many thoughtful persons have attempted to articulate “a public philosophy” and “a common vocabulary and a shared vision” in order “to allow conflicting answers and discordant questions to be discussed within the bonds of civility and rationality”³⁰. He found intriguing the environmental movement’s interest in what is “natural” in so far as it might provide such a common vocabulary, shared vision, and opportunity to reconnect law and morality:

“The last twenty years has shown an enormous resurgence in the perception of the importance of the natural. In particular, one thinks of the environmental movement and ecological concerns. There is an awareness that things have certain connections of a causal nature built into the way they are. If these connections are disregarded or violated, very unhappy consequences will result. I think it is possible to develop this insight, in a way that I find

²⁷ JOHN PAUL II, *Fides et Ratio* (1998), n. 82; cfr. 5, 22, 55, 56, 9f4.

²⁸ POPE JOHN PAUL II, *Redemptor Hominis* (1979), n. 8 citing Vatican Counsel II, *Gaudium et Spes*, 22, AAS 58 (1966), nn. 1042-1043.

²⁹ The heresy of Apollinaris who denied that Jesus Christ had a spiritual and rational human soul was condemned at the Council of Rome in 381 A.D.: “We pronounce anathema against them who say that the Word of God is in the human flesh in lieu and place of the human rational and intellective soul. For, the Word of God is the Son Himself. Neither did He come in the flesh to replace, but rather to assume and preserve from sin and save the rational and intellective soul of man”., in *New Advent, Encyclopedia* <https://www.newadvent.org/cathen/01615b.htm>, accessed 7/5/23.

³⁰ R. J. NEUHAUS, “The Moral Delegitimization of Law,” in *Notre Dame Journal of Law, Ethics and Public Policy*, 4 (1989), pp. 51-61.

intriguing, with respect to our understanding of law as part of a moral universe”³¹.

The first conceptual difficulty one meets when attempting to find a contemporary common vocabulary and shared vision about nature and human nature is to define nature. Is nature simply a material reality, or does material reality itself also have an immaterial, spiritual dimension that fashions it? Reason suggests that human beings stand apart from the material universe to which they also belong. Aristotle argued that human reason is not satisfied with merely material and efficient casual explanations, i.e., with knowing what something is made of and the exigencies of how that material came together. He said, we do not rest easy until we also know *why* something is *what* it is, i.e., its final and formal causes³².

Reason cannot help but recognize regularity in nature and human nature. This regularity or design, according to Aristotle, cannot be ascribed to chance: “Where there is regularity there is also a call for an explanation, and coincidence is no explanation at all”³³. Therefore, because all of nature, including human nature, exhibits regularity it cannot be ascribed to random chance but to purpose and design. The regular ordering of nature, its purposive design, leads to recognition of a wise and benevolent God. This reason cannot deny in good faith as St. Paul warned: “For since the creation of the world God’s invisible qualities—his eternal power and divine nature— have been clearly seen, being understood from what has been made, so that people are without excuse”³⁴.

The mental restlessness we experience when faced with explanations for the way things are (descriptive analysis) that fail to provide a purposive explanation about *why* things are the way they are (prescriptive analysis) presents evidence, an intimation that human beings are not just part of the material universe but also transcend it. Christian revelation confirms this intimation that human beings walk in two worlds, one immanent and material, the other transcendent and immaterial, i.e., spiritual. Pope Paul VI in the *Credo of the People of God* defends both the reality of the physical world from reductionist solipsism and the exceptional spiritual attributes of the immaterial human soul:

³¹ *Ibid.*, 52.

³² “Aristotle on Causality”, *Stanford Encyclopedia of Philosophy*, First published Wed Jan 11, 2006; substantive revision Mar 7, 2023. <https://plato.stanford.edu/entries/aristotle-causality/> accessed 6/30/23.

³³ “Aristotle on Causality”, cit.

³⁴ *Rm* 1, 20.

“We believe in one only God, Father, Son and Holy Spirit, creator of things visible such as this world in which our transient life passes, of things invisible such as the pure spirits which are also called angels, and creator in each man of his spiritual and immortal soul”³⁵.

To include the concept of a “human soul” in a common vocabulary and shared vision of nature, however, will surely provoke objections. Nonetheless, Francis Fukuyama in *Our Posthuman Future* noted that modern culture has not come up with another word to take its place. This, he says, has serious consequences for the foundations of universal human rights³⁶. No material reality including the human genome, notwithstanding the United Nations *Universal Declaration on the Human Genome and Human Rights*³⁷, can serve as the foundation of human dignity and human rights especially now that we can genetically enhance human beings and produce hybrid human-animal chimeras³⁸.

Therefore, the best way to advance the human rights project and an authentic human ecology that enjoys widespread belief, is to honor our obligation to God who values human being he made in his image and, so, we are obligated to regard every human being as a rights-bearer: The human person is “the only creature on earth that God has willed for himself”³⁹. It is because the spiritual soul of every human being is created directly by God, and because we bear his image, and because we are called by God to cooperate with his grace and enjoy eternal beatitude with God, that each human being has equal dignity and worth: “Created in the image of the one God and equally endowed with rational souls, all men have the same nature and the same origin. Redeemed by the sacrifice of Christ, all are called to participate in the same divine beatitude: all therefore enjoy an equal dignity”⁴⁰.

³⁵ POPE PAUL VI, *Credo of the People of God* (1968) n. 8 (internal citations omitted).

³⁶ F. FUKUYAMA, *Our Posthuman Future: Consequences of the Biotechnological Revolution*, Picador New York 2002, pp. 150-151.

³⁷ See United Nations “Declaration on the Human Genome and Human Rights” (1997) Article 1: “The human genome underlies the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity”.

³⁸ See STAT, “International Team Creates First Chimeric Human-Monkey Embryos”, June 15, 2021, <https://www.statnews.com/2021/04/15/international-team-creates-first-chimeric-human-monkey-embryos/>, accessed 7/7/23. For a Catholic ethical analysis of genomic research see N. O’CALLAGHAN, “Human Origins & Human Rights in the Genomic Age”, *Ave Maria Law Review*, 3 (2005), pp. 123-146.

³⁹ *Catechism of the Catholic Church*, n. 356, citing Vatican Council II, *Gaudium et Spes*, 24 n. 3.

⁴⁰ *Catechism of the Catholic Church*, n. 1934.

The psycho-somatic unity of the human person raises the material universe to its highest perfection in our ability to praise and thank God on behalf of all the material creation: “Man, though made of body and soul, is a unity. Through his very bodily condition he sums up in himself the elements of the material world. Through him they are thus brought to their highest perfection and can raise their voice in praise freely given to the Creator”⁴¹. The creation of the human soul is exceptional. Although united to the body the human soul is not merely another material effect of the fusion of male and female gametes: “The Church teaches that every spiritual soul is created immediately by God –it is not “produced” by the parents– and also that it is immortal: it does not perish when it separates from the body at death, and it will be reunited with the body at the final Resurrection”⁴².

2nd Principle of an Integral Natural Law of Human Ecology – Human Nature, a unity of Soul and Body, is Normative

Faith and reason confirm that human nature, a unity of an immaterial soul created directly by God with his image impressed upon it united to a material body, is normative.

4. The Basic Inclinations Human Nature versus those of Flora and Fauna

Although one can speak of human nature without reference to the immateriality of the human soul as the locus of reason and free will, such an omission inevitably reduces reason and free will to the exigencies of matter. The upshot of this is that human beings are different from animals only in degree, not kind. Animal rights activists make this claim. Nolt summarizes arguments for animal rights as follows:

All sentient beings have interests.

We ought to grant equal consideration for equal interests to all beings that have interests.

So: We ought to grant equal consideration for equal interests to all sentient beings.

This is the core of Peter Singer’s argument for animal liberation⁴³.

⁴¹ *Ibid.*, n. 233 citing Vatican Council II, *Gaudium et Spes* n. 1, cfr: *Dan* 3, 37-80.

⁴² *Ibid.*, n. 366 citing Pius XII, *Humani Generis*, (1950).

⁴³ J. NOLT, “The Move from *Good* to *Ought*”, cit., pp. 357-358.

Aquinas admitted that human beings share two basic inclinations in common with plants and animals, that is, plants, animals, and human beings each after their fashion, strive to maintain their existence and, also, the fact that animals and human beings conceive offspring sexually⁴⁴. However, even the two inclinations that we share with plants and animals are done rationally by human beings – that is to say, we may not seek to stay alive or procreate with disregard for the other basic inclinations of our rational nature⁴⁵. The most basic inclination of our rational nature, the “law of our mind”, *syndereses*⁴⁶, is to do good and not violate the other precepts of the natural law, i.e., our duty to fulfill the basic inclinations or our rational human nature which are – to preserve one’s life by all proportionate means, to procreate reasonably, to know truth, to appreciate beauty, to live in society as friends doing to others as you would have them do to you, and to cultivate the riches of the material world as a gift of self to others⁴⁷.

Given the irreducible differences between the basic inclinations of plants and animals versus those of human beings, the minor premise in the animal rights syllogism begs the question when it states – “we ought to grant equal consideration for *equal* interests to all beings that have interests”. The interests of human beings, even those interests that we share in common with animals, are done freely and are not determined. Therefore, human interests are not equal to the interests of animals.

For example, an animal by instinct seeks to save its life at any cost. An animal that dies fighting to save the life of its offspring also does so by instinct. A human being, however, may choose to stay alive at any cost or may choose not to save his life if he properly follows the guidance of his rational nature and understands that in a particular instance to save his life would contravene the demands of friendship (to treat others as oneself). A dog may breed indiscriminately, but a man must consider the

⁴⁴ Th. AQUINAS, *Summa Theologiae*, I-II, q. 94, a. 2.

⁴⁵ This principle Germain Grisez and John Finnis refer to as the “first principle of morality” which prohibits acting directly against any other basic inclination which they refer to as a “basic good” for epistemological reasons. See R. P. GEORGE, “Recent Criticism of Natural Law Theory”, cit., p. 1396.

⁴⁶ Th. AQUINAS, *Summa Theologiae*, I-II, q. 94, a. 1, Reply Obj. 2 ““Synderesis” is said to be the law of our mind, because it is a habit containing the precepts of the natural law, which are the first principles of human actions”.

⁴⁷ JOHN PAUL II, *Veritatis Splendor*, n. 51 citing Thomas Aquinas, *Summa Theologiae* I-II, q. 94, a. 2: “In order to perfect himself in his specific order, the person must do good and avoid evil, be concerned for the transmission and preservation of life, refine and develop the riches of the material world, cultivate social life, seek truth, practice good and contemplate beauty”.

best interests of the child that may be conceived and, so, only procreate in a committed relationship with the woman he marries.

As we have seen, environmental epistemology allows us to draw moral norms from the facts of nature and human nature – from *is* to *good* and from *good* to *ought*. The logical form is valid, but controversy may persist with the premises as is the case when animal rights activists who seek to bestow human rights on animals based on a fallacious parity of interests.

3rd Principle of an Integral Natural Law of Human Ecology – The Disparity Principle

Because the basic inclinations of plants and animals are fundamentally dissimilar from those of human beings, there is no basis for recognizing the dignity and worth of plants and animals as equal to that of human beings.

5. Manners of Speech when comparing Animals and Human Beings

The anthropomorphizing fallacy described above –that equates animal interests with human interests– is compounded by the way we often speak about animals as though they are *like* human beings as if the word “like” means “equal to”. There are three basic ways to speak of comparisons –univocally, equivocally, and analogically.⁴⁸ Animal rights activists speak of human beings and animals univocally by insisting that animals are equal to human beings– “A rat is a pig is a dog is a boy. They are all mammals”⁴⁹.

What Benedict XVI described as the “scientific approach to nature” blind to its teleology⁵⁰ speaks about nature equivocally, as totally purpo-

⁴⁸ See Th. AQUINAS, *Summa Theologiae*, I, q. 13, a. 5 for analogy of proportion: “For in analogies the idea is not, as it is in univocals, one and the same, yet it is not totally diverse as in equivocals; but a term which is thus used in a multiple sense signifies various proportions to some one thing; thus “healthy” applied to urine signifies the sign of animal health, and applied to medicine signifies the cause of the same health”.

⁴⁹ See K. McCABE, “Who Will Live, Who Will Die?” in *Washingtonian*, August 1986, p. 21, quoting Ingrid Newkirk, president of People for the Ethical Treatment of Animals (PETA) cited by W. J. SMITH, *A Rat Is a Pig Is a Dog Is a Boy: The Human Cost of the Animal Rights Movement*, Encounter Books, New York, 2010, p. 3.

⁵⁰ See footnote n. 11.

seless, different from human beings who act purposely. Also, to speak about God as totally transcendent (which he is not) would render our words about God, based as they are on immanent realities of time and space, meaningless.

When we say that men and women are complementary, we are speaking of them analogically, a form of speech that lies in-between univocal and equivocal speech. For instance, a man's body and a woman's body are comparable but not equal, not exactly the same. It is true to say a man's body is like a woman's body and a woman's body is like a man's body, but each of their bodies are reproductively substantially different. In this case there exists a two-way analogy.

There is still another way to speak about comparable subjects, that is, when only one of the subjects is comparable and the other subject is not in any substantive respect. For example, one may say that the sun reflected in the lake is like the sun in the sky. However, the sun in the sky is not like the sun in the lake. Likewise, we are like God being made in his image but, God is not like us.

“Consequently, one must acknowledge in the freedom of the human person the image and the nearness of God, who is present in all (cfr. *Eph* 4:6). But one must likewise acknowledge the majesty of the God of the universe and revere the holiness of the law of God, who is infinitely transcendent...”⁵¹.

One-way analogous speech is also appropriate when we compare animals to ourselves. While it is true to say that animals are like us, it is equally true to say that we are not like animals. Animals experience emotional attraction and aversion like human beings, but human emotions are not like those of animals. Human and animal emotions are asymmetrically analogous. There is a similarity within a far greater dissimilarity. Although emotions belong to the order of the body as Aquinas explains⁵², being “a movement of the sense appetite, which follows from the apprehension of the senses, and is accompanied by a bodily transmutation”⁵³, in a human being they also “form the passageway and ensure the connection between the life of the senses and the life of the mind”⁵⁴. Therefore it is more accurate to refer to this intersection of the life of the body and that of the mind in a human being as *emotivity*:

⁵¹ JOHN PAUL II, *Veritatis Splendor*, n. 41.

⁵² Th. AQUINAS, *Summa Theologiae*, I-II, q. 22, a. 3.

⁵³ Th. AQUINAS, *Summa Theologiae*, q. 22, a. 1.

⁵⁴ *Catechism of the Catholic Church*, n. 176.

“Emotivity runs between and links corporality and spirituality. It cannot be reduced to the reactivity of the body although it is conditioned by it. It is a psychical event rather than a reaction. Emotivity is responsible for man’s sensitivity to values and provides the will with a special kind of raw material, in its spontaneous attraction to values. The will itself is an intellectual response to values. A deep emotional response wells up in the person in response to truth, goodness, and beauty”⁵⁵.

Similarly, it is proper to say animal signaling is like human language, but human language is not like animal signaling. And again, an animal’s experience of pain is like human suffering, but human suffering is not like animal pain. Human pain produces similar physical reactions in human beings and animals. But human suffering is more than a psychical event, rather, it crosses the passageway from the life of the senses to the life of the mind. The sufferer asks *why* and is not resigned to any answer. Ultimately, every person asks why must I die? A deep emotional response (sadness, aversion, anger, despair) wells up in the person in response to physical or moral evil. John Paul II explains that this mental suffering can only be assuaged, and peace restored if suffering is seen as transcendent, having co-redemptive significance when united with Christ’s suffering⁵⁶.

4th Principle of an Integral Natural Law for Human Ecology – The Solidarity Principle

Given the one-way asymmetrical similarity between animals and human beings, in so far as animals are like human beings, but human beings are not like animals, it is just to say – *human beings deserve no less consideration than nature, flora, and fauna, but much greater consideration.*

⁵⁵ M. SHIVANANDAN, *Crossing the Threshold of Love: A New Vision of Marriage*, Catholic University Press, 1999 pp. 64-65 (summarizing K. WOJTYLA, *The Acting person*, trans. Andrzej Potochi, ed. A. Tymieniecka, Analecta Husserliana 10, Dordrecht, Holland: Reidel, 1979, pp. 221-227.

⁵⁶ See JOHN PAULL II, *Salvifici Doloris* (On the Christian Meaning of Human Suffering) (1984), reflecting on St. Paul Col. 1, 24: “Now I rejoice in what I am suffering for you, and I fill up in my flesh what is still lacking in regard to Christ’s afflictions, for the sake of his body, which is the church”.

Part III. Environmental Law and Principles of Governance for the Global Commons

Environmental and animal rights activists and academics have put forward legal stratagems for a system of governance for the whole range of the global commons. This section will examine whether those stratagems are compatible with a Catholic vision, that is, whether they can be turned from a collectivist trajectory toward the common good of nature and human ecology.

6. The Public Trust Doctrine

In British and American common law, the Public Trust Doctrine (hereafter referred to as PTD) recognized that governmental authorities have a fiduciary obligation to act as a trustee of the trust assets, originally land subject to tides, and to guarantee access, common use, and enjoyment of these trust assets for the beneficiaries of the trust, i.e., its citizens:

“At common law, the title and dominion in lands flowed by the tide water were in the King for the benefit of the nation....

Upon the American Revolution, these rights... were vested in the original States...”⁵⁷.

The public trust of natural resources can and should act as a corrective – to rein in laissez faire capitalism that has tended to exploit nature’s resources to maximize corporate profit. However, PTD can go too far and legitimize various forms of political collectivism: “The problem with the public trust doctrine is that it lacks ‘a readily defensible stopping point. The public trust doctrine has the potential to reach – and to lead to restrictions on the behavior of – all parties that contribute collectively to an ecological problem, even if the casual link of any individual party is attenuated”⁵⁸.

In many countries, especially in the developing world, the corpus of the PTD has been expanded to include all natural resources⁵⁹. For instance, the Supreme Court of India ruled that all natural resources of the country are held in trust by the government for the benefit of its citizens:

⁵⁷ *Shively v. Bowlby*, 152 U.S. 1 (1894), pp. 14-15.

⁵⁸ A. C. LIN, “Public Trust and Public Nuisance: Common Law Peas in a Pod?” 45 *U.C. Davis L. Rev.* (2012), pp. 1075, 1089.

⁵⁹ See M. C. BLUMM and R. D. GUTHRIE, “Internationalizing the Public Trust Doctrine: Natural law and Constitutional and Statutory Approaches to Fulfiling the Saxion Vision”, *University of California, Davis*, 4 (2012), pp. 760-807, 741.

“The State is the trustee of all natural resources which are by nature meant for public use and enjoyment, and the public at large is the beneficiary of the seashore, running waters, airs, forests, and ecologically fragile lands”⁶⁰.

Some environmental activists and academics suggest that the PTD is the slate upon which national constitutions are written: “[I]t is more appropriate to consider the Constitution as rooted in the public trust doctrine rather than think of the public trust doctrine as rooted in the Constitution.... As the chalkboard on which the constitution was written, the public trust doctrine provides the background and context for the Constitution”⁶¹. Others suggest that the PTD provides a legal strategy to enforce the Sustainable Development Goals: [T]he Public Trust Doctrine (PTD) provides a legal foundation and implementation framework for achieving sustainable resource use... protecting the rights of future generations to functioning ecosystems and governing resources beyond national jurisdictions.... [T]he PTD Converts stewardship principles [of Rio 20 – the Sustainable Development Goals] to substantive stewardship requirements⁶².

Regardless of how it is employed, the distinctive feature of the PTD remain the same providing guiding principles for environmental law and policy: 1) there can be no substantial conveyance of trust assets; 2) any conveyance of trust assets must further the trust’s purposes; 3) all beneficiaries of the trust have standing to bring suit in court; 4) the precautionary principle applies to trust assets such that anyone whose activity threatens irreparable harm to trust assets has the burden of proof to show that the contemplated action will be harmless; and 5) one may not modify trust assets beyond their “natural use”⁶³.

The precautionary principle and natural use principle applicable to both the PTD and Rights of Nature require further consideration.

⁶⁰ *M.C. Mehta v. Kamal Nath et al.*, 1997 1 S.C.C. 388 (1996).

⁶¹ G. TORRES and N. BELLINGER, *The Public Trust Doctrine: The Law’s DNA*, (2014), 4 Wake Forest J.L. & Pol’Y, pp. 281, 288.

⁶² Mary Turnipseed and 12 others legal scholars (February, 2012) “The Public Trust Doctrine and Rio +20”, http://wildmigration.org/pdf_bin/Brief_201202_PublicTrustDoctrine-Rio20_brief.pdf, accessed 7/7/23.

⁶³ See M. C. BLUMM and R. D. GUTHRIE, “Internationalizing the Public Trust Doctrine”, *cit.*, pp. 741-807.

6.1. The Precautionary Principle

The precautionary principle protects natural resources from substantial and irremediable harm even if actual harm has not yet occurred and there is no conclusive proof that it will occur. Provided there is some objective reason to believe that such harm may result from a proposed human activity, the burden of proof shifts to those whose activity threatens nature's amenities and resources to prove that the proposed activity will not create irremediable damage. As the Supreme Court of Hawaii noted in a recent decision, there is an "inherent presumption in favor of public use, access, and enjoyment" of public trust resources⁶⁴.

The United Nations *Rio Declaration on Environment and Development* (1992) advanced the precautionary principle as an international standard of environmental law: "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall be not used as a reason for postponing cost-effective measures to prevent environmental degradation"⁶⁵.

In *Laudato Si'* Pope Francis also endorsed the precautionary principle: "This precautionary principle makes it possible to protect those who are most vulnerable and whose ability to defend their interests and to assemble incontrovertible evidence is limited. If objective information suggests that serious and irreversible damage may result, a project should be halted or modified, even in the absence of indisputable proof. Here the burden of proof is effectively reversed..."⁶⁶.

6.2. The Natural Use Principle

The "natural use" principle stipulates that the natural characteristics of an environment may not be substantially altered⁶⁷. Private ownership of land "must find some meaningful restraint in the natural use to which

⁶⁴ *In re water Use Permit Application (Waiahole Ditch)*, 9 P.3d 409, 472 (Haw. 2000). For a short summary of Waiahole Ditch see, P. FAHMY, "The National Park Service and Hawaii's Public Trust Doctrine", (2014) <https://files.hawaii.gov/dlnr/cwrm/presentations/pp20140917-NPSc.pdf>, accessed 7/3/23.

⁶⁵ United Nations, *Rio Declaration on Environment and Development* (1992), Principle 15.

⁶⁶ POPE FRANCIS, *Laudato Si'*, n. 186.

⁶⁷ M. C. Blumm and Mary C. Wood, "Teacher's Manual, The Public Trust Doctrine", in *Environmental and Natural Resource Law*, (2014), pp. 55, 50 referring to *Just v. Marinette County* 201 N.W. 2d 761, 768, 768 (Wis. 1972).

the land is suited..."⁶⁸. Property owners' rights are not absolute. One court ruled that a property owner cannot develop land that substantially alters the land for non-indigenous property uses:

"Is the ownership of a parcel of land so absolute that man can change its nature to suit any of his purposes? The great forests of our state were stripped on the theory that man's ownership was unlimited. But in forestry, the land at least was used naturally, only the natural fruit of the land (the trees) were taken. The despoilage was in the failure to look to the future and provide for the reforestation of the land. An owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others. The exercise of the police power in zoning must be reasonable and we think it is not an unreasonable exercise of that power to prevent harm to public rights by limiting the use of private property to its natural uses"⁶⁹.

The natural use of a local environment, therefore, must conform to its *telos*, its purposiveness, or its basic inclinations to flourish⁷⁰. As we have seen, the natural use of flora and fauna, or their interrelations in an ecosystem, their *telos*, their purposive drive, is to stay in existence and reproduce. Therefore, human activity ought not cause natural entities to lose biodiversity or become extinct.

Just as PTD's natural use principle may be used to further the basic purposive inclination of a natural environment to flourish in a particular way, for example, the *telos* of a wet land or a rain forest, which may not be reconfigured to unnatural uses, in similar fashion the human ecology's moral environment should be promoted and defended. Harvard constitutional law scholar, Adrian Vermeule, notes that the classical legal tradition "supports an expanded version of the 'public trust' doctrine" because the environment is a crucial part of the common good and that the "[p]ublic prohibition of pornography is a form of environmentalism for morals"⁷¹.

⁶⁸ M. Ch. Wood, "Advancing the Sovereign Trust of Government to safeguard the Environment for present and Future Generations (Part II): Instilling a Fiduciary Obligation in Governance", in *Environmental Law*, 39-91 (2009) pp. 92-139, 124.

⁶⁹ *Just v. Marinette County* 201 N.W. 2d 761, 768 (Wis. 1972).

⁷⁰ As used in this article, "natural use" corresponds with the term "basic inclinations".

⁷¹ A. VERMEULE, *Common Good Constitutionalism*, Polity Press, Cambridge, 2022, pp. 177, 171.

6.3. Rights of Nature

The PTD protects trust assets for the interests of its human beneficiaries. Rights of Nature (hereafter referred to as RoN) goes a step further in an opposite direction and declares that nature itself has a right to flourish not for the benefit of human beings but for its own well-being. Therefore, RoN grants legal personality to nature and empowers concerned and knowledgeable human beings to speak on its behalf as its legal guardians.

In 2008 Ecuador amended its Constitution and became the first country to recognize the legal personality of nature (“Pachamama”) and provided that all citizens have standing to act on her behalf:

“Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain itself and regenerate its own vital cycle, structure, functions and its evolutionary processes. Any person, people, community or nationality, may demand the observance of the rights of the natural environment before public bodies...”⁷².

Harmony with Nature, a publication of the United Nations, lists twenty-three countries that have embraced RoN in one fashion or another. Environmentalists who promote RoN contend that nature should no longer be treated legally as property but a rights-bearer:

“This evolving legal approach acknowledges that the traditional environmental regulatory systems generally described herein regard nature as property to be used for human benefit, rather than a rights-bearing partner with which humanity has co-evolved. Rights of Nature is grounded in the recognition that humankind and Nature share a fundamental, non-anthropocentric relationship given our shared existence on this planet, and it creates guidance for actions that respect this relationship”⁷³.

Not all those who invoke RoN, however, are committed to an eco-centric environmental ethic.

Some civil minded citizens may turn to RoN to protect a local human community from toxic waste when environmental agencies fail to do their job due to a conflict of interests⁷⁴. For instance, certain environ-

⁷² *Constitution of the Republic of Ecuador*, (2008) Chapter 7, art. 71.

⁷³ *Harmony with Nature, Rights of Nature Law & Policy*, <http://www.harmonywithnatureun.org/rightsOfNature/>, last visited 7/2/23.

⁷⁴ One elected official explained to this author that his state’s environmental protection

mental problems such as toxic landfills go under-regulated by the environmental agencies commissioned to oversee them due to the “capture” of these agencies by the clients they were set up to regulate⁷⁵. Therefore, to get around environmental agency capture in circumstances where under-regulation has not yet resulted in personal injury to any human being, nature itself is brought into court by a court appointed guardian et litem as the plaintiff because it has already been injured by toxic waste:

“In the United States, about three dozen municipalities around the country have so far passed local laws to recognize the rights of nature. Virtually all these laws to date have been passed in response to specific local threats such as proposed coal mining, hydrofracking, groundwater extraction and other risks to the health and well-being of communities”⁷⁶.

However, environmental activists and academics refuse to extend the logic of the PTD or RoN to human ecology. We must ask why does the precautionary principle shift the burden to those whose activity may harm the delicate balance of the ecosystems of nature but not to social, economic, and political policies that threaten the even more delicate balance of human ecology? Why should building projects conform to the “natural use” of an environment but projects to alter human nature to unnatural use and sterility, such as transgender ideology, be allowed? Why should courts and national constitutions recognize the rights of nature and grant it juridical personality but refuse to recognize the legal personhood of the prenatal child. If “the Book of Nature is one and indivisible”, as Catholic social doctrine declares, then why these glaring disparities? A system of governance for the whole range of the global commons grounded in an integral natural law of human ecology must insist that human nature be given no less consideration than flora and fauna.

agency has been captured by landfill operators due to economic pressures from 1) “tipping fees” for every ton of garbage these agencies allow to be tipped or dumped in the state and, 2) negligent landfill operators who fail to clean up toxic conditions at their landfill are permitted to open a new landfill to generate income to pay the fines incurred at their old landfill which they then operate just as negligently as the old one. This is allowed to happen because if the landfill operator fails to clean up a toxic waste contaminating the local environment the agency must cover the cost. So, there is both economic incentives and disincentives, a carrot (tipping fees) and a stick (clean-up costs) that contribute to environmental agency capture. This source asked to remain anonymous – but he is an official elected to an environmental regulatory board for a county in the state of Ohio, USA.

⁷⁵ L. SHEEHAN, “Implementing Rights of Nature Through Sustainability Bills of Rights”, in *NZJIP* (2015), p. 92. The author lists “regulatory capture; industry viewed as the client” along with the lack of funding, political push-back by industry, inefficient agency operations, and the lack of research and monitoring data to explain why environmental laws have failed to protect the environment.

⁷⁶ *Ibid.*, p. 101.

5th Principle of an Integral Natural Law for Human Ecology – Enforcement Principles

Given that human beings deserve no less consideration than nature, flora, and fauna, therefore the Precautionary Principle and the Natural Use Principle apply in the promotion and defense of human flourishing and Rights of Nature’s recognition of the legal personality of nature unable to speak for itself extends to vulnerable human beings unable to speak for themselves.

7. Part IV. Participated Theonomy and Human Ecology

The scientific logic of modernity criticized by Benedict XVI that fails to see the telos of nature and human nature, the giftedness of creation and its purposive design, rests upon a selective reading of Immanuel Kant. Kant may be understood to propose that the foundation of human dignity and human rights lies in a person’s “autonomous” free choices not coerced from without nor constrained from within by desires or fear of disapproval from a moral norm derived from external authority – religious, familial, or otherwise. Therefore, by autonomous choices one creates the goods/values to which one is obligated⁷⁷. To act otherwise is an undignified “heteronomous” action. Seen from this perspective (compounded by skepticism about deriving “ought” from “is”), behavior based on obligations due to the order and design of nature may appear as simply heteronomous, i.e., moral norms derived from obedience to an external authority, i.e., nature.

On the contrary, John Paul II in *Veritas Splendor* speaks about the “rightful autonomy” of practical reason that possess the natural law within itself but, also, a false autonomy that creates moral norms:

“The rightful autonomy of the practical reason means that man possesses in himself his own law, received from the Creator. Nevertheless, *the autonomy of reason cannot mean that reason itself creates values and moral norms*. Were this autonomy to imply a denial of the participation of the practical reason in the

⁷⁷ “[W]e must avoid attributing to Kant, as it has been done so often, the grotesque view that only moral agency is free [done free of internal desire and external coercion] and non-moral agency [that done under the compulsion of desire or threat of external force] is not accountable precisely because it is not free. Needless to say, sometimes Kant lends himself to such an interpretation when, for example, he claims: “what else, then, can freedom of the will be but autonomy, i.e., the property that the will has of being a law to itself...” L. CARANTI, “Kant’s Theory of Human Rights”, in *Estudos Kantianos* 2 (2014), Kant-Online, posted June 17, 2014.

wisdom of the divine Creator and Lawgiver, or were it to suggest a freedom which creates moral norms, on the basis of historical contingencies or the diversity of societies and cultures, this sort of alleged autonomy would contradict the Church's teaching on the truth about man"⁷⁸.

Rightful autonomy in the moral life is a participation in God's governance, which he says, may be described as a "participated theonomy" in which one chooses to act in conformity with the "truth of creation" as a co-governor with God:

"Others speak, and rightly so, of *theonomy*, or *participated theonomy*, since man's free obedience to God's law effectively implies that human reason and human will participate in God's wisdom and providence. By forbidding man to "eat of the tree of the knowledge of good and evil", God makes it clear that man does not originally possess such "knowledge" as something properly his own, but only participates in it by the light of natural reason and of Divine Revelation, which manifest to him the requirements and the promptings of eternal wisdom. Law must therefore be considered an expression of divine wisdom: by submitting to the law, freedom submits to the truth of creation"⁷⁹.

Since we are created in the image of God, then to create values and make choices contrary to God's image written in the basic inclinations of human nature is to obey a false self, an alien authority, which is veiled heteronomy:

"Autonomy, [wrongly understood as] obedience to myself in alienation from God, is still slavery because it is disguised heteronomy. For since I am made in God's image, if I am alienated from Him, then I am also alienated from myself. Obedience to my alienated self is but obedience to yet another alien 'other.' The only true freedom is 'participated theonomy,' joyful participation in the law of the God in whose image I am made"⁸⁰.

⁷⁸ JOHN PAUL II, *Veritatis Splendor*, n. 40.

⁷⁹ *Ibid.*, n. 41.

⁸⁰ J. BUDZISZEWSKI, *Underground Thomist*, February 22, 2016. <https://www.undergroundthomist.org/theonomy>, accessed 7/4/23.

7.1. How to read the Book of Nature

Pope Francis in his address to the United Nations in 2016 recognized “a right of the environment”. However, he did not say that a right of the environment prohibited the private ownership of nature – land or chattel. On the contrary, he said, God permits human beings to respectfully “use” creation for human benefit. Pope Benedict XVI’s comment, “[t]he earth has a dignity of its own”⁸¹ provides context for Pope Francis’s statement:

“First, it must be stated that a true ‘right of the environment’ does exist, for two reasons. First, because we human beings are part of the environment. We live in communion with it, since the environment itself entails ethical limits which human activity must acknowledge and respect.... Second, because every creature, particularly a living creature, has an intrinsic value, in its existence, its life, its beauty and its interdependence with other creature We Christians, together with the other monotheistic religions, believe that the universe is the fruit of a loving decision by the Creator, who permits man respectfully to use creation for the good of his fellow men and for the glory of the Creator; he is not authorized to abuse it, much less to destroy it. In all religions, the environment is a fundamental good”⁸².

“A right of the environment” to exist and a vision of creation with “intrinsic value” that may, nonetheless, be respectfully used for the good of human beings and the glory of the Creator marks the path of law that is neither equivocally anthropocentric nor univocally eco-centric but analogically theonomic – a duty of co-governance in keeping with God’s purposive design so as to honor him and creation, his gift to us.

For example, if one asks a florist whether roses have rights, she who buys and sells them, prunes, and discards them, will answer, “no, roses do not have rights”. The same may be said of a bouquet of roses left by chance at one’s door. Although it may look beautiful and give off an enchanting fragrance, one might still ignore it or throw it away. To speak of one’s duty to honor the intrinsic beauty of a bouquet of roses left by chance at one’s door would appear, at best, a subjective and sentimental valuation.

⁸¹ BENEDICT XVI, “Address to the Bundestag”. See footnotes n. 11 and n. 13.

⁸² POPE FRANCIS, “Address to the United Nations General Assembly”, New York, September 26, 2016.

However, if a bouquet of roses were delivered to a young woman with a love note from her fiancé, then the answer to the question – do these roses have rights – changes. Strictly speaking, the young woman can still do with the bouquet as she pleases. She can instrumentalize it and use it to swat flies, or feed the rose petals to her parrot, or just throw it away. However, by doing so she dishonors her fiancé and ends their engagement. Even though a basic inclination of human nature is to appreciate beauty and roses in bloom are universally recognized as beautiful, still it is primarily out of respect for her fiancé that this woman is obliged to respect this rose bouquet and put in a vase of water and set in a place of honor.

As we have seen, this is the way environmental epistemology proceeds: From a species of nature (the *is* of a rose) – to recognition of what is good for this species (water is *good* for a rose) and then from the good of a relationship with God (the *good* of her engagement to her fiancé) to a duty to honor what is good for the gifts God values (she ought to put the bouquet in a vase of water)⁸³.

Conclusion

What philosophers try to understand using logic, poets, children, and saints apprehend directly. The poet William Wordsworth, recalling his early childhood wrote that a child seems to see and hear something beyond the mere facts of nature penetrating to a deeper reality, a message that communicates wonder but then quickly fades away when one grows older: “Whither is fled the visionary gleam?... Of splendor in the grass, of glory in the flower...”⁸⁴. The patron saint of ecology, Francis of Assisi, regained this visionary gleam with his return to a state of innocence after his profound conversion and sang “Praise be you my Lord (Laudato Si’) with all your creatures...”⁸⁵. St. Francis looked upon nature with a “disinterested, unselfish and aesthetic attitude”, and was able to “see in visible things the message of the invisible God who created them”⁸⁶.

The poet, Gerard Manley Hopkins coined the term “inscape” and used it as a noun to describe the interiority of an object, “some intriguing secret challenging the observer to discover it, and promising to disclose

⁸³ See the beginning of this article.

⁸⁴ W. WORDSWORTH, “Ode: Intimations of Immortality from Recollections of Early Childhood” (1807), stanzas 57 and 183, <https://pryan2.kingsfaculty.ca/pryan/assets/File/Willem%20Wordsworth.pdf>, accessed 7/7/23.

⁸⁵ ST. FRANCIS OF ASSISI, “Canticle of the Sun” (1225).

⁸⁶ JOHN PAUL II, *Centesimus Annus*, n. 37, see footnote 15.

the mystery of the object's beauty"⁸⁷. He also used it as a verb – the ability to see and enter into the inside of visible things and know the message, their pattern or design, in a loving embrace and, so, “inscape” them. To know someone of something by affinity in the Thomistic tradition is referred to as connaturality⁸⁸.

An integral natural law of human ecology reads the Book of Nature's ethical norms in two ways – *deductively* with speculative reason gleaned prescriptive norms from descriptive analysis of nature and human nature and *connaturally* with the aesthetical visionary gleam of practical reason that unites the inscape of nature within itself and knows the same norms intuitively. From these norms further conclusions and practical determinations⁸⁹ of natural law may be articulated to provide “systems of governance for the whole range of the global commons”, to wit:

Principle 1

Nature is normative because one can reason from the facts of nature to the goodness of nature's designs to a duty to flourish the goodness of nature's designs.

Principle 2

Faith and reason confirm that human nature, a unity of an immaterial soul created directly by God with his image impressed upon it united to a material body, is normative.

Principle 3

Because the basic inclinations of plants and animals are fundamentally dissimilar from those of human beings, there is no basis for recognizing the dignity and worth of plants and animals as equal to that of human beings.

Principle 4

Given the one-way asymmetrical similarity between animals and human beings, in so far as animals are like human beings, but human beings are not like animals, it is just to say – human beings deserve no less

⁸⁷ A. J. MCCARTHY, “Towards a Definition of Hopkins' ‘Inscaping’”, *University of Dayton Review*, 4-3 (1967), pp. 2, 3.

⁸⁸ See J. MARITAIN, “On Knowledge Through Connaturality”, in *Review of Metaphysics* 4 (4) (1951), pp. 473-481.

⁸⁹ See Th. AQUINAS, *Summa Theologiae*, I-II, q. 95, a. 2. Also see A. VERMEULE, *Common Good Constitutionalism*, cit., for guidance as to how the conclusions and determinations of the natural law may apply in the promotion and defense of the classical legal tradition.

legal consideration than nature, flora, and fauna, but much greater legal consideration.

Principle 5

Given that human beings deserve no less legal consideration than nature, flora, and fauna, therefore the Precautionary Principle and the Natural Use Principle of environmental ethics apply in the promotion and defense of human flourishing and Rights of Nature's recognition of the legal personality of nature unable to speak for itself extends to vulnerable human beings unable to speak for themselves.