



2009

Cognition and Consensus in the Natural Law Tradition and in Neuroscience: Jacques Maritain and the Universal Declaration of Human Rights

C.M.A. McCauliff

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>



Part of the [Human Rights Law Commons](#)

Recommended Citation

C.M.A. McCauliff, *Cognition and Consensus in the Natural Law Tradition and in Neuroscience: Jacques Maritain and the Universal Declaration of Human Rights*, 54 Vill. L. Rev. 435 (2009).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol54/iss3/3>

This Article is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

Article

COGNITION AND CONSENSUS IN THE NATURAL LAW TRADITION AND IN NEUROSCIENCE: JACQUES MARITAIN AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

C.M.A. MC CAULIFF*

IN November 1947, Jacques Maritain (1882-1973), a prominent French philosopher and head of the French delegation to the United Nations Educational, Scientific, and Cultural Organization's (UNESCO) second general conference in Mexico City, helped galvanize the UNESCO delegates to advocate for the United Nations' adoption of the Universal Declaration of Human Rights. Discussion had stalled over the philosophical justification for advocating the Universal Declaration of Human Rights, but all delegations, broadly speaking, agreed on the contents of the Declaration itself. By concentrating on the passage of the Declaration without an accompanying philosophy, Maritain succeeded in galvanizing support. As Roger Seydoux remembers, the thirty-seven delegations coalesced around Maritain's approach of consensus on the content of the agreement without official justification of the reasons for the agreement. Maritain's consensus approach and his willingness to forgo philosophical preambles grew out of his view of natural law.

Maritain was in the United States for a series of lectures when France fell in late spring 1940. He then taught and lectured in the United States and served as a foreign member of the Committee on the Freedom of the Press. The idea of "setting forth basic rights could be seen in a number of different ways by early 1942 when a widely circulated public statement by the National Conference of Christians and Jews concerning 'inalienable rights' and the publication of a book by Maritain entitled *Les Droits de l'Homme et la Loi Naturelle* [The Rights of Man and Natural Law] stimulated still further discussion about the prospects for some kind of bill of rights that might protect all people."¹ UNESCO "invited written comments from one hundred and fifty very different people, directly asking them for their

* Professor of Law, Seton Hall University School of Law. A.B. Bryn Mawr College, M.A., Ph.D. University of Toronto, J.D. University of Chicago. Thanks to Paul Sigmund, Angela Carmella, Frank Pasquale, Jacqueline M. Nolan-Haley, Marc Poirier, Kristen Boon, Alice Ramos, Tom O'Sullivan, Cornelia Borgerhoff, the James Madison Program at Princeton University, and Seton Hall University School of Law Summer Research Stipend (Dean Patrick Hobbs).

1. PAUL GORDON LAUREN, *THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS* 153 (1998).

thoughts on some of the specific philosophical questions raised by international human rights.”²

Maritain then began, with other philosophers, a campaign of writing to educate the public on human rights with the intent of moving public opinion toward acceptance of the Declaration.³ Varied political, cultural, and ideological attitudes among the participating nations, from capitalistic materialism to state totalitarianism—to say nothing of Christian democratic ideas—demanded cooperation without fighting over ideology. Differences were temporarily set aside to attend to recognition of the Declaration. In the long process to the charter, Maritain continued, as a private philosopher, to maintain that adherence to values of natural law constituted the necessary foundation that would sustain commitment to the Declaration once it became a charter.

In exploring how Maritain contributed to the dialogue of his time and how modern thinkers can benefit from that process, Part I of this Article studies the way Maritain used a reinvigorated natural law, emphasizing intuition—called “connaturality” because it is the Thomistic term—to engage national representatives of differing traditions in dialogue concerning the need for agreement on the Universal Declaration of Human Rights. Maritain simply described the origins of our ethical intuitions without denying that they often are later given rational expression, much as the new scientists of human nature are demonstrating today.

This same distinction between ethical origins in intuition and their later rationalistic expression also plays a central role in psychological studies of human nature and in the work of John Rawls (1921-2002), an important figure for cognitive scientists, particularly with respect to his Kantian proceduralism and language studies. The recognition of the gap between cognition and consensus in the thought of philosophers Maritain and Rawls also finds expression in cognitive science. Part II of this Article discusses modern studies in cognitive and other sciences of human nature, and applies them retrospectively to Maritain’s insights, illuminating why he, along with other like-minded leaders, was so successful in persuading U.N. member states to adopt the Declaration without attempting to agree on the justifications for their choices.⁴ For the Maritain of the Declaration

2. *Id.* at 223.

3. See generally UNESCO, HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS (1949) [hereinafter HUMAN RIGHTS].

4. See STEVEN PINKER, THE BLANK SLATE: THE MODERN DENIAL OF HUMAN NATURE 31-51 (2002). Cognitive science began research on the human mind during the 1950s and began to show that human beings share a definite nature. See *id.* Cognitive neuroscience studies how the brain puts emotion and cognition into operation, and behavioral genetics examines how genes affect behavior. See *id.* Evolutionary psychology studies the engineering of the mind, its purpose, and its design. See *id.* For a caution about the scientific grounding and applicability of evolutionary psychology, see Brian Leiter & Michael Weisberg, *Why Evolutionary Biology Is (So Far) Irrelevant to Law* n.100 (Univ. of Tex. Public Law Research, Paper No. 89, 2007), available at http://ssrn.com/sol3/papers.cfm?abstract_id=892881 (citing Jerry Coyne, *Of Vice and Men: The Fairy Tales of Evolutionary Psychology*, THE

and *Man and the State*, knowledge through intuition is common to us all and, as such, serves as the basis for public dialogue and agreement.

Maritain used the same natural law theory to explore how human rights might be justified within the natural law tradition, as Part III discusses. Modern focus on the sciences of human nature argues that human beings across different cultures see crisis situations—where human rights are at stake—in the same way, but have difficulty articulating their reasoned interpretation of these situations and agreeing on these reflections. Knowing how to resolve the crisis in question without being able to explain why suggests that the shared solutions in crises are part of normal human functioning, directly apprehended by the human mind without articulated reasons. Maritain was able to focus agreement on essentials of the moral sense without being deflected by philosophical and political justifications on which people could not agree.

I. COGNITION (INTUITION) IN NATURAL LAW: MARITAIN'S
 ELABORATION OF THE TRADITION

Intuition in the form of human inclination or connaturality played an important role in Maritain's philosophy of natural law and in Maritain's perception of how we engage in dialogue with each other and agree on basic principles. Several separate strands in Maritain's life that developed over decades came together to permit Maritain to urge cooperation among peoples, as well as to enable his philosophical explanation of how we reach agreement despite our differing cultures and backgrounds. After receiving his *agrégation*, a French civil service qualification for secondary school teaching, in 1905, Maritain studied biology with Hans Driesch at Heidelberg from 1906-1908.⁵ This biological bent, together with his previous attendance at Henri Bergson's lectures at the *Collège de France*, greatly contributed to Maritain's initial interest in intuition.⁶ Bergson lec-

NEW REPUBLIC, Apr. 3, 2000, at 27 ("Unfortunately, evolutionary psychologists routinely confuse theory and speculation. Unlike bones, behavior does not fossilize, and understanding its evolution often involves concocting stories that sound plausible but are hard to test. . . . If evolutionary biology is a soft science, then evolutionary psychology is its flabby underbelly.")).

5. See JEAN-LUC BARRÉ, JACQUES & RAISSA MARITAIN: BEGGARS FOR HEAVEN 76 (Bernard E. Doering trans., 2005). Driesch worked on the development of the embryo and connected his studies with the philosophy of Aristotle (384-322 B.C.E.), who himself had been actively interested in biology. See HANS DRIESCH, LA PHILOSOPHIE DE L'ORGANISME (M. Riviére ed., 1921). Maritain reflected his interest in this field in Jacques Maritain, *Le Neo-Vitalisme en Allemagne et le Darwinisme*, REVUE DE PHILOSOPHIE, Sept.-Oct. 1910, at 17. See BARRÉ, *supra*, at 443; see also Jean-Louis Allard, *Maritain's Epistemology of Modern Science*, in SELECTED PAPERS FROM THE CONFERENCE-SEMINAR ON JACQUES MARITAIN'S *The Degrees of Knowledge* 144, 144-73 (Robert Henle, Marian Cordes & Jeanne Vatterott eds., 1981).

6. See GERALD A. MCCOOL, THE NEO-THOMISTS 77 (1994) ("Bergson's influence can be discerned in the important role assigned to intellectual intuition in Maritain's own philosophy."). Among Bergson's students in 1902 were Jacques Maritain and Raissa Oumansoff (and later Maritain). See BARRÉ, *supra* note 5, at 53.

tured about intuition but separated it from the intellect, deeming intuition “the mind’s immediate grasp of finite spirit’s endless motion” and leaving Maritain with limited use for intuition.⁷

Maritain’s understanding and use of intuition, however, were transformed by reading Thomas Aquinas (1225-1274), so that the motion and duration of Bergson’s philosophy could be related to being. In the process, Bergson’s influence seemed less significant to Maritain’s developing theory.⁸ According to diary entries, Maritain began his lasting relationship with Thomism on September 15, 1910, when he read the *Summa Theologiae* as a way of reasoning about faith. For quite some time, Maritain apparently accepted the standard account of natural law as a fully developed rational description of the moral sense.⁹ Thomism provided a way for Maritain to examine problems involving justice and the state. Maritain’s reading of Aquinas allowed him to transform intuition with the Thomistic notion “that there is knowledge only if intelligence is at work.”¹⁰

Through intuition, Maritain linked this apprehension to the human reasoning faculty, though not to discursive reasoning. He applied intuition to all creative thinking because that intuitive understanding showed each person the nature of the activity in question and the rules (or norms) the field naturally follows.¹¹ According to Maritain, the “judgments in

Connaturality is moral sensitivity that the human being naturally senses. Although connaturality is the Thomistically authentic word, the word “intuition,” which covers many different theories, will frequently be substituted for connaturality. For places in this Article where this substitution occurs, see *infra* notes 13, 25-29 and accompanying text.

7. See BARRÉ, *supra* note 5, at 78.

8. Rather, Bergson became Thomisticized in Maritain’s philosophy. See JACQUES MARITAIN, *BERGSONIAN PHILOSOPHY AND THOMISM* (Mabelle Andison trans., 1955) [hereinafter *BERGSONIAN PHILOSOPHY*]. For Maritain’s treatment of Bergson’s concept of “Intuition and Duration,” see *id.* at 126-27, 146-79.

9. See BARRÉ, *supra* note 5, at 94-95. The theory of natural law continues to appeal because it affirms that:

Freedom and moral choice are not incompatible with the existence of objective values in man and society; that human existence is meaningful; that human beings possess equal dignity and rights; and that political and legal forms are more than the product of arbitrary will and should be justified in human terms. For these reasons, natural law theories constitute a powerful and attractive alternative to relativist skepticism and to blind faith in traditionalist, religious, or political authoritarianism.

PAUL E. SIGMUND, *NATURAL LAW IN POLITICAL THOUGHT ix-x* (1971). For similar views among neuroscientists, see *infra* notes 127-28 and accompanying text.

10. Thomas L. Gwozdz, *Jacques Maritain & the Centrality of Intuition* (1996) (unpublished Ph.D. dissertation, Fordham University) (on file with author), available at <http://fordham.bepress.com/dissertations/AA19628337/> (follow “View More” hyperlink; then follow “Full Text—PDF” hyperlink).

11. See BRIAN STILTNER, *RELIGION AND THE COMMON GOOD* 89 (1999). Ramsey first traced this development in Maritain’s thought through the textual changes in Maritain’s works from the early to late 1940s. See PAUL RAMSEY, *NINE MODERN MORALISTS* 223 (1962). Stiltner summarizes Ramsey:

Maritain abandoned claims made in his earlier writings that natural law involves a rational apprehension of human nature and that judgments

which Natural Law is made manifest to practical Reason do not proceed from any conceptual, discursive, rational exercise of reason . . . [but from] *connaturality*.”¹² In 1929, Maritain stated what he believed intuition was and was not:

All great philosophers have recognized the existence of and necessity for an intuition from which their wisdom is suspended. It is on the nature of this intuition that they are divided; as much, to tell the truth, as on the nature of the human being, which Aristotle alone was able to contemplate with quiet glance as an animal endowed with reason. The genuine and nourishing intuition of human knowledge and of philosophy is not [such and such an intuition] . . . ; nor an intellectual angelistic intuition accessible to all, like the Cartesian intuition of thought and clear ideas; . . . or like the Bergsonian intuition of duration. It is a *human intellectual intuition*, the intellection of being which, suprasensitive in itself, is directly grasped in the sensible in which it is immanent, and pursued into the pure spiritual analogically attained, an intellection at first rudimentary, and naturally progressive, like everything human, and due to the essentially human process . . . of the abstraction of intelligibles.¹³

Maritain went on to discuss the role of intuition in Aristotle and Aquinas, concluding, “[t]hus man has an intuition as an animal, sense intuition, and an intuition as reasonable, the intellectual intuition we are discuss-

proceeding from natural law take the form of a deductive practical syllogism . . . but Maritain’s growing insight into Aquinas led him to discard [these claims] as mistaken. Maritain’s mature natural law theory fixes upon the way reason and will are disposed to good actions by the inclinations of our nature.

STILTNER, *supra*, at 90.

12. Jacques Maritain, *On Knowledge Through Connaturality*, 4 REV. METAPHYSICS 473, 478 (1951) [hereinafter *On Knowledge Through Connaturality*], reprinted in JACQUES MARITAIN, *NATURAL LAW: REFLECTIONS ON THEORY & PRACTICE* 20 (William Sweet ed., 2001) [hereinafter *NATURAL LAW*]; see also Jacques Maritain, *THE RANGE OF REASON* 22-29 (1952) [hereinafter *THE RANGE OF REASON*], reprinted in *NATURAL LAW*, *supra*.

13. BERGSONIAN PHILOSOPHY, *supra* note 8, at 30-31. This quotation occurs in the preface to the second edition, dated May 1929. See *id.* As Van Riet summarizes the problem:

[O]ur human cognition presents numerous discernible moments, even though they are vitally united: [cognition] is born in experience, bursts forth in the concept, blossoms out in the judgment, and matures in reasoning. . . . [E]xperience marks the passivity of the subject, whereas the concept, the judgment, and reasoning underline, rather, its activity. In the first case, the subject “observes,” whereas in the other it “understands.”

GEORGES VAN RIET, *THOMISTIC EPISTEMOLOGY: STUDIES CONCERNING THE PROBLEM OF COGNITION IN THE CONTEMPORARY THOMISTIC SCHOOL* 288-89 (Donald G. McCarthy & George E. Hertrich trans., 1965) [hereinafter *THOMISTIC EPISTEMOLOGY*]. In short, to know “is to observe and to understand at the same time.” *Id.* at 289.

ing.”¹⁴ For almost the next two decades, this Thomist description of intuition stood alone because Maritain did not need to use the concept of natural law actively in his writings.

Then, in 1947, one very important influence on Maritain’s reliance on intuition as the way we know natural law came directly from his experience with the UNESCO delegates, and transformed his understanding of the nature of reason and dialogue.¹⁵ Maritain linked his view of intuition to the moral sense—that is, to natural law. Moreover, Maritain saw that human knowledge of natural law, or moral sense, comes through a personal intuition. In this way, Maritain took the standard Thomistic account of natural law, rooted in reason and appearing as a full-blown moral sense, to a new level by shifting the focus from the natural law system to the individual’s apprehension of natural law.¹⁶

The insight that all human beings can grasp right and wrong intuitively through their moral sense is at the heart of cooperation and negotiation.¹⁷ In Maritain’s words: “For man, the natural law is a moral law

14. *Id.* at 31.

15. See Paul E. Sigmund, *Maritain on Politics*, in UNDERSTANDING MARITAIN: PHILOSOPHER AND FRIEND 153, 163 (Deal W. Hudson & Matthew J. Mancini eds., 1987). “The experience of working with men of widely differing philosophical and religious outlooks on the preparation of the Declaration seems to have had an effect on his natural law theories.” *Id.*

16. See McCool *supra* note 6, at 80 (citing JACQUES MARITAIN, A PREFACE TO METAPHYSICS: SEVEN LECTURES ON BEING 45-49 (1943)) (“Maritain linked the mind’s grasp of the intelligibility of concrete existence to a pre-conceptual intuition. That intuition, he added, was a concrete, highly personal experience, akin to an intellectual shock or to a grace of the natural order. No conceptual knowledge could substitute for it.”).

As far as Thomistic epistemology is concerned, scholars have asked about the ways of knowing and the steps of knowing, that is “the diversity of the moments within complete human knowledge”: “Are intellect, consciousness, sensibility memory, and authority capable of guaranteeing us a valid cognition? . . . What is the value of experience, the concept, judgment, and reasoning?” VAN RIET, *supra* note 13, at 285-86. Van Riet places Maritain as among those who “see the *concept* as the essential moment of cognition,” but with a difference. *Id.* at 291. Maritain clarifies “the progress which judgment makes in relation to the concept” but the concept “attains only an essence,” whereas “the judgment affirms an existence in the order of possible realities.” *Id.* at 293.

17. Paul Ramsey, the Princeton scholar of religion, criticized Maritain from the formalist viewpoint that if Maritain’s interpretation of Aquinas is correct, then emotion rules Thomistic ethics. See RAMSEY, *supra* note 11, at 213-22. For Ramsey, strict Thomism separates “connaturality” from practical reasoning. See *id.* Ramsey deems Thomism to include conceptual expressions of natural law principles in custom. See *id.* Maritain’s inclusion of intuition as part of practical reason struck Ramsey as a departure from strict Thomism. See *id.* In fact, many have criticized Maritain’s development of intuition from their own stance of strict adherence to ratiocination as co-extensive with reason. See, e.g., FERGUS KERR, AFTER AQUINAS: VERSIONS OF THOMISM 72, 97-103, 227 (2003); Germain G. Grisez, *The First Principle of Practical Reason: A Commentary on the Summa Theologiae, 1-2, Question 94, Article 2*, in AQUINAS: A COLLECTION OF CRITICAL ESSAYS 347-48 (Anthony Kenny ed., 1969). For an excellent point-by-point refutation of Grisez’s position, see Donald F. Haggerty, *Jacques Maritain and the Notion of Connaturality* (1995) (unpub-

because man obeys or disobeys it freely, not necessarily”¹⁸ The notion of cooperation on a substantive basis, without agreement on philosophical justifications for the substantive choices, is the train in Maritain’s thought that may prove most useful to contemporary lawyers.¹⁹

A. *Inclinations Are “Rooted in Reason”*²⁰

Moral, or natural, law is “the normality of functioning of the human nature or essence” and is “*naturally known* . . . through inclination.”²¹ Maritain’s development of intuition is the expression of a moral faculty applied to thinking. Reading Aquinas allowed Maritain to transform intuition with the Thomistic notion “that there is knowledge only if intelli-

lished doctoral thesis, Pontifical Lateran University) (on file with Academia, Alfonsiana, Rome); see also Raymond Dennehy, *Rescuing Natural Law from the Rationalists: Maritain’s Restoration of Credibility to Natural Morality and Natural Rights*, 10 *VERA LEX* 14 (1990). As Maritain put it, “[I]ntellectualism’ has never claimed, as ill-informed adversaries often accuse it of doing, to enclose each of our faculties in an ivory tower, and reduce all our ways of knowing to the syllogism. . . . Does not Saint Thomas . . . insist upon the interdependence of all our powers . . . ?” *BERGSONIAN PHILOSOPHY*, *supra* note 8, at 163-64 (citations omitted).

18. JACQUES MARITAIN, *LA LOI NATURELLE OU LOI NON ECRITE* 19-35 (1986) [hereinafter *LA LOI NATURELLE*], *reprinted in* *NATURAL LAW*, *supra* note 12, at 29. Sweet notes that “Parts of Chapter IV of *Man and the State* . . . and of *The Rights of Man and Natural Law* . . . follow this lecture very closely.” *NATURAL LAW*, *supra* note 12, at 25 n.5.

Cooperation and consensus building can be found in the history of many treaties at least since Magna Carta (1215). See generally MATTHEW RIDLEY, *THE ORIGINS OF VIRTUE: HUMAN INSTINCTS AND THE EVOLUTION OF COOPERATION* (1994). For the purposes of this article, “consensus building” is not meant technically. After the Second World War, much study has been conducted, making the field organized and producing principles of action ready for use. “Consensus building is a deliberative process that uses a neutral facilitator or mediator to bring together stakeholders so that they can jointly seek solutions to a problem.” JACQUELINE M. NOLAN-HALEY, *ALTERNATIVE DISPUTE RESOLUTION* 262 (3d ed. 2008) (citing LAWRENCE SUSSKIND, S. MCKEARNAN, & J. THOMAS-LARMER, *THE CONSENSUS BUILDING HANDBOOK: A COMPREHENSIVE GUIDE TO REACHING AGREEMENT* (1999)). Several scientists suggest why disagreement is so difficult to deal with: “[M]oral reasoning is an effortful process, engaged in after a moral judgment is made, in which a person searches for arguments that will support an already-made judgment. . . . [E]veryday reasoning is heavily marred by the biased search only for reasons that support one’s already-stated hypothesis.” Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 *PSYCH. REV.* 814, 818 (2001), available at <http://faculty.virginia.edu/haidtlab/articles/haidt.emotionaldog.pdf> (citations omitted).

19. This intuitive moral sense is also the subject of the current neuroscientific empirical studies addressed in Part II of this Article.

20. JACQUES MARITAIN, *CHALLENGES AND RENEWALS: SELECTED READINGS* 232 (Joseph W. Evans & Leo R. Ward eds., 1966) [hereinafter *CHALLENGES AND RENEWALS*].

21. *Id.* at 184.

gence is at work.”²² Legal scholars have not fully explored Maritain’s use of intuition in formulating his positions.²³

For Maritain, intuition has to do with intellect rather than emotions or rationalization.²⁴ The meaning of intuition is complex and must be untangled. With the application of Thomistic principles, intuition becomes knowledge “produced in the intellect” while at the same time bypassing the device of the concept and using connatural knowledge, or knowledge “by inclination rather than concept.”²⁵ Finally, “connatural knowledge differs from rational discourse, but by means of it the intellect can come to know the heart of reality in a way far deeper than rational discourse.”²⁶ Maritain used updated Thomistic arguments, arguing that the human race has come to a deeper understanding of natural law over time. Because of its flexibility and incorporation of a notion of growth and generation, like the embryos Maritain studied under Hans Driesch, the theory of knowledge through inclination represents a significant expansion of the theories of natural law based on rational-deductive systems. Maritain holds “the range of reason” “to include the nonrational tendencies whose source is in that nature of man inscrutable to the conscious intellect alone.”²⁷ This is the knowledge involved in prudential judgment: prudence and connaturality go “together in Maritain’s moral philosophy . . . [a]s they did in the ethics of Aristotle and St. Thomas.”²⁸

Maritain’s theory of intuitive perception of natural law—which he referred to variously as “knowledge by inclination,” “connaturality,” or “congeniality”—roughly means that as humans we come equipped with the ability to learn by intuition, or that intuition is second nature to us through a kind of moral sensitivity.²⁹ “The natural law of all beings ex-

22. Gwozdz, *supra* note 10, at 2.

23. See Patrick McKinley Brennan, *Jacques Maritain (1882-1973)*, in *THE TEACHINGS OF MODERN CHRISTIANITY ON LAW, POLITICS, AND HUMAN NATURE* 75 (John J. Witte & Frank S. Alexander eds., 2006) (emphasizing lack of legal commentary on Maritain’s work at outset of his treatment of Maritain; for example, *Lloyd’s Introduction to Jurisprudence* includes excerpts from *Man and the State* without accompanying analysis). “Maritain’s work is acknowledged in the wide world of legal philosophy, but not comprehended.” *Id.*

24. *But cf.* Sigmund *supra* note 15, at 164 (stating that Maritain “clearly seems to have altered Aquinas’s theory by de-emphasizing its rational character”).

25. Gwozdz, *supra* note 10, at 4.

26. *Id.*

27. RAMSEY, *supra* note 11, at 222. *The Range of Reason* is the title of the English translation of *Raison et Raisons* (1947).

28. McCool, *supra* note 6, at 87.

29. See JACQUES MARITAIN, *MAN AND THE STATE* 93-94 (1951) [hereinafter *MAN AND THE STATE*], reprinted in *NATURAL LAW*, *supra* note 12, at 37-38. McCool deals with moral sensitivity. See McCool, *supra* note 6, at 87 (citing JACQUES MARITAIN, *SCIENCE AND WISDOM* 113-14 (1940)). “Commentators on intuition have generally stressed the fact that a judgment, solution, or other conclusion appears suddenly and effortlessly in consciousness, without any awareness by the person of the mental processes that led to the outcome.” Haidt, *supra* note 18, at 818 (citations omitted).

isting in nature is the proper way in which, by reason of their specific nature and specific ends, they *should* achieve fulness [sic] of being in their behaviour.”³⁰ Furthermore, “in order to *divine*, to know or judge without discourse, we do not [need] recourse to a special cognitive power, distinct from the intellect . . . everything boils down to the spontaneous exercise of the *intelligence*.”³¹ Maritain’s use of inclination allowed him to reach those beyond the Roman Catholic or, indeed, any religious tradition, because of both the visibility of compromise—not on values, but on the justifications for those same values—and the role of “individual personal discernment” in intuition.³²

Aristotle and Aquinas had emphasized the reasonable character of law. While inclination is not in Aristotle’s work, it is treated in Aquinas’s. Maritain did not deny the role of reasoning power when analysis became necessary. With his fascination for biology, however, Maritain selected as his primary aim to see how far Aquinas’s ancient insight on connaturality properly applied to a broader range of human faculties: “[T]he question for me was . . . to test the validity of the notion of knowledge through connaturality, as elaborated in the Thomist school, and more systematically to recognize the various domains to which it must be extended.”³³

Maritain gave intuition a modern thrust, fitting it into relevant aspects of modern life and professions. In *On Knowledge Through Connaturality*, Maritain vastly extended the domain of Aquinas’s insight on connaturality from Aquinas’s treatment of moral virtues to human dialogue itself—much the same as Aquinas had earlier interpreted Aristotelian principles in a Christian way, and had thereby made Aristotle’s contributions relevant in a new and much broader context throughout Western Europe.³⁴

30. LA LOI NATURELLE, *supra* note 18, reprinted in NATURAL LAW, *supra* note 12, at 29.

31. BERGSONIAN PHILOSOPHY, *supra* note 8, at 163. Maritain continues: The intellect in a similar case, produces its act without having been led to do so by its normal mode of advancing, by reasoning or by discourse. It is the spontaneous welling up of this act which give it its “divinatory” aspect; but as a result it finds itself deprived of demonstrative certitude.

Id.

32. See Brennan, *supra* note 23, at 89. See generally WILLIAM J. NOTTINGHAM, CHRISTIAN FAITH AND SECULAR ACTION: AN INTRODUCTION TO THE LIFE AND THOUGHT OF JACQUES MARITAIN (1968) (welcoming this approach). *But see* SIGMUND, *supra* note 9, at 181 (noting that Richard Niebuhr “often criticized Catholic theories of natural law as rigid and inflexible, and excessively rationalistic”).

33. *On Knowledge Through Connaturality*, *supra* note 12, at 14; see also THE RANGE OF REASON, *supra* note 12, at 22-23.

34. See *On Knowledge Through Connaturality*, *supra* note 12, at 22-23. Maritain claimed only to be restoring Aquinas’s position, which he found distorted by philosophy in the generations following Aquinas. See MAN AND THE STATE, *supra* note 29, at 91 n.11, reprinted in NATURAL LAW, *supra* note 12, at 34 n.9 (citations omitted). Later philosophers obscured the role of inclination: “knowledge in which human reason does not intervene in order to establish the law, but simply to know in conformity with the inclination of nature.” LA LOI NATURELLE, *supra* note 18, at 114, as translated in Haggerty, *supra* note 17, at 243.

Maritain's great contribution was his treatment of how the human being relates those moral virtues to a moral sense: as part of a reasoning process in various fields of human endeavor from science to the arts. "The significance of Maritain's doctrine of natural law . . . provides for him a support for the hope that people will agree to the public terms of cooperation."³⁵

B. *Intellectual Intuition*

Maritain aimed to expand the scope of reason by including the point when the human being perceives the moral insight or knows the virtue in question as part of natural law. That gives natural law its "dynamic" character.³⁶ Maritain stated:

In this knowledge through union or inclination, connaturality or congeniality, the intellect is at play not alone, but together with affective inclinations and the dispositions of the will, and is guided and directed by them. It is not rational knowledge, knowledge through the conceptual, logical and discursive exercise of Reason. But it is really and genuinely knowledge, though obscure and perhaps incapable of giving account of itself, or of being translated into words.³⁷

Steven Pinker, like Maritain before him, finds that we have trouble articulating our moral reasoning or rationalization.³⁸ The study of the gap between people's moral convictions and the justifications of those convictions started with studies by moral psychologists some forty years ago with the "trolley" problems.³⁹ Psychologist and evolutionary biologist Marc Hauser sets forth the two methods of philosophical explanation of

the nature of moral judgments as either an attempt to deduce, using reason and logic, what individuals ought to do based on the facts at hand, or [to] let intuition play its course, followed up

35. ROBERT SONG, *CHRISTIANITY AND LIBERAL SOCIETY* 158 (1997).

36. See STILTNER, *supra* note 11, at 90. The characterization "dynamic" comes from Maritain's *MAN AND THE STATE*, *supra* note 29, at 93.

37. *On Knowledge Through Connaturality*, *supra* note 12, at 15; see also *THE RANGE OF REASON*, *supra* note 12, at 23.

38. See Steven Pinker, *The Moral Instinct*, *THE N.Y. TIMES MAG.*, Jan. 13, 2008, at 35. Maritain similarly finds that human beings

(except when they make use of the reflective and critical disciplines of philosophy) are unable to give account of and rationally to justify their most fundamental moral beliefs: and this very fact is a token, not of the irrationality and intrinsic invalidity of these beliefs, but on the contrary, of their essential *naturality*

On Knowledge Through Connaturality, *supra* note 12, at 21; see also *THE RANGE OF REASON*, *supra* note 12, at 27-28.

39. See Philippa Foot, *The Problem of Abortion and the Doctrine of Double Effect*, 5 *OXFORD REV.* 5 (1967) (discussing trolley problems); see also Judith Jarvis Thomson, *Individuating Actions*, 68 *J. PHIL.* 774 (1971) (same). For "trolleyology" questionnaires, see MARC D. HAUSER, *MORAL MINDS: HOW NATURE DESIGNED OUR UNIVERSAL SENSE OF RIGHT AND WRONG* 112-31 (2006).

by a search to work out the nature of the intuition, what it means in the service of developing the prescriptive principles. Scientific evidence plays no role in either approach.⁴⁰

Maritain does not deny the role of reason, but as a man with experience in twentieth century biology, he noticed the areas in which apprehension of the way things are becomes part of human reason without the need for a reasoning process.⁴¹ “I think that the teaching of St [sic] Thomas here should be understood in a much deeper and more precise fashion than is usual.”⁴² As always, Maritain used Thomistic categories.⁴³ Maritain wanted to use Thomism “to inspire and fashion a new age of Christianity, not to keep alight the distant glimmer of a medieval wisdom.”⁴⁴

Thus, Maritain wrote about “the fundamental power of intelligence to grasp certain general truths directly from experience.”⁴⁵ “My contention is that the judgments in which Natural Law is made manifest to practical Reason do not proceed from any conceptual, discursive, rational exercise of reason.”⁴⁶ Intuition or connatural knowledge operates before concepts: a preconcept is an unformulated or unverbilized concept. Because human nature is “so dependent on the senses,” and thus incompletely intuitive, human understanding “must actualize its intuitions through discursive ratiocination, by what we call ‘research,’ ‘analysis,’ ‘theory construction,’ and ‘verification.’”⁴⁷ Maritain’s emphasis on intuition helps us understand differences in the community of learning, including different talents each student has. His insight on the method of human knowing provides him with the tool for forging agreement on the basics held in common and the discretion to subsequently justify these basics philosophically and in different ways. Knowledge by inclination “is obscure, unsystematic, vital knowledge, by connaturality or congeniality, in which the intellect, in order to bear its judgments, consults and listens to

40. HAUSER, *supra* note 39, at 121.

41. See GERALD A. MCCOOL, FROM UNITY TO PLURALISM: THE INTERNAL EVOLUTION OF THOMISM 117-21 (1989).

42. LA LOI NATURELLE, *supra* note 18, reprinted in NATURAL LAW, *supra* note 12, at 33.

43. Sigmund wrote that what Maritain did with some Thomistic concepts would have horrified Thomas. See SIGMUND, *supra* note 9, at 161 (applying what Maritain saw as pluralism and Aquinas as heresy) (citations omitted).

44. BARRÉ, *supra* note 5, at 101-02. Maritain “was drawn to [Thomism] in the belief that, intelligently extended and applied, it could become, in capable hands, the philosophy which the modern world needed to integrate twentieth century experience.” MCCOOL *supra* note 6, at 92.

45. Benedict M. Ashley, *Introduction to THE COMMON THINGS: ESSAYS ON THOMISM AND EDUCATION* 15 (Daniel McInerney ed., 1999). Technically, this power of the intelligence is called *intellectus*, while “the other power of intelligence to reason from these truths as first principles” is called *ratio*. *Id.*

46. *On Knowledge Through Connaturality*, *supra* note 12, at 20; see also THE RANGE OF REASON, *supra* note 12, at 27.

47. Ashley, *supra* note 45, at 15.

the inner melody that the vibrating strings of abiding tendencies make present in the subject.”⁴⁸

Maritain treated connatural knowledge as both the method of knowing natural law, and as his basis for public dialogue about the adoption of the Universal Declaration of Human Rights and other major issues of the post-war world, including totalitarian and communist threats to human dignity.⁴⁹ He described “the moral law as ‘natural,’” because “it is related to human nature (i.e., in terms of human functioning and human ends).”⁵⁰ That is, all human beings “share the same nature.”⁵¹ Furthermore, natural law is naturally known, that is, directly, “by inclination”—connaturally known.⁵² Importantly, this knowledge is part of our faculty of reason.⁵³ Other reasoning faculties may appear to require more effort from us. Thus, we know science conceptually either through deductive reasoning or empirically by observation.⁵⁴

In *The Rights of Man and the Natural Law*, one of his most important books, published in French in 1942, Maritain developed his argument that natural law is the basis of a true philosophy of democracy and human rights. Maritain traced natural law as a heritage from the Greeks, beginning with Antigone’s speech, circa 440 B.C.E., justifying her right to defy positive law—her uncle Creon’s decree—and obey the timeless law of the

48. MAN AND THE STATE, *supra* note 29, at 91-92, *reprinted in* NATURAL LAW, *supra* note 12, at 34-35. According to Haidt, “moral intuition can be defined as the sudden appearance in consciousness of a moral judgment, including an affective valence (good-bad, like-dislike), without any conscious awareness of having gone through steps of searching, weighing evidence, or inferring a conclusion.” Haidt, *supra* note 18, at 818. Haidt therefore concludes: “Rather than following the ancient Greeks in worshipping reason, we should instead look for the roots of human intelligence, rationality, and virtue in what the mind does best: perception, intuition, and other mental operations that are quick, effortless, and generally quite accurate.” *Id.* at 822 (citations omitted).

49. See SIGMUND, *supra* note 9, at 161. “Partly as a result of his writing on the subject, [*The Rights of Man and Natural Law*], Maritain was active after World War II in various United Nations groups that contributed to the formulation and adoption of the Declaration of Human Rights.” *Id.* at 161. “Maritain responded to the war not only in writing but in several other capacities. He marshaled prominent intellectuals to sign manifestos against Hitler, Mussolini, and Franco[,] . . . delivered radio addresses to France, [and] published political treatises that were secretly distributed through the country . . .” STILTNER, *supra* note 11, at 107.

50. William Sweet, *Introduction to JACQUES MARITAIN, NATURAL LAW: REFLECTIONS ON THEORY & PRACTICE* 3, 8-9 (William Sweet ed., 2001). Conveniently for present-day students, the major passages of Maritain’s reflections on natural law have recently been collected in one place. See *id.* at 12.

51. *Id.* at 9. This means that natural law “has an ontological character.” *Id.*

52. See *id.* Maritain uses the word “gnoseology.” The second edition of *Webster’s New International Dictionary*, published in 1949, spells the word as “gnosiology” and defines it as a synonym for epistemology, or method of knowing. See WEBSTER’S NEW INTERNATIONAL DICTIONARY (2d ed., 1949) (“gnostic”).

53. See Sweet, *supra* note 50, at 9. “Nevertheless, while these basic principles are not known through reason, they are still ‘reasonable.’” *Id.*

54. See *id.*

heavens to bury her brother Polynices.⁵⁵ Maritain's choice of Antigone's defiance is a very telling insight into the scope and meaning of natural law. It illustrates the essence of natural law, which is concerned with fundamental matters eliciting universal consensus. Once these core values are recognized, Maritain is very much a pluralist because human nature displays a variety of rich customs that contribute to human society.

How are moral values known by means of connatural knowledge? Maritain argued that in the depth of the intellect an aspect of reason and intelligence functions as intuition. Intelligence picks up on instinct and transforms it into human inclination, that is, inclination informed by reason. Intelligence knows the ends of human nature connaturally.⁵⁶ The precepts of natural law are immediately known through inclination—connaturality—but cannot be demonstrated⁵⁷ because the conscious exercise of human reason—this is “second-glance”⁵⁸ knowledge—does not occur in the first perception of natural law, which is nonconceptual.⁵⁹ The knowledge of the virtuous person, the knowledge of the prudent person, or pre-philosophical knowledge of the values inherent in natural law are types of moral knowledge a person receives by connaturality or intuition.

Starting with Aristotle's observation that “[n]either by nature then, nor contrary to nature do the virtues arise in us; rather we are adapted by nature to receive them, and are made by them,” Hauser asks “how the mature state of moral knowledge is acquired.”⁶⁰ Hauser sets forth “the

55. See JACQUES MARITAIN, *THE RIGHTS OF MAN AND THE NATURAL LAW* 58 (Doris C. Anson trans., 1943) [hereinafter *THE RIGHTS OF MAN*]. In *Man and the State*, Maritain returned to Antigone's situation.

Antigone is the heroine of natural law; she was aware of the fact that, in transgressing the human law and being crushed by it, she was obeying a higher commandment—that she was obeying laws that were unwritten, and that had their origin neither today nor yesterday, but which live always and forever, and no one knows where they come from.

MAN AND THE STATE, *supra* note 29, at 85; see also LA LOI NATURELLE, *supra* note 18, reprinted in NATURAL LAW, *supra* note 12, at 26. Maritain compared Antigone's speech to Paul, *Epistle to the Romans*, 2:14-15, stating that the gentiles have “the work of the law written in their hearts.” MAN AND THE STATE, *supra* note 29, at 85.

56. See Gwozdz, *supra* note 10, at 129; cf. Jonathan Haidt, *The New Synthesis in Moral Psychology*, 316 SCIENCE 998 (2007), available at <http://www.sciencemag.org/cgi/reprint/316/5827/998.pdf?ijkey=9S1Vi6nUWCqY.&keytype=ref&siteid=sci>.

57. See *On Knowledge Through Connaturality*, *supra* note 12, at 21; see also THE RANGE OF REASON, *supra* note 12, at 27.

58. CHALLENGES AND RENEWALS, *supra* note 20, at 229.

59. See Gwozdz, *supra* note 10, at 130.

60. HAUSER, *supra* note 39, at 297. For a further discussion of the natural state, see *infra* notes 69, 128 and accompanying text. Some psychologists have found that “five psychological systems . . . provide the foundations for the world's many moralities . . . harm/care, fairness/reciprocity, ingroup/loyalty, authority/respect, and purity/sanctity.” Jonathan Haidt & Jesse Graham, *When Morality Opposes Justice: Conservatives Have Moral Intuitions that Liberals May Not Recognize*, 20 SOCIAL JUSTICE RESEARCH 98, 98 (2007), available at <http://faculty.virginia.edu/haidtlab/articles/haidt.graham.2007.when-morality-opposes-justice.pdf> (building on work of Richard Shweder).

universal moral grammar theory” as a “toolkit for building a variety of different moral systems.”⁶¹ He uses law professor John Mikhail’s experiments to support his own conclusion that “the intuitive knowledge underlying our moral judgments is like the intuitive knowledge of language, physics, psychology, biology, and music.”⁶² Thus, in Hauser’s judgment, “Mikhail’s claim, and the key idea driving [Hauser’s] argument for the moral faculty, is that much of our knowledge of morality is similarly intuitive, based on unconscious and inaccessible principles for guiding judgments of permissibility.”⁶³ Now that it is apparent that the current work of neuroscientists and other empirical experts indirectly supports Maritain’s philosophical conclusions about intuition from the 1940s and 1950s, we may turn in greater detail to their empirical findings and to some Kantian theorists whose work is particularly relevant.⁶⁴

II. NEUROBIOLOGY, PSYCHOLOGY, AND MODERN NEUROSCIENCE: HUMAN NATURE OBSERVED

The intersection of philosophy and psychology at the relatively new science of the moral sense—sometimes called cognitive science or science of human nature—illuminates the universal processes of apprehending moral conviction and reasoning.⁶⁵ Maritain’s philosophy that human be-

61. HAUSER, *supra* note 39, at 300.

62. *Id.* at 125. Hauser also discusses Mikhail’s work. *See id.* at 123-27. Maritain discussed the analogous character of human knowledge in the fields of poetry, mystical, and moral experience, which are made known through connaturality. *Cf.* THE RANGE OF REASON, *supra* note 12, at 24; *On Knowledge Through Connaturality*, *supra* note 12, at 16; *see also* JACQUES MARITAIN, CREATIVE INTUITION IN ART AND POETRY 80-90 (1953) (examining nature of aesthetic knowledge through philosophy of creative intuition and intellectualized emotion, and writing that artist intuitively “pre-conceptual awareness” of concrete world). As Ashley stated, “Maritain deserves great credit for insisting that the first principles of every science and art are known, not by reason, but by intuition, and that this intuition rests on sense experience and imagination, i.e. is aesthetic.” Ashley, *supra* note 45, at 15.

63. *Id.*

64. For a further discussion of neuroscience’s Kantian links, see *infra* notes 76-87 and accompanying text. For many Kantians who make the practical field of ethics the premier philosophical starting point, “human knowledge is unified by the analysis of language.” Ashley, *supra* note 45, at 4; *cf.* HAUSER, *supra* note 39, at 37-38 (discussing Rawls and Chomsky’s grammar of morals). For Aristotle, however, human knowledge “had to be critically reduced to sense knowledge, and ultimately to the sense of touch. Thus natural science had epistemological primacy.” Ashley, *supra* note 45, at 4-5 (citing the *De Anima*); *see also* Francis Slade, *Was ist Aufklärung? Notes on Maritain, Rorty, and Bloom with Thanks but no Apologies to Immanuel Kant*, in THE COMMON THINGS: ESSAYS ON THOMISM AND EDUCATION 48 (Daniel McInerney ed., 1999).

65. Philosopher Georges Van Riet describes the field of cognition in the following terms:

To know is to experience and to understand: to know *that* things are, and to know *what* they are. It is to attain to the existence and to penetrate the essence. To know is, first of all, to experience. Experience implies, on the part of the subject, a certain passivity, a receptivity with respect to some exterior thing, the acquiring of a datum. But to know is also to

ings apprehend principles of justice and fairness through intuition shaped his approach to negotiation and persuasion because he concentrated on what everyone knew in common as the focus of agreement. The modern empirical field of research on moral sense reinforces Maritain's approach in several important ways.

Because Maritain knew that we have a moral faculty, he was able to urge agreement on universal rights themselves rather than getting deflected by the reasoning used to justify the rights in the Declaration.⁶⁶ The recent scientific findings about how the human mind works in apprehending the moral sense may be applied to confirm Maritain's approach. These findings provide empirical evidence for Maritain's theory that people first concentrate on principles of justice through intuition, and justify our apprehensions afterward.⁶⁷ Cognitive science has examined the in-

understand, to reduce to unity the diversity of the datum, to interiorize it. . . . In opposition to experience, understanding connotes an attitude on the part of the mind which is, above all, active and spontaneous. Within the object, it connotes the attributes of universality and necessity demanded by "science."

1 GEORGES VAN RIET, THOMISTIC EPISTEMOLOGY: STUDIES CONCERNING THE PROBLEM OF COGNITION IN THE CONTEMPORARY THOMISTIC SCHOOL vii-viii (Gabriel Franks ed., 1963). Van Riet looks at the opposite extremes and seeks to avoid both: "How can these two opposing aspects, which the human faculty of knowledge presents, be reconciled? . . . Empiricism solved it by ignoring the role of thought, and idealism settled the question by neglecting the role of the datum." *Id.* at viii.

66. See MAN AND THE STATE, *supra* note 29, at 76.

67. According to Pinker:

([M]orality has an internal logic, and possibly even an external reality, that a community of reflective thinkers may elucidate, just as a community of mathematicians can elucidate truths about number and shape.) But it does mean that the moral sense is laden with quirks and prone to systematic error—moral illusions, as it were—just like our other faculties.

PINKER, *supra* note 4, at 270 (citing Jonathan Haidt, H. Koller, & M. G. Dias, *Affect, Culture and Morality, or Is It Wrong to Eat Your Dog?*, 65 J. PERSONALITY & SOCIAL PSYCH. 613 (1993)).

Similarly, Maritain observed:

[O]n the one hand, a careful examination of the data of anthropology would show that the fundamental *dynamic schemes* of natural law, if they are understood in their authentic, that is, still undetermined meaning (for instance: to take a man's life is not like taking another animal's life . . .), are subject to a much more universal awareness—everywhere and in every time—than would appear to a superficial glance; . . . on the other hand, an immense amount of relativity and variability is to be found in the particular rules, customs, and standards in which, among all peoples of the earth, human reason has expressed its knowledge even of the most basic aspects of natural law: . . . spontaneous knowledge does not bear on moral regulations conceptually discovered and rationally deduced, but on moral regulations known through inclination. . . . And in such tendential frameworks or dynamic schemes many various, still defective contents can occur,—not to speak of the warped, deviated, or perverted inclinations which can mingle with the basic ones.

MAN AND THE STATE, *supra* note 29, at 93, *reprinted in* NATURAL LAW, *supra* note 12, at 36-37; see also Jonathan Haidt & Craig Joseph, *Intuitive Ethics: How Innately Prepared Intuitions Generate Culturally Variable Virtues*, DAEDALUS 55 (2004).

herence of the universal principles of the moral sense in people of varied cultural backgrounds. Each culture emphasizes some universal principles over others.

For example, in Virginia psychologist Jonathan Haidt's study of moral behavior, respondents made the same suggestions for action despite their cultural differences, and they all had trouble articulating their reasoning.⁶⁸ The moral reasoning occurred after the judgment was made, as Maritain had observed. Haidt set forth the importance of moral inclinations, focusing on both their universality and cultural variability, and emphasizes the richness of morality beyond care and fairness, including loyalty, authority, and spiritual purity.⁶⁹ Maritain took the first principle of natural law, to do good and avoid harm—identified as the care/harm psychological system in Haidt's study—as his beginning point, and used intuition knowledge as the key to understanding universal values and political agreement and negotiation. He was ahead of his time insofar as cognitive science was still in its infancy when Maritain was writing. A study such as this Article, which examines Maritain's view of universal, or natural law, principles of justice through the lens of modern experimental moral science, is new in Maritain studies. The findings of cognitive science allow us not only to appreciate Maritain more fully but also to make greater use of Maritain's approach at a time when we very much need international cooperation.

Pinker, building on Peter Singer's metaphor of the expanding circle of entities treated as worthy of moral consideration, notes that we have reached "outward from the family and village . . . and most recently—as in the Universal Declaration of Human Rights—to all of humanity."⁷⁰ Like Maritain before him, Pinker suggests that the "possibilities for moral progress" are not over: "Human societies, like living things, have become

68. In 2001, Haidt conducted a study, done in person, presenting people with problems for their reaction. His central claim was that "moral judgment is caused by quick moral intuitions and is followed (when needed) by slow, *ex post facto* moral reasoning." Haidt, *supra* note 18, at 817. In a similar vein, Hauser conducted a "Moral Sense Test," located at <http://moral.wjh.harvard.edu>, a web-based experiment with 200,000 people from 100 different countries answering trolleyology questions in which the respondents could not explain why they decided as they did. See HAUSER, *supra* note 39, at 127. As Pinker put it: "People have gut feelings that give them emphatic moral convictions and they struggle to rationalize the convictions after the fact." PINKER, *supra* note 4, at 271.

69. See Haidt & Graham, *supra* note 60 (describing foundations of morality, and including data from web-based survey). The harm/care principle in which people have the instinct to help other people and to avoid harming them corresponds to the principle of natural law with which Maritain began his inquiry. Similarly, the doctors' oath, inspired by Hippocrates, is first to do no harm. In describing Haidt's study, Pinker called these five foundations of morality "the primary colors of the moral sense" and "a periodic table of the moral sense." Pinker, *supra* note 38, at 35, 37; see also Haidt, *supra* note 56.

70. PINKER, *supra* note 4, at 167.

more complicated and cooperative over time.”⁷¹ In trying to account for what he sees, Pinker suggests two possible theories: either that values come from religion, or that “evolution endowed us with a moral sense and we have expanded its circle of application over the course of history through reason . . . , knowledge . . . , and sympathy.”⁷² For example, to analogize to the situation that Maritain saw when nations considered adopting the Universal Declaration of Human Rights, the moral sense that killing people is wrong is paramount and all can agree on that.

The orientation of the new scientific studies of the human moral sense, or faculty, is Kantian in its theoretical or philosophical support for its discoveries. The truths Maritain, Aristotle, Aquinas, Pinker, and Hauser, together with psychologist Jonathan Haidt and John Mikhail share⁷³ (to mention only those who figure most heavily in this article), include the basic description of human nature, complete with an intuitive and historical or progressive moral sense. Hauser announces several themes of the cognitive scientist: “intuitive judgments versus consciously reasoned policy, innate capacities and acquired values, the common man’s intuitions versus the educated man’s reasoning [U]niversal judgments of fairness constrain the range of cross-cultural variation [I will explore] the extent to which people are aware of the principles driving their moral judgments.”⁷⁴ The consonance with Maritain’s themes of our intuitive moral grasp in various fields of human endeavor is clear.

71. *Id.* at 167. For a discussion of Maritain’s similar expression of the same point, see *infra* notes 118-21 and accompanying text.

72. *Id.* at 188. Indeed,

[c]hildren as young as a year and a half spontaneously give toys, proffer help, and try to comfort adults or other children who are visibly distressed. People in all cultures distinguish right from wrong, have a sense of fairness, help one another, impose rights and obligations, believe that wrongs should be redressed, and proscribe rape, murder, and some kinds of violence. These normal sentiments are conspicuous by their absence in the aberrant individuals we call psychopaths.

Id. (citations omitted); see also Richard A. Shweder, M. Mahapatra, & J. Miller, *Culture and Moral Development*, in *THE EMERGENCE OF MORALITY IN YOUNG CHILDREN 1* (J. Kagan & S. Lamb eds., 1987).

73. Maritain, who saw his philosophy as very different from Kant’s, shares some points in common with Kant: “Although the term ‘pluralism’ occurs only once in Kant’s published works, Kant’s political philosophy embodies the principles that Maritain includes under the term ‘pluralism’ in *Man and the State*.” John R. Goodreau, *The Idea of Democratic Pluralism*, in *REASSESSING THE LIBERAL STATE: READING MARITAIN’S Man and the State 100* (Timothy Fuller & John P. Hittinger eds., 2001). Mikhail’s Ph.D. dissertation deals with Rawls’s use of language and is available at his website. See John Mikhail, Georgetown Law, <http://www.law.georgetown.edu/faculty/Mikhail>.

74. HAUSER, *supra* note 39, at 61 (citing Thomas Jefferson’s letter to his nephew, Peter Carr). Compare Maritain’s statement:

One cannot too much insist upon this fundamental spontaneity of intelligence and on the importance of similar “intuitions” which, more or less confused, always precede and accompany intellectual elaboration, which cause the solution to be foreseen before it has been verified and demonstrated, and which are at the origin of the great consequences of thought.

For Pinker, Hauser, and other cognitive scientists, the context for their academic discussion is biological evolution. For Maritain, universal human nature, grounded in Aristotelian and Thomistic philosophy, comes from God. Aristotle and Maritain's interest in biology does not require them to set metaphysics aside in order to start with ethics. Up to the point of interpretation, the data are congruent with Maritain's observed data: Maritain, Rawls, and the cognitive scientists all adhere to the view that human nature is universal, including an intuitive moral sense or faculty. They diverge in that Maritain attributes human nature to God's work, whereas scientific Kantians see biological evolution as the cause of human nature.⁷⁵

But these acts are far from being foreign or contrary to the intelligence,—they are intellectual acts; it is more than ever a question of intelligence.

BERGSONIAN PHILOSOPHY, *supra* note 8, at 163. Immanuel Kant (1724-1804) applied principles that previous generations discussed in terms of political order to individual morality: "universality, generality, impartiality, and free consent." 2 JOSEPH KOTERSKI, NATURAL LAW AND HUMAN NATURE 30 (2002). These concepts fit in well with the work of both Rawls and neuroscience. Koterski observes that although the autonomy of reason is "the main thrust of Kant's theory of the categorical imperative [that is, the moral sense or the principle of morality]," Kant used the language of natural law in one of his formulations of the theory, writing, "[s]o, act as to treat all men not simply as a means, but always as, at the same time, ends in themselves," and further explaining, "the application he makes of his principles often seems to presume the very sort of knowledge that he holds to be inaccessible to us." *Id.* at 30, 37 (citation omitted).

75. For example, sociobiologist Edward Wilson, seeing Darwin as the evolutionary heir to Aristotle's *Nicomachean Ethics*, tracks natural law, focusing, however, only on science and leaving out Aristotelian habits and reasoning in human nature to highlight "biological origins." E.O. WILSON, *CONSILIENCE: THE UNITY OF KNOWLEDGE* (1998) [hereinafter *CONSILIENCE*]. The biological basis of human nature is controlling and drives out any other considerations and reflections. Wilson thereby opens the formulation of what he has to contribute to charges from other scientists of embracing social Darwinism, eugenics, and even Nazism. Pinker, acknowledging that these critics are not "scientifically illiterate," suggests that they are confused: "After Wilson argued in *Consilience* that divisions between fields of human knowledge were becoming obsolete, the historian Tzvetan Todorov wrote sarcastically, 'I have a proposal for Wilson's next book . . . [an] analysis of Social Darwinism, the doctrine that was adopted by Hitler, and of the ways it differs from sociobiology.'" PINKER, *supra* note 4, at 134. (Without minimizing the problems of interdisciplinarity, note that the way Wilson's theory may be interpreted in neo-fascist terms, with only the science updated, gives rise to the concern.)

Pinker concedes that "the new sciences of human nature really do resonate with assumptions that historically were closer to the right than to the left." *Id.* at 284. Pinker suggests, however, that we may trust today's scientists not to make the devastating mistakes of their predecessors: "But today the alignments are not [so] predictable." *Id.* To that end, Pinker enlists the "brains behind the American Revolution." *Id.* at 296 (citing two articles by John O. Mc Ginnis: *The Original Constitution and Our Origins*, 19 HARV. J.L. & PUB. POL'Y 251, 251-61 (1996); *The Human Constitution and Constitutive Law: A Prologomenon*, 8 J. CONTEMP. LEGAL ISSUES 211, 211-39 (1997) (assuming that human biology affects legal systems and arguing that founders' "theory of human nature could have come right out of modern evolutionary psychology")); *see also* Leiter & Weisberg, *supra* note 4, at n.4 (denying that

A. *Neuroscience's Kantian Links*

Rawls and Noam Chomsky are two central modern thinkers whose work relies upon a universal human nature with a moral sense approached through linguistic studies, and, especially in the case of Rawls, interpreted from a Kantian perspective. Maritain, Rawls, and Chomsky perceive both the world as well as human nature in substantially the same way, but Maritain is not a Kantian. Mikhail's work on Rawls, who started with linguistics, has been cogently reprised in Hauser's description of moral minds.

Central to [Rawls's] thinking was an identity relationship, the principle of *justice as fairness* Fairness is justice. Like the British philosophers of the Enlightenment, especially David Hume, Rawls believed in a moral sense, a sense of justice that was designed on the basis of principles that "determine a proper balance between competing claims to the advantages of social life." He also believed, paralleling Hume, that we can understand the nature of our moral sense by using the tools of science. Unlike Hume, however, Rawls placed little emphasis on the emotions. Rather, unconscious principles drive our moral judgments.⁷⁶

Rawls's linguistic studies show that we may not be aware of all the principles at work when we use language. Much of Rawls's work is designed to set forth the minimum elements necessary to achieve some basis for agreement. In approaching the same question, Maritain called on connaturality as a way of knowing natural law, that is, as the way in which people agree to "the public terms of cooperation," and Rawls later in *Political Liberalism* used the notion of "overlapping consensus."⁷⁷

evolutionary biology in its present state of development as discipline can determine founders' version of human nature).

76. HAUSER, *supra* note 39, at 65 (citation omitted). "Rawls suggested that we may often pronounce a judgment about what is fair or unfair, permissible or impermissible, without knowing why—without being able to justify our actions or give an explanation that is consistent with our behavior." *Id.* at 67; see also Eric Gregory, *Before the Original Position: The Neo-Orthodox Theology of the Young John Rawls*, 35 J. REL. ETHICS 179, 187-88 (2007) (analyzing pages two and three of Rawls's unpublished undergraduate thesis presented to Philosophy Department at Princeton University in December 1942). Indeed,

[p]ersonality, according to Rawls, does not mean individuality. He likens it to "spirit"—a uniqueness that is "not reducible to the possession of a particular body or the summary of mental states." Human beings become persons in community, which is to be contrasted with notions of community as "an aggregate of individuals."

Gregory, *supra*, at 187-88 (citation omitted).

77. See SONG, *supra* note 35, at 156, 158 (citing *The Immanent Dialectic of the First Act of Freedom*, in THE RANGE OF REASON, *supra* note 12, at 64-85); see also V. Bradley Lewis, *Liberal Democracy, Natural Law, and Jurisprudence: Thomistic Notes on an Irish Debate*, in REASSESSING THE LIBERAL STATE: READING MARITAIN'S *Man and the State*, *supra* note 73, at 140-58 (analogizing views of Maritain and Rawls). Brad Lewis points out the striking similarity of Maritain's "apparent optimism about the possibility of radical moral disagreement coexisting peacefully under the aegis of agree-

Rawls carries his observation about language over to the operation of our moral faculty. Hauser asks, if “we may act without knowing why What does it mean to know, and, in particular, to know about the principles of fairness [that is, about the moral sense]?”⁷⁸ Building on the linguistic analogy that we naturally and unreflectively use our language skills and our moral faculty, Rawls saw “that many of our morally relevant judgments emerge rapidly, often without reflection, in the absence of heated emotion, and typically without access to a clear justification or explanation.”⁷⁹ Despite the fact that Maritain taught in the Philosophy Department at Princeton from 1941 to 1942, we do not have to assume that Rawls was influenced by, or even read, Maritain. Indeed, the importance of the recognition of a common moral sense in human nature to their theories—termed “natural law” in Maritain’s case and “justice” in Rawls’s—would lead both philosophers to make similar observations and statements.

Rawls served in the Pacific theater during World War II and changed his earlier strong belief in evangelical Episcopalianism to belief in political expression as the best way to combat human rights violations, transgressions, and atrocities, focusing on the human moral sense.⁸⁰ Mikhail has devoted much scholarly attention to John Rawls’s notion that morality or

ment about political institutions” and John Rawls’s later “notion of ‘overlapping consensus’ in *Political Liberalism*.” *Id.*; see also SONG, *supra* note 35, at 156; STILTNER, *supra* note 11, at 51 (citing JOHN RAWLS, *POLITICAL LIBERALISM* xviii (1993)); Martha C. Nussbaum, *Aristotle, Politics and Human Capabilities: A Response to Antony, Arneson, Charlesworth and Mulgan*, 111 *ETHICS* 102, 105 & n.10 (2000); Posting of Lawrence Solum to Legal Theory Blog, <http://lsolum.typepad.com/legaltheory/2008/08/legal-theory-4.html> (Aug. 17, 2008, 12:58 EST); cf. Cass Sunstein, *Incompletely Theorized Agreements*, 108 *HARV. L. REV.* 1733 (1995) (using different terminology but expressly similar idea). For further discussion of Maritain’s appreciation for people with widely different viewpoints coming together for political action, see *infra* note 173 and accompanying text.

78. HAUSER, *supra* note 39, at 67. At any rate, it is unlikely Rawls was familiar with the finer points of Maritain’s philosophy because Rawls thought that natural law “fails to see that human beings are distinctive creatures . . . because they resemble the excellences of community” the Trinitarian God enjoys. *Id.*; see also Gregory, *supra* note 76, at 190 (citing page eleven of Rawls’s thesis).

79. HAUSER, *supra* note 39, at 67.

80. See Gregory, *supra* note 76, at 200 (citing SHELDON WOLIN, *POLITICS AND VISION: CONTINUITY AND INNOVATION IN WESTERN POLITICAL THOUGHT* 540, 542-43 (expanded ed. 2004)). In Wolin’s reading of Rawls’s concern with the “political consequences of beliefs,” Rawls attempted to keep religion private and to subsume religious arguments under the aegis of politics, rendering politics a religion. *Id.* (citation omitted). Gregory himself addresses Rawls’s political conception of justice, which restricted expression of religious views in the public square in *A THEORY OF JUSTICE* (1971), but which grew less restrictive in *POLITICAL LIBERALISM* (1993) and *THE IDEA OF PUBLIC REASON REVISITED* (1997). See *id.* at 198. Restrictions on religious expression are troubling because they are impractical (rational justifications arise after the epistemic or cognitive context), “historically naive (religious convictions have inspired some of the most democratic episodes in public life), strategically self-defeating, . . . and antidemocratic.” *Id.*

sense of justice is a cognitive faculty or “something persons have.”⁸¹ According to Mikhail, Rawls assumes each person develops a sense of justice under normal circumstances; that is, each person develops the ability to make systematic and stable moral judgments about an indefinite number of cases of first impression.⁸² This faculty of moral judgment is a common human possession: according to Rawls’s linguistic analogy, principles of justice are “innate categories of morality common to all men, imprinted on their neural structure.”⁸³ The concept of innate moral knowledge is the most profound interpretation of this analysis.

Again, similarly, the linguist Noam Chomsky, as Pinker emphasized, “has been the most vocal defender of an innate cognitive endowment since he nailed his thesis of an inborn language faculty to the behaviorists’ door in the late 1950s.”⁸⁴ Without adopting evolutionary biology, Chomsky wishes to see his scientific beliefs influence the political structure: “humans are innately endowed with a desire for community and a drive for creative free expression, language being the paradigm example. That holds out the hope for a society organized by cooperation and natural productivity rather than by hierarchical control and the profit motive.”⁸⁵ Moreover, these desiderata also resonate with Maritain’s political philosophy. Hauser’s assessment of Chomsky’s contribution, that language is a universal feature of all human minds, provides the starting point for Hauser’s own study:

I argue that our moral faculty is equipped with a universal moral grammar, a toolkit for building specific moral systems. Once we

81. See John Mikhail, *Law, Science, and Morality: A Review of Richard Posner’s The Problematics of Moral and Legal Theory*, 54 STAN. L. REV. 1057, 1089 (2002) (critiquing Posner’s position on effects of biology on behavior). Posner is a moral relativist, and his argument against the empirical evidence of neuroscience for universal patterns underlying the behavior of all human cultures “seems both undefended and implausible.” See *id.* at 1107.

82. See *id.* at 1089-90 (citing JOHN RAWLS, A THEORY OF JUSTICE (1971); John Rawls, *Justice as Fairness*, 54 J. PHIL. 653, 656-59 (1957); John Rawls, *The Sense of Justice*, 72 PHIL. REV. 281, 281-82 (1963)).

83. Mikhail, *supra* note 81, at 1108 (citing RONALD M. DWORKIN, TAKING RIGHTS SERIOUSLY 158 (1977)).

84. PINKER, *supra* note 4, at 300 (discussing Chomsky’s favoritism of innate cognition theory). Similarly, Pinker himself studied language patterns. See STEVEN PINKER, THE LANGUAGE INSTINCT: HOW THE MIND CREATES LANGUAGE 413 (1994) (stating that universal patterns underlie behavior of all human cultures).

85. PINKER, *supra* note 4, at 301; cf. HAUSER, *supra* note 39, at 69 (citing NOAM CHOMSKY, ASPECTS OF THE THEORY OF SYNTAX 8-9 (1965)). Chomsky, quoted by Hauser, stated:

Any interesting generative grammar will be dealing, for the most part, with mental processes that are far beyond the level of actual or potential consciousness; furthermore, it is quite apparent that a speaker’s reports about his behavior and competence may be in error. Thus, a generative grammar attempts to specify what the speaker actually knows, not what he may report about his knowledge.

HAUSER, *supra* note 39, at 69.

have acquired our culture's specific moral norms—a process that is more like growing a limb than sitting in Sunday school and learning about vices and virtues—we judge whether actions are permissible, obligatory, or forbidden, without conscious reasoning and without explicit access to the underlying principles.⁸⁶

Hauser describes the central idea of his own book in similar terms in the analogy to the unconscious knowledge of linguistic grammar: “we evolved a moral instinct, a capacity that naturally grows within each child, designed to generate rapid judgments about what is morally right or wrong based on an unconscious grammar of action.”⁸⁷

Apart from their Kantian inspiration, Pinker and Hauser share with Maritain the same view of how many thinkers got off track in understanding human nature during the early modern period, thereby bringing scholars into difficulties. Their complaints may be treated together for the purpose of diagnosing what went wrong. Pinker traced “the fingerprints of the Blank Slate [Locke's empiricism], the Noble Savage [Rousseau's romanticism], and the Ghost in the Machine [Descartes' dualism] on modern intellectual life . . . to] see how the seemingly airy ideas of Enlightenment philosophers entrenched themselves in modern consciousness, and how recent discoveries are casting those ideas in doubt.”⁸⁸ A blank slate “has neither injunctions to do good nor injunctions to do evil.”⁸⁹

B. *Angelism and the Blank Slate*

Rene Descartes (1596-1650) deflected people from a true understanding of human nature, composed not just of the mind that Descartes emphasized, but also of a body and emotions. In *Three Reformers* and *The Dream of Descartes*, Maritain terms Descartes's distorted focus on the mind “angelism.”⁹⁰ As Maritain repeatedly pointed out, human beings are historical and live in motion, and it takes us time to reflect on what we know

86. *Id.* at xviii. Compare Hauser's views with Maritain's views, *supra* notes 24-26, 37, and accompanying text. In greater detail, Hauser put the meaning of Chomsky's contribution in the following terms:

The revolutions in linguistics, catalyzed by Noam Chomsky in the 1950s and eloquently described by Steven Pinker in *The Language Instinct* [1994], was based on a theoretical shift. Instead of an exploration of cross-cultural variation across languages and the role of experience in learning a language, we should follow in the tradition of the biological sciences, seeing language as an exquisitely designed organ—a universal feature of all human minds.

Id. at xvii.

87. *Id.* (describing Hauser's conception of innate linguistics).

88. PINKER, *supra* note 4, at 10, 13 (analyzing evolution of societal conceptions of consciousness).

89. *Id.* at 10.

90. JACQUES MARITAIN, *THREE REFORMERS: LUTHER, DESCARTES, ROUSSEAU* (1929); see also JACQUES MARITAIN, *THE DREAM OF DESCARTES* (Mabelle L. Andison trans., 1944). For an excellent treatment of Maritain's views on these matters, focusing on Descartes, see Richard Fafara, *Angelism and Culture, in UNDERSTANDING*

intuitively. Although Descartes had a body as do all human beings, Descartes “resolve[d] at the outset to begin philosophizing as if he did not.”⁹¹ For Maritain, the senses and the intellect work together to focus on what we know by intuition, but for Descartes, knowledge of principles and consequences is immediate and intuition is pure and strong, as it is deemed to be only for angels, according to prior thought.⁹² Descartes singled out a part of human nature, the mind, and effectively, if unintentionally, negated the rest of human nature. The distortion in human life caused by assuming an exaggerated pre-eminence for the mind alone (“I consider the mind, that is to say, myself inasmuch as I am only a thinking being”) causes harm for those acting on such a theory by separating culture from biology: “the dogma that biology is intrinsically disconnected from the human social order offers scientists ‘safe conduct across the politicized manifold of modern academic life.’”⁹³

John Locke (1632-1704) is treated by both Maritain and Pinker as symbolic of the change in the relationship between the common culture and the understanding of human nature. Maritain described culture as “the perfecting of man’s physical, intellectual, and moral nature,” and therefore focused on Locke in his symbolic sense rather than attempting to deal with Locke’s theories themselves.⁹⁴ Pinker carefully points out his symbolic use of Locke to signify the damage done to our cultural understanding of human nature.⁹⁵ Locke’s emphasis on experience gave rise to

MARITAIN: PHILOSOPHER AND FRIEND 171 (Deal W. Hudson & Matthew J. Mancini eds., 1987).

91. Fafara, *supra* note 90, at 175.

92. See JACQUES MARITAIN, *MORAL PHILOSOPHY: AN HISTORICAL AND CRITICAL SURVEY OF THE GREAT SYSTEMS* (1945); Jacques Maritain, *Religion and Culture, in ESSAYS IN ORDER* (C. Dawson & J.F. Burns eds., 1940); JACQUES MARITAIN, *SOME REFLECTIONS ON CULTURE AND LIBERTY* (1933); see also STANLEY L. JAKI, *ANGELS, APES, AND MEN* (1983).

93. PINKER, *supra* note 4, at 8 (quoting Rene Descartes, *Meditations on First Philosophy* (1641), in *THE PHILOSOPHY OF THE 16TH AND 17TH CENTURIES* 134 (Richard Popkin ed., 1967)) (quoting anthropologist John Tooby and psychologist Leda Cosmides). Pinker notes that “[t]he unification of our understanding of life with our understanding of matter and energy was the greatest scientific achievement of the second half of the twentieth century.” *Id.* at 30. Maritain’s expanded role for intuition in human nature not only reflects his own interest in embryology but also presents a more accurate picture of human nature and therefore of the basis of negotiation and agreement.

94. See Fafara, *supra* note 90, at 171; see also Sigmund, *supra* note 15, at 163 (noting that “[i]n the case of Locke,” Maritain’s charge that the Enlightenment theories are based on an erroneous notion of human autonomy is literally wrong). Note, however, that Maritain wrote favorably of Locke in contrast with the *philosophes*: “The American Declaration of Independence, however, marked by the influence of Locke and ‘natural religion,’ adhered more closely to the originally Christian character of human rights.” *THE RIGHTS OF MAN, supra* note 55, at 80; see also *NATURAL LAW, supra* note 12, at 78.

95. Pinker sets forth the symbolic passage from Locke:

Let us then suppose the mind to be, as we say, white paper void of all characters, without any ideas. How comes it to be furnished? Whence comes it by that vast store which the busy and boundless fancy of man has

empiricism. In turn, but unintentionally, arguments against any content for the concept of human nature arose because of the irrational fear that acceptance of the concept of human nature would preclude social programs. It was thought that the existence of a human nature, rather than a blank slate, might lead to the prediction that the participants in the social programs could not change.⁹⁶

Jean-Jacques Rousseau (1712-1778) accepted the Lockean blank slate, attributing human wickedness to society itself and not the human heart.⁹⁷ Rousseau “believed (incorrectly) that savages were solitary, without ties of love or loyalty, and without any industry or art. . . . In [*The Social Contract*] he calls on people to subordinate their interests to a ‘general will.’”⁹⁸ Maritain thought Rousseau’s noble-savage concept of autonomy was a “false political emancipation and false conception of human rights.”⁹⁹ In *Man and the State*, Maritain’s masterpiece of political philosophy, Rousseau is taken to task for distorting the concept of human nature by substituting the general will for the people’s autonomy: “[A]ll individual wills lose any independence of their own in the indivisible *General Will*.”¹⁰⁰ As Maritain saw Rousseau’s general will, the state is enabled to claim “unheard-of absolutism” insofar as the social contract “gives the body politic [civil community] an absolute power over all its members.”¹⁰¹

After the citizen enters the social contract, in Rousseau’s words, “his life is no longer a nature’s boon only, but a conditional gift of the state.”¹⁰² According to Maritain, “Rousseau’s State was but the Hobbesian

painted on it with an almost endless variety? Whence has it all the materials of reason and knowledge? To this I answer, in one word, from EXPERIENCE.

PINKER, *supra* note 4, at 5 (quoting JOHN LOCKE, AN ESSAY ON HUMAN UNDERSTANDING 26 (Raymond Wilburn ed., 1947) (1690)).

96. *See id.* at 27-28.

Philosophers no longer [in the 17th and 18th centuries] had to refer to an underlying divine reason or eternal law. . . . While there is a natural moral law, its status is unclear; the notions of a human telos and a common good recede from view. The fundamental natural law of self-preservation is soon understood as equivalent to an individual’s right to life.

Sweet, *supra* note 50, at 3.

97. *See* PINKER, *supra* note 4, at 11.

98. *Id.* at 8 (citing JOHN JACQUES ROUSSEAU, THE SOCIAL CONTRACT, bk. I, ch. vii (“Whoever refuses to obey the general will shall be constrained to do so by the entire body; which means only that he will be forced to be free.”)).

99. Goodreau, *supra* note 73, at 99.

100. MAN AND THE STATE, *supra* note 29, at 47. “The Legislator, that superman described in the *Contrat Social*, offers us a preview of our modern totalitarian dictators . . . who have to ‘alter man’s constitution in order to strengthen it.’” *Id.* at 46 (citing JOHN JACQUES ROUSSEAU, THE SOCIAL CONTRACT, bk. II, ch. vii).

101. *Id.* at 45 n.35 (quoting JOHN JACQUES ROUSSEAU, THE SOCIAL CONTRACT, bk. II, ch. iv).

102. *Id.* at 46 (quoting JOHN JACQUES ROUSSEAU, THE SOCIAL CONTRACT, bk. II, ch. v).

Leviathan, crowned with the General Will.”¹⁰³ As Maritain observed of the Rousseauist social contract, no law of the General Will “could possibly be resisted by the individual [conscience in the name of justice. Law did not need to be *just* to have force of law. Sovereignty had a right to be obeyed, whatever it might command. Sovereignty was above moral law.”¹⁰⁴

Instead, “[t]he right of the people to govern themselves proceeds from Natural Law. . . . A law is not made *just* by the sole fact that it expresses the will of the people. An unjust law, even if it expresses the will of the people, is not law.”¹⁰⁵ The mythical noble savage is a loner whose only validation after entering the social contract is the state; but in fact, human beings desire to live in society. The free human being who wishes to engage with other human beings is not looking to become the citizen of a state with a general will that must be obeyed, even when the person cannot respect the general will or feel bound in conscience to obey. The human being with a sense of natural law freely joins social groups and religious and professional organizations. The human considers the state that part of society which provides services, such as safety and physical protection to the state’s borders and other services for the common good that human beings all need. The state recognizes that it is not the source of the person’s rights. The people give their allegiance to the state without denying responsibility and loyalty to other groups and duties.

Maritain, a Christian with the especially strong commitment of a convert, does not tie the existence of morality to any particular religion, choosing Sophocles’ *Antigone* as his symbol of morality for historical reasons.¹⁰⁶ Maritain contrasts the Middle Ages, with its religious and political unity, to a modern secular Western state characterized by the unity of the human person, who is simultaneously a member of political society and a religious group of choice: “[t]he unity of religion is not a prerequisite for political unity, and men subscribing to diverse religious or non-religious creeds have to share in and work for the same political or temporal common good.”¹⁰⁷ This is the “pluralist principle” that “require[s] from the State a juridical recognition” of minorities who contribute to the heritage of the nation.¹⁰⁸

103. *Id.*; see also PINKER, *supra* note 4, at 8 (describing Rousseau’s acceptance of Hobbes’s work). Pinker also saw Rousseau’s affinity for Hobbes, whom Rousseau quoted approvingly in Book IV, Chapter viii of *The Social Contract*.

104. MAN AND THE STATE, *supra* note 29, at 48.

105. *Id.*

106. *See id.* at 85.

107. *Id.* at 160. Nevertheless, Maritain’s view of a religiously pluralist society with both believers and non-believers having a seat at the political table and contributing their insights runs the risk of “alienat[ing] both sides.” See STILTNER, *supra* note 11, at 88. Maritain recognized that American liberalism “incorporates a principled place for religion in society.” *Id.*

108. MAN AND THE STATE, *supra* note 29, at 169-70. Stiltner speaks of the pluralism of multiple voices and perspectives. See STILTNER, *supra* note 11, at 1. Maritain “offers a pluralist society which also admits the importance of human socialization and cultural traditions.” SONG, *supra* note 35, at 149.

Steven Pinker recognizes that:

[M]ost Americans continue to believe in an immortal soul, made of some nonphysical substance, which can part company with the body. . . . Choice, dignity and responsibility are gifts that set off human beings from everything else in the universe, and seem incompatible with the idea that we are mere collections of molecules.¹⁰⁹

Hauser also acknowledges other people's religious beliefs but explicitly seeks a "divorce" between morality and religion, and even more explicitly feels that religious perspectives stand in the way of recognizing "our common biology."¹¹⁰ Whatever the religious beliefs of most scientists and intellectuals, the theory of human nature according to the natural law tradition—espoused by the character Antigone, and by Aristotle, Aquinas, and Maritain—has much in common with the theory of human nature set forth in the empirical descriptions of cognitive and other scientists. The evidence of the origins of human nature, whether in God, in biological evolution, or some theory as yet not in vogue, is not, and apparently cannot be, clear and convincing. Both believers and nonbelievers acknowledge this fact, believers not relying on proof, but rather on grace and faith, and intellectuals relying on whatever "has become the secular religion of modern intellectual life," as secular orthodoxy changes from age to age with the blank slate exiled in favor of biological evolution.¹¹¹

109. PINKER, *supra* note 4, at 10. Haidt deals with religion from a psychologist's point of view:

My claim is that the human mind perceives a . . . specifically moral dimension that I will call "divinity." . . . In choosing the label "divinity," I am not assuming that God exists and is there to be perceived. (I myself am a Jewish atheist.) Rather, my research on the moral emotions has led me to conclude that the human mind simply *does* perceive divinity and sacredness, whether or not God exists.

JONATHAN HAIDT, *THE HAPPINESS HYPOTHESIS: FINDING MODERN TRUTH IN ANCIENT WISDOM* 183-84 (2006).

110. See HAUSER, *supra* note 39, at xx, 421-22. With respect to the persistence of religious belief, Haidt concludes:

As a liberal I value tolerance and openness to new ideas. . . . Liberalism and the ethic of autonomy are great protectors against such injustices. I believe it is dangerous for the ethic of divinity to supersede the ethic of autonomy in the governance of a diverse modern democracy. However, I also believe that life in a society that entirely ignored the ethic of divinity would be ugly and unsatisfying. . . . If the [] dimension [of divinity] and perceptions of sacredness are an important part of human nature, then the scientific community should accept religiosity as a normal and healthy aspect of human nature—an aspect that is as deep, important, and interesting as sexuality or language (which we study intensely).

HAIDT, *supra* note 109, at 210-11; cf. DEAN H. HAMER, *THE GOD GENE: HOW FAITH IS HARDWIRED INTO OUR GENES* (2004) (discussing genetic studies of twins' religious experience).

111. See PINKER, *supra* note 4, at 10; see also Owen D. Jones & Timothy H. Goldsmith, *Law and Behavioral Biology*, 105 COLUM. L. REV. 405 (2005). Note the

III. NATURAL RIGHTS AND HUMAN EQUALITY:
 MARITAIN'S NATURAL LAW THEORY

In 2001, Michael Ignatieff wrote that:

Fifty years after its proclamation, the Universal Declaration of Human Rights has become the sacred text of what Elie Wiesel has called a 'world-wide secular religion.' . . . Human rights has become the major article of faith of a secular culture that fears it believes in nothing else. . . . It is not a creed; it is not a metaphysics.¹¹²

Ignatieff finds "these kinds of foundational arguments" divisive and argues that focus on what human rights "actually *do* for human beings" would provide more convincing support for human rights.¹¹³ This divisiveness existed at the time the Declaration was being prepared because of the difficulty of describing the human moral sense and what it requires individuals and society to do. "It is likely that no issue of public policy in the world raises more difficult philosophical questions than that of human rights."¹¹⁴ The major reason for the difficulty is the inability to agree about philosophical justifications for human rights. The Rousseauist French State, for example, claimed that human rights derive from the State itself, but the United States declared its independence on the ground that men "are endowed by their Creator with certain unalienable rights." These issues arose "with force and drama," when "the United Nations decided that its Commission on Human Rights, composed of government representatives, should draft an international bill of rights capable of securing universal acceptance. . . . Profound differences of philosophy about the individual, the state, and ethical values surfaced immediately."¹¹⁵

cautions on the applicability of evolutionary psychology in its current state of development:

[T]he current fascination with "law and evolutionary biology" [] permits the patina of "science" to be enlisted on behalf of various hobby horses of the right. . . . [P]erhaps all of these are true, but right now evolutionary biology offers no support to any of them. But "ephemeral enthusiasms wafted on the politics of the moment" have made the science irrelevant.

Leiter & Weisberg, *supra* note 4, at 49 & n.106 (citation omitted).

112. MICHAEL IGNATIEFF, HUMAN RIGHTS AS POLITICS AND IDOLATRY 53 (2001) (citation omitted). For the development of the Universal Declaration, see JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING AND INTENT (1999).

113. See IGNATIEFF, *supra* note 112, at 54. As quoted in another work, Maritain wrote: "We affirm in vain the dignity and the vocation of the human person if we do not work to transform the conditions which oppress him or her, and if we do not work to make it possible for that person to eat his or her bread in dignity." MICHAEL A. SMITH, HUMAN DIGNITY AND THE COMMON GOOD IN THE ARISTOTELIAN-THOMISTIC TRADITION 6 (1995) (citation omitted).

114. LAUREN, *supra* note 1, at 219.

115. *Id.* at 219-20. "They strenuously debated whether human rights derived from God, from natural law, or from the authority of the state." *Id.* at 221. For the

The Commission therefore had to extend a seat at the table to many more persons and viewpoints than those government representatives on the Commission. Nongovernmental organizations from all over the world and specialized agencies from the International Labor Organization to the International Refugee Organization shared their insights, together with lawyers' national and international committees and institutes. The Commission also relied on philosophers that UNESCO contacted: one hundred fifty persons from around the world were asked several questions on the premise that the world "must develop a common set of ideas and principles . . . [to] reconcile the various divergent or opposing formulations now in existence."¹¹⁶ Among them was Jacques Maritain's historical view that a bill of rights could not be exhaustive and final because the state of the moral conscience and civilization change from age to age.¹¹⁷

A. *Historical Development of Natural Law: "Man Being an Historical Animal"*¹¹⁸

In *Man and the State*, written in 1949, and *La Loi Naturelle ou Loi non E'crite*, written the next August, Maritain deals with the development of human understanding of natural law over time: as people have greater experience they refine their ability to be more compliant with the principles of natural law.¹¹⁹ The epistemological aspect of natural law emphasizes how we become aware of human inclination in our own lives as we grow in experience. "Knowledge of natural law is progressive, though the natural law itself does not change."¹²⁰ In Maritain's view, our knowledge of natural law is rooted in history. The essential inclinations of human

United Nations Commission on Human Rights, see JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY & PRACTICE* 129, 132 (2d ed. 2003).

116. LAUREN, *supra* note 1, at 223 (citing UN Archives and UNESCO documents). The memorandum UNESCO sent to the philosophers is reproduced in *HUMAN RIGHTS*, *supra* note 3, at 251-55. The questionnaire is also reprinted. See *id.* at 255-57.

117. See LAUREN, *supra* note 1, at 223-24. The responses of Maritain and several other philosophers were published in the *UN Weekly Bulletin*, highlighting the role of the philosophers. *Id.* at 341 & n.58 (citing different *Bulletin* issues between July and December 1947, as well as *Report of the First Meeting of the Committee of Experts Convened by UNESCO on the Philosophical Principles of the Rights of Man*, 31 July 1947, based on questionnaire responses). René Cassin and Charles Malik, two members of the UN Commission on Human Rights, found the report very convincing. See *id.* at n.60.

118. *On Knowledge Through Connaturality*, *supra* note 12, at 20; see also *THE RANGE OF REASON*, *supra* note 12, at 27.

119. See *MAN AND THE STATE*, *supra* note 29, at 90, reprinted in *NATURAL LAW*, *supra* note 12, at 32-33; see also Gregory Doolan, *Maritain, St Thomas Aquinas, and the First Principles of Natural Law*, in *REASSESSING THE LIBERAL STATE: READING MARITAIN'S MAN AND THE STATE* 127 (Timothy Fuller & John P. Hittinger eds., 2001); RAMSEY, *supra* note 11, at 222.

120. Sweet, *supra* note 50, at 9.

nature “either developed or were released as humanity advanced.”¹²¹ Maritain stresses that Aquinas’s approach to natural law required a “historical approach and a philosophical enforcement of the idea of development that the Middle Ages were not equipped to carry into effect.”¹²²

Because natural law is unwritten, human knowledge of natural law “has increased little by little as man’s moral conscience has developed.”¹²³ According to Maritain, epistemologically speaking, natural law “essentially involves a dynamic development,” which will progress “as long as human history endures.”¹²⁴ It is important that the moral sense keep current with the other developments in society. Maritain provided an anthropology of natural law, a narrative from pre-written history about the cultures, customs, societies, and institutions of different peoples around the world. He started from the Aristotelian insight that “there is a human nature, and that this human nature is the same in all men. I am taking it for granted that we also admit that man is a being gifted with intelligence, and who, as such, acts with an understanding of what he is doing, and therefore with the power to determine for himself the ends which he pursues.”¹²⁵ Human beings differ from culture to culture, according to their circumstances, but they are all equally human.

Anthropologists have taught us within what structures of tribal life and in the midst of what half-awakened magic it was primitively formed. This proves merely that the knowledge men have had of the unwritten law has passed through more diverse forms and stages than certain philosophers or theologians have believed. The knowledge which our own moral conscience has of this law is doubtless still imperfect, and very likely it will continue to develop and to become more refined as long as humanity exists.¹²⁶

121. MAN AND THE STATE, *supra* note 29, at 92, *reprinted in* NATURAL LAW, *supra* note 12, at 35; *cf.* Sigmund, *supra* note 15, at 164. Maritain “gives more emphasis [than Aquinas] to the notion of a progressive development in the understanding of the natural law.” SIGMUND, *supra* note 9, at 190.

122. MAN AND THE STATE, *supra* note 29, at 92, *reprinted in* NATURAL LAW, *supra* note 12, at 35; *see also* Deborah Wallace, *Jacques Maritain and Alasdair Mac Intyre: The Person, the Common Good and Human Rights*, in *THE FAILURE OF MODERNISM: THE CARTESIAN LEGACY AND CONTEMPORARY PLURALISM* 127 (Brendan Sweetman ed., 1999). “It was Maritain’s conviction that the modern discovery of rights was part of an evolution in the modern moral conscience which identified previously unseen dimensions of the natural law.” Wallace, *supra*, at 129.

123. MAN AND THE STATE, *supra* note 29, at 90, *reprinted in* NATURAL LAW, *supra* note 12, at 32 (positing that mankind’s awareness of natural law coincides with development of conscience).

124. *Id.* at 93-94, *reprinted in* NATURAL LAW, *supra* note 12, at 37 (stating that natural will continue to develop as mankind evolves).

125. *Id.* at 85-86, *reprinted in* NATURAL LAW, *supra* note 12, at 27.

126. *Id.* at 90, *reprinted in* NATURAL LAW, *supra* note 12, at 33; *see also* COLIN TURNBULL, *THE MOUNTAIN PEOPLE* (1972) (considering question of cultural relativism in anthropological setting).

Maritain speculated about why the ancients saw people as more united than we do and recognized that many of the differences among people are morally irrelevant. Cognitive science, starting soon after Maritain's speculation, has helped us see that the differences in human culture are not as vast as we had even recently thought.¹²⁷ Pinker notices that the moral sense can be variable and universal at the same time.¹²⁸

Moral philosophy "does not discover the moral law," which was "discovered by men before the existence of any moral philosophy."¹²⁹

[M]an being an historical animal, these essential inclinations of human nature either developed or were released in the course of time: as a result, man's knowledge of Natural Law progressively developed, and continues to develop. . . . I would say that these genuinely essential inclinations have been responsible for the regulations which, recognized in the form of dynamic schemes from the time of the oldest social communities, have remained permanent in the human race, while taking forms more definite and more clearly determined.¹³⁰

As Maritain well knew, knowledge of natural law, the moral sense, "will progress as long as human history endures. That progress of moral conscience is indeed the most unquestionable instance of progress in hu-

Researchers in the human sciences have begun to flesh out the hypothesis that the mind evolved with a universal complex design. Some anthropologists have returned to an ethnographic record that used to trumpet differences among cultures and have found an astonishingly detailed set of aptitudes and tastes that all cultures have in common.

PINKER, *supra* note 4, at 55 (citing DONALD E. BROWN, *HUMAN UNIVERSALS* (1991)). See generally Donald E. Brown, *Human Universals and Their Implications*, in *BEING HUMANS: ANTHROPOLOGICAL UNIVERSALITY AND PARTICULARITY IN TRANSDISCIPLINARY PERSPECTIVES* 156 (N. Roughley ed., 2000).

127. See PINKER, *supra* note 4, at 37 (hypothesizing that mental commonalities underlying behavior). "Once one starts to think about mental software instead of physical behavior, the radical differences among human cultures become far smaller. . . . *Universal mental mechanisms can underlie superficial variation across cultures.*" *Id.* Thus, Pinker describes "familiar categories of behavior," such as marriage customs that have to be learned, "but the deeper mechanisms of mental computation that generate them may be universal and innate." *Id.* at 39; see also MARY DOUGLAS, *NATURAL SYMBOLS: EXPLORATION IN COSMOLOGY* (1970).

128. See Pinker, *supra* note 38, at 37 (discussing origin of moral spheres). Some scientists have found five universal moral spheres—from fairness to community and authority—as a legacy of evolution, but these depend on the particular culture for interpretation. See *id.* at 52; cf. Jonathan Haidt, *The Moral Emotions*, in *HANDBOOK OF AFFECTIVE SCIENCES* 852 (Richard J. Davidson ed., 2003). For further discussion of the five moral spheres, see *supra* note 60.

129. *On Knowledge Through Connaturality*, *supra* note 12, at 22.

130. *THE RANGE OF REASON*, *supra* note 12, at 27, reprinted in *NATURAL LAW*, *supra* note 12, at 20-21; cf. JACQUES MARITAIN, *ON THE PHILOSOPHY OF HISTORY* 104-10 (1957); RAISSA MARITAIN, *HISTOIRE D'ABRAHAM OU LES PREMIERS AGES DE LA CONSCIENCE MORAL* (1947).

manity.”¹³¹ For Maritain, human history and anthropology did not require cultural relativism or the empirical “Blank Slate”—that is, the denial that a universal human nature exists.¹³² From the concept of a shared human nature, Maritain recognized that within cultural differences, all ethnic groups are equally human with the same ability to perceive natural law through their moral conscience.¹³³ Maritain’s recognition of equality requires respect in the embodiment of human rights.

B. *The Rights of Man and Natural Law*

In *The Rights of Man and Natural Law*, Maritain wrote in 1942 that while the French Declaration on Human Rights of 1789 afforded some rights, it was based on an incorrect rationalist perspective that excluded God and looked toward the state as the source of liberty.¹³⁴ On the other hand, the American Declaration of Independence more closely adhered to the original and, as Maritain saw it, Christian character of human rights. Maritain argues that “the duties which the natural law imposes on man (to live, to mate, to reproduce, to learn, to worship) creates rights, i.e., an obligation of non-interference by others.”¹³⁵ By applying the notion of an ordered universe to human ends, Maritain “form[ed] the foundation of a theory of human rights.”¹³⁶ Natural law envisions “an ultimate moral order in the universe in which all contradictions are capable of being resolved and an ultimate harmony can prevail.”¹³⁷ Rights are “linked to the very nature of man” and are thus based on the idea of natural law.¹³⁸ Maritain wrote that:

131. MAN AND THE STATE, *supra* note 29, at 94, *reprinted in* NATURAL LAW, *supra* note 12, at 37.

132. See PINKER, *supra* note 4, at 23. Pinker discusses anthropology from the perspective of cognitive science.

133. *Cf. id.* Franz Boas (1858-1942), the founder of modern anthropology, believed that “all ethnic groups are endowed with the same basic mental abilities. Boas was right about this, and today it is accepted by virtually all scholars and scientists.” *Id.* (footnote omitted).

134. See THE RIGHTS OF MAN, *supra* note 55, at 80, *reprinted in* NATURAL LAW, *supra* note 12, at 78. (“The French Declaration of the Rights of Man framed these rights in the altogether rationalist point of view of the Enlightenment and the Encyclopedists, and to that extent enveloped them in ambiguity.”).

135. SIGMUND, *supra* note 9, at 191-92. Quoting Maritain, “The same natural law which defines our most fundamental duties, and by virtue of which every law is binding, is the law which assigns to us also our fundamental rights.” MAN AND THE STATE, *supra* note 29, at 86; *see also* ARTHUR P. MONAHAN, FROM PERSONAL DUTIES TOWARDS PERSONAL RIGHTS: LATE MEDIEVAL AND EARLY MODERN POLITICAL THOUGHT, 1300-1600 185-94 (1994). Article 29 of the Universal Declaration of Human Rights states, “[E]veryone has duties to the community in which alone the free and full development of his personality is possible.” G.A. Res. 217A, U.N. Doc. A/810 (Dec. 12, 1948).

136. SIGMUND, *supra* note 9, at 191-92.

137. *Id.* at 183.

138. See THE RIGHTS OF MAN, *supra* note 55, at 65-66.

[B]ecause we are enmeshed in the universal order, in the laws and regulations of the cosmos and of the immense family of created natures (and finally in the order of creative wisdom) . . . because we have at the same time the privilege of sharing in spiritual nature we possess rights vis-a-vis other men and all the assemblage of creatures.¹³⁹

Maritain's study of the Enlightenment's emphasis on rights led him to conclude that rights evolved from the untapped resources of natural law.¹⁴⁰

Maritain grounded human rights in natural law. Starting with the natural law correlation of rights and duties, Maritain derived just societal relations from duties relating to the common good that are to be fulfilled first. The European notion of contract law still depends on fulfilling one's own part of the contract before suing to enforce one's rights against the other party.¹⁴¹ In terms of social and political rights and obligations, the emphasis on duty in natural law would require the human being to receive rights in the context of that person's role in society. Maritain, however, followed the American Declaration of Independence and abstracted the human being from the natural law social context, lodging rights in the person from the fact of the person's existence alone.¹⁴²

139. *Id.* at 66.

140. *See id.* at 64.

141. *See* DAVID IBBETSON, A HISTORICAL INTRODUCTION TO THE LAW OF OBLIGATIONS 208-13 (1999). Professor Carmella explains that:

[R]ights in Catholic social thought differ in important ways from those derived from the natural-rights tradition. First, because Catholics see a social person embedded in relationships, rights flow from prior duties owed to others. Natural-rights theories have an individualistic conception of the person who possesses rights but who owes only duties voluntarily undertaken. Second, Catholics view the state primarily as necessary and helpful in the promotion and articulation of rights and duties; natural-rights theories view it primarily as the person's adversary.

Angela Carmella, *A Catholic View of Law and Justice*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 255, 264 (Michael W. McConnell et al. eds., 2001).

142. *See* THE RIGHTS OF MAN, *supra* note 55, at 63-64. Deborah Wallace suggests that the pitfalls of Maritain's theory lie in separating the human being from his political and social context, thereby departing from Thomistic natural law duty. *See* Wallace, *supra* note 122, at 131. MacIntyre and others object to the use of rights language as being inappropriate in a natural law setting. *See id.* at 133 (citing Alasdair MacIntyre, *Community, Law and the Idiom of Rhetoric of Rights*, 26 LISTENING 100-10 (1991)).

On the other hand, because Maritain connects rights to natural law, he "avoids some of the criticism of theories of individual rights." Sweet, *supra* note 50, at 10. MacDonald also objected to discourse on human rights at the time talk of the Universal Declaration of Human Rights was in the air. *See* Margaret MacDonald, *Natural Rights*, 47 PROCEEDINGS OF THE ARISTOTELIAN SOC'Y 225 (1947); *see also* Executive Bd., Am. Anthropological Ass'n, *Statement on Human Rights*, 49 AM. ANTHROPOLOGIST 539 (1947) (presenting moral relativist objections on grounds that Declaration is ethnocentric). In other contexts, Maritain did not separate the person from the community. *See* STILTNER, *supra* note 11, at 93-94, 134-36. In his undergraduate thesis, Rawls recognized "[t]he *Imago Dei* renders human beings

Building on the International Declaration of the Rights of Man, which the Institute of International Law adopted on October 12, 1929, Maritain listed human rights in three different categories: the human person, the civic person, and the social person as worker. This is perhaps best summarized as the “right to have a part, free of charge, depending on the possibilities of the community, in the elementary goods, both material and spiritual, of civilization.”¹⁴³ *The Rights of Man* has a list of rights that “closely resembles those that came to be explicitly given in the 1948 United Nations Declaration” but without the underlying theory.¹⁴⁴

The following describes the types of rights on which all people can compromise. According to Article 1, “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Among the “concatenation of rights differing in degree” that Maritain mentioned are: (1) the right to existence (Article 3) and liberty of conscience (Article 9); (2) the right to own property, the right to work (Article 22), and the right to equal pay (Article 23); and (3) liberty of expression, freedom of exposition, and freedom of association (Article 20).¹⁴⁵ Furthermore, in general, the family overarches “the civil community and the State” both in time and in loyalty, making it “important in a declaration of rights to specify clearly the rights and liberties to be included in it and which human law does no more than sanction.”¹⁴⁶ Stoic ideas that were added to Aristotle and Maritain’s list resonate with stoic natural justice. Aquinas used teleology to pull all of this together. Universal standards in which all can concur arise in times of great international disaster, such as the Holocaust. Maritain’s earlier anti-Enlightenment attitude, set forth in *Three Reformers*, was now gone.

responsible: ‘personality with obligations,’ capable of answering God’s loving call to be in community.” Gregory, *supra* note 76, at 191.

143. THE RIGHTS OF MAN, *supra* note 55, at 114; cf. Jacques Maritain, *The Rights of Man: A Comment by Jacques Maritain*, in UNITED NATIONS WKLY. BULL., NOV. 18, 1947, at 672, 674 [hereinafter *The Rights*].

144. Sweet, *supra* note 50, at 11. Maritain’s theory is based on “Aquinas’s belief in a universe ordered . . . by God in a hierarchy of ends.” Sigmund, *supra* note 15, at 163.

145. See *The Rights*, *supra* note 143, at 673-74. Equal pay, the right to work, and the right to education (Article 26) are not found in the United States Constitution. Other modern rights include a “right to rest and leisure” (Article 24) and a “right to a standard of living adequate for the health and well-being” (Article 25). See William Sweet, *Introduction to PHILOSOPHICAL THEORY AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 1* (William Sweet ed., 2003) [hereinafter Sweet, *Introduction to PHILOSOPHICAL THEORY*].

146. *The Rights*, *supra* note 143, at 674. “No declaration of human rights will ever be exhaustive and final. It will ever go hand-in-hand with the state of moral consciousness and civilization at a given moment in history.” Jacques Maritain, *On the Philosophy of Human Rights*, in HUMAN RIGHTS, *supra* note 3, at 74.

C. *Man and the State*

There is a dynamism which impels the unwritten law to flower forth in human law, and to render the latter ever more perfect and just in the very field of its contingent determinations. It is in accordance with this dynamism that the rights of the human person take political and social form in the community.¹⁴⁷

Maritain, no stranger to controversy, grounded human rights in human nature; mutual respect is a basis for rights. Beyond natural law alone, Maritain provided an account of human beings and what is important to them, “including nonpolitical goods and values” and the religious sensibilities they do—or do not—possess.¹⁴⁸ In 1951’s *Man and the State*, Maritain treated the state as part of the body politic that administers justice and good order. “[T]he basic political reality is not the State, but the body politic with its multifarious institutions, the multiple communities which it involves, and the moral community which grows out of it.”¹⁴⁹ The church finds its place in the body politic through its association and heritage and contributes its insights about truth, beauty, and other goods of the spirit to the common good. These supra-temporal goods are the moral heritage of mankind, the spiritual with the good of civilization or the community of minds, which requires freedom of religion.¹⁵⁰ Democracy is important to Maritain’s thoughts in general, and particularly in *Man and the State*, where he called for both religious pluralism and state support of religion as a bulwark of freedom. Maritain rejected religious establishment and recognized the healthfulness of American democracy.¹⁵¹ He came to recognize

147. MAN AND THE STATE, *supra* note 29, at 100. Jacques Maritain has “attempted to develop the distinctively Catholic presuppositions which undergird a Catholic advocacy of human rights,” starting from a natural law framework. See Wallace, *supra* note 122, at 128.

148. See STILTNER, *supra* note 11, at 50.

149. MAN AND THE STATE, *supra* note 29, at 202.

150. See *id.* at 160 (“The unity of religion is not a prerequisite for political unity, and men subscribing to diverse religious or non-religious creeds have to share in and work for the same political or temporal common good.”).

151. See ST. THOMAS AQUINAS ON POLITICS AND ETHICS 172 (Paul E. Sigmund trans. & ed., 1988). Maritain, according to one source,

was one of the most important influences in promoting the acceptance of liberal democracy and religious pluralism by European Catholics and the papacy who had been alienated by the anti-clericalism of continental liberalism. He did this by reinterpreting the traditional Thomist teachings to justify support for human rights and freedom of worship, so that the modern secular democratic state was seen as more faithful to the principles of Christianity and man’s “natural inclinations” than the hierarchical corporatism of the Middle Ages which continued to influence the thinking of Catholic conservatives.

Id. Freedom and the state’s role in promoting “the temporal common good” provide the bases of Maritain’s call for pluralism. See SIGMUND, *supra* note 9, at 192.

that democracy is the only type of government to solve the problem of ends and means, “the basic problem in political philosophy.”¹⁵²

Man and the State shows to great advantage Maritain’s development of natural law theory. “The philosophical foundation of the Rights of man is Natural Law. Sorry that we cannot find another word!”¹⁵³ He described the American Constitution as “an outstanding lay Christian document tinged with the philosophy of the day,”¹⁵⁴ thus synthesizing Christianity and liberalism and allowing many Christians at that time to embrace liberalism, which had not been possible before.¹⁵⁵ Maritain, along with the American Declaration of Independence, insisted on the derivation of rights from the nature of man. These rights are

inalienable since they are grounded on the very nature of man, which of course no man can lose. This does not mean that they reject by nature any limitation. . . . Just as every law,—notably the natural law, on which they are grounded,—aims at the common good, so human rights have an intrinsic relation to the common good.¹⁵⁶

There are both positive and negative aspects to Maritain’s emphasis on an intuitive perception of natural law. On the positive side, intuition explains the immediate reaction of horror everyone has to evils such as

152. See MAN AND THE STATE, *supra* note 29, at 54. In *Christianity and Democracy*, published in 1943, Maritain argued that there is an essential link between the Christian tradition and the view of man as a free person that underlies democracy. See M. SUSAN POWER, JACQUES MARITAIN (1882-1973): CHRISTIAN DEMOCRAT, AND THE QUEST FOR A NEW COMMONWEALTH 95-100 (1992) (noting Maritain’s three categories of rights: personal, civic, and those of working people).

153. MAN AND THE STATE, *supra* note 29, at 80.

The concept of natural law has been so much abused, so much pulled about, distorted or hypertrophied that it is hardly surprising if, in our age, many minds declare themselves weary of the whole idea. Yet they must admit that since Hippias and Alcidas, the history of human rights and the history of the natural law are one, and that the discredit into which positivism for a period brought the concept of natural law inevitably involved similar discredit for the concept of human rights.

HUMAN RIGHTS, *supra* note 3, at 75.

154. MAN AND THE STATE, *supra* note 29, at 183. For the traditional bases of human rights in philosophy and religion, see LAUREN, *supra* note 1, at 5-20; THE DECLARATION OF INDEPENDENCE (U.S. 1776).

155. See Wallace, *supra* note 122, at 128.

Maritain’s political and social vision called for a new social order marked by a plurality of cultures governed by democratic principles and animated by the Christian spirit. Maritain hoped for a “personalist” democracy that would curb individualism without being totalitarian, advocate human rights vehemently as integral to the common good, and promote human freedom in conjunction with virtue.

Id. Maritain also envisioned a series of community social, political, professional, religious, and charitable organizations “to encourage personal initiative and local action.” See *id.*

156. MAN AND THE STATE, *supra* note 29, at 101.

genocide; intuition gets at some transcendent basis for universal condemnation of the gravest evils. On the other hand, intuition of natural law is amorphous and difficult to apply specifically because of the great social variation, which leads to omission of thoughtful analysis about the meaning of a universal intuitive aversion to genocide. Furthermore, despite intuition, human beings do not always choose to acknowledge and respect the rights of others.¹⁵⁷ To act positively as a community in carrying out the intuitions of natural law on human rights, human beings must act in solidarity with one another. That is, they must “actively engage in work that will promote” human rights over time, including educational programs.¹⁵⁸

Maritain’s description of natural law is an effort to ground universal condemnation of evil morally by emphasizing the values most human beings share in common, while at the same time keeping the concept vague enough to avoid getting into specifics that may divide us. Natural law goes beyond “thou shalt not commit murder,” but it is not often concerned with specific details relevant to a time or place.¹⁵⁹ For Maritain, natural law is not merely a rational reflection on experience, but rather a moral intelligence. The new science of moral sense operates on “the hypothesis that human beings possess a common moral nature, rich enough to provide the foundation of a system of human rights and obligations.”¹⁶⁰

Deriving human rights and securing their respect is extremely difficult to achieve. For natural lawyers, inclination makes each person familiar with self-preservation and a mother’s protection of her child. That allows everyone to acknowledge a right to life and that genocide is wrong. The missing link is the recognition that every person shares the same human nature. Dictators fail to acknowledge this basic truth of natural law, the major offenders during the consideration of the Declaration being Hitler and Stalin, who were responsible for the deaths of millions of human beings. Natural law cannot overcome such departures, but because it is dependent on the inclination of the human persons, natural law

157. See Sweet, *supra* note 145, at 2.

Appeals to rights have often been ineffective. Some critics reject the rights listed in the UDHR altogether Nor have the old objections . . . to universal human rights—that they are ahistorical, vague, imprecise, insensitive to cultural differences, metaphysically problematic, and serve to reinforce the status quo—lost their influence.

Id. (citing JEREMY WALDRON, *NONSENSE UPON STILTS: BENTHAM, BURKE AND MARX ON THE RIGHTS OF MAN* (1987)).

158. See William Sweet, *Solidarity and Human Rights*, in *PHILOSOPHICAL THEORY AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 213, 226 (William Sweet ed., 2003) (noting that Maritain’s theories are applicable to current challenges surrounding diversity).

159. Objections that we do not or cannot know what is moral and what is not, or that the morality of the majority should not tyrannize the minority, therefore do not touch the heart of what the concept of natural law expresses. See PINKER, *supra* note 4, at 172, 198-202, 272-73.

160. *Id.* at 427.

methodology “is open to the work of the social and biological sciences for data about the constitution and circumstances of human life. . . . The method then brings these data and reflections about human nature under the framework of practical reason.”¹⁶¹

Furthermore, a recognition that each and every human being is like oneself provides the basis for the respect owed to one another, which is at the heart of all human rights theories. In his discussion of Maritain, Stiltner describes the theoretical framework for a natural rights theory of human rights. Such a theory “centers around rights as inalienable expressions of human dignity, recognizing that rights have both a communal context (they aim at the common good) and practical limitations as to their practice (they may conflict with other rights or duties).”¹⁶² A strictly natural law approach, common to Sophocles’s *Antigone* and Maritain alike, does not elaborate a religious or theological justification for human rights, although natural law is based on a comprehensive position on human nature. Maritain, however, relies on the theology of the person.¹⁶³

Morality is still something larger than our inherited moral sense. “[A] recognition that the other guy is acting from moral rather than venal reasons can be a first patch of common ground.”¹⁶⁴ One side can acknowledge the other’s concern for community, stability, fairness, or dignity, even while arguing that some other value should trump in that instance. This, in fact, was Maritain’s approach to the Universal Declaration of Human Rights, reflecting the natural law notion that “we are involved in the universal order.” In his work to promote the Declaration, Maritain searched for what “goals we can share and defend.”¹⁶⁵

161. STILTNER, *supra* note 11, at 92.

162. *Id.*; see also SMITH, *supra* note 113, at 6-37.

163. For an excellent treatment of theological personalism in Maritain’s works, such as *The Person and the Common Good*, see STILTNER, *supra* note 11, at 93-102. The common good is based on the characteristics of persons: “their God-given dignity, their possession of inalienable rights, their call to God as their ultimate end, and their need for communication and community with others.” *Id.* at 99. Stiltner suggests that having both a natural law approach and a theological approach “advances a liberal-communitarian synthesis on the common good.” *Id.* Thus, “the recognition of the person as a social being, of how individual human identity is built on life in community, and of the priority of the common good in social life, is necessary to construct an adequate account of rights.” Sweet, *Introduction to PHILOSOPHICAL THEORY*, *supra* note 145, at 11 (citing Thomas Jeannot, *A Postsecular Exchange: Jacques Maritain, John Dewey, and Karl Marx*, in *PHILOSOPHICAL THEORY AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 11, 83-95 (William Sweet, ed. 2003)).

164. Pinker, *supra* note 38, at 58.

165. *Id.*

III. CONCLUSION: HUMAN INCLINATION AS A BASIS FOR DIALOGUE AMONG PEOPLE WITH DIFFERENT VIEWS¹⁶⁶

How exactly did Maritain's conception of natural law contribute to the adoption of the Universal Declaration of Human Rights? The Director General of UNESCO, Julian Huxley, adopted the following philosophical justification for UNESCO's work: "Thus the general philosophy of UNESCO should, it seems, be a scientific world humanism, global in extent and evolutionary in background."¹⁶⁷ As far as the Declaration was concerned, Maritain took a different approach. In his inaugural address to the Second International Conference of UNESCO in Mexico City on November 6, 1947, presiding at the meeting after he was elected Conference chairman, Maritain addressed, among other questions, how people divided by intellectual disagreements may nevertheless cooperate on practical matters.¹⁶⁸ These practical matters deal not with "the affirmation of the same conception of the world, man and knowledge, but [with] the affirmation of the same set of convictions concerning action."¹⁶⁹ In an important articulation of why intuition, inclination, or connaturality are so important as a means of dialogue with different groups—in this case, nations—Maritain explained that shared practical convictions allow people of good will to agree on substantive matters, such as deciding to adopt the Universal Declaration of Human Rights. Without directly stating so in his speech, Maritain realized that the substantive matters of agreement come to each person as principles of natural law do: through virtue of human nature by inclination directly from experience. Our philosophical justifications, or rationalizations, come later and divide us.

Thus, we recognize that killing people is wrong and set forth different reasons for so holding:

[I]t is not permissible to take the life of an innocent man because he has become a useless and costly burden to the nation, or because he impedes the successful undertakings of any group what-

166. See *id.* at 58; see also MAN AND THE STATE, *supra* note 29, at 69-73.

167. JULIAN HUXLEY, UNESCO: ITS PURPOSE AND ITS PHILOSOPHY 8 (1946). Some contemporaries thought that the pamphlet promoted "a purely materialist line of conduct." See Roger Seydoux, *Jacques Maritain à Mexico*, in 10 CAHIERS JACQUES MARITAIN (1984), translated in part in BARRÉ, *supra* note 5, at 392; see also Rene Mougel, *J. Maritain et la Déclaration universelle des droits de l'homme de 1948*, in 37 CAHIERS JACQUES MARITAIN 13-15 (1998).

168. See Jacques Maritain, *The Possibilities for Co-operation in a Divided World*, in JACQUES MARITAIN, THE RANGE OF REASON, *supra* note 12, at 179 (1952) [hereinafter *The Possibilities*] (noting topic of Maritain's speech for international and diverse audience); cf. Brennan, *supra* note 23, at 81 (citing DONALD & IDELLA GALLAGHER, THE ACHIEVEMENT OF JACQUES AND RAISSA MARITAIN: A BIBLIOGRAPHY: 1906-1961 23 (1962)). In a similar position to Maritain's from the new sciences of human nature, Haidt and Hersh show that deeply divided groups can find common ground. See Jonathan Haidt & Matthew A. Hersh, *Sexual Morality: The Cultures and Emotions of Conservatives and Liberals*, 31 J. APPLIED SOCIAL PSYCHOL. 191-221 (2001).

169. *The Possibilities*, *supra* note 168, at 180.

soever; the human person is endowed with a dignity which the very good of the community presupposes and must, for its own sake, respect. . . .¹⁷⁰

This agreement on what is “written on heart” is “enough to undertake a great work, and it would mean a great deal to become aware of this body of common practical convictions.”¹⁷¹ Recognition of the sincerity of other people’s differing justifications for agreeing on the substance of the task in question is particularly important because this respect is the one principle which allows people of opposing viewpoints to come together for the purpose at hand; no one is “entitled to demand that others subscribe to his own justification of the practical principles on which all agree.”¹⁷² This practical respect is at the heart of the human rights that receive substantive recognition in the Declaration.

Although Maritain had a different philosophical justification than Huxley for supporting the Declaration—that of natural law—he decided not to make his viewpoint an issue in opposition to Huxley’s. Rather, Maritain felt it crucial to emphasize the contents of the Declaration itself, which, as he saw from his notion of intuition, all delegations could accept.¹⁷³ His insight that justifications come later in the mind through rationalization allowed him to suggest that philosophical justifications should be forgone in order to reach consensus on the terms of the agreement, which was a recognition rather than a conferral of rights. The fact that people have difficulty explaining their moral judgments has elicited different responses from social psychologists and other scientists. For example, Hauser characterizes Jonathan Haidt’s approach as Humean: people are dumbfounded “because we are not reasoning about these moral dilemmas but rather delivering flashes of insight based on unconscious emotions.”¹⁷⁴ Similarly, Maritain found that “a sort of unwritten common law [exists] at the point of practical convergence of extremely different theological ideologies and spiritual traditions.”¹⁷⁵

The insights of modern neuroscience confirm this highly successful approach. For example, UNESCO inquired among the delegates about the philosophical basis of human rights.¹⁷⁶ In his response, Maritain began by discussing the method of formulating the Declaration, which Maritain characterized as “the moral charter of the civilized world.”¹⁷⁷

170. *Id.* at 183-84.

171. *Id.* at 180-81.

172. *Id.*

173. See MAN AND THE STATE, *supra* note 29, at 78. Maritain recognized a shared “sort of unwritten common law, at the point of practical convergence of extremely different theoretical ideologies and spiritual traditions.” *Id.*

174. HAUSER, *supra* note 39, at 156.

175. MAN AND THE STATE, *supra* note 29, at 78.

176. See UNITED NATIONS WKLY. BULL., *supra* note 143, at 672 (indicating context in which Maritain’s comment was presented to UNESCO).

177. *Id.* at 672.

Maritain thought “while *practical* agreement in regard to such a Declaration is possible, *theoretical* agreement is impossible.”¹⁷⁸ He recognized that despite agreement about the need for a Declaration, opinion in most member delegations “derive[s] from the thought of each of them individually—depending upon their schools of thought, their philosophical and religious traditions, their area of civilization, and their historical experiences—from extremely different, or even fundamentally opposed, theoretical conceptions.”¹⁷⁹

It would doubtless not be easy, but it would be possible, to establish a common formulation of these *practical conclusions*, or, in other words, of the different rights recognized as pertaining to the human being, in his personal and social existence. On the other hand, it would be quite hopeless to look for a common *rational justification* of those practical conclusions and of those rights. To do so would risk either seeking to impose an arbitrary dogmatism, or to be confronted at once by unbridgeable gulfs. For in the sphere of rational justifications, in the speculative or theoretical sphere, the question of the rights of man involves the whole philosophy of life, the whole system of moral and metaphysical (or anti-metaphysical) certainties to which each of us subscribes. As long as there is no unity of faith or of philosophy between human beings, the sphere of rational justifications will remain one of division.¹⁸⁰

According to Maritain, practical agreement on the rights themselves was made possible by the shared experience of then recent political disasters, namely “the acts of those who before the Second World War constituted themselves the instruments of Fascist and racial propaganda and corruption, aiming at the breaking up of the democracies from within and the encouraging in men of the blind desire to free themselves from freedom.”¹⁸¹

Statements at the meeting were collected for submission to the UN Commission on Human Rights, which was preparing the draft of the Declaration. Later, in November 1947, Maritain used the questions in the UNESCO memorandum to set forth his own justification for the Declaration “in the full realization” that he could not “count upon the agreement of those who subscribe to other philosophical principles,” thereby re-em-

178. *Id.*

179. *Id.*

180. *Id.* Johnson treated such fundamental differences in culture and values as natural law versus positivism, liberalism versus Marxism, and western concerns versus other concerns. See M. Glen Johnson, *A Magna Carta for Mankind: Writing the Universal Declaration of Human Rights*, in *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A HISTORY OF ITS CREATION AND IMPLEMENTATION: 1948-1998* 19, 42-48 (M. Glen Johnson & Janusz Symonides eds., 1998).

181. UNITED NATIONS WKLY. BULL., *supra* note 143, at 674.

phasizing his point that while we may agree on what the rights are, it is nevertheless extremely difficult to agree on how we reach those rights.¹⁸²

How does natural law work to set forth human rights? According to Maritain:

[A]ny rational justification of the idea of the rights of man, as of the idea of law in general, demands that we should rediscover the idea of natural law, distorted by eighteenth-century rationalism, in its true metaphysical connotations, its realistic dynamism and the humility of its relation with nature and experience. We are then able to understand how a certain ideal order, rooted in the nature of man and of human society, can impose moral demands valid throughout the world of experience, history, and fact, and can establish, for the conscience as for the written law, the permanent principle and the elementary and universal criteria of rights and duties.¹⁸³

“[B]y very virtue of human nature, *an order or a disposition [exists] which human reason can discover and according to which the human will must act in order to attune itself to the necessary ends of the human being. The unwritten law, or natural law, is nothing more than that.*”¹⁸⁴ Therefore, “[m]en know it with greater or less difficulty, and in different degrees, running the risk of error here as elsewhere.”¹⁸⁵ Maritain’s insight that human intuition operates as a part of normal and natural human functioning is currently the subject of much empirical verification by psychologists, social biologists, and other scientists with additional practical data continuously being amassed. Maritain’s extension of the range of intuition from the sphere of human virtues to the perception of the principles of natural law and, indeed, to “the entire realm of aesthetic knowledge . . . is one of Maritain’s most original contributions . . . and perhaps his greatest and most lasting one.”¹⁸⁶

Returning to the theme of burial rites in *Antigone*, we can use our own context to apply Maritain’s notion of knowledge of natural law by inclination.¹⁸⁷ For example, we see that at the heart of many 9/11 families’ frustrations with governmental authority is the decision to permit re-building to go forward when the families wanted a further search for human remains. More recently, families have been upset by the delay in the memorial scheduled to be built by the tenth anniversary in 2011, both for the dignity of those lost and to give the survivors closure. In other words, for

182. *See id.* at 673.

183. *Id.*

184. RIGHTS OF MAN, *supra* note 55, at 61.

185. *Id.* at 62.

186. MCCOOL, *supra* note 41, at 129.

187. Brad Lewis doubts “the efficacy of natural law argument in the public discourse and constitutional jurisprudence of modern liberal democracies,” but sees some role for “the honest application of these researches to our own culture and institutions.” Lewis, *supra* note 77, at 141, 158.

Antigone and for us, natural law does not concern parking tickets or administrative questions of positive law such as how late a bar or club can stay open, but rather fundamental questions of moral right, which cut across differences of time and place. Natural law goes beyond “thou shalt not commit murder,” but it is not often concerned with specific details relevant to a time or place.

In *Man and the State*, Maritain continued to proclaim the reasonability of law:

It is essential to law to be an order of *reason*; and natural law, or the normality of functioning of human nature known by knowledge through inclination, is *law*, binding in conscience, only because nature and the inclinations of nature manifest an order of reason,—that is of *Divine Reason*. Natural law is law only because it is a participation in Eternal Law.¹⁸⁸

Reason includes much more than logic because it is based on the human mind, which encompasses reasonable, rational, and intuitive components, to say nothing of other faculties of the mind.¹⁸⁹ Maritain’s enlargement of natural law to include our individual moral senses completes the picture of our reasoning power and intellect in his definition of moral law. From *Bergsonian Philosophy and Thomism* through *Man and the State*, Maritain always placed the epistemological description of intuition within the concept of reason, parting with Bergson for abandoning the intellect. The insights of cognitive science confirm the soundness of Maritain’s focus on learning by intuition or connaturality, demonstrating how human nature works and indicating how human beings respond to natural law in the form of their own moral sense.¹⁹⁰

188. MAN AND THE STATE, *supra* note 29, at 96, *reprinted in* NATURAL LAW, *supra* note 12, at 60; *cf.* RIGHTS OF MAN, *supra* note 55, at 66-69, *reprinted in* NATURAL LAW, *supra* note 12, at 58 n.25. “Intuition, reasoning, and the appraisals contained in emotions . . . are all forms of cognition. Rather, the words ‘intuition’ and ‘reasoning’ are intended to capture the contrast made by dozens of philosophers and psychologists between two kinds of cognition.” Haidt, *supra* note 18, at 818.

189. *See* PINKER, *supra* note 4, at 220-21 (listing cognitive faculties and their corresponding intuitions).

The mind also has components for which it is hard to tell where cognition leaves off and emotion begins. These include a system for assessing danger, coupled with the emotion called fear, a system for assessing contamination, coupled with the emotion called disgust, and a moral sense, which is complex enough to deserve a chapter of its own.

Id. at 221.

190. *See* Haidt, *supra* note 18, at 818 (“[I]ntuition occurs quickly, effortlessly, and automatically, such that the outcome but not the process is accessible to consciousness, while reasoning occurs more slowly, requires some effort, and involves at least some steps that are accessible to consciousness.”); *see also* HAUSER, *supra* note 39, at 126-27; PINKER, *supra* note 4, at 270 (“The moral sense is a gadget, like stereo vision or intuitions about number. It is an assembly of neural circuits cobbled together from older parts of the primate brain and shaped by natural selection to do a job.”).

Maritain looked for his ultimate truth in transcendence and expressed his theory of human rights in the language of natural law. The success of the cooperation and negotiation on the Declaration of Human Rights demonstrates the wisdom of Maritain's formulation of intuition.¹⁹¹ The work of such psychologists as Haidt and Hauser in devising questionnaires to illuminate the universality of human nature helps us understand psychologically why Maritain's approach is so successful and useful for present day dialogue, especially for respecting each contributor to a negotiation and capitalizing on what we share in common. Therefore, objections that we do not or cannot know what is moral and what is not, or that the morality of the majority should not tyrannize the minority, do not touch the heart of what the concept of natural law expresses. We have a common basis of agreement built into our common human nature. Those who have rejected natural law because they think it exclusively concerns reason and fails to take the whole person into account might consider Maritain's approach a resource for dialogue.¹⁹²

191. See DONNELLY, *supra* note 115, at 40-41 (tracing emerging international consensus on Declaration); see also Jamie Mayerfeld et al., *Exploring Universal Rights: A Symposium*, 7 HUM. RTS. & HUM. WELFARE 67-111 (2007).

192. The guardians of logic discount other components of our reasoning capacity and underestimate the value of Maritain's connaturality. In the same way, some schools of thought founded on a theory of treating the whole person fail to recognize the richness that natural law has to offer them. Dialogue and outreach could be fruitful, particularly given the Thomistic theory that Jacques Maritain presents. Maritain takes notice of the complete human being and total personality, including inclination and connatural knowledge of the moral sense.

