LIBERTY UNIVERSITY

Liberty University Law Review

Volume 2 | Issue 3 Article 4

2008

Natural Law in the Public Square

Daniel R. Heimbach

NATURAL LAW IN THE PUBLIC SQUARE

Daniel R. Heimbach[†]

"As an atheist, I am honest to myself and respect natural law. Christians have to deny basic laws of nature and deceive their own common sense in order to maintain their belief."[1]
– James Sansom

I. INTRODUCTION

How should evangelicals seeking to influence the public square respond to atheists like James Sansom who think natural law justifies a naturalistic ethic completely contrary to what we espouse? Should we use the same natural law approach on which such atheists rely, or should we employ something else? I will argue that once the surrounding culture denies the reflected presence of divinely sourced moral standards in nature, relying on nothing more than nature as it is ceases to be a viable strategy for influencing the public square. I will also argue that, until a culture reaches that point, natural law can be a strategy for building moral apologetics with nonbelievers.

My aim is limited. I do not dispute the reflection of supernaturally imposed moral order in nature; I affirm biblical doctrine on the sufficiency of natural evidences justifying God's condemnation of fallen humanity; and I believe that creation has an appeal sufficient to lift the mind of nonbelievers to see the reflection of God in nature.

I aim only at the viability of employing natural law on atheistic terms for building support for biblically acceptable moral standards in the public square. I mean only to address the utility of employing natural law in

---

† Professor of Christian Ethics, Southeastern Baptist Theological Seminary; Ph.D. (law, politics and Christian ethics) and M.Phil. (law, politics and Christian ethics), Drew University Graduate School; M.Div. (theology) and M.A. (philosophy of religion), Trinity Evangelical Divinity School; B.S. (oceanography), United States Naval Academy; defense policy certificate, Harvard University John F. Kennedy School of Government. From December 1985 to January 1989, Dr. Heimbach served as aide to Senator Richard Lugar (R-IN), from January 1989 to February 1991 he served on the White House staff of President George H. W. Bush as Deputy Executive Secretary of the Domestic Policy Council, and from February 1991 to February 1993 served as Deputy Assistant Secretary of the Navy for Manpower. He composed the moral framework that President Bush applied in the Persian Gulf War and helped lead the coalition opposing the Clinton effort to normalize homosexuality in the armed services.

1. James Sansom, Letter to the Editor, *Atheists More Honest*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 8, 2006, at A24.

nontheistic terms as a strategy for influencing those who refuse to acknowledge anything in or beyond nature to justify restraining natural passions.

II. RESURGENT INTEREST

My reason for addressing this issue comes from a surge of recent interest among evangelicals in using natural law for moral apologetics in secular culture. Catholics have long espoused natural law for engaging the culture, and their proponents today include Robert George, John Finnis, George Weigel, Timothy Fuller, Clarence Thomas, and J. Budziszewski. Other natural law proponents today include various anthropocentric secularists like Hugh Hefner who justifies sexual indulgence by "a sense of connection to the humankind and nature on this planet,"[2] Peter Singer who sees nothing in nature to require concluding that sex with animals in any way offends "our status and dignity as human beings,"[3] and Andrew Sullivan who justifies "a diversity of moral sexual experience and identity" because he believes that observing nature reveals that "*Homo sapiens* is a moderately adulterous species, made up primarily of mildly unfaithful male-female couples with a small minority of same-sex coupling."[4]

Now joining these proponents is a growing number of evangelicals who are urging fellow Protestants to reject historic skepticism toward natural law in hope of enhancing moral influence in the public square. This development is separating evangelicals into traditionalists and revivalists. On the traditionalist side, R. Albert Mohler[5] and John Warwick Montgomery[6] agree with the late Carl F. H. Henry who urged evangelicals

---

2. Ronald Bruce Meyer, *Hugh M. Hefner and Playboy (1953)*, Dec. 10, 2004, http://www.ronaldbrucemeyer.com/rants/1210almanac.htm.

3, Peter Singer, *Heavy Petting*, NERVE, Mar. 12, 2001, *available at* http://www.utilitarian.net/singer/by/2001----.htm.

4. ANDREW SULLIVAN, THE CONSERVATIVE SOUL 97 (2006).

5. Mohler argues that "[t]o revert to natural law reasoning is to retreat from the high ground of the Christian truth claim" and warns that "it is not possible for evangelicals to adopt natural law reasoning as a basis for moral argumentation and remain authentically evangelical." R. Albert Mohler, *Homosexuality in Theological Perspective, Part 4*, Oct. 6, 2005, http://www.albertmohler.com/commentary_read.php?cdate=2005-10-06.

6. Montgomery says that "[t]he Natural Law Theory cannot hold up . . . because in different culture[s] there are different values." He asserts, "There is not a simple set of values that is universally accepted." John Warwick Montgomery, Human Rights & Christianity: Why They Are Inseparable, Lecture at University of California at Los Angeles (Feb. 1, 2006), *as quoted in* Michelle Vu, *Human Rights, Christianity Inseparable, Says World Renown* [sic] *Apologist*, CHRISTIAN POST, Feb. 6, 2006, *available at*

to engage the culture but without accommodating "postmodern nihilism" in the guise of natural law.[7] On the revivalist side, R. C. Sproul,[8] Norm Geisler,[9] Chuck Colson,[10] Stephen Grabil,[11] Craig A. Boyd,[12] and J. Daryl Charles,[13] think evangelicals must either embrace natural law or lose hope of engaging the culture on moral issues.

Articles by Alan Johnson and Carl Braaten launched the present movement to revise Protestant thinking on natural law,[14] and these stirred Carl F. H. Henry to warn that Protestants must reject the false promises of natural law philosophy.[15] Now Stephen Grabill, Craig Boyd, and J. Daryl Charles are again trying to shift Protestant attitudes on natural law by arguing that Protestant luminaries such as Carl F. H. Henry, Helmut Thielicke, Herman Dooyeweerd, Cornelius Van Til, and G. C. Berkouwer

---

http://www.christianpost.com/article/20060206/7824_Human_Rights%2C_Christianity_Inseparable%2C_Says_World_Renown_Apologist.htm.

7. Carl F. H. Henry, *Natural Law and a Nihilistic Culture*, FIRST THINGS 54 (Jan. 1995).

8. R.C. Sproul, Address at the Faith and Law Group Inaugural Meeting (n.d.); *see also* R.C. Sproul, *Natural Theology and Science*, *in* DEFENDING THE FAITH (2003).

9. NORMAN L. GEISLER & FRANK TUREK, LEGISLATING MORALITY (1998).

10. Colson says, "Belief in natural law—whether one believes that law is God-given or exists on a more intuitive level—is the only real basis we have to support moral positions." Charles W. Colson, *Self-Evident Truth*, JUBILEE (Feb. 1992).

11. *See* STEPHEN J. GRABILL, REDISCOVERING THE NATURAL LAW IN REFORMED THEOLOGICAL ETHICS (2006). Grabill accuses evangelicals of lacking critical moral discernment on contemporary moral issues, and argues this can be rectified only by reappropriating Aristotelian philosophy and natural law. *See also* Stephen J. Grabill, *Evangelicals and the Brave New World: Why Natural Law Can No Longer Be Ignored* (Sept. 6, 2006), http://www.acton.org/commentary/commentary_341.php (last visited Sept. 30, 2008).

12. *See* CRAIG A. BOYD, A SHARED MORALITY: A NARRATIVE DEFENSE OF NATURAL LAW ETHICS (2007). Boyd argues: "In an increasingly global society where religious and cultural differences are often accentuated and form the basis for conflict between peoples and among nations, it would seem that natural law morality, if it can be coherently defended, may provide a plausible common ground for people of diverse backgrounds." *Id.* at 11-12.

13. *See* J. DARYL CHARLES, RETRIEVING NATURAL LAW: A RETURN TO MORAL FIRST THINGS (2008) [hereinafter CHARLES, RETRIEVING NATURAL LAW]. In an article based on his forthcoming book, Charles contends that "apart from natural law, we lose any basis upon which to build a moral apologetic and to contribute meaningfully to civil society." J. Daryl Charles, *Protestants and Natural Law*, FIRST THINGS 33, 37 (Dec. 2006) [hereinafter Charles, *Protestants and Natural Law*].

14. *See* Alan F. Johnson, *Is There a Biblical Warrant for Natural Law Theories?*, 25 J. EVANGELICAL THEOLOGICAL SOC'Y 185 (1982); Carl E. Braaten, *Protestants and Natural Law*, FIRST THINGS 20 (Jan. 1992).

15. *See* Henry, *supra* note 7, *passim*.

were all seriously wrong,[16] and that unless evangelicals adopt a more Catholic approach to natural law philosophy we will soon have no "basis upon which to build a moral apologetic" in the public square,[17] and will lose moral influence with nonbelievers for lack of "a bridge to connect the Christian faith and culture."[18] I will carry this debate past both positions by arguing that, while historic Protestant skepticism is largely justified, relying on a natural law strategy for moral apologetics can at times be effective, but not when nonbelievers insist on denying recourse to more than nature for distinguishing what is or is not morally normative in nature.

III. NO SIMPLE DEFINITION

When it comes to evaluating natural law philosophy and tradition, the most critical task is first to explain what one means by *natural law*, and that is never easy. Many have noted the enormous range and consequent difficulty of capturing the entire corpus in one definition. Arthur Harding, in his book the *Origins of the Natural Law Tradition*, observes that "[c]oncepts of Natural Law are almost as varied as are the philosophical systems which have been evolved in the history of Western civilization."[19] Daniel O'Connor thinks "various versions of the doctrine differ so much both in their detail and in their philosophical bases that it is very misleading to talk of *the* theory of natural law."[20] And Carl F. H. Henry observes that natural law now means so many different things to so many different people that some claim the term has no "precise content" and "changes with an evolving society."[21] This is complicated by the fact that natural law involves multiple concepts, with no proponent accepting all, and with no principle of coherence—other than referring in some way to *nature* and *law*—uniting all conceptions within a single rubric.

---

16. *See id.*; 1 HELMUT THIELIKE, THEOLOGICAL ETHICS (FOUNDATIONS) (William H. Lazareth ed., 1979); HERMAN DOOYEWEERD, ROOTS OF WESTERN CULTURE: PAGAN, SECULAR, AND CHRISTIAN OPTIONS 111-47 (Mark Vander Vennen et al. eds., John Kraay trans., 2003) (1959); CORNELIUS VAN TIL, COMMON GRACE AND THE GOSPEL 23-95 (1974); G. C. BERKOUWER, GENERAL REVELATION 187-214 (1955).

17. CHARLES, *Protestants and Natural Law*, *supra* note 13, at 37.

18. Stephen J. Grabill, *Protestants and Natural Law: A Forgotten Legacy*, Acton Institute PowerBlog, Aug. 9, 2006, http://blog.acton.org/archives/1095-Protestants-and-Natural-Law-A-Forgotten-Legacy.html.

19. ORIGINS OF THE NATURAL LAW TRADITION, at v (Arthur L. Harding ed., 1954).

20. D.J. O'CONNOR, AQUINAS AND NATURAL LAW 57 (1967).

21. Henry, *supra* note 7, at 54.

This makes natural law, not just difficult, but impossible to define without proposing a definition that is either innocuous or limited to less than everything encompassed by natural law tradition taken as a whole. This means we must either define natural law so broadly as to involve no fixed content—as perhaps *anything referring to nature and morality any way at all*—or must use a definition covering less than everything natural law tradition encompasses as a whole. I will start with a rather broad yet less than comprehensive definition that Christians will consider familiar, and will proceed then to interact with conceptions extending beyond that less than comprehensive starting point.

Unless stated otherwise, *natural law* as used in this paper means a combination of the following: that some sort of moral ideal or ethical law exists by which human laws and behavior can be evaluated; that this moral ideal or ethical law is in some way present in nature; that what this moral ideal or ethical law demands is knowable in some way (either by reason, or intuition, or experience, or sensation) by men in their natural state (apart from revelation, regeneration, or indoctrination); and that what this moral ideal or ethical law requires relates to everyone, everywhere, all the time. Nevertheless, readers should remember this is a working definition that does not fully cover all versions of natural law philosophy, because not every version agrees with all or even any of these defining elements. Indeed some more recent variations maintain that natural standards are all relative, subjective, and sensual, and therefore entail no fixed content.

IV. DIVIDED STREAMS

Using this ostensibly more familiar but admittedly less than comprehensive definition, it is nevertheless clear that the evolution of natural law tradition through history divides into profoundly irreconcilable streams over whether the power by which one determines what is normative in nature is itself part of nature, or is located beyond nature and only reflected in nature. That is, whether the morally normative in nature involves nothing more than what occurs in nature, or reflects rationally discernable purposes and plans for how natural things should work even when they do not, and in reference to which human beings can evaluate natural occurrences as morally good or bad. In discussing these streams, I will refer to versions deriving norms from nothing but nature as *naturalist*, and to those relying on a source beyond nature as *supernaturalist*.

Despite differing on other matters, Protagoras and Socrates both took a naturalist view of natural law. Protagoras is famous for asserting that "man

is the measure of all things—of things that are, that they are, and of things that are not, that they are not."[22] He was not sure if gods existed, but did not matter because he claimed if gods do exist they are no help when it comes to moral knowledge.[23] While Socrates may have regarded gods with more respect, he did not think their existence made any difference to moral knowledge. From what we know, Socrates taught that all men possess a sense of morality by virtue of human nature, and can know what morality requires by consulting their own natural desires. Thus, Plato credits Socrates with arguing: "no one goes willingly toward the bad . . . ; neither is it in human nature . . . to want to go toward what one believes to be bad instead of to the good."[24] Protagoras and Socrates were naturalists because neither relied on the supernatural authority, and both held that nature as it is, and nature alone, supplied its own standard of moral valuation.

While Protagoras and Socrates were naturalists, however, it appears that many if not most ancient Greeks held some version of a supernaturalist approach to natural law. At least we know from Thucydides that the ancient men of Athens invoked a supernaturalist version of natural law to justify conquering weak neighbors. When the people of Melos appealed to natural conscience for maintaining independence, the ancient Athenians answered that "of the gods we hold the belief, and of men we know, that by the necessity of their nature, wherever they have power, they always rule."[25]

Seeing the difficulty Socrates had resisting the subjectivity of Protagorian sophistry, Plato rejected naturalism in favor of supernaturalism, but on terms other than the Athenians used to justify conquering weak

---

22. PROTAGORAS, TRUTH OR DESTRUCTION fragment 1, *quoted in* BERTRAND RUSSELL, A HISTORY OF WESTERN PHILOSOPHY 77 (1945); *see also* DIOGENES LAERTIUS, LIVES OF EMINENT PHILOSOPHERS bk. 9, § 51. Protagorus was a sophist and an agnostic, living around the same time as Socrates. Although no complete work of his survives, portions of his work and thought have been preserved through citations made by other authors of the time. *See* ROBIN WATERFIELD, THE FIRST PHILOSOPHERS: THE PRESOCRATICS AND SOPHISTS 210 (2000).

23. PROTAGORAS, ABOUT GODS fragment 4, *quoted in* EDWARD SCHIAPPA, PROTAGORAS AND LOGOS: A STUDY IN GREEK PHILOSOPHY AND RHETORIC 141 (2003). The Greek text of the fragment reads, "περί μέν θεών ούκ έχω είδέναι ούθ ώς είσίν, ούθ ώς ούκ είσίν πολλά γάρ τά κωλύοντα είδέναι, ή τ'άδηλότης καί βραχύς ών ό βίος του άνθρώπου," which Shiappa renders, "Concerning the gods I am unable to know, whether they exist or whether they do not exist or what they are like in form." *See id.* at 141. For further information on the fragment, see generally *id.* at 141-54; LAERTIUS, *supra* note 22.

24. Plato, *Protagoras*, *in* COMPLETE WORKS 787 (John M. Cooper ed., Stanley Lombardo & Karen Bell trans., 1997).

25. THUCYDIDES, HISTORY OF THE PELOPONNESIAN WAR bk. 5, § 105.

neighbors. Plato held that morality in nature was a matter of finding happiness by reaching the proper balance between sensual (material) and intellectual (nonmaterial) pleasures. Rather than relying on the subjectivity of human perception, Plato anchored the objectivity of natural morality not in nature itself, but in something beyond nature. He argued that the right balance for human happiness does not come from nature as it is, but from conforming nature to supernatural standards, or forms, that exist independent of nature and are only reflected in nature we observe and experience. While Plato avoided the problem of moral subjectivity by fixing standards of natural law in supernatural forms, he did not rely on supernatural revelation and developed a view of natural law philosophy that justified totalitarian control of religion, work, education, sex, and the smallest details of family life.[26]

After Plato, Aristotle developed a version of natural law philosophy that reverted once more to naturalism. Aristotle held that what natural law requires does not come from anything beyond nature, but involves nothing more than observing nature as it is. Aristotle thought that moral objectivity in natural law depends on assuming everything in nature has just one function regardless of human ingenuity; and because he thought nature shows there are different sorts of human nature Aristotle justified slavery and argued that freeing slaves was immoral. "It is clear," he said, "that some men are by nature free, and others slaves, and that for these slavery is both expedient and right."[27] Following Aristotle, Epicurus took naturalism a step further by reducing natural law to sensuality arguing that, "[i]f you fight against all your sensations, you will have no standard [in nature] to which to refer, and thus no means of judging even those judgments which you pronounce false."[28]

In the first century B.C., the Roman philosopher Cicero resorted to a version of natural law rather similar to that used by the ancient Athenians. Cicero's version of natural law attempted to justify the expansion of the Roman empire as a *natural* duty to assemble as many as possible into a single civil community "associated by a common acknowledgment of moral right."[29] Augustine criticized Cicero's natural law philosophy mainly for the naïve optimism by which Cicero assumed the possibility of arriving at a

---

26. *See* PLATO, REPUBLIC.

27. ARISTOTLE, POLITICS § 1255a.

28. LAERTIUS, *supra* note 22, at bk. 10, § 146.

29. CICERO, THE REPUBLIC 1.25. The Christian theologian Augustine reacted very sharply to Cicero's views in his own writings on this topic. *See* AUGUSTINE, THE CITY OF GOD AGAINST THE PAGANS bk. 19, ch. 21.

common moral basis—equally acceptable to the godly and the ungodly—sufficient for uniting all humanity in a single governing administration responsible for upholding and defending moral right and wrong.

Because "moral right is that which flows from the fountain of justice,"[30] and because the one true God is the only source of true moral justice, Augustine questioned how Cicero's presumption of an "assemblage of men associated by a common acknowledgement of moral right" can ever arise to unite those who serve the one true God with those who desert him to worship "impure demons"?[31] Augustine argued "it is only when the soul serves God that it exercises a right control over the body," and it is only when reason submits to God that it is able then to "govern as it ought the passions and other vices."[32] As such, there can be no true moral justice in individuals who do not serve God and "there certainly can be none in a community composed of such persons," and if so there can be no "common acknowledgement of moral right which makes an assemblage of men a people whose affairs we call a republic."[33] Augustine therefore argued Cicero had to be wrong, since there can be no valid basis—no natural law case for common moral ground—for believing those who know the one true God could ever agree on moral matters to the degree required for uniting them in a commonly administered society (or republic) with those who "do not serve God but demons."[34]

The early church mainly followed Augustine's rejection of natural law philosophy for reaching common moral ground with non-Christians until the thirteenth century when Thomas Aquinas rediscovered Aristotle and developed another version of natural law—one based on biblically grounded supernaturalism in place of Aristotle's scientific naturalism.[35] Unlike Aristotle, Aquinas did not think nature was itself the origin of moral truth. He explained that "the light of natural reason, whereby we discern what is good and what is evil, which pertains to the natural law, is nothing else than an imprint on us of the divine light."[36] While Aquinas believed that men see enough of God's moral reason in nature to guide them toward earthly happiness, he also cautioned that "human reason is not itself the rule

30. AUGUSTINE, THE CITY OF GOD AGAINST THE PAGANS bk 19, ch. 21.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *See* O'CONNOR, *supra* note 20.

36. *See* ST. THOMAS AQUINAS, SUMMA THEOLOGICA, pt. I-II, q. 91, a. 2 (Benziger Bros. ed., 1947) (1274), *available at* http://www.ccel.org/a/aquinas/summa/FP.html.

of things."[37] Rather, human reason was only a capacity for perceiving principles "contained in the eternal law" of God.[38] So, for Thomas, natural human capacity for discerning and interpreting true moral standards reflected in nature is checked, validated, and illuminated by biblical revelation and in that way moral agreement uniting Christians with non-Christians depends on whether and to what extent non-Christians agree to seeing in nature what Christians can verify in relation to scripture.

In the sixteenth century, John Calvin reaffirmed how Aquinas identified moral law in nature with the everlasting moral law of God.[39] Calvin argued that there is in reality just one moral law, and so "the law of God which we call the moral law is nothing else than a testimony of natural law and of that conscience which God has engraved upon the minds of men."[40] Nonetheless, Calvin was not as confident as Aquinas in the sufficiency of fallen humanity to run a morally just civil order relying on natural reason alone. Calvin held that, while "the purpose of natural law . . . is to render men inexcusable,"[41] it did not mean that unregenerate men, left to their own devices, could ever accurately comprehend—much less accept—the sort of moral grounds needed to secure civil happiness. Calvin believed that sin so thoroughly obscures the natural exercise of reason, that men must have God's "written law to give us a clearer witness to what was too obscure in the natural law."[42]

This led Calvin to conclude that men have by nature enough moral knowledge to justify God's wrath, but not enough on its own to provide a sufficient basis for "the preservation of society." He explained that as fallen beings "we quite fail to take our concupiscence into account, for the natural man refuses to be led to recognize the diseases of his lusts. The light of nature is extinguished before he even enters upon this abyss."[43] Calvin therefore held that by natural reason men never truly discern, never truly desire, and never truly will what is morally good and right apart from supernatural intervention of the Holy Spirit.[44] So, while Calvin maintained a version of natural law, its moral content was supernatural, its standards

37. *Id.* at q. 90, a. 3, r. 2.

38. *Id.*

39. *See* William Klempa, *John Calvin on Natural Law*, *in* JOHN CALVIN AND THE CHURCH: A PRISM OF REFORM (Timothy George ed., 1990).

40. JOHN CALVIN, INSTITUTES OF THE CHRISTIAN RELIGION bk. 4, ch. 20, § 16.

41. *Id.* at bk. 2, ch. 2, § 22.

42. *Id.* ch. 8, § 1.

43. *Id.* ch. 2, § 24.

44. *Id.* § 25-27.

could not be discerned apart from the Holy Spirit, and therefore appealing to natural law could not be used for defining common moral ground with non-Christians who reject the Holy Spirit and rely on nothing more than natural reason or conscience.

Other than debate that has continued among theologians regarding various supernatural approaches to natural law following either Aquinas or Calvin,[45] the history of natural law philosophical tradition since the sixteenth century has been one of steady decline into ever more narrow versions of naturalism and less and less confidence in the possibility of grounding moral objectivity in any understanding of nature.[46]

In the early seventeenth century, only two generations following Calvin, the Dutch jurist Hugo Grotius reaffirmed the possibility of employing natural law philosophy on naturalistic, non-supernatural terms.[47] While continuing to hold that moral principles of natural law cannot be *fully* known apart from accepting God's existence, Grotius nevertheless put such faith in non-regenerate reason that he asserted that human capacity to arrive at sound principles of social justice "would have a place even were we to accept the infamous premise that God did not exist or did not concern himself with human affairs."[48] In so doing, Grotius made natural law a product of autonomous, non-regenerated human reason. He severed reason from needing to affirm the existence of God to the extent that how men think of God has no necessary bearing on their ability to exercise reliable moral judgment.

Following Grotius, others joined in divorcing natural law from supernaturalism. Thomas Hobbes, claimed that a law of nature (meaning a

---

45. The highlight in the evolution of this ongoing discussion is perhaps EMIL BRUNNER & KARL BARTH, NATURAL THEOLOGY (Geoffrey Bles ed., P. Fraenkel trans., 1964) (including Emil Brunner, *Nature and Grace* and Karl Barth, *No!*).

46. It is often said of rationalists of the seventeenth and eighteenth centuries, who severed natural law from supernaturalism, that "far from establishing a new era of human liberty, [they] actually set the stage for a process of deterioration which, if unchecked, will destroy the very liberty which they asserted." Arthur L. Harding, *The Ghost of Herbert Spencer: A Darwinian Concept of Law*, *in* ORIGINS OF THE NATURAL LAW, *supra* note 19, at 69, 70; *see also* EMIL BRUNNER, JUSTICE AND THE SOCIAL ORDER 4-10 (Mary Hottinger trans., 1945).

47. This in no way denies Oliver O'Donovan's very fine corrective as to ways in which Hugo Grotius is often unfairly criticized. What I say here is valid and to the point, even though it is true that Grotius also stressed the religious duty of obeying God and claimed natural reason requires "that we must obey God without qualification." *See* OLIVER O'DONOVAN, *The Justice of Assignment and Subjective Rights in Grotius*, *in* OLIVER O'DONOVAN & JOAN LOCKWOOD O'DONOVAN, BONDS OF IMPERFECTION (2004).

48. HUGO GROTIUS, DE IURE BELLI AC PACIS 12 (F.W. Kelsey et al. eds., 1925).

moral rule derived from nature) is "the dictate of right reason, conversant about those things which are either to be done or omitted for the constant preservation of life and members, as much as in us lies";[49] and Jean-Jacques Rousseau believed that self-love is of itself alone "always good, always in accordance with the order of nature."[50] This enlightenment version of supernaturally detached natural law philosophy, which venerated reason "as much as in us lies," came to be used during the French Revolution to justify stealing whatever working class people wanted and slaughtering others—not for what they did but for what they had. On this, Jacques Ellul observes "it was not for nothing that the French Revolution inaugurated the cult of the goddess Reason,"[51] meaning that once men believe that nothing transcends their own reason, then nothing they think reasonable can ever be criticized as being wrong.

In the nineteenth century, John Stuart Mill and Herbert Spencer developed still more narrow versions of naturalistic natural law philosophy. Severed from the supernatural, these men found it harder than ever to justify fixed moral standards based on nothing but nature as it is. Human reason did not seem as reliable as it had. Mill denied that we should assume nature even requires a unitary principle justified by whatever someone or other considers reasonable. He decided that natural laws are nothing more than regularities observable in nature, that moral judgments based on natural laws are therefore nothing more than descriptions of what happens to occur in nature, and that consequently faith in our own non-supernatural "humanity" should replace all "supernatural religions."[52]

At the same time, Herbert Spencer reduced natural law to evolutionary naturalism, and in a way that erased distinctions separating human from animal life, and denied society should assist weaker members. According to Spencer, the only moral law in nature is the "law of natural selection" as defined by Charles Darwin—the law that nature favors "survival of the fittest." For Spencer this meant there is no duty for stronger, more able members of society to aid the survival of anyone less fit. He held that "human justice must be a further development of sub-human justice" and

---

49. THOMAS HOBBES, PHILOSOPHICAL RUDIMENTS CONCERNING GOVERNMENT AND SOCIETY ch. 2, § 1, *in* 2 THE ENGLISH WORKS OF THOMAS HOBBES OF MALMESBURY 16 (William Molesworth ed., 1891) (footnote omitted).

50. JEAN-JACQUES ROUSSEAU, ÉMILE 174 (Barbara Foxley trans., 1974) (1762).

51. *See* JACQUES ELLUL, THE THEOLOGICAL FOUNDATION OF LAW 31-36 (Marguerite Wieser trans., 1960).

52. JOHN STUART MILL, THREE ESSAYS ON RELIGION 50 (1874).

concluded that nature requires the strong and fit to eliminate every less fit member of the human race.[53]

Finally, the twentieth century witnessed the collapse of hope of finding any fixed moral content based on taking a naturalistic (nonsupernatural) approach to natural law philosophy. While religious proponents still debate Thomistic versus Reformed versions of natural law theology, atheistic secularists have come to conclude natural law philosophy provides little or no fixed content, and whatever may be left (in any) is certainly not thought sufficient to secure social survival much less to provide an adequate basis on which to establish reliable social order.

H. L. A. Hart developed what he called a "minimal content" naturalist version of natural law, by which he meant the only truly necessary moral content nature requires of civil law is the absolute minimum without which most people in society will stop voluntary cooperation with a legal system.[54] Similarly, Rudolf Stammler and Georges Renard both argued that with no reference beyond nature, natural law assures no fixed content at all. Stammler proposed a "variable content" version,[55] and Renard a "progressive content" version,[56] with both narrowing natural law philosophy to a form able to convey any moral content at all. Stammler and Renard together reduced natural law to what some have dismissed as "an empty bottle decorated with a nice label." While their versions of natural law philosophy are far from anything recognizable to Christians and are nowhere close to the definition with which we started this survey, they do constitute a segment of what natural law tradition has come to include. In this, they do in fact represent what natural philosophy has come to mean for many if not most secular (nonsupernaturalist) proponents in contemporary Western culture.

V. DIMINISHING PROSPECTS FOR NONSUPERNATURALISM

Again, my reason for tracking the divided history of natural law tradition is neither to dispute the reflection of God's moral order in creation, nor to reject the sufficiency of natural evidences to justify God's condemnation of fallen humanity, nor to question the reality of moral conscience in all members of the human race. Rather, I have highlighted how natural law philosophy has in fact evolved through history as proponents have divided

53. HERBERT SPENCER, THE PRINCIPLES OF ETHICS pt. 4, § 12 (1892-93).
54. H.L.A. HART, THE CONCEPT OF LAW 189-95 (1961).
55. RUDOLPH STAMMLER, WIRTSCHAFT UND RECHT (1896).
56. GEORGES RENARD, LE DROIT, L'ORDRE ET LA RAISON (1927).

over supernaturalism and rejecting the relevance of anything more than nature for evaluating nature. I will now treat how this affects prospects for relying on natural law philosophy for influencing nonbelievers in the public square.

From the actual evolution of natural law tradition through time, it is hard to ignore how once proponents reject supernaturalism, they have always found it more and more difficult to agree on any common moral ground with supernaturalists. From Protagoras to Spencer, from Aristotle to Stammler, naturalists have slid from agreeing on basic standards sufficient for assuring civil happiness, to only discovering laws of individual survival, to denying any fixed standards at all. Over this same history, naturalists have also claimed that natural law justifies slavery, slaughtering the innocent, classifying dishonesty as a virtue, and exterminating weak or needy members of the human race. What this history shows is that rejecting the supernatural severs natural law from moral objectivity so that approaching natural law on naturalist (nonsupernatural) terms necessarily degenerates into naturalism and subjective reliance on sensuality. From a purely naturalist (nonsupernatural) point of view, there is no basis for distinguishing moral laws *in nature* from regularities *of nature*. Without the supernatural, natural law reduces to ethical naturalism because moral judgment based on nothing but nature can never justify anything more or less than whatever we happen to see, feel, or experience in nature.

Noting how natural law philosophy deteriorates apart from supernaturalism does not mean that evangelicals should never use natural law for moral apologetics in the public square. Yet it is helpful to illuminate when and to what degree relying on natural law philosophy is a viable strategy for moral apologetics with naturalists. Jacques Ellul suggests the utility of natural law apologetics for influencing nonbelievers depends on the state of religious-moral decline in surrounding culture.[57] A limit is reached on the ability of supernaturalists to influence naturalists using natural law apologetics when naturalists start refusing to accept any matter reflecting faith in the supernatural. The possibility of finding common moral ground is finally erased at the point that naturalists refuse to cooperate with those who will not at the outset agree (or pretend to agree) that nothing natural is ever wrong because nothing exists beyond nature as it is.

Ellul notes how the effectiveness of relying on natural law philosophy for establishing common moral ground with naturalists diminishes with the

57. ELLUL, *supra* note 51, at 31-36.

religious-moral decline of culture.[58] That is, so long as most people believe in the existence God—or at least believe that moral standards observable in nature depend on some notion of supernatural reality—there is hope of reaching some basic agreement on moral standards justified through appeal to natural law. Nonbelievers and believers will for a while agree on moral standards discoverable in nature without seeming to require faith in anything more than nature. After most members in a culture lose faith in God, however, (not saving faith but belief that God exists) reaching the point of denying that nature depends on anything more than nature as it is, it becomes increasingly difficult for those who believe that way to agree on any objectively fixed morality. At this point, therefore, it becomes increasingly difficult for supernaturalists to find common moral ground with naturalists on non-supernatural naturalistic terms.[59]

In describing the pathology of legal philosophy and systems of law, Ellul observes several stages by which societies increasingly lose ability to establish common moral ground based on natural law. First, denying that natural law depends on more than nature makes it more and more difficult for anyone to evaluate law (whether moral or civil) by anything other than itself, and law "becomes purely a combination of technical rules."[60] Second, losing ability to recognize the reality or relevance of any authority beyond what exists results in juridical technique falling victim to whatever power insists on controlling it.[61] Third, denying accountability to any authority beyond itself, the state starts claiming absolute authority over all aspects of law; and when this happens the state becomes "judge of law" and is no longer "judged in its actions by the law."[62] Fourth, when the state transcends law (presumes absolute power over law), then what law is required by the state "gradually ceases to be observed and respected."[63] More and more citizens begin viewing the law as unworthy and cease to cooperate voluntarily, penalties are then tightened, the police system grows, and society falls into chaos.

At the fifth and final stage, Ellul observes that attempts are often made (by Christians or men of good will) "artificially to revive natural law, with the hope of bringing law back to life." Nevertheless, these attempts are doomed after passing "a point of no return," which occurs when denying

58. *Id.*
59. *Id.*
60. *Id.* at 31
61. *Id.* at 32.
62. *Id.* at 33.
63. *Id.*

the supernatural meets wide scale failure to agree on a body of commonly respected standards relying on nature.[64] At this final stage, non-supernatural appeals to natural law philosophy are completely ineffective. Nonbelievers can no longer be moved to restrain natural appetites based on appealing to nothing more than nature; and Ellul argues that, once a culture reaches this point, moral order cannot be restored apart from renewing faith in God. He argues that, once a culture sinks to this level, no restoration is possible except for replacement by a "new civilization"; and that "can only originate in the will of God."[65]

What Ellul contends is that, since the application and influence of moral standards sufficient to secure and maintain social order is essentially connected to supernaturalism, only faith in the moral authority of God is in the end sufficient to check those who think they are of themselves able to create law for themselves. Since creators are superior to what they create, men are in the end immune from criticism based nothing more than whatever laws they happen to create. What men make can be unmade however it suits their passions, and only authority beyond human manipulation is sufficient to check human manipulation. While most members of society still accept the reflection in nature of something more than nature, it is possible to establishing common moral standards on appeal to nature. Nonbelievers and believers will agree on common standards discoverable in nature without seeming to require faith in anything beyond nature. When a declining culture loses confidence in the reality of moral authority beyond nature reflected in nature, however, it becomes next to impossible for naturalists and supernaturalist to arrive at common moral ground based on acceptably similar views of nature.

VI. REDUCING EXPECTATIONS

This suggests that evangelicals must not think that relying on natural law philosophy is always a good strategy for moral apologetics in the public square.[66] The unavoidable problem with employing natural law philosophy as an apologetic strategy in atheistic circumstances is that naturalism will never persuade atheistic naturalists to accept what is supernatural. In other words, *those who rely on more-than-nature cannot use nothing-but-nature to persuade those who deny anything-more-than-nature to accept what*

64. *Id.* at 35.

65. *Id.* at 35-36.

66. Meaning here a strategy that effectively convinces nonbelievers to endorse biblically acceptable moral standards without appealing to supernatural authority.

depends on more-than-nature. If an atheistic naturalist denies being able to see in nature any reason for restraining natural passions, he or she will never be persuaded to accept a more restrictive standard by appealing to nothing more than that very nature in which he denies seeing any reason for restriction. Such thinking will not change without referring to something, or someone, greater than nature, an authority by which natural sensations, experiences, and observations can be evaluated as to moral worth and legitimacy.

Without accepting the relevance of supernaturalism, natural law philosophy loses touch with moral objectivity and leads to indulging whatever passions arise from natural sensation and experience. To ground universally fixed moral objectivity independent of human subjectivity, natural law requires more than atheistic naturalism. That is, natural law philosophy must rely on something more than nature as it is. It requires the supernatural. And evangelicals considering the value of natural law philosophy for moral apologetics must understand that we cannot maintain irreconcilable claims. That is, we cannot use supernaturalism to ground our own knowledge of universal moral objectivity, while at the same time alleging that those we plan to convince require no such thing.

Evangelicals attracted to natural law philosophy on supernatural terms may try limiting its definition to exclude atheistic naturalism. If so, we may not at the same time apply a non-atheistic point of view to arrive at some alleged common moral ground with those who approach natural law on atheistic terms. Further, should we accept a broader view encompassing the entire range of natural law philosophic tradition to increase likelihood of finding common ground with moral atheists, we will find that the only moral standards on which atheistic naturalists agree are those derived from ethical naturalism and no more. Either way evangelicals operating in the public square are kept from arriving at common moral ground with avowed atheists, because no one in the public square can win the day by misrepresenting what others mean by natural law.

Once nonbelievers in a secular culture reject traditional moral norms as alien to natural passions, it becomes impossible—not just difficult but impossible—to restore their recovery by relying on nothing more than nature as it is. At this point, appealing to natural law philosophy is powerless to restrain moral decline, and moral apologetics by evangelicals in the public square must look to another approach. An approach not hampered by denying reliance on more than nature for evaluating nature; one not afraid of directing men beyond themselves to their Creator; one that promotes civil happiness, justice, and social order by appealing to Jesus

Christ, not theocraticly, but in ways that respect the right of anyone to persuade anyone else based on whatever that person considers convincing.

Evangelicals called to moral apologetics in the public square must realize that, in a naturalistic, postmodern, nihilistic context, appealing to nature's supernatural Creator is surely more promising than resorting to natural law philosophy on atheistic terms. Where then does that leave us? On the one hand, Alan Johnson, Carl Braaten, Stephen Grabill, Craig Boyd, and Daryl Charles are surely right about scripture affirming a universal moral order reflected in nature, so that access to this reflection transcends all races, classes, cultures, and religions. Yet I believe they are wrong where they fail to distinguish between the competing approaches to natural law. They fail to distinguish between taking a supernatural biblically based approach to natural law that supposes a reality beyond nature for determining what is or is not moral in nature, and the various atheistic approaches to natural law that either require denying there is anything wrong with nature or refuse to allow recourse to more than nature for evaluating nature. Failing to make this distinction leaves their case for reviving natural law as a "bridge category" sits astride a logical *non sequitur* that supposes the term "natural law" refers to exactly the same thing for naturalists and supernaturalists alike. Failing to realize this distinction, however, involves more than logic, for as long as evangelicals conflate incompatible notions of natural law evangelical moral apologetics in the public square is reduced to no more than arguing over what is acceptable to atheistic naturalism.

On the other hand, Carl F. H. Henry, R. Albert Mohler, and John Warwick Montgomery—to say nothing of earlier giants of Protestant theology such as Thielicke, Dooyeweerd, Van Til, and Berkouwer—are surely right to insist that evangelicals must never deny the relevance of supernaturalism for engaging the culture, and must not allow the morality of natural reason to be severed from the morality of transcendent revelation. Nevertheless, I believe these also are wrong where their concerns lead to overlooking how the strategic value of using natural law philosophy for moral apologetics varies with cultural degeneration. So while evangelical traditionalists are right to warn against accommodating "postmodern nihilism" in the guise of natural law, they should not deny the value of natural law for influence the public square so long as the culture does not insist on reducing natural law to moral atheism.

VII. CONCLUSION

In the final analysis, I believe we should be neither naively optimistic nor naively pessimistic. We should neither ignore nor exaggerate reasons for historic Protestant skepticism, and we should neither claim that natural law is never more than naturalism nor deny that natural law ever encompasses naturalism. Evangelicals challenging historic Protestant skepticism toward employing natural law philosophy must not confuse biblically refereed knowledge of God's moral standards reflected in nature with atheistic theories that deny there is anything wrong in nature. And those who warn we must not reduce natural law to naturalism should not reject using a natural law apologetic where it yet persuades nonbelievers to accept God's standards for securing common life.

Of course, God's authority over creation applies whatever men think or say, but the degree to which men deny that truth does directly affect the degree to which natural law philosophy can work as a bridge for identifying and defending moral ground acceptable to nonbelievers in the public square.