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In Gratitude for What We are Given: A Common Morality for ‘the Global Age’?

WILLIAM J. WAGNER

These essays are The Catholic University of America’s response to an initiative of Cardinal Joseph Ratzinger, the future Pope Benedict XVI, when still Prefect for the Vatican’s Sacred Congregation for the Doctrine of the Faith, soliciting original scholarly research and dialogue on the “important and urgent” question of what moral reasoning can sustain morally sound law and policy in our contemporary moment.1 This question is of manifest concern in an era of rapid social and technological advance bringing with it the convergence, dissolution, and alteration of cultures. This concern is magnified as large-scale unforeseen consequences of past technological interventions in the human environment come to light, new technological interventions in human biology give rise to worrisome moral dilemmas, and a technocratic morality of means all too often predominates.2 Under these circumstances, society finds itself challenged to preserve any adequate moral compass. Cardinal Ratzinger states that “the destiny of human beings and the future of human beings” are at issue, and attentive, fair-minded observers may well agree.

This introduction, first, sets out and evaluates the reciprocal, antiphonal steps of “Vatican initiative” and “university response” at this collection of essays’ genesis. Once having done so, it offers the reader not only a basic synthesis of the authors’ separate contributions but also of the contours of the collection as a whole. In these

1 Letter from Cardinal Joseph Ratzinger, Prefect, Congregatio pro Doctrina Fidei, to Rev. Fr. David M.P. O’Connell, C.M., Rector, The Catholic University of America (Oct. 27, 2004) [hereinafter Ratzinger Letter] (on file with the Journal for Law, Philosophy and Culture). All other quotations contained in this article that are cited from Cardinal Ratzinger’s “letter” or “initiative” are from this letter.

2 The popular mind is inclined to equate these problems and dilemmas with a loss of technological control over the human situation and environment. However, there are commentators who trace them to a mentality associated with technology. Jacques Ellul, for instance, points out the bargain at the root of the technological society precisely adopting, as fundamental, the mentality of “technique” in exchange for the promise of “extraordinary comforts, hygiene, knowledge, and nourishment.” JACQUES ELLUL, THE TECHNOLOGICAL SOCIETY 436 (John Wilkinson trans., 1964). Pope Pius XII intuited the flaw in this bargain in these terms:

It is beyond doubt that the weight of a flagrant contradiction presses down the human race in the twentieth century, as if striking it in its pride: on the one hand, there is the confident expectation of modern man, fashioner and eyewitness of the . . . “technical revolution,” that he can create a world of plenty, in wealth and goods, a word freed from poverty and uncertainty. On the other hand, there is the bitter reality of the long years of grief and ruin, with the resulting fear . . . of not succeeding in founding even a mere modest beginning of harmony and lasting peace. Something, then, is not proceeding aight in the internal scheme of modern life; an essential error must be sapping the foundation. But where is that concealed? How and by whom can it be corrected?

ways it offers readers an introductory roadmap to the wealth of insights that the collection contains and those that it may in turn inspire.

I. The Origin of the Collection

Cardinal Joseph Ratzinger communicated his initiative on behalf of The Sacred Congregation for the Doctrine of the Faith to several universities around the world, leaving it to each university to select its own mode of response. He relayed the request to The Catholic University of America in a letter to its president, Father David M. O'Connell, C.M., dated October 27, 2004. The present collection is The Catholic University of America's distinctive response to Cardinal Ratzinger's challenge. This dialectic of proposal and reply is most readily described by sketching briefly first at the Vatican request and then at the University's response.

A. Character and Significance of the Ratzinger Initiative

The Cardinal Ratzinger letter, sent expressly with the Holy Father's encouragement, was promulgated on the authority of the then reigning pontiff, Pope John Paul II, so that it is fair to see it as a papal initiative. The letter bears the intellectual imprint of Joseph Ratzinger, as theologian, who now, no less, has become John Paul’s successor, Benedict XVI. Nothing in the interim serving to diminish its pertinence, the initiative can be seen as having the mandate of Benedict’s pontificate. Thus, the initiative, infused with the intellectual style of Joseph Ratzinger, is doubly a papal endeavor, reflecting the mandate of two pontificates. Its distinctively papal character appears in the scope and gravity of the problems it addresses, as well as in the breadth of the solutions that it outlines in response to them. Its papal character appears in its resonance with several core historic papal functions. Its more particular content, on the other hand, derives from its purpose, which is to address the Academy.

1. The Initiative’s Papal Character

As an office of unparalleled and unbroken continuity over many centuries, the Papacy has, as it has proclaimed the Gospel, advocated, in a recurring way over time, for intelligible terms of common agreement across cultures. In the present context, Cardinal Ratzinger, in effect, grounds just such advocacy in four historic functions of the Papacy. These include the Papacy's service, as: 1) sign and occasion of unity, not

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3 Ratzinger Letter, supra note 1.

4 As a pivotal historical instance, Walter Ullman cites a “completion of the process of amalgamating Roman, Christian and Germanic elements in the West,” under the influence of the Papacy by the early ninth century, for example, as a cause of the “great civilizing effect” in Europe. WALTER ULLMAN, A SHORT HISTORY OF THE PAPACY IN THE MIDDLE AGES 91 (Routledge 2003) (1972). In a more recent context, Catholic missionaries acting under papal mandate in non-Christian cultures had to seek common modes of adjudicating disputes with nonbelievers. For example, Catholic converts in nineteenth-century China in a dispute over their continuing participation in commonly owned lands arrived at a settlement with a cash payment and a withdrawal from common ownership. Charles A. Litzinger, Rural Religion and Village Organization in North China: The Catholic Challenge in the Late Nineteenth Century, in CHRISTIANITY IN CHINA: FROM THE EIGHTEENTH CENTURY TO THE PRESENT 41, 44-45 (Daniel H. Bays ed., 1996).
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just of the Catholic Church, but of the human race; 2) moral and doctrinal teacher, traditionally conceived as in custodianship of the "natural moral law;" 3) the highest office in an ecclesial system of governance; and 4) a diplomatic advocate for human rights and welfare across diverse human cultures and peoples. The Vatican's standing to raise the questions posed by the initiative has credibility precisely because in so doing it advances these core papal functions.

a. Sign and Occasion of Unity

Cardinal Ratzinger's letter opens with the goal of a "common denominator" as "held by all people" functioning to secure "fundamental criteria for laws affecting the rights and duties of all." It concludes by disclosing that its motivation is "charity" in the "service to culture, politics, the economy and the family" and by naming as its ultimate concern "the destiny of human beings and the future of civilization will be everywhere respected." The underlying premise of the letter is the Papacy's symbolic identification with the moral solidarity of the human race and the moral unity of human experience. At each step of the initiative, Cardinal Ratzinger implicitly relies for standing to speak on the Papacy's historic role symbolizing these elements of unity.

The Papacy's own self-understanding is, of course, that it has such symbolism by divine conferral, but it cultivates, as well, the interreligious and secular recognition of that symbolism for its merely functional and practical value in the service of the world. The Papacy addresses its social Encyclicals to all people of good will, for example, not just to people of Catholic faith. Some non-Catholic Christians respect

5 Catholic ecclesiological doctrine defines Papal primacy this way: "The Roman Pontiff, as the successor of Peter, is the perpetual and visible principle and foundation of unity of both the bishops and of the faithful." SECOND VATICAN COUNCIL, LUMEN GENTIUM [DOGMATIC CONSTITUTION ON THE CHURCH] ¶ 23 (1964). The First Vatican Council expressed the same idea in its own terms. See FIRST VATICAN COUNCIL, AETERNUS PASTOR [FIRST DOGMATIC CONSTITUTION ON THE CHURCH OF CHRIST] (1870). See also ROBERT ENO, THE RISE OF THE PAPACY (1990) (illustrating the historical emergence of the Petrine office).

6 The notion of "standing" in the formal legal sense reflects a common sense notion that a party with "a sufficient personal concern" will more effectively litigate a matter. ERWIN CHEMERINSKY, FEDERAL JURISDICTION 58 (4th ed. 2003).

7 Ratzinger Letter, supra note 1.

8 Id.

9 To extend the analogy of legal standing, one could say that the Church's interest in unity gives it standing to raise such an interest on behalf of all those who likewise have an interest in unity but are too scattered to raise it for themselves. See Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592 (1982) (explicating parens patriae standing).

10 E.g., POPE JOHN XXIII, PACEM IN TERRIS [PEACE ON EARTH] (1963) [hereinafter PACEM IN TERRIS] (concluding the salutation commencing his encyclical letter, Pacem in Terris, with "and to all Men of Good Will"). Pope Benedict XVI has said, "the Pope, in his capacity as Shepherd of his community, is also increasingly becoming a voice for the ethical reasoning of humanity." Pope Benedict XVI, Lecture at the University of Rome "La Sapienza" (Jan. 17, 2008) [hereinafter University of Rome "La Sapienza"], available at http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/january/documents/hf_ben-xvi_spe_20080117_la-sapienza_en.html. See also Ian Fisher, University Protests in Rome Lead Pope to Cancel Speech, N.Y. TIMES, Jan. 16, 2008 (reporting that vociferous public opposition to the scheduled lecture in a sector of the University community, based on a statement made by the Pope before assuming his office in which he cited Paul Feyerabend in defense of at least certain aspects of the seventeenth-century Church's handling of the Galileo Galilei case, led the Vatican to cancel this lecture).
this role as *ius humanum* even when they do not as *ius divinum*. The Papacy is not the only religious office on the world scene able to assume this wider symbolic role, as one can see merely by contemplating the significant role today of the Dalai Lama. By reason of its own self-concept, its very wide jurisdiction under Catholic ecclesiastical law over large numbers of Catholics scattered around the world, and its historic role within western civilization, the Papacy’s adoption of this role, however, has special functional or practical plausibility.

b. Moral and Doctrinal Teacher

The Ratzinger letter acknowledges, in an implicit way at least, that the Papacy is experiencing a challenge in being heard in its proclamation of Catholic and Christian moral doctrine by reason of obstacles in the contemporary culture. The importance to Catholicism of the Papal office and the proportionate scale, and distribution of Catholicism globally makes this cultural impasse a benchmark for all other institutions and associations concerned with moral values. *Ad intra*, the Papacy, as moral teacher, has standing to speak to Catholics wherever they are charged with serving as teachers or researchers in areas relating to moral philosophy or theology.


12 The concrete institutional and jurisdictional elements giving the Catholic Church its global character as a matter of its own internal structure can be seen in detail in the summary account of the geographical distribution of its diverse administrative units provided in the Vatican’s *Annuario Pontificio* (Pontifical Yearbook). See, e.g., CITTA DEL VATICANO, *ANNUARIO PONTIFICIO PER L’ANNO 2008* (presenting the global geographical distribution of Roman Catholic Dioceses, Archdioceses, and other administrative units for 2008). See also JOHN A. HARDON, S.J., *MODERN CATHOLIC DICTIONARY* 27 (1980) (explaining the *Annuario Pontificio* as the “official directory of the Roman Catholic Church”). The results of the papal census of Roman Catholics for the *Annuario Pontificio* 2010 indicate that there are now 1.166 billion Catholics—meaning that Roman Catholics make up a little more than seventeen percent of the world’s population. See *Number of Catholics Increases Worldwide: 2010 “Annuario” Shows Growth in Asia and Africa*, NEWS AGENCY ZENIT, Feb. 21, 2010, http://www.zenit.org/article-284257?l=English.

13 Extending the analogy to the legal doctrine of standing, the United States Supreme Court has recognized concreteness of injury as an element of showing standing in the legal sense. *See United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669 (1973) (holding that the effect of increased freight rates on the freedom of members of the association to avail themselves of outdoor recreational opportunities constituted the necessary concreteness of injury). Standing, moreover, can be asserted on behalf of others if certain requisites are satisfied. *See Barrows v. Jackson, 356 U.S. 249* (1953) (holding that a Caucasian who breached a restrictive racial covenant on a real estate deed had standing to assert the rights of persons who were members of minority ethnic groups).

14 *See, e.g., Congregation for the Doctrine of the Faith, Instruction on the Ecclesial Vocation of the Theologian, 20 ORIGINS 117, 119-126 (1990).* Joseph Komonchak comments on this Instruction, describing it “as an effort, first, to validate the theological enterprise and, second, to distinguish between
Ad extra, the Papacy is well positioned to speak as well to all those with parallel roles in other cultural and religious traditions. The difficulty that the Papacy faces in the reception of its own teaching role gives it standing to speak to the concerns of moral teachers, who, at any level, find themselves similarly situated.

### c. An Office in a System of Legal Governance

As an office of governance, the Papacy must concern itself, as a matter of its own internal legal order, with the cultural and intercultural conditions for duly affirming "the fundamental criteria for laws affecting the rights and duties of law"—i.e., precisely the point of concern on behalf of civil society within the Ratzinger initiative. For a century and more, the Papacy has sought to influence civil and normal and even healthy tensions and illegitimate forms of dissent." Joseph A. Komonchak, *The Magisterium and Theologians*, 29 CHICAGO STUDIES 307 (1990). He says that the document expresses "a wider view which recognizes the whole Church as the primary bearer of Christ's message in and to the world, and as the role of both theologian and Magisterium." *Id; see also Pope John Paul II, Sapientia Christiana [ Apostolic Constitution on Ecclesiastical Universities and Faculties] (1979) [hereinafter Sapientia Christiana] (illustrating the Church's doctrinal position on the character of universities with ecclesiastical faculties).

A helpful conceptual justification for the participation of the papacy in public discourse is the following: "[T]here needs to be a place within public conversation and civic argument where matters of human destiny can be debated and where the implications these matters have for the well-being of individuals, institutions, society at large, the world community, and the planet we inhabit can be drawn out. . . . [T]hose communities for which some form of religious ethics provides a reflective articulation of moral vision and practice" can "serve as a model for public conversation on a matter upon which human differences run deep, and to serve as such a model precisely by sustaining throughout it the 'openness to mutual transformation.'" Philip J. Rossi, S.J., *Conflict, Community, and Human Destiny: Religion, Ethics, Community and the Public Construction of Morality, in Ethics, Religion, and the Good Society: New Directions in a Pluralistic World* (Joseph Runzo ed., 1992) (citing DAVID TRACY, PLURALITY AND AMBIGUITY: HERMENEUTICS, RELIGION AND HOPE 93, cf. 10-17, 98-99 (Harper & Row, 1987); David Tracy, *Christianity in the Wider Context: Demands and Transformations," in Religion and Intellectual Life 4.7-10 (1987)).

In his before-mentioned lecture intended for the University of Rome "La Sapienza," Pope Benedict XVI finds support in John Rawls' concept of public reason for papal participation in public discourse. Pope Benedict names Rawls' concession of a criterion of reasonableness "in the fact that such doctrines derive from a responsible and well thought-out tradition in which, over lengthy periods, satisfactory arguments have been developed in support of the doctrines concerned." University of Rome "La Sapienza", supra note 10. The Pope sums up his own view this way: "The Pope speaks as the representative of a community of believers in which a particular wisdom about life has evolved in the course of the centuries of its existence. He speaks as the representative of a community that preserves within itself a treasury of ethical knowledge and experience important for all humanity: in this sense, he speaks as the representative of a form of ethical reasoning." *Id. Pope Benedict asks "What is a university?", and answers that "I think one could say that at the most intimate level, the true origin of the university lies in the thirst for knowledge that is proper to man. The human being wants to know what everything around him is. He wants truth." *Id. He also inquires: "What should the Pope do or say at the university? Certainly, he must not seek to impose the faith upon others in an authoritarian manner – as faith can only be given in freedom. Over and above his ministry as Shepherd of the Church, and on the basis of the intrinsic nature of this pastoral ministry, it is the Pope's task to safeguard sensibility to the truth; to invite reason to set out ever anew in search of what is true and good, in search of God; to urge reason, in the course of this search, to discern the illuminating lights that have emerged during the history of the Christian faith, and thus to recognize Jesus Christ as the Light that illumines history and helps us find the path towards the future." *Id.

To extend the legal standing metaphor, an association can assert standing on behalf of individual members if it alleges, in part, the same kind of interest that would give them individual standing. Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977) (holding that an association can challenge a state law restricting its constituents from labeling their produce effectively based on its own dedication as an association precisely and fostering effective marketing within the industry).

Ratzinger Letter, supra note 1. Pope John Paul II's comment in connection with the promulgation of
international law through the promulgation of Catholic Social Thought. In doing so, it has aimed at a societal reinforcement of the moral requisites of the Church’s own internal order.\(^9\) The “obscuring” of moral knowledge that the Ratzinger initiative cites as problem, therefore, has potential for affecting the Church as a body of believers and as an institution.\(^{20}\) This vulnerability of the Catholic Church in its own stability and good order lends credibility to the Papacy’s standing to promote discussion of the more general problem for society.\(^{21}\)

d. Diplomatic Advocate for Human Rights and Welfare

The Papacy functions as a diplomatic observer on the world scene. In this role, it receives information allowing it to learn almost uniquely about evolving social and intellectual developments that have cross-cultural import for the moral health and

the Church’s 1983 Code of Canon Law provides the Church’s doctrinal view of the matter:

In actual fact the Code of Canon Law is extremely necessary for the Church. Since, indeed, [the Church] is organized as a social and visible structure, it must also have norms: in order that its hierarchical and organic structure be visible; in order that the exercise of the functions divinely entrusted to [it], especially that of sacred power and of the administration of the sacraments, may be adequately organized; in order that the mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well-defined; in order, finally, that common initiatives, undertaken for a Christian life ever more perfect may be sustained, strengthened and fostered by canonical norms.


\(^9\) Papal advocacy for an international human rights regime can be understood as having this two-sided buttressing effect. Thus, Pope John XXIII addresses his encyclical, Pacem in Terris, both to “all men of Good will” and to “the Clergy and Faithful of the entire Catholic World.” PACEM IN TERRIS, supra note 10 (emphasis added). This pattern, beginning in 1963 with Pacem in Terris, continues to the present day. See, e.g., POPE JOHN PAUL II, CENTESIMUS ANNUS [ON THE HUNDREDTH ANNIVERSARY] (1991) (addressing this encyclical to “Venerable Brothers in the Episcopate” and to “to all men and women of good will” among others).

\(^{20}\) Some social science studies suggest that there is a far-reaching dismissal of the Church doctrine on morals and other matters among members of generations that have come of age after the Second Vatican Council:

[R]eligious individualism is a revered part of the American experience. It has had a deep impact on contemporary Catholicism. In the view of many young adult Catholics, being a Catholic is less a matter of core identity and more a matter of personal option. These young adults are more individualistic than ever, less inclined to go to church or to confession out of a sense of obligation, less convinced that the Church’s rules are God’s rules, less convinced that the Church’s structures are divinely ordained or necessary, and more inclined to make choices for themselves. Young adults feel at home in the Church insofar as they appropriate it on their own terms.


\(^{21}\) To extend the analogy of legal standing, an organization has standing under law where a behavior undermines the organization’s ability to achieve its goals because of administrative disruption as distinguished from a mere setback to the organization’s abstract social interests. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982) (holding that an association, which provided counseling and referral services for low- and moderate-income home-seekers, had suffered an injury-in-fact through the “racial steering” practices of real estate brokers).
human welfare of society. Its diplomatic mission permits the Church to receive and to give early warning of pains and losses that societies are incurring in these areas across cultures, political systems, and religions, which otherwise might too readily evade notice among those closely experiencing them. The Vatican’s unique diplomatic informational base supplies credibility to the Papacy’s standing to raise questions based on factual assumptions regarding the global status of moral discourse.

2. The Letter’s Audience: The Academy

The Ratzinger letter states that the Congregation found it “necessary,” upon the conclusion of its own study of the matter, “to expand the scope of inquiry and involve additional institutions,” foremost among these, according to the letter’s logic, Catholic universities. The letter’s request is then structured in three steps: it frames the question or problem for the academy’s review; yields to the academy the question’s further exploration; and designates a third sector—the organs of public opinion, of political decision, and of law—as ultimately the forum to which the academy’s insights are to be directed for their most critical application.

Cardinal Ratzinger names, as the question that the Academy is asked to address, society’s critical need for a renewal of its sources of insight into certain “natural moral truths regarding, for example, respect for human life and the transmission of life within marriage, human love, family rights, social justice and freedom,” for the sake of grounding “the fundamental criteria for laws affecting the rights and duties of all.” He describes the situation of one “obscuring” truths for “centuries . . . unquestioned ethical principles for the life of society,” by reason, at least, in part of “contemporary difficulties” society now experiences in “grasping the necessity and value of the philosophical basis of ethics.”

22 The diplomatic role of the Church in this regard has been analyzed this way: the transnational structure of the Roman Catholic Church “have begun to play more specialized roles in aggregating demands and giving normative support for universal human values.” Ivan Vallier, The Roman Catholic Church: A Transnational Actor, 25 INT’L ORG. 479, 499 (1971). As an early twentieth-century example, one can name the role of Catholic diplomatic organizations working in tacit unison with the Holy See in supplying the League of Nations with “documents and statistics” from different national perspectives on the questions of concern to the League regarding “the protection of children and the suppression of obscenity, drugs, the traffic in women, and slavery.” ROBERT JOHN ARAUJO, S.J. & JOHN A. LUCAL, S.J., PAPAL DIPLOMACY AND THE QUEST FOR PEACE: THE VATICAN AND INTERNATIONAL ORGANIZATION FROM THE EARLY YEARS TO THE LEAGUE OF NATIONS 225, 229 (2004).

23 This international perspective also can help the Church to understand signs of change called for within its own order. “[T]he different attitudes towards the Church and the papacy[,] which [Angelo Roncalli] had encountered in Bulgaria, Greece and Turkey, [and] the problems and difficulties of French Catholics” that he encountered as a papal diplomat, shaped his decision to convene the Second Vatican Council as Pope John XIII. J. DEREK HOLMES, THE PAPACY IN THE MODERN WORLD 201 (1981).

24 Again, with analogy to the doctrine of standing in law, standing on the part of an association to assert the interests of its constituents may be based in part on its having “engaged in . . . research and analysis, public education campaigns, and scientific research” in the area of their common interest. See Hunt v. Wash. State Apple Adver. Comm’n, 432 U.S. 333, 344 (1977).

25 Ratzinger Letter, supra note 1 (emphasis added).

26 Id.

27 Id.
He goes on to sketch a variety of deep-seated causative trends behind this decline. Several of them are intellectual: i.e., a "rupture between the ratio functionalis of the natural sciences and the ratio ethica" with a consequent "divergence between the empirical sciences . . . and philosophy and theology;" an "extensive and complex semantic range" in the current use of "the concept of 'nature;'" and the prevalence of "agnosticism and relativism." And, others are extrinsic or sociological: "rapid social change;" "processes of modernization and technological advances;" "formative influence of the mass media on culture and popular opinion;" and "pluralism and multiculturalism characteristic of many countries."  

His letter sketches several concrete steps as elements in what he presumes to be the solution to this problem. He names, for example, the overcoming of "contemporary difficulties in grasping the necessity and value of the philosophical basis of ethics;" a renewed ecumenical unity among Christian churches, founded on "deeper [common] understanding of the theology of creation, as this flows from the unity of God's salvific plan in Christ" and Christian unity regarding "the ethical requirements that derive from the constitution of the human person as created by God" and "intercultural and interreligious" consensus based on a correlation of diverse concepts "equivalent to one or more aspects of the natural law"; Cardinal Ratzinger envisions this final element of dialogue as occurring between a putatively Christian Europe and Western Hemisphere and a tacitly non-Christian Africa and Asia, "'interpreting and defining the values rooted in the very nature of the human person'" and mutually "beneficial for all parties" without any imposition by Christianity.  

The distinctive task that the letter then yields to the Academy is the search for "deeper understanding" of the problem, and "currents and points of agreement . . . productive [for] renewing . . . philosophical and theological reflection" and inspiring "ecumenical, interreligious and intercultural encounters" that he sketches as presumptively curative of it. The letter assigns this investigation to the Academy with the understanding that its results will have their primary application in yet another sector—i.e., the organs of public opinion, political decision, and law. The academic work, which Cardinal Ratzinger's initiative means to elicit, has a relevance going beyond either the internal compass of academic debate or its value for prospective doctrinal pronouncements or other initiatives by the Papacy. It is foreseen as in the service of society in its attempts to settle the "fundamental criteria for laws affecting the rights and duties of all."  

28 Id.  
29 Id.  
30 Id. (quoting POPE JOHN PAUL II, NOVO MILLENNIO INEUNTE ¶ 51 (2001)).  
31 Id. The initiative asks each university to undertake a study of "some aspect of this question." Id. The present collection limits itself to "philosophical and theological reflection" and "ecumenical, interreligious and intercultural encounters." Id. The Center for Law, Philosophy and Culture selected these aspects of the question from among all of those named in the Ratzinger Letter, as broad enough and as being, without more, amenable to coherent development. Elements that the Letter cited but are not included here are, for example, the coordination of dialogue with "representatives of media and politics."  
32 Id.
The outreach of Cardinal Ratzinger to the Academy in this initiative presupposes the relationship between the Church and its universities, envisioned under the relevant doctrinal framework propounded by the contemporary Catholic Church. At the same time, it reflects a more distinctive conception of that role, originating more personally with Joseph Ratzinger. This conception, was formed undoubtedly in Ratzinger’s history first as a University Professor, and then as Prefect for the Sacred Congregation for the Doctrine of the Faith. Benedict’s personal synthesis appears more in evidence in his official pronouncements in the setting of his pontificate than it did as he carried out his role as the Prefect for the Sacred Congregation of the Doctrine of the Faith. One well known example of its appearance is in his dialogue as Pope with philosopher Jürgen Habermas, resulting in a co-authored published work. Another is seen in his dialogue with Jewish theologian Jacob Neusner over Jewish and Catholic perspectives on the significance of Jesus of Nazareth. In pursuit of this conception, he accepted an invitation to address the University of Rome “La Sapienza” on the topic, originally scheduled for January 17, 2008. The cancellation of the lecture after demonstrations in opposition is a reminder that Pope Benedict’s vision of the Church’s relationship with the Academy has at times been “a sign of contradiction,” as the panel, “Pope Benedict XVI and the Desideratum of Nature Law,” below begins to address.

35 One can compare, for example, his well known Instruction as Prefect, Instruction on Certain Aspects of the “Theology of Liberation”, 14 ORIGINS 193-204 (1984), with his dialogue among Catholic universities as Pontiff:

In regard to faculty members at Catholic colleges universities, I wish to reaffirm the great value of academic freedom. In virtue of this freedom you are called to search for the truth wherever careful analysis of evidence leads you. Yet it is also the case that any appeal to the principle of academic freedom in order to justify positions that contradict the faith and the teaching of the Church would obstruct or even betray the university’s identity and mission; a mission at the heart of the Church’s munus docendi and not somehow autonomous or independent of it.

36 See Virgil Nemoianu, The Church and the Secular Establishment: A Philosophical Dialogue Between Joseph Ratzinger and Jürgen Habermas, 9 LOGOS, Spring 2006, at 17, 17-42. This dialogue, originally a public exchange sponsored by the Bavarian Catholic Academy in Munich on January 19, 2004, with the title Vorphilosophische moralische Grundlagen eines freiheitlichen Staates, was later published as a book. See JOSEPH RATZINGER AND JUERGEN HABERMAS, THE DIALECTICS OF SECULARIZATION: ON REASON AND RELIGION (2007).
38 Fisher, supra note 10.
B. The Catholic University of America’s Response

The Ratzinger letter aims at eliciting an original and distinctive response from each university that it addresses. As just one example, one can consider the University of Notre Dame’s option of producing a volume of essays exploring the philosophy of Alasdair MacIntyre whose themes intersect with the letter’s subject matter. Quite apart from the substantive results of its inquiry, each participating university is called by the letter to account for the structure and method that has determined the character of the work it has produced. This is so because the quest for a suitable academic methodology for uncovering academically sound responses to the initiative’s concerns is one of the initiative’s central objectives. The character of that methodology will hardly be obvious in advance, in view of the “contemporary difficulties” that Cardinal Ratzinger’s letter states are “not absent” even “from the teaching . . . in Catholic universities,” “obscuring” relevant insight. The gravity of the question within the letter’s schema is clear, since it notes that “the destiny of human beings and the future of civilization” hangs in the balance.

At The Catholic University of America, the Center for Law, Philosophy and Culture (“the Center”) was entrusted with the responsibility of deciding the further details of the University’s response to Cardinal Ratzinger’s request for action. The distinctive structure and method that the Center brought to this assignment is, historically speaking, what The Catholic University of America can now offer for future, potential emulation by others. The Center’s basic purpose and the goals dovetailed well with those of the papal initiative. Its purpose was, namely, to advance “theoretical understandings of law’s relation to human culture and the human good,” with the further objective of “the renewal and transformation of culture through practical insight into the relation of law and legal institutions to the human good under contemporary circumstances.”

40 INTRACTABLE DISPUTES ABOUT THE NATURAL LAW: ALASDAIR MACINTYRE AND CRITICS (Lawrence S. Cunningham ed., 2009). Other examples include The Catholic University of East Africa’s The First CUEA International Symposium: Natural Law, convened in Nairobi, Kenya on February 6-8, 2007, and The Pontifical Lateran University’s International Congress on Natural Law, held in Rome, Italy on February 12, 2007.
41 Ratzinger Letter, supra note 1.
42 Id.
The Center’s purpose oriented it to research into the cultural prerequisites and potential of seeking the common human good, by and under law. The Center, therefore, sponsored: theological and philosophical research into the nature and meaning of human fulfillment; research in the humanities, more generally, into the good of human experience and expression; research in the social sciences into the function of human social institutions and practices; and research in law into the requisites of a just and equitable legal ordering of society. The test of the success of its work, obviously enough, is the integration of these disciplines in a single conversation.

Two principles combine to provide the key to the Center’s method for integrating these disciplines within such a common conversation. One of these principles is that unity is to be sought according to the Anselmian postulate of fides querens intellectum (faith seeking understanding).\textsuperscript{45} Citing the encyclical Fides et Ratio, the Ratzinger initiative affirms that it rests upon this same fundamental intellectual orientation.\textsuperscript{46} Faith that common understanding is ultimately possible holds the place for a conversation among disciplines that do not share common disciplinary methodological postulates on a topic that exceeds any of their individual scope.
Viewpoints can then be related in a dialectic that enjoys coherence in relation to the kinds of horizons articulated by Bernard Lonergan. The second principle that is key to the Center’s integration of disciplines is an interdisciplinary conversation in the Center that finds a concrete anchor in some reference to law or public policy. The Center raised theoretical questions about the the common good or law as these arise abstractly as a matter of philosophy or political theory or in relation to scriptural or theological motifs, wherever possible with some at least indirect reference to law or policy. In doing so, the Center linked its conversations to two sources of basic meaning available across disciplines. First, it related discussion to the moral authority arising inherently through practical decision for the good of the community. Second, it offered participants legal method as a grammar for an integrative statement of issues crossing academic disciplines. In both respects, each discipline is enabled to introduce its version of deliberative reason into a discussion, thus, sharing an inherent intelligibility not dependent upon the disciplines’ reaffirmation of one another’s internal criteria. Within legal studies, the Center’s methodology introduces, reciprocally, the theory of the humanistic disciplines, beginning with philosophy and theology, specifically for the sake of its appropriation within the law’s characteristic form of concern for meaning and value.

It would be quite unrealistic to suppose that the work envisioned in the Ratzinger initiative could be carried out by an ad hoc interdepartmental University committee. The trend of ever-increasing differentiation and specialization at the contemporary university imposes powerfully dispersive forces interfering with the capacity of the University’s schools and departments, on an ad hoc basis without more, to conduct the integrative work the Ratzinger initiative envisions.
Particular schools and departments within a university are generally not equipped to cultivate the motivation, distinctive purpose, or academic expertise for the relevant work because they necessarily conceive of their work within separate specialized and differentiated spheres. Their dedication to their separate spheres and their need to compete for resources in the zero-sum game of campus allocations pulls them away from attention to the requirements of common integrative work. In addition, the cultural “difficulties” that the Ratzinger initiative cites as obscuring the integrative pursuit of truth also affect Catholic universities, immersed as they are in the general culture, so that culturally-regnant positivism and relativism become more convenient, and, for some participants, perhaps even more congenial. As a result, purely intra-

subdividing as we learn more. The scale of universities is so vast that they become worlds unto themselves—academic ghettos. We talk only to others within our specialty, and may have trouble doing even that. Faculty members who take their turn on grant committees often shake their heads over the research proposals they must read from alien departments. . . . We can’t just ignore the explosion of knowledge and information that we have to deal with these days. Increasingly, administrators worry that the training we give at the university becomes obsolete so rapidly. The degrees they award mean less as the useful life of “information” shrinks.

C. JOHN SOMMERVILLE, THE DECLINE OF THE SECULAR UNIVERSITY 9 (2006). Pope Benedict XVI names the cultural loss of conviction of “the objective,” which could anchor movement counter to the direction of disintegration, as a decisive cause of the dispersive effects of differentiation:

When nothing beyond the individual is recognized as definitive, the ultimate criterion of judgment becomes the self and the satisfaction of the individual’s immediate wishes. The objectivity and perspective, which can only come through a recognition of the essential transcendent dimension of the human person, can be lost. Within such a relativistic horizon the goals of education are inevitably curtailed. Slowly, a lowering of standards occurs. We observe today a timidity in the face of the category of the good and an aimless pursuit of novelty parading as the realization of freedom. We witness an assumption that every experience is of equal worth and a reluctance to admit imperfection and mistakes.

Pope Benedict XVI, Address to Catholic Educators at The Catholic University of America (Apr. 17, 2008), in 37 Origins 741, 743 (2008). Essentially the same point has been made by Sommerville:

But why talk only about information? One no longer hears administrators giving talks on “wisdom,” an old-fashioned word meaning seeing things in their widest context, including our ultimate concerns. . . . [T]here is something besides size and specialization that is undermining the universities. They have also lost touch with important questions by their secularization. Important questions seem to involve “ultimate” values and standards of reference.

SOMMERVILLE, supra, at 9-10. See also GEORGE M. MARSDEN, THE SOUL OF THE AMERICAN UNIVERSITY: FROM PROTESTANT ESTABLISHMENT TO ESTABLISHED NONBELIEF (1994) (providing a historical account of the secularization of the University questioned by Sommerville). Pope Benedict seeks to advance what is the Church’s proposed remedy to the problem and with it the living impulse of the Center of Law, Philosophy and Culture:

But a University, and especially a Catholic University, “has to be a ‘living union’ of individual organisms dedicated to the search for truth . . . It is necessary to work towards a higher synthesis of knowledge, in which alone lies the possibility of satisfying that thirst for truth which is profoundly inscribed on the heart of the human person” (footnote omitted). Aided by the specific contributions of philosophy and theology, university scholars will be engaged in a constant effort to determine the relative place and meaning of each of the various disciplines within the context of a vision of the human person and the world that is enlightened by the Gospel, and therefore by a faith in Christ, the Logos, as the centre of creation and of human history. . . . While each discipline is taught systematically and according to its own methods, interdisciplinary studies, assisted by a careful and thorough study of philosophy and theology, enable students to acquire an organic vision of reality and to develop a continuing desire for intellectual progress. In the communication of knowledge, emphasis is then placed on how human reason in its reflection opens to increasingly broader questions, and how the complete answer to them can only come from above through faith.

EX CORDE ECCLESIAE, supra note 33, at ¶¶ 16, 20. 50 See Desideratum of a Natural Law, supra note 39, at 66-67 (presenting David Solomon’s reservations
departmental focus and energy is insufficient to tilt the balance against the dispersive effects of specialization and differentiation. The Center, by virtue of its character advanced, in workable terms, true cross-disciplinary work. As a consequence, it was situated as a kind of lever or fulcrum enabling a flow of focus and energy favoring collaborative integrative efforts among the diverse constituencies of its university, sufficient to overcome all countervailing inertial forces in the direction of separation and dispersal of energy.

The Center functioned by offering a “second-order” vantage from which to interpret, apply, and supplement the first-order work of particular schools and departments, with the result that that work may be taken up within the channels of a common integrative endeavor. Just as it would be an error to suppose that the separate schools and departments can replicate this integrative function separately, it would be an error to think that such a center can fulfill this function as some kind of extrinsic, purely administrative “outside consultant.” It functions effectively within is assigned role only because it possesses the cumulative substantive knowledge and skill required to advance genuine integrative understanding. Its niche permits it to accumulate and perfect this knowledge in a way not open to individual schools and departments “caught” in their first-order disciplinary tracks. It conducts its work in reliance on its director and other scholars who possess advanced degrees in more than one core discipline or who work in teams in which close-enough working harmony achieves a fusion of expertise across disciplines. It regularly convenes carefully-constituted and adequately-grounded expert planning groups with requisite joint knowledge across disciplines. It has established consultative relationships with many individual scholars and other experts with substantive knowledge concerning problems recurring in the Center’s coordination of multidisciplinary work.

Schools and departments are organized around the maintenance of a set number of faculty lines; the satisfaction of standing curricular requirements; and the conferral of degrees attesting to disciplinary competency. As a consequence, their activities flow, over time, in relatively fixed channels of scholarly discourse and administrative decision-making. They, thus, are unable to muster the energy or directionality required for true cross-disciplinary integrative projects that both the Ratzinger initiative and the charter of Catholic universities as illumined by Ex corde ecclesiae deem to be not only valid and legitimate but necessary. A multidisciplinary center like the Center for Law, Philosophy and Culture, by contrast, from its inception, is a vehicle suited to such work. It is constructed around the requisite motivation and sense of purpose. Its structure equips it to secure and retain the distinctive knowledge needed for its task; to aggregate the stable of professional relationships crossing

about the good faith of the pervasive university culture).

51 John Henry Newman describes this second-order perspective this way: “And further, the comprehension of the bearings of one science on another, and the use of each to each, and the location and limitation and adjustment and due appreciation of them all, one with another, this belongs, I conceive, to a sort of science distinct from all of them, and in some sense a science of sciences.” JOHN HENRY NEWMAN, THE IDEA OF THE UNIVERSITY 57 (Oxford University Clarendon Press 1976) (1899).
ordinary administrative boundaries within a university and beyond it;\textsuperscript{52} and to strike an efficient and fair balance in allocating costs and benefits among participants across its evolving projects.\textsuperscript{53} So constituted, the Center for Law, Philosophy and Culture of

\textsuperscript{52} The Center of Law, Philosophy and Culture, thus, enjoys a working rapport with a network of scholars at the home university and across many other universities, even internationally, within relationships formed over time by way of these scholars' substantive academic contributions to particular Center projects and their ongoing individual consultation on various Center matters. The Center cultivates such rapport within both the higher and lateral administrative structures of its university in order to foster the communication and efficient administrative decision-making that is needed to advance participation in Center projects by scholars' schools and departments. It cherishes such rapport with administrative staff within the law school and different university sectors. At this level, the fuller texture of relevant concretized knowledge is transmitted.

In this latter realm, specific acknowledgements are in order with respect to those whose contributions made the present collection possible. First, the Center's thanks go to Constantia Dedoulis whose creative imprint and record of resourcefulness runs throughout the entire narrative embodied in footnote 45 above like a golden thread and, with her, to Margaret Pooley whose like stamp is very much evident on the events of the last three years. Then, I wish warmly to thank Janelle Salamon, my former administrative assistant, now a law student at nearby American University, who skillfully gathered all the manuscripts in this particular proceeding—at times by arduous transcription—into the initial compilation that preceded this published journal issue as a gift to the Journal's very able student editorial board and staff. Next, I would wish to mention, with gratitude, Mary Dodson, who has artfully arranged the travel and accommodation of over two hundred scholars participating in Center events over the years. I also wish to make special mention of the exceptional assistance of Joan Vorrasi, William Jonas, and their staffs, including Brandon Pettit, for orchestrating so deftly all the complex planning of the use of facilities and providing food and refreshment for visiting scholars and often very large audiences—here special mention must be made of Joan Vorrasi's exquisite judgment and care in attention to detail. Nor can one leave out warm thanks for the wonderful and very extensive creative work of the members of our graphic designers and public relations and publications staff: Lara Frederickson, Donna Hobson, Carol Casey, and Victor Nakas must be mentioned with gratitude. The Center is indebted to Lara Frederickson for her sublime design of both all the symposium publicity centering on art from the Dome of Creation, Cathedral of San Marco, Venice, Italy, and her beautiful design of the Center's current web page. Likewise, the skillful assistance with information technology of Edward Trudeau, Dustin White, Juanita Glenn, and William Lantry deserve heartfelt mention. Not least, I would like to thank with special warmth Gayle Campbell and Paula Blackwell for their exceptional assistance in accounting for the expenses in connection with the symposium. The Center also wishes to thank many other staff members whose work cannot be mentioned here, but which was equally essential.

The life force of the Center is manifest in relationships which it fosters with interested professional and graduate students, for, as volunteers and paid interns, these students perform key academic and quasi-academic functions in the course of the work. Here, I would like to thank in particular Jonathan Watson, Emily Khoury, Lauren Brannon, Maggie Datiles, Michael O'Brien, and Daniel Marcinek for their very kind assistance. In the context of the present collection, such a debt is to be acknowledged with keenest gratitude to the student Board of Editors and Staff of the Journal (a co-faculty-student edited publication) listed on the masthead above for their preparing the present body of work for publication, as they with great skill and much tireless labor have played the most decisive role of all in accounting for the appearance of the present volume.

Finally, the symposium was made possible with very generous gifts from several donors. The Center, therefore, wishes with very warm thanks to acknowledge the generous support of The William E. Simon Foundation, Our Sunday Visitor Institute, the John McGonigle Charitable Trust, and the Marriott International Corporation. Particular thanks go to Our Sunday Visitor Institute for its unbroken support through a number of grants over the life of the Center that have substantially advanced its coming into existence. The tireless work of Tracy Dowling and Robert Sullivan of the University Development office, which facilitated such sponsorship, is also warmly acknowledged.

\textsuperscript{53} In contrast to the school or department, the Center must advance a common good defined by the intersecting ends of individual and institutional contributors including: the ultimate academic purpose of the particular project; the underlying founding purposes of the University and of the interdisciplinary center in question; the motivating purposes of any co-sponsor, like Cardinal Ratzinger in the present case; the individual academic benefits leading each academic participant to take part; and the academic ends of each campus school or department contributing project resources. Again, in contrast to the school or department, the Center must coordinate means effectively, against this same backdrop of shifting ends. Flaws that enter the work on this level can readily result in a project failing to reach the critical threshold for creating substantively worthwhile work.
The Catholic University of America produced a symposium, entitled “A Common Morality for the Global Age: In Gratitude for What We Are Given” and held on March 27 - 30, 2008, answering to the initiative of Cardinal Ratzinger’s letter to the University of October 27, 2004. It is this symposium that has yielded the collection of essays below. In carrying out this work, the Center was pleased that it catalyzed the enrichment and the renewal of local community on the University campus dedicated to the themes of Cardinal Ratzinger’s initiative. Many consultations with faculty experts across campus preceded the symposium. Two of the symposium’s plenary papers and nine of its responses or panel presentations were written by members of The Catholic University of America faculty. The Center was no less delighted to have contributed to the University’s being, for the time, the hub of a larger world-wide university without walls. Numerous off-campus experts graciously consulted during the planning phase, and twenty-one plenary speakers travelled to the University from within the United States and from abroad to deliver the papers that now appear here as articles, as did, as well, fifteen scholars serving as respondents and panelists. A diverse and lively audience of six hundred audience members, both from on and off campus and from the United States and from other countries, came together for the four-day symposium. The hope now is that in the course of considering the essays that follow, readers may be inspired by it to build a parallel community of discourse wherever they find themselves in venues across the country and around the world.

II. The Essays

As Cardinal Ratzinger’s initiative fans out to include its more particular concerns, it implies at its core a unifying thesis. The present collection of essays takes seriously the initiative’s diverse particular concerns but does so with attention to an organic unity deriving from this more fundamental thesis. To this extent, this collection represents what is admittedly an interpretation—hopefully creative—of the request found within Cardinal Ratzinger’s initiative. The collection states what it infers of this thesis in light of terms suggested by C.S. Lewis in The Abolition of Man. This reliance does not seem to be altogether daring, as Cardinal Ratzinger himself adopts Lewis’ thesis elsewhere. Cardinal Angelo Scola, a moral philosopher and

In attending both to ends and means, once again in contrast to the school or department, the Center must track variables to ensure balance of fairness among participants in relationships and ad hoc projects crossing beyond ordinary university channels. Sensitivity is called for respecting the tally of true costs and benefits across all participants—which is easily missed—and the just and creative measure of distribution.


55 JOSEPH RATZINGER, TURNING POINT FOR EUROPE?: THE CHURCH IN THE MODERN WORLD ASSESSMENT AND FORECAST 29 (Brian McNeil trans., 1994). Pope John Paul II also acknowledged such a cultural transmission of moral wisdom discerning at its core an implicit acknowledgement of God as the foundation at the root of the possibility of morally good action, for God “has already given an answer to [the question of the good] . . . by creating man and ordering him with wisdom and love to his final end, through the law which is inscribed in this heart.” POPE JOHN PAUL II, VERITAS SPLendor [SPLendor OF TRuth] ¶ 12 (1993).
theologian and patriarch of Venice, conveniently paraphrases Lewis’ thesis as the authors had it before them in his own essay, as follows:

The attitude that was so dear to Lewis, an attitude of respect and gratitude for what has been given, an attitude that is proper to each person towards the inheritance of practical wisdom, which all traditions and cultures in very part of the globe have preserved for the great chain of the generations . . . . According to this thesis, which had already been formulated by Benedict XVI in Deus Caritas Est, our existence is illuminated on the historical and cultural level by a common normative “natural” patrimony, susceptible of being made the foundation for a non-deductivist conception of natural law, whether it be of a cosmological, biological, or rationalistic sort.56

All of the authors in the collection had this Lewis thesis as one starting point for reflection, as they turned to thinking about their individual topics. The goal was to instill an orientation in the collection as a whole to the more organic sweep to what is taken to be Ratzinger’s vision,57 and to invite the authors to relate their particular topics to some more holistic vision of the problem whether confirmatory of, or in any way in counterpoint to, the Lewis thesis. Each author accepted, as narrower topic, some aspect of one of the particular concerns to which the Ratzinger alludes: i.e., 1) the necessity and value of the philosophical basis of ethics; 2) ecumenical unity among Christian churches on the question of moral truth; 3) agreement on moral principle through “intercultural and interreligious” dialogue; or 4) “fundamental criteria for laws affecting the rights and duties of all” as a matter of public policy, political decision and lawmaking. Each author then developed that particular topic with an implicit orientation to, in some way, confirming, qualifying, or perhaps even rejecting the larger C.S. Lewis thesis.

The result is a very rich body of work. The collection covers a great deal of ground on a complex array of themes from a number of different angles. An academic introduction may be undertaken in a number of ways. The present one, in the section that remains, seeks to offer a chart of the viewpoints ahead as well as of the contours of the discussion among these viewpoints taking shape as the this collection is considered as a whole. By delineating these pathways, the introduction seeks to assist readers from diverse backgrounds, both on an initial exposure to this material and, upon subsequent re-readings should these occur in the years to come, for the sake of a more adequate grasp of the distinctive contributions of the different authors and of the many interconnections that may be made among their work from diverse disciplinary and faith perspectives.

56 Angelo Scola, *The Light of Moral Insight*, post, pp. 71, 73.

57 See generally JOSEPH RATZINGER, VALUES IN A TIME OF UPHEAVAL (2006) (exploring the role of a reconciliation of faith and reason in finding an adequate response to current threats to the good of humanity); JOHN L. ALLEN, JR., *THE RISE OF BENEDICT XVI* 165-198 (2005) (setting out Pope Benedict’s call for a response, both on the level of ideas and of politics, to the cultural problem of a “dictatorship of relativism” in both the United States and Europe).
A. Agreeing on the Context for the Question – Preliminary Issues

Two panel conversations open the collection, each seeking to name core considerations basic to orienting the reader to the collection’s essential significance. One panel, entitled “Avenues of Reflection: Opening the Conversation,” asks where the discourse of the collection “is headed” by inquiring into general concepts that might offer the most basic horizon against which the collection makes its contribution.\(^5\) The other, entitled “Pope Benedict XVI and the Desideratum of a Natural Law: Three Views,” asks, in effect, about the meaning of “from whence” the collection comes in view of its origin in an initiative of Joseph Ratzinger, Pope Benedict XVI.\(^5\)

1. Horizons of Relevant Basic Meaning

John Polkinghorne, a physicist and Anglican priest from Cambridge University, and Stanley Hauerwas, a theologian from Duke University, in their first panel, inquire into the concepts they believe serve as the most productive basic horizon of meaning against which to measure the collection’s contribution. John Polkinghorne names, as pertinent horizon, the awareness of ethical insight as a universal dimension of human knowing inherently informing the method even of scientific research that itself is unable to explain it.\(^6\) Stanley Hauerwas takes a rather different approach, setting forth, as such a concept, appreciation for our vulnerability and need as creatures, reminding us as he does so that theories and languages can divide as well as unite in contrast to this state of dependency, which is universal.\(^6\)

2. The Significance of the Collection’s Origin in the Thought of Pope Benedict XVI

James Schall, S.J. a professor of politics at Georgetown University, David Solomon a professor of philosophy at the University of Notre Dame, and I, a law professor at The Catholic University of America, each a Roman Catholic commentator on papal teaching in the public arena, in our second panel, reflect on the significance of the collection’s origin in the thought of Pope Benedict XVI. James Schall, S.J. finds this significance in the “world historical” importance of the question Pope Benedict frames, that is, of how world dialogue can today be joined over what it now means as humans to relate to reality.\(^6\) Co-panelists David Solomon and I shift to the separate


\(^5\) Desideratum of a Natural Law, supra note 39, at 63-69.

\(^6\) *Avenues of Reflection*, supra note 58, at 57-58.

\(^6\) Id. at 61-62.

\(^6\) Desideratum of a Natural Law, supra note 39, at 63. In his article, *Natural Law in Medieval and Early Modern Europa: Sismic Activity and Shifting Foundations*, Professor Francis Oakley of Williams College returns to a consideration precisely of ambiguity in the medieval synthesis, cited to call into question the Pope’s interpretation of it. *See post*, pp. 223-24, 236-37. Jean Porter a moral theologian at University of Notre Dame in her article, *Natural Right, Authority, and Power: The Theological Trajectory of Human
question of the expected impact of the papal initiative. Citing the sociology of cultural opinion and the modern research university, Solomon sees in these, powerful extrinsic limits to the reception of the Pope’s initiative because of their opposition to “the very rudiments of natural law” and “intellectual violence.” I, for my part, ask whether limits internal to the Pope’s own vision flow from a certain skepticism about practical reason’s capacity to discover—as a matter of finitude, not sin—the intrinsically correct political solutions to many societal problems wondering whether the Pope entertains some degree of acceptance of some aspects of a liberal and positivistic social world.

3. Alternative Emphases and a Choice of Options

Thus, at least modestly conflicting positions emerge even in the opening tentative explorations of these panels, with John Polkinghorne and James Schall, S.J. voicing a kind of confidence in the capacity of human beings under at least some circumstances (with attention to reason and openness to grace, for example) to know fundamental moral principles in common; and with, conversely, Stanley Hauerwas, David Solomon, and I, each in his own way, acknowledging limits, and emphasizing difference of one kind or another. Similar contending emphases present themselves throughout the essays that follow. The reader is invited then always to ask whether these can be united in a higher synthesis favoring unity or, as the case may be, difference. Whatever the synthesis, the reader will, of course, wish to grasp the specific underlying principles on which it relies.

B. The Collection’s Thematic Content

A logical first point of orientation for parsing the content that follows is to ask what characteristics in the “world historical” situation eliciting Cardinal Ratzinger’s initiative the authors see as salient. Its logical stopping point, no less clearly, is a consideration of the inquiry by some authors into what more concrete applications in law, policy, and politics of insights into moral reasoning. The middle step of setting forth views on the central question of sound moral reasoning is more complex, for closer examination shows that some views envision a unity in moral reasoning, tending to a common integration of cultures, while others see some irreducible diversity in moral reasoning so that unity among cultures, if it is to occur, advances more minimally, through constructive or functional bridges across difference. The contents of these essays will, then, be introduced in four steps, accounting for, in turn: 1) the details of the current global situation; 2) unity in moral reasoning tending to lead to a common integration of cultures; 3) diversity in moral reasoning so that only

Rights, returns to the papal initiative for the sake of a reminder that the papacy itself, like all other human institutions even within the Church needs to be subject to the critique of moral insight. See post, pp. 311-14.
63 Desideratum of a Natural Law, supra note 39, at 65-66.
64 Id. at 68
65 Id. at 63.
a provisional unity among cultures is attainable through some secondary functional or constructive step; and 4) envisioned applications of moral reasoning in law, policy and politics.

1. The Current Global Situation

Two authors give particularly cohesive overviews of characteristics defining the current global situation. They are, Cardinal Angelo Scola and William Schweiker, professor of Christian ethics at the University of Chicago and ordained Methodist minister. From his perspective as moral philosopher and moral theologian, Cardinal Scola, in “The Light of Moral Insight,” points to several relevant external factors—i.e., “rapid transformations currently under way in the sphere of the affections, the bios, technologies, communications, and the intermingling of civilizations and cultures.” In parallel, he cites the pertinent role of certain ideas, such as “axiological pluralism” a tendency to equate anthropology with an evolving bios and a cosmology in which human history absorbs the concept of nature such that “[m]an becomes his own experiment.”

From his vantage as Christian ethicist concerned with public policy in an attitude of moral responsibility, William Schweiker, in “Accepting and Assigning Liabilities for Environmental Harms,” paints the era in more empirically-oriented terms of global harms, “whether through automobiles, high stack emissions, wanton use of resources or the endangering of species,” inequitably distributed whether through “geography, poverty, underdevelopment” or “ignorance,” describing the exceedingly complex ways in which these harms and their distributions interact in overlapping systems of “patterns and processing,” resisting analysis under “totalizing schemes that attempt to order social reality.” Schweiker describes the complex non-personal forces determining aspects of the human associations within which we might assign moral responsibility for such harms and their distributions, and, as well, to the “imaginative construals of reality” upon which participation in these associations depends. Not surprisingly, he depicts the imputation of moral responsibility in this global world to be subtle and demanding.

Other essayists highlight more particular features of our era with several underscoring negative implications of the global market. In “A Worldly Church: Politics, A Theology of the Church and the Common Good,” Stanley Hauerwas, for example, addresses an illusion of diversity the market creates by its “juxtaposition” of consumer options, which, in fact, only undermines a genuine discovery of the common good in local communities. Kevin Hart, a professor of theology and

66 Scola, supra note 56, at 71.
67 Id. at 72-73.
69 Id. at 348.
70 Stanley Hauerwas, A Worldly Church: Politics, A Theology of the Church and the Common Good, post, p. 448.
literature at the University of Virginia, in “Quest for Global Morality, Kantian Diversion,” touches on the negative consequences for local communities of “global capitalization” and associated global international law and humanitarian institutions with their attendant culturally-destructive Kantian-abstractionism.71 In “God, Sex and America: Decline of the Common Morality,” Nicholas Boyle, a professor of comparative literature and culture at the University of Cambridge, also cites global capitalism as problematic, but he locates its problematic character elsewhere, namely, in its functioning without a global political authority serving to situate it within a true global ethical life.72

At least two authors cite tendencies within a global material culture to encourage moral insensitivity or injustice. Michael Sandel, a professor of government at Harvard University, in “Mastery, Hubris and Gift: Biotechnology and the Human Good,” for instance, describes a temptation in pervasive global technocracy to an attitude of perfectionist control, which is inhospitable to human values.73 In “International Justice as Equal Regard and the Use of Force: Are We Fighting for the Same Things?” Jean Elshtain, a professor of political philosophy at the University of Chicago, outlines, for her part, the predatory character of a global arena in which some sovereign state actors prey on their own populations or, if not that, then fail to protect some groups in their populations from predation by others.74

Not every author sees globalization as entailing only negative challenges. In “Openness to Moral Insight: Socio-Cultural Considerations,” Katherine Tanner, a professor of theology at the University of Chicago Divinity School, invites us, for example, to find hope in the global interdependence and social differentiation across national and cultural borders now allowing us to encounter others who do not share our own understanding of “the given,” in the very conversations in which we seek to confirm our cultures. She develops the case for seeing this circumstance as the blessing of a truer openness to the givenness of reality.75

2. Viewpoints Espousing Unity and Universality in Moral Reasoning

In developing accounts of moral reasoning that they believe can sustain morally sound law and policy in the contemporary moment, one camp of authors assumes an inherent unity and universality in such moral reasoning permitting an integration of common understanding across diverse cultures and contexts. Perspectives in both philosophy and theology appear among viewpoints of this kind. In both domains, authors focus their attention, first, on fundamental postulates and, then, on the

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75 Kathryn Tanner, *Openness to Moral Insight: Socio-Cultural Considerations*, post, pp. 174-75.
integration of morally-significant social facts or the formation of tradition transmitting moral knowledge within human communities over time.

a. Fundamental Postulates

The fundamental postulates of moral knowledge which enjoys unity and universality are developed by several moral philosophers and by a number of moral theologians.

(1) Moral Philosophy

Of perspectives in moral philosophy affirming the universality of moral insight, John Polkinghorne’s “The Christian Belief in Creation and the Attitude of Moral Responsibility,” has a freshness by virtue of its situation in scientific method, making it appealing as the first to read. Cardinal Scola, Kenneth Schmitz, a professor of philosophy at the University of Toronto, and Thomas Hibbs, a professor of philosophy at Baylor University, each, in their essays, provide their own accounts of a more fully developed supporting moral epistemology. Alongside these, Robert George, a professor of moral jurisprudence at Princeton University, an exponent of what Cardinal Scola terms the “New Classical Theory,” advances a mode of moral reasoning with a like moral optimism but not sharing their metaphysics.

John Polkinghorne, through an analysis of modern science and its value-neutral causal explanations, places in comparative profile another equally valid, but value-laden dimension of the human encounter with reality—i.e., knowledge of right and wrong. He demonstrates the universality of ethical knowledge precisely by highlighting the ethical dimension of the scientific method, which science itself cannot explain. Polkinghorne considers the Christian community by reason of its doctrine of Creation, available to nurture this ethical dimension that he considers to originate in the Creator.

In “The Light of Moral Insight,” Cardinal Scola argues that the dual experience of desire and of human fulfillment in relationship with others arising through fulfilling desire opens the way to the recognition that inclination discloses the good of fulfillment as such and, thus, to the moral life. He asserts that moral knowledge is a knowledge of human inclinations in their full breadth and, to this same extent, a knowing by “connaturality”—i.e., knowing with an affective basis. The experience of desire, in this view, is revelatory of being so that our inclinations correspond to the ontological degrees in which we take part as living and rational beings. Reason, in

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77 Robert George, *Natural Law, God, and Human Rights*, post, pp. 131-34.
78 Id. at 78-79.
79 Scola, *supra* note 56, at 77-81.
this schema, formulates obligation as it moves from desire, recognition and communion, to commandment.\textsuperscript{81}

In "Human Nature and Human Culture," Kenneth Schmitz offers a metaphysics in support of the moral epistemology he would appear to hold in common in most of its essential terms with Cardinal Scola.\textsuperscript{82} Schmitz explores the "richly dense constitution comprising the first principles of intelligibility and value that dwells within the very depths of each and every being" and, thus, inform human knowing and acting.\textsuperscript{83} He sees human beings as sharing an ascending array of inclinations even to a certain degree with nonhuman reality, and human knowing as uniting us with things by liberating them for relationship through the disclosure of their intelligibility.\textsuperscript{84} He offers a vision of human knowledge as liberating moral agents by preparing them for transitive action whereby they care for or use things.\textsuperscript{85} Moral agency, in his view, perfects our own characters, and culture itself is an expression of our inclinations and freedom in the service of our purposes.\textsuperscript{86}

In "Creation, Gratitude, and Virtue," Thomas Hibbs shares essentially Scola's and Schmitz's moral epistemology, but interprets it in the light of a theology of Creation in reliance on a particular theological strand in Thomas Aquinas.\textsuperscript{87} Drawing on the idea of the radical contingency of created being, and the generosity of the Creator, he sees the moral agent as \textit{imago dei} and gives space to the history of sin, grace, and redemption.\textsuperscript{88} A duty in religion to worship and thank the Creator becomes visible from this angle, as at the root of moral obligation.\textsuperscript{89} The thanks that we owe God is not just for the sheer fact of his having brought something out of nothing, but for the integrity of Creation as He now holds it in being.\textsuperscript{90} Justice, in Hibbs' view, begins with a sense of our indebtedness in our vulnerability and injustice in a prideful refusal to acknowledge our weakness.\textsuperscript{91}

In "Natural Law, God, and Human Rights," Robert George takes, as his point of departure, certain basic self-evident reasons for human choice constituting the possibilities of human well-being and fulfillment.\textsuperscript{92} He finds, in these reasons, an integral directiveness yielding knowledge of modes of responsibility that generate concrete requirements of moral obligation.\textsuperscript{93} He locates these modes of responsibility midway between knowledge of the first principle of morality and the knowledge of

\begin{thebibliography}{99}
\bibitem{81} Id. at 81.
\bibitem{83} Id. at 89.
\bibitem{84} Id. at 90, 92.
\bibitem{85} Id. at 95.
\bibitem{86} Id. at 96-98.
\bibitem{88} Id. at 106.
\bibitem{89} Id. at 109. Paul Weithman questions whether Thomas Hibbs succeeds in grounding moral obligation through a duty in gratitude to God, since not having been in existence prior to being created \textit{ex nihilo}, one was not there to receive anything. Paul Weithman, \textit{Response to Thomas Hibbs, post}, pp. 115-17.
\bibitem{90} Hibbs, \textit{supra} note 87, at 104.
\bibitem{91} Id. at 111.
\bibitem{92} George, \textit{supra} note 77.
\bibitem{93} Id. at 131-32.
\end{thebibliography}
George eschews the metaphysics of these other authors, so that his approach entails, for example, no necessary reference to God. In George’s explication, such moral reasoning accounts for rationally-motivated action, virtues as habits born of upright choosing, and norms of obligation, as well as grounds contemporary human-rights practice.

(2) Theology and Religion

The collection’s theological perspectives also include a number of views with optimism regarding the universality of moral truth. With respect to the Christian theologians among them, agreement takes shape as ecumenical consensus. The representatives of the three Abrahamic faiths, for their parts, reach overlapping agreement within an inter-religious dialogue. This agreement expands to add the viewpoint of Daoism as the one Asian religion in the collection (with the proviso that Daoism must also be reviewed below a second time in connection with decentralizing viewpoints since it evades easy generalization). Each of these theological or religious viewpoints speaks from within a particular tradition, so that it naturally implicates the problem of mediation among traditions. Each assumes that the problem is not insurmountable, but devotes only cursory attention to it. Some other theological approaches—to be discussed subsequently—are of a decentralizing kind viewing this same step of mediation as problematic.

(a) Christian Views

Robert Wilkin, a professor of the history of Christianity at the University of Virginia, and Peter Casarella, a professor of Catholic studies at DePaul University, in their responses to Kevin Hart and Stanley Hauerwas respectively, raise the possibility of a Christian endorsement of a theologically grounded “compelling universal ethic.” Other authors, within the collection, offer substantive support for such a project. The latter include, Stephen Westerholm, a professor of biblical studies at McMaster University, Brian Johnstone, C.Ss.R., a professor of theology at The Catholic University of America, and Cardinal Angelo Scola, whose essay, already discussed above, embraces moral theology no less than philosophy. As a general matter, these converging viewpoints stress Creation as theme, leaving Eschatology more frequently a theme perhaps in the decentralizing essays yet to be considered below.

In “Christian faith in Redemption: Origin of a Moral Attitude,” Brian Johnstone proposes theological concept of “gift and reception” as foundation for common moral reasoning. He conceives of Creation as an unconditional gift from the transcendent...
God. Humans, as recipients of this gift, can, he believes, realize the capacity for fulfillment they have received by themselves giving and again receiving. They can take responsibility for Creation’s gifts or sin by seeking domination. In Johnstone’s view, redemption occurs through the resurrection as God’s response to Jesus’ unconditional openness to God’s gifts. Johnstone interprets natural law as a gesture of responsibility for gifts received, offering a corresponding interpretation of some basic features of traditional natural law reasoning. He likewise proposes this same pattern of “gift and reception” as capable of ordering mutually creative and respectful dialogue among diverse religious and moral traditions.

Within the schema of his essay, Cardinal Angelo Scola adds a complementary theological ethic to his philosophically-conceived natural-law reasoning, in a seamless dynamic synthesis. As a matter of a theological ethic, he envisions Jesus as fulfilling the promise of the gift of true life by the renewal he offers of relationship in communion of love with God and others. Jesus is, thus, “the living fulfillment of the law” and, indeed, the “living personal law.” Jesus is to be seen, then, as the fulfillment of naturally-knowable no less than revealed morality. The rational moral law is, in this view, ultimately realized in a personal relationship, rather than adherence to abstract norms. The Christian ethic can in this perspective, thus, be said to be of personalistic universality.

In “St. Paul and the Knowledge of the Natural Law,” Stephen Westerholm relies on an exegesis of the Pauline writings to show that St. Paul affirms the idea of universally knowable natural moral norms. In this respect, Westerholm offers an important New Testament scriptural warrant for the projects pursued by Johnstone and Scola and endorsed by Wilkin and Casarella. Westerholm shows that St. Paul views the gentiles as condemned and in need of salvation because they are in violation of moral obligations known to them naturally. He uncovers, further, that St. Paul understands moral knowledge to derive from God and moral blindness as arising through the suppression of naturally-available. While Westerholm affirms

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99 Id. at 421. Johnstone’s theologically-developed perspective works in close harmony with the view of Thomas Hibbs, which, by contrast, relied on Aquinas’ philosophical development of a related idea. See Hibbs, supra note 87, at 101-14.
100 Johnstone, supra note 98, at 422.
101 Id. at 424.
102 Id. at 424-25.
103 Id. at 426.
104 Id. at 426-27.
105 Scola, supra note 56, at 82-83.
106 Id.
107 Id. at 83.
108 Id.
109 Id.
110 Id. at 440. Frank Matera adds an interesting distinction by noting that St. Paul considered his gentile audience to have the sufficient moral orientation to understand what the Gospel was offering. Matera, supra note 109, at 445-46.
111 Westerholm, supra note 109, at 440.
St. Paul's overriding concern to be the transformative power of the Gospel, he concludes that St. Paul acknowledges, nonetheless, the promotion of moral good and restraint of moral evil by civil authority, however yet unredeemed that authority may be, also to be a good.\textsuperscript{112}

(b) Dialogue Among Abrahamic Faiths

Representatives of the other two Abrahamic faiths offer views in an overlapping agreement with the Christian views just set out. Rabbi Barry Freundel, rabbi of the Kesher Israel Congregation in Georgetown, District of Columbia, assistant professor of rabbinic literature at Baltimore Hebrew University, sets forth a Jewish perspective on universal principles of ethical consciousness. Mahmoud Ayoub, a professor of Islamic studies and comparative religious at Temple University, does the same from an Islamic perspective.

In "God's Gift and Mindfulness of the Ethical Dimension as Human Response," Barry Freundel illumines a Jewish vision of moral reason as God's gift, illustrates that Judaism teaches about moral reason through its theocentric scriptural narrative\textsuperscript{113} which, according to rabbinic tradition, instructs not only through the words that it depicts God as speaking, but through what it recounts of God's deeds and attitudes.\textsuperscript{114} The narrative offers God, in this respect, as a model for human emulation through His acts of kindness and self-control. In depicting God as responsive to ethical criticisms of His own conduct, it encourages human adaptiveness to true ethical insight.\textsuperscript{115} The sacred narrative of God's attitudes and actions, in this view, also supply ethical direction for human social institutions.\textsuperscript{116} Freundel relates that the rabbinic tradition holds these narrative elements to be universally applicable since their chronology precedes the creation of the Jewish people.\textsuperscript{117}

In "Enjoining the Good and Dissuading from Evil: Social Morality of the Qu'ran," Mahmoud Ayoub illuminates moral reasoning in Islam.\textsuperscript{118} Beginning from the cardinal precept, "Do Good and Avoid Evil,"\textsuperscript{119} he gives an exegesis of the theology and anthropology informing Islamic moral thought, showing that, for Islam, God is a

\textsuperscript{112} Id. at 444.
\textsuperscript{113} Rabbi Barry Freundel, God's Gift and Mindfulness of the Ethical Dimension as Human Response, post, pp. 403-15.
\textsuperscript{114} Id. at 403-6.
\textsuperscript{115} Robert Burt takes this theme and develops it further to suggest that the biblical narrative teaches that God cedes to human beings an independent role in propounding moral norms such that God himself is bound by them. Robert Burt, Response to Barry Freundel, post, pp. 417-20. One may find worthwhile an exploration of the similarity and difference of Robert Burt's explication of the mutuality of love between God and human beings and Thomas Hibb's view of God's gift and human need. See Hibbs, supra note 87, at 101-14.
\textsuperscript{116} Freundel, supra note 113, at 407-15.
\textsuperscript{117} Id. at 415.
\textsuperscript{118} Mahmoud Ayoub, Enjoining the Good and Dissuading from Evil: Social Morality of the Qu'ran, post, pp. 391-98.
\textsuperscript{119} Id. at 391. It will not escape notice that Ayoub's account of this statement in Islam appears indistinguishable from St. Thomas Aquinas' statement of the first precept of natural law: Do Good and Avoid Evil. THOMAS AQUINAS, SUMMA THEOLOGICA I.II, Q. 94, Art. 2 (Fathers of the Eng. Dominican Province trans., Benziger Brothers 1947).
moral God who expects our obedience as rational morality. He relates that Islam presents moral reason itself as God’s gift, and shows that this is so on several ground—Islam depicts moral reason as possible through a covenant of recognition God made with humans at their creation; God as having made the subsequent gift of Revelation and the Prophets; God as giving us His own example for emulation; and God as bestowing His ongoing moral Guidance on human beings. The good expected as a matter of obeying God’s moral commands in this Islamic view presupposes universal respect for human dignity and, since it is social in nature, calls for common restraint of evil. Ayoub confirms the universality of this vision of moral truth through the Qu’ranic teaching that the Abrahamic faiths and even the nations of the earth share it.

(c) Dialogue with Asian Religions: Daoism

In “At One with Earth and Heaven: The Ethical Integration of Self, Society, and Nature in Daoism,” Lydia Kohn, a professor of religion and East Asian studies at Boston University, after laying a foundation in Daoist cosmology, introduces the reader to the several kinds of ethical rules that, together, guide Daoist living. She illustrates their integral inter-connection within a larger ethic oriented to a right balance in the habituation of the emotions in admirable qualities of character and action, and, she illumines their resonance with harmonies of the moral agent’s own bodily state and the larger natural and cosmic order. Conduct and attitude in conformity with this ethic will respect the rhythms, phases and polarities of the natural and cosmic world, and ultimately harmony with the cosmic energy at the heart of all things, the Dao. She clarifies the “transmoral” character of the Dao in its embracing wholeness. She offers Daoism’s cosmic integration, for its possible pertinence to global morality.

120 Ayoub, supra note 118, at 392-93.
121 Id. at 393-95.
122 Id. at 395-97.
123 Id. at 395, 397.
124 Lydia Kohn, Being at One with Earth and Heaven: The Ethical Integration of Self, Society, and Nature in Daoism, post, pp. 365-84. However, these will resonate with aspects—now largely passed over in the West—of a writer like Thomas Aquinas dealing with topics like piety and observance. See Hibbs, supra note 91, at 107. It is of interest to compare her account with that of Kenneth Schmitz whose metaphysics resonates at least to some degree. See Schmitz, supra note 82, at 87-91. One can ask, for example, whether greater awareness of Daoist and related thought might lead to a rediscovery of dimensional, integrative awareness that has largely been lost in the West to global detriment. See Schmitz, supra note 82, at 91-92, 94-96, 98. It is also intriguing to compare her account with William Schweiker’s description of integrated patterns of systems making-up the global world as he analyzes it. See Schweiker, supra note 68, at 347-54. Perhaps, the ethical consciousness Professor Kohn describes is suited, at something like a transcendental level, furthering the integration of a more adequate ethical response in the context Schweiker describes. Heather Elliott’s response seems to suggest that this might be the case. Heather Elliott, Response to Rev. William Schweiker, post, pp. 361-63 (offering the case study of “the Methuselah Tree”).
125 Kohn, supra note 124, at 381-84.
126 Id. at 372-76.
127 Id. at 366-67.
128 Id. at 365.
b. The Integration of Morally-Pertinent Fact and Formation of Traditions of Ideas and Practice

Lines of thought in the collection, assuming an optimistic moral epistemology, move beyond philosophical and theological reasoning more narrowly conceived to integrate, at points, data from the world of fact. In one instance, the collection expands its reach to include a dialogue with psychology over the developmental preconditions of moral agency. A number of authors pursue the quite different empirical question of the conditions of concretely transmitting philosophical ideas or moral practices in traditions over time.

(1) Psychology and the Emergence of Moral Agency

In “The Role of the Family in the Transmission of the Moral Life” Paul Vitz, a professor and senior scholar at the Institute for Psychological Sciences and professor emeritus of psychology at New York University, explores what psychology can teach about the family’s role in the emergence of moral agency. He sets forth scientific evidence, for example, linking the emergence of the human moral capacity to maternal nurturance of the infant’s capacities to attach and empathize. A correlated differentiation of love and hate is, in this view, a first sign of “prototypical and unconscious” synderesis distinguishing good from evil. Similarly, he illustrates the family’s role in the formation of moral character and altruism through shared narratives and structure, and its role in fostering moral cognition impacting moral behavior.

(2) History and the Formation of Tradition

Several articles and responses engage the historical question of a culture’s formation of a tradition embodying or transmitting awareness of the principles of practical reason over time. Some appear to view moral knowledge as ahistorical and, to this extent, seem to reject the basic relevance of the question of history. Others view practical reason as mediated in some sense by tradition transmitted through practice arising concretely in history. These latter authors hold a moral epistemology that is optimistic to the extent at least that they consider the formation of a common tradition to be possible.

(a) Ahistorical Views

In “The Natural Law, the Laws of Reason, and the Distraction of History,” Hadley Arkes, a professor of jurisprudence and American institutions at Amherst College, argues that knowledge of moral principle arises by direct apprehension akin to

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130 Id. at 182-91.
131 Id. at 185-86.
132 Id. at 191-98.
knowledge in mathematics. Only belatedly discovered by some, moral law, in his view, is not new. Institutions, in one period, may be more attuned to moral reason than in another, but its principles are invariant and do not change. Insight into a principle such as the one that each person has an equal right to respect as constituted as free, and not through extrinsic features like race, is, Arkes suggests, to remember something that we, in a sense, already know, rather than as arising in a specific past. John Polkinghorne joins Arkes in asserting an analogy between moral values and self-evident principles of logic and mathematics. He, like Arkes, considers that, although human institutions are in need of perennial reform in the light of basic values and although concrete discernment is needed to guide their application, knowledge of these principles itself is not historical. Robert George’s discussion of the question of history and moral values appears to have a marked affinity with Arkes’ and what appears to be Polkinghorne’s view.

(b) Historically Oriented Moral Epistemologies

Authors holding to an optimistic moral epistemology but who situate practical reason, in contrast to ahistorical perspectives, within some kind of historical dynamic, align themselves in two groups. One of these assumes, even if it does not in each case outright emphasize it, that practical reason reaches its full expression within a theoretical tradition culling what it needs for the formulation of ideas from the flow of a dialogue arising and transmitted historically. Where theological, these viewpoints appear to be more influenced more by ideas of Creation than Eschatology. Holger Zaborowski, a professor of philosophy at The Catholic University of America, in his response to John Polkinghorne, notes this propensity. The second group sees historically unfolding practice as the occasion for new insight into moral truth. It appears to imagine more a tradition of practice than thought, and when theologically-based, it appears moderately influenced by Eschatology.

(i) Moral Knowledge Accruing by Tradition

In his essay, Cardinal Scola cites a common normative “natural” patrimony suited to sustaining a conception of natural law with Aquinas as its leading exponent. Kenneth Schmitz adds greater detail to this same description, referring to “[t]he philosophical tradition stemming from Plato and Aristotle which received new light in Augustine and Thomas Aquinas as well as in the Fathers and the Schoolmen.” Cardinal Scola appears to introduce a distinction that is key to grasping the way in

134 Id. at 215-17.
135 Id. at 211-12.
136 Polkinghorne, supra note 76, at 139-41.
137 George, supra note 77, at 132.
138 Scola, supra note 56, at 77-82.
139 Schmitz, supra note 82, at 88.
which theoretical ideas form the thread connecting tradition in this interpretation when he distances himself in a certain sense from the "amalgam of cultural attitudes and positions C.S. Lewis cites as legacy."  

Taken without more, he states that this "legacy" will be interpreted as no more than "an ideological interpolation of certain cultural data which, when subjected to close study are found to be transitory, even contradictory and not the source of a coherent and reliable doctrine." In so saying, Cardinal Scola may be suggesting that theoretical conceptualizations and their justification, not the transmission of forms, attitudes, and practices, are the decisive matter of tradition.

(ii) Moral Knowledge Emerging Historically

In responding to Katherine Tanner, Patrick Brennan, a professor of law and catholic legal studies at Villanova University Law School, draws on the ideas of Eric Voegelin to introduce an idea of differentiation of consciousness yielding over time, historical breakthroughs ushered in by "rare individuals as prophets and philosophers and saints" opening the way for greater openness to the given. Again relying on Voegelin, Brennan considers some cultural modes to block the full scope of practical reason when they erect barriers to what can be asked or said. In parallel, Holger Zaborowski, responding to John Polkinghorne, points out that the scientific establishment’s resistance to Polkinghorne’s own ethical and theological views calls for a causal explanation, as does no less the public’s vulnerability to reductionist scientism. Zaborowski says that this resistance invites a critique of Christianity’s role itself in somehow unwittingly eliciting them.  

In Brennan’s view, history allows footholds for new starting points for traditions of a truer openness to reality and, no less, for novel modes of interference in that same creative process.

Brian Tierney, a professor of medieval legal history at Cornell University, responding to Jean Porter, a professor of theology at the University of Notre Dame, explores a pattern in the Christian-rights tradition, by which new insights emerge through precisely atrocities that cannot be adequately objected to under received formulas. He says that this limit-experience can fruitfully lead to renewal through a revisiting of a tradition’s founding principles. R.H. Helmholz, a professor of law at the University of Chicago, in his response to Hadley Arkes, focuses in on the relative inadequacy that history exposes in received statements of the principles of equity; he advises methodological skepticism in attempts to translate notions of equity in enacted legal rules. Tierney, for his part, envisions the possible revision of

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140 Id. at 73.  
141 Id.  
142 Patrick Brennan, Response to Kathryn Tanner, post, p. 179.  
143 Id. at 178.  
144 Zaborowski, supra note 78, at 150.  
145 Brennan, supra note 142, at 315-17.  
146 Brian Tierney, Response to Jean Porter, post, pp. 315-17.  
147 R.H. Helmholz, Response to Hadley Arkes, post, pp. 221-22.
traditions to reflect overlapping agreement on at least some basic concepts for ensuring the decent treatment of people among the world’s religious traditions, based on evolving insight born of the experience of shared hardships.\(^1\)

### 3. Visions of Difference in Moral Reasoning as Starting Point for Interconnection

A group of viewpoints in the collection, in contrast to the ones considered up to now, approach the question of moral reason capable of sustaining morally sound law and policy in the contemporary moment from the perspective of postulates of difference, that permit at most limited functional or constructive interconnections among world-ethical perspectives. This group again includes perspective in both philosophy and theology. In both domains, authors address both postulates of difference and steps of functional or constructive interconnection. By definition, these views interest themselves in cultivating with integrity diverse traditions, rather than unitary tradition. Their interest in psychology is not towards the integration of fact in quest of a more comprehensive grasp of universal moral agency, but, to the contrary, in unmasking pseudo-cognition as psychologically caused.

#### a. Moral Philosophy

Philosophical viewpoints in the collection discounting unity in moral reasoning explore, in part, fundamental postulates of difference, and, in part, limited constructive or functional steps of interconnection. The simple outlines of their contributions with respect to each can most conveniently be sketched, separately and in turn.

**(1) Fundamental Postulates**

Viewpoints in the collection treating human moral reasoning as fundamentally diverse appear to be of three kinds. For convenience here, they may be termed particularist, critical, and nominalist.\(^2\) Particularist views include those of Stanley Hauerwas and Kevin Hart. Critical views embrace those of Nicholas Boyle and Katherine Tanner. A nominalist view is set forth by Francis Oakley, a professor of the history of ideas at Williams College.

**a. Particularist Views**

Stanley Hauerwas’ purpose (to provide an understanding of the nature of the Church) is ultimately theological but *en route* he proposes a particularist view of moral

\(^{1}\) Tierney, *supra* note 146, at 316-17.

\(^{2}\) The use of “isms” to define these options is not in any way meant to be negative, nor is it meant to provide an adequate definition for the viewpoint involved. Rather, it is adopted only for its functional value in advancing a basic orientation to the relatively distinct options appearing within the collection.
reasoning he borrows from Alasdair McIntyre. Hauerwas portrays practical reason and virtue as realized in pursuit of the common good within local communities and, thus, as inseparable from shared practice. He sees knowledge of the good as emerging only as "local reflection . . . upon local political structures, as these have developed through some particular social and cultural tradition." Practical reason and virtue are, thus, only realizable, in this view, in "a practical education." Moral philosophy has a role to play in Hauwerwas' vision, but only where guided and limited by the "conceptual and argumentative resources of that same tradition." 

Kevin Hart gives a philosophical account of a theocentric ethic that is likewise particularist since he sees its credibility as dependent upon the particularity of its genesis in tradition and as oriented to the absolutely singular particularity of God. He is not averse to "involving" natural law if it does not disconnect ethics from their theologically-constituted tradition of origin. Critically, he offers a negative critique of a competing moral view purporting to make extraneous these very theological and particularist elements. The view he rejects asserts the unity of a "common morality," in his view, via a false abstractionism associated with the Enlightenment, detaching moral awareness from a lived-context in tradition, and from relation to God.

These two "particularist" accounts shift the focus to preserving local communities of practical reason or religious belief in the face of disruption by state, market, or abstracting ideologies. They do not, however, seem to entail any necessary rejection of many of the terms of the philosophies of the Scolas, Schmitzs and Hibbeses but to stipulate that the cogency of these other views is contingent on their re-interpretation within particular moral and faith communities that they, in turn, concretely and organically sustain.

(b) Critical Views

Nicholas Boyle's critique reduces the moralizing discourse of contemporary public life to no more than an artifact of a psychological mechanism that he traces to a breakdown in an adequate empowerment of political authority. Boyle observes that society, under the conditions of the global market, replaces a common ethical life with an Ersatz of pressure to force the internal formation of ethical commands and, in consequence, guilt. He explains this substitution of guilt for ethical life through a Freudian psychological mechanism that enters into the public domain in a negative dynamic that he explains via Hegel. Boyle endorses Freud's view that social cooperation depends on the suppression of aggression generating guilt, which in turn

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150 Hauerwas, supra note 70, at 454 (quoting Alasdair MacIntyre, Politics, Philosophy, and the Common Good, in THE MACINTYRE READER 234, 246 (Kelvin Knight ed., 1998)).
151 Id.
152 He leaves the door open to a revision of natural law that does not depend on a Divine lawgiver as long as it expressed a clear heteronomy in which "the good precedes rights." Hart, supra note 71, at 246.
153 Id. at 246-47.
154 Boyle, supra note 72, at 267.
is displaced in moralistic reproaches against others.\textsuperscript{155} He then borrows from Hegel to explain how this pattern has come to substitute for ethical life, rather than to remain merely its psychological substratum: the global market, today, functions without any state-like consolidation of power, capable of enforcing norms of conduct and Hegel teaches that an ethical life can exist only consequent to the consolidation of power for that purpose.\textsuperscript{156}

In her essay, Katherine Tanner’s critique likewise reduces alleged moral “givens” as the product of a psychological defense, but does so along lines differing from Boyle’s. Drawing on Jonathan Lear, she exposes a tendency in the quest for comprehensive moral accounts “of the given” a propensity, at times, to seek closure against reality on the analogy of a neurotic’s perpetuation of illness through an unconscious insistence on seeing the world only in disappointing terms.\textsuperscript{157} Unconscious socio-cultural processes can, in her view, entrench a cultural preference for “self-enclosure” too sure of the “veracity of what is commonly held” even to penetrate to the truly “given.”\textsuperscript{158} Tanner recommends a corresponding hermeneutic of skepticism.\textsuperscript{159} As a theologian, she invites consideration of the connection between this closed-mindedness and sin.\textsuperscript{160}

(c) A Nominalist View

In “Natural Law in Medieval and early-Modern Europe: Seismic Activity and Shifting Foundations,” Francis Oakley, gives exposition to the “nominalist” vision of practical reason of fourteenth-century William of Ockham distinct from the Thomistic synthesis, and yet itself also embedded within the Christian tradition over centuries. Oakley shows that Ockham attributes physical and moral order to a “free and inscrutable divine will” unbounded by “external standard”\textsuperscript{161} and that Ockham sees the world as made up of “singular entities linked solely by external relations,” and the moral order as “a top-down legislative imposition by an omnipotent divine will on . . . discrete individuals.”\textsuperscript{162} Oakley argues that the apparent instability for moral norms in Ockham’s approach is illusory since Ockham merely shifts the load-bearing function from the philosophical to the theological leg of his philosophical-theological synthesis, depending, in doing so, on biblical motifs of divine promise and covenant to justify God’s constancy in sustaining both reason and nature.\textsuperscript{163}
(2) Concepts Bridging Irreducible Difference

Viewpoints stressing irreducible difference move, at a certain point, from the postulates of difference themselves, to constructive or functional interconnections that may, nonetheless, to an extent bridge cultures and traditions. The authors of the essays reveal four kinds of such bridging concepts: 1) analogy; 2) attending; 3) common grammar; 4) negative capability; and e) consolidation of power.

(a) Analogy

Kevin Hart proposes an analogy to bridge differences and to permit a limited degree of common ground among diverse traditions of faith. He sees the “looseness” he concedes in the device as, if anything, a virtue in contrast to empty promises of formalism. He suggests that the method can work where the respective traditions on all sides of the analogy share “deep parallels” and the term proposed as analogous is “broadly acceptable” among them. He suggests that agreement by analogy at most can supplement local tradition at a second “tier” where it can be variously enriched by them. He proposes the Golden Rule as Christianity’s plausible contribution to such cross-cultural analogical moral dialogue. Although Brian Tierney’s focus is admittedly more juridical than Hart’s, Tierney, in his response to Jean Porter, likewise endorses analogy as a bridge to possible (limited) overlapping agreement among religions. As a shared term, he finds “respect and compassion for the human person” at the wellspring of the major religions.

(b) Attending

In “Mastery, Hubris and Gift: Biotechnology and the Human Good,” Professor Michael Sandel, prescribes a method of intercultural integration of moral discourse that he terms, the “way of attending.” He does not ask local traditions to give any kind of even lexical priority to any cognitive point of abstract or even analogical agreement, rather he suggests that each religious and moral tradition may bring its entire patrimony of moral resources, unsorted, to every common discussion of moral concern. The bridge he, instead, proposes to discuss is a perception in common, synthesis. It also invites a consideration of Ockham’s counter approach as a potential basis for a particularist theological ethic for Christian communities and a more pluralist regime based on Ockham’s concept of subjective rights, at least within the larger political order. In connection with this latter possibility, Oakley calls attention, for example, to Ockham’s influence on a line of thinkers, including John Locke, contributing to the rise of the modern constitutional order. In addition, Oakley’s account offers ground for a renewal in dialogue between Christianity and Islam over the relation of ethical commands and Divine Will.

164 Hart, supra note 71, at 254.
165 Id.
166 Id.
167 Id.
168 Id. at 253-54.
169 Tierney, supra note 146, at 317.
170 Sandel, supra note 73, at 153.
where this arises, of the moral-unease-inducing qualities in concrete practices. This method is one in which different traditions join in the “interpretive project” of “mak[ing] sense of or diagnos[ing]” their collective discomfort in the presence of practices they sense to be problematic. As the product of this method, he envisions shared attitudes, rather than propositions. Katherine Tanner’s proposal of the cultivation of skepticism of self, in matters implicating cultural difference, seems to complement Sandel’s. Her method would appear to clear the way precisely for “attending” in Sandel’s sense, liberating a culture from the trap of “inattending” by reason of unexamined “knowingness.”

(c) Grammar

Katherine Tanner and Stanley Hauerwas agree that a grammar can be the basis for common conversation in which the interlocutor is permitted, in Tanner’s vivid phrase, to remain “irredeemably strange” and yet still of the conversation. Hauerwas sees language across difference as needed to foster listening to and grasping “the intelligibility of diverse claims of injustice,” and as a means whereby we may offer “truthful judgments to one another and others that come only by having our convictions exposed to those that do not share them.” At one level, the appeal is one for a kind of language within a particular community sufficiently open to difference. At another, especially for Hauerwas, it appears to be an intersection of diverse languages across diverse local communities permitting a conversation about languages and over “similarity and diversity of the regional liturgies.”

(d) Negative Capability

A number of proposals for bridging differences in moral reasoning put forward concepts distinctively opening a negative space that can be filled by empathetic regard for the other person, regardless of difference. Together, these concepts may qualify as a subset of what Katherine Tanner, relying on Levi-Strauss, terms “floating signifiers.” They seem to channel what Thomas Keats called “negative capability.” They resonate with Karl Rahner’s experience of limitation in knowledge or freedom on the part of finite subjects, as transcendental.
Stanley Hauerwas, in his opening conversation with John Polkinghorne, offers, for example, the concept of basic human physical vulnerability that comes upon us without our asking, in just this vein.\textsuperscript{181} Michael Sandel, similarly, offers the concept of “the unbidden” as allowing us access to an appreciation of the other person’s value and restraining our impulse to master and control.\textsuperscript{182} In “Respect for Human Dignity,” Gilbert Meilaender, a professor of theology and Christian ethics at Valparaiso University, offers an extended meditation on the concept of human dignity as a marker provided by our equal vulnerability to weakness and death precisely for our equal human worth. Meilaender distinguishes this meaning of human dignity from another less fundamental usage, defining dignity on a comparative basis.\textsuperscript{183}

\textbf{(e) Consolidation of Power}

As mentioned previously, Nicholas Boyle holds common ethical life to be impossible without the presence of a state or a state-like authority. Correspondingly, power must be consolidated and conferred on the state for enforcing shared norms of conduct before differences in moral claims can be bridged as an expression of genuine ethical life.\textsuperscript{184} Therefore, for unity in ethical understanding to emerge under contemporary global conditions, Boyle argues that there must occur first a state-like deployment of force on the same global scale as the international economy. This will be seen to have occurred only when “state-like processes, of attitudes, tendencies, and even embryonic institutions, with ambitions to deploy the State-defining power of force,” in fact, come to achieve global control.\textsuperscript{185}

\textbf{b. Theology and Religion}

Theological viewpoints aligning with the pole of greater skepticism regarding unity in moral reasoning for the most part rely on the philosophical postulates considered thus far. However, as distinctly theological contributions on this side of the collection’s balance sheet, the reader will wish to consider aspects of Stanley Hauerwas’ essay. The reader will also wish to return to a consideration of the theological dimension of

\textsuperscript{180} In one formulation, Rahner explains the idea this way:

Then is the hour of his grace. Then the seemingly uncanny, bottomless depth of our existence as experienced by us is the bottomless depth of God communicating himself to us, the dawning of his approaching infinity which no longer has any set paths, which is tasted like a nothing because it is infinity. When we have let ourselves go and no longer belong to ourselves, when everything (including ourselves) has moved away from us as if into an infinite distance, then we begin to live in the world of God himself, the world of the God of grace and of eternal life.


\textsuperscript{182} Avenues of Reflection, supra note 58, at 61-62.

\textsuperscript{183} Sandel, supra note 73, at 155.

\textsuperscript{184} Gilbert Meilaender, Respect for Human Dignity, post, pp. 120-25.

\textsuperscript{185} See supra text accompanying note 160.
the concepts mediating negative capability just mentioned. As well, the reader will wish to return to a further consideration of a decentralizing characteristic of Daoism, as Livia Kohn elaborates it.

Stanley Hauerwas is unique among the Christian theologians in the collection in approaching moral reason from the vantage of ecclesiology. In doing so, he proposes a two-tiered approach in some ways parallel to that which Kevin Hart sketches in connection with inter-religious dialogue. Locally, Hauerwas images the Church in terms borrowed from Alasdair McIntyre to fashion a vision of the Church constituting itself in local communities, speaking local vernacular liturgical languages, and learning what it means “to survive” and in this discovering “what it means to be human.”

He depicts the Church as bringing theological virtues and a dedication transcending the world’s comprehension, to the task of discovering the common good. At global level, Hauerwas relies on Karl Rahner’s concept of the Church in the global era, as necessarily Church in diaspora, suggesting that Christians, scattered in their local communities, are called in Christian hope to strive for unity in “common love of God” with Christians everywhere.

Gilbert Meilaender and Stanley Hauerwas specifically identify a theological dimension of the concepts mediating negative capability, which they put forward in what can be considered in the first instance a philosophical or ethical manner. The fuller theological and philosophical grounding that Thomas Hibbs provides, as was seen above, for vulnerability as orienting the moral agent in gratitude to the Creator can, in principle, be equally well applied to ground the views of Meilander and Hauerwas and of Sandel, although Sandel, himself, winning a skeptical response for this from his respondent Stephen F. Smith, a professor of law at the University of Notre Dame, in doing so, declines to limit the concept he offers of the “unbidden” to its theological significance in parallel to the natural law theory of Robert George.

Livia Kohn’s exposition of Daoist integrative ethical consciousness was included above among theological approaches envisioning unity in moral reasoning, but the cosmic integration and balance of Daoism, as Kohn explicates it, displays an interesting ambiguity. These qualities appear to transcend the distinction between unity and difference organizing this introduction for they seem to suggest in a way that every person, every place, and every society equally forms a center of harmony. In this respect, her account appears radically decentralizing. For this reason, it seems appropriate to suggest that Daoism as Kohn illuminates it be proposed for reconsideration in this latter context of decentralizing theories. Charles B. Jones,

\[\text{Kohn, supra note 124, at 365-84 ("Every living being, everything that is created and has form has its particular being because of qi. Qi is manifest Dao . . . .")} \]
a professor of Religious Studies at The Catholic University of America, in his response to Lydia Kohn, emphasizes the lack of correspondence between Asian and Western religious ideas.\textsuperscript{193} Perhaps, his point receives confirmation here.

c. The Absence of the Integration of Facts or Concern with the Formation of Tradition

Because they do not espouse a principle of unity in the sense that is of interest in this collection of essays, the essays in question do not espouse a point around which they are inclined to pursue the integration of fact or the formation of a general philosophical tradition. In some other setting, however, one assumes that these same authors might be inclined to advance integration within local, rather than universal modes of thinking or perhaps to delegate that task to political or legal institutions rather than religious or moral communities, relying perhaps on purely functional or practical bridges among differences.

4. Applications of Moral Reasoning to Politics and Law

Ayatollah Amad Iravani, a scholar affiliated with the Center for the Study of Culture and Values at The Catholic University of America, in his response to Mahmoud Ayoub, advocates for an inter-religious dialogue on many issues of morally sound social practice, observing that frequently such issues cannot be resolved by simple reference to religious traditions.\textsuperscript{194} The conversation that Iravani envisions ultimately is one within the sphere of politics and lawmaking. Perhaps the majority of the essays in this collection touch at least indirectly on these topics; several make them their primary focus. In this vein, essays in the collection explore each of the following issues: 1) political decision-making; 2) pursuit of justice; 3) the rule of law; and 4) the recognition of human rights under law.

a. Political Decision-making

Cardinal Scola and William Schweiker, the two authors whose succinct, yet comprehensive, descriptions of the current situation were considered above, are also the two who bring to focus the question of political decision-making in pursuit of the common good. In his essay Cardinal Scola addresses the contribution of moral reason and faith to discourse in pluralized civil society.\textsuperscript{195} Because convictions must be “translated” into “public” terms in the pluralized civil society, he argues that participants, individual or corporate, must, for this very reason, give tireless witness to a “process of argumentation sensitive to the truth”\textsuperscript{196} drawing on their moral

\textsuperscript{193} Charles Jones, \textit{Response to Livia Kohn}, post, p. 385.
\textsuperscript{194} Amad Iravani, \textit{Response to Mahmoud Ayoub}, post, p. 400.
\textsuperscript{195} Scola, supra note 56, at 83-85.
\textsuperscript{196} \textit{Id.} at 84.
experience to “rediscover” “orientations and lines of the common good." Religious traditions, in his view, should be subject to the same rules of “equal competition” as others, but should not be excluded either from debate or enactments in law. They should instead, he suggests, be encouraged to witness to “the irreplaceable universal concrete element” in moral awareness to which they are heirs.

William Schweiker proposes a more adequate structure for a public policy genuinely responsive to global environmental harms. Grounding his approach theologically, in an attitude of “gratitude and trust and devotion to service” but tempered by Christian realism and an awareness of tragedy, he propounds a mode of “ecological rationality” taking seriously the novel, complex, and subtle pattern of intertwined personal and impersonal factors accounting for global environmental harms. This mode of rationality reveals a double challenge in making policy on the assignment of liability of global environmental harms. The definition of redressable harms and the conferral of standing to complain about them requires a novel “depersonalizing [of] our concept of value,” while the ascription of moral responsibility and the assignment of legal liability requires an unaccustomed “personalizing [of] nonpersonal forces.”

b. The Pursuit of Justice

Several authors in the collection advance modes of moral reasoning specifically as in the service of justice as a political value. These authors contemplate justice as either a counterpoint from which to criticize law or as pursuable apart from law in the international arena considered as an “extra-legal” realm. In doing so, they rely on rights language to express moral rather than legal imperatives. Authors considering justice in this sense include, as a principal author, Jean Elshtain, a professor of social and political ethics at the University of Chicago, and, as respondents, Carter Snead, a professor of law at the University of Notre Dame, and David Hollenbach, S.J., a professor of theology at Boston College.

In “International Justice as Equal Regard and the Use of Force: Are We Fighting for the Same Things?,” Jean Elshtain makes a case for humanitarian military intervention by some sovereign nations in the internal order of others, arguing that, where a state subjects its population to barbarities or is unable to preserve internal order so that all of its citizens are protected from violent attacks by other citizens, other states capable of doing so should be seen as having the duty and, thus, the right to intervene by force as needed to defend the vulnerable population. Her test

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197 Id.
198 Id.
199 Id.
200 Schweiker, supra note 68, at 352, 357-59.
201 Id. at 348-52.
202 Id. at 341, 356.
203 Id. at 341, 353-54.
204 Elshtain, supra note 74, at 319-34.
would be a variant on *ius ad bellum*. Her model overall would be one of good citizenship among nations.\textsuperscript{205} Although its feasibility, in her view, arises indeed through a world-wide currency of human rights and democratic discourse, she grounds her concept not upon Kantianism, but it would appear, upon an Augustinian concept of Christian love of neighbor.\textsuperscript{206}

Carter Snead, in responding to Nicholas Boyle, argues *contra* that human rights concepts carry their meanings as moral terms apart from recognition by the state.\textsuperscript{207} In fact, he asserts that it is precisely for this reason that rights are invaluable for criticizing the *de facto* power of states.\textsuperscript{208} Under domestic law, Snead cites as illustration of this value of rights the need to frame objections to inhuman bio-ethics practices,\textsuperscript{209} and, under international law, he avers that human rights concepts serve well to coordinate humanitarian relief in the face of local governmental interference or inaction, citing international campaigns to eliminate illness.\textsuperscript{210}

Father David Hollenbach, S.J. in responding to V. Bradley Lewis, a professor of philosophy at The Catholic University of America, argues for a universal ethic capable of application across cultures and traditions for the sake of advocacy for vulnerable individuals falling “between the cracks” of the state system.\textsuperscript{211} Quite in contrast to Kevin Hart, Hollenbach favors Immanuel Kent relying on the Kantian *imago* of the human being as possessing dignity always an end, never a means, to advance international solidarity in support of human rights.\textsuperscript{212}

c. Rule of Law

The framework of Law is propounded by two authors within the collection, as being of decisive importance in the pursuit of both politics and justice. These authors are principal author, Nicholas Boyle, and respondent, Cole Durham, a professor of law at Brigham Young University. The parallels between them are several: each champions the rule of law, criticizes efforts to foster rights via extra-legal conduits, and draws on German idealist philosophical antecedents. Nonetheless, their conceptions of the rule of law differ decisively by virtue of the respectively Hegelian and Kantian genealogy of their ideas.

Nicholas Boyle, as we have seen, asserts that common ethical life can only emerge “on the other side of” the consolidation of the enforcement power of the state. Thus, in his view, rights, in the ethical sense, can only make sense in a functioning framework of law. In an interesting parallel to Kevin Hart’s criticism of floating abstract rights concepts, Boyle deconstructs and rejects precisely such moralisms, but

\textsuperscript{205} Id. at 330-31.
\textsuperscript{206} Id. at 322.
\textsuperscript{207} Carter Snead, *Response to Nicholas Boyle, post*, pp. at 273-76.
\textsuperscript{208} Id. at 274.
\textsuperscript{209} Id. at 274.
\textsuperscript{210} Id. at 275.
\textsuperscript{211} Id. at 276.
\textsuperscript{212} Father David Hollenbach, S.J., *Response to V. Bradley Lewis, post*, p. 297.
does so from his alternative Hegelian foundation. While Hart is concerned with moral meanings detached from niches within particular religious traditions, Boyle is with meanings detached from their niches within the consolidated unitary structure of law and power of the state or some state-like entity. Boyle asserts that the real impact of rights concepts afloat outside of any regulatory framework is to enable the market to become a mask for arbitrary and self-serving ad hoc imperialist interventions by individual states. Boyle selects the American penchant for rights ideology, in particular, for criticism in these terms.²¹³

Cole Durham, in responding to Jean Elshtain, promotes the importance of respect for the rule of law as a requirement of justice. He asserts that the test of any more particular claim in justice is whether at the threshold it is advanced with respect for the rule of law, taking as the basis of his approach Immanuel Kant's philosophy of law. Durham, thus, begins from the state of nature lacking any mechanism for commensurating conflicting claims with the result that every effort to do justice, because strictly unilateral, violates the freedom and equality of others.²¹⁴ He calls our attention to the role of entry into civil society with its enforcement of rights under law in the making possible of redress of grievances within an order of freedom and reciprocity.²¹⁵ Durham considers the same to be true among nations within the international order²¹⁶ suggesting that for one state to pursue intervention in the affairs of another, based on a unilateral claim of justice without reference to law, is for it to abandon civil society and return to a morally deficient state of nature.²¹⁷

Quite a few of the collection’s authors express skepticism about the philosophical elements Cole Durham brings from Kantianism to his rule-of-law analysis. They show no interest in the Hegelian premise of Boyle’s. It would be of interest to know whether these same voices consider their criticism or reservations to extend, beyond the narrower setting of moral, to the legal-philosophical occupying the interest of Boyle and Durham. If so, one can productively wonder they might themselves advocate fashion a philosophy of law, or some other rule of law framework capable of sustaining international order.

d. Rights in the Jurisprudential Sense

Finally, several essays and responses within the collection concern themselves with rights, in a sense more specific than that at stake in the discussion of the pursuit of justice just considered. Jean Porter captures this more specific sense in her essay with the term, jurisprudential. In “Natural Right, Authority and Power: The Theological Trajectory of Human Rights,” Porter defines rights, in this jurisprudential sense, as “claims [that] may be said to generate law, or at least to provide a warrant, perhaps even an exigent demand, for the creation of legal and institutional forms within which

²¹³ Boyle, supra note 72, at 268-71.
²¹⁴ Cole Durham, Response to Jean Elshtain, post, pp. 337-38.
²¹⁵ Id. at 337.
²¹⁶ Id. at 338.
²¹⁷ Id. at 338.
they can be recognized and enforced."  Three principal authors speak to this topic: Jean Porter, Robert George, and V. Bradley Lewis, with respondents Brian Tierney, R.H. Helmholz and Kenneth Pennington, a professor of ecclesiastical and legal history at The Catholic University of America, touching upon it as well. These authors address both the philosophical and historical basis for rights in this jurisprudential sense.

(1) The Content and Justification of Rights in the Jurisprudential Sense

The authors addressing the philosophical basis of rights in this jurisprudential sense fall into two camps. One of these camps advocates that rights be understood principally in a "subjective," the other in an "objective" sense. Jean Porter is in the first group, with philosophical support it would seem from Francis Oakley and historical support, it would appear, from Brian Tierney. Robert George and V. Bradley Lewis are in the second, with implicit philosophical support from those authors in the collection writing in continuity with the intellectual lineage of Thomas Aquinas.

Jean Porter touches upon these two kinds of rights, both arising within the Christian tradition—one, termed "subjective" and enacted into law as a matter of quasi-necessity and, more readily termed "jurisprudential," the other, termed "objective," receiving its essential content by exposition of the moral requirements of justice, and so, in Porter’s analysis, without necessary reference to civil law in its basic articulation. Porter defines subjective rights as, individual moral "properties" or "powers" defining "zones of personal liberty" and focusing on "self-determination and personal control." She finds a theological ground for preferring the subjective version of rights in the concept of the human person as Imago Dei, that in her view implies a human capacity for "free self-disposal," and in the doctrine of God whereby divine love reflects "an incomprehensible inwardness" summoning a "correlative response out of those capacities and deep choices within ourselves that mirror and reflect God’s inmost life."

In “Natural Law, God, and Human Rights,” Robert George, by contrast, proposes a conception of rights that is, in Porter’s terminology “objective.” Rights express, in his view, principles of justice, requiring that people be treated as ends in themselves. Rights, so understood, however, have a direct and meaningful link to civil law because lawmakers look in practical reason, to rights in this sense, to craft legal forms. At the same time, rights are, apart from legal enactment, invaluable in

218 Porter, supra note 62, at 301.
219 Id. at 300-01.
220 Id. at 301-02, 307.
221 Id. at 308-09.
222 George, supra note 77, at 132.
223 Id. at 133-34.
the critique of law.224 Although George holds, as was mentioned above, the philosophical justification of rights to require no explicit theological foundation, he offers, nonetheless, a theological interpretation of rights parallel to Porter’s in its appeal to the concept of the person as *Imago Dei*. His use of the term, however, in contrast to hers analogizes human choice and action to God’s power—i.e., His “power to cause things that one is not caused to cause,” with the proviso that the analogy extends to human choices objectively made “in light of one’s intelligent grasp of their value.”225

(2) The Value of History and Tradition for Interpreting Rights in the Jurisprudential Sense

A number of authors in the collection explore the value of history and tradition respectively, for interpreting rights in the jurisprudential sense. Plenary authors Jean Porter and Robert George and respondents, R.H. Helmholz, and Brian Tierney, each with their own distinctive emphasis, reflect on the historical question, while V. Bradley Lewis and Kenneth Pennington, each likewise with his own distinctive angle of perspective take up the question of tradition.

(a) The Historical Question

Jean Porter, calls attention to a correlation between emerging new forms of societal structure and organization serving practical needs and the appearance of legal forms advancing moral values—i.e., rights. She, thus, links the medieval appearance of rights concepts with the emergence of centralization and formalized bureaucracy facilitating their jurisprudential recognition.226 Brian Tierney, for his part, as was cited above, examines a countervailing correlation, namely, that which has often existed between the occurrence of historical “calamities” in the form of wars and persecution and the subsequent appearance of breakthroughs in understanding of what decency requires of law in the accordance of moral protections for one’s fellow human beings.227

Robert George and R.H. Helmholz, from their separate vantage points, speak to opposing poles of concern within the dialogue between civil law-making and insight into natural equity. Robert George starts from the insights of practical reason into the nature of fundamental rights in the moral or objective sense, and proceeds to an historical survey of the relative adequacy in justice of various legal systems. Within the sweep of Western law, he would appear to consider legal systems basically reliable in translating respect for persons into law, with slavery and the like serving as

224 *Id.*
225 *Id.* at 131.
227 Tierney, *supra* note 146, at 316.
R.H. Helmholz, as cited above, starts from demonstrable errors encoded into civil law throughout the centuries to reach the conclusion that Western law cannot be treated as having been presumptively correct in its responses to human dignity. Helmholz’s observations would seem to suggest self-doubt as a useful methodological postulate of moral theorizing.

(b) The Question of Tradition

In “Theory and Practice of Human Rights: Ancient and Modern,” V. Bradley Lewis argues for re-interpreting modern rights law and practice within the tradition of philosophical reflection on law and politics rooted in pre-modern political theory. He proposes that this project answers to the need of modern rights law and practice for substantive theoretical support. He observes that the modern state that provides the context for rights law and practice is in constant need of renewal, for in it the “substance of community thins” and “human relations become attenuated and legalized.” The tradition for which he advocates answers this need, with its rich resources of political theory, which can be expected to contribute to a “renewal of democratic political culture and a renewed consciousness of the good that transcends the political.” The tradition that Lewis expounds supports the objective vision of rights cited above. Lewis finds additional support for his preference in contemporary sources, citing, to this end, not only John Finnis, but also H.L.A. Hart, Joseph Raz, and Neil MacCormick.

Kenneth Pennington, in his response to Francis Oakley, invites consideration of yet a different tradition, as supplying a basis for creatively and productively interpreting rights in the jurisprudential sense, drawing the reader’s attention to the extended and rich tradition of canonistic interpretation of rights and law flourishing over centuries in the medieval era. Pennington observes that the thomistic tradition does not alone comprehensively account for intellectual currents at the medieval era, and that the canonistic tradition is demonstrably distinct both by virtue of its participants and its content. The canonistic tradition, as Pennington develops it, would support more a voluntaristic interpretation of rights akin to the subjective theory Porter advances.

III. Conclusion

In moving from this introductory and anticipatory exploration of its themes to the collection itself, readers will wish to call to mind that the collection’s purpose, which—in keeping with Cardinal Ratzinger’s charge—is a quest for “points of

228 George, supra note 77, at 132.
229 Helmholz, supra note 147, at 221-22.
231 Id. at 295.
232 Id. at 282-83, 296.
233 Id. at 289-90.
234 Id. at 290, 293.
235 Kenneth Pennington, Response to Francis Oakley, post, pp. 239-41.
agreement." They will, therefore, wish to remain alert to points of agreement, for example, on the philosophical basis for ethics across cultures and traditions. Here they will attend to those viewpoints in the collection converging around claims of universal modes of knowledge of human fulfillment of one kind or another, serving to ground moral obligation. They will consider the convergence of viewpoints appealing to the need for a more forthright witness to self-evident truths, regarding the dignity of the human person and the nature of right and wrong, akin perhaps, in some way, to disciplined respect among scientists for the demands of logic in scientific research. They will give an ear, no less, to viewpoints converging around the assertion of a universal significance of an underlying attitude of caring reverence grounded in religion, for the cosmic dynamism of "givenness," understood as Creation or as the Dao. Those among the Abrahamic faiths may wish, no less, to ask explore views coming together on the critical importance for knowledge of moral truth, of an acknowledgement of the Creator in an attitude of worship, thanks, obedience, and emulation. In parallel, Christian readers will wish to examine points of agreement converging on a Christocentric basis of ethical reasoning, whether oriented principally more to Creation or to Eschatology. Where points of agreement in any of these senses are found to exist, readers will ask how they translate into a comprehensive philosophy, natural theology, or some other kind of theory that might some how support an emerging common world-wide praxis or larger common tradition.

Readers will, however, also wish to consider, no less, the significance of "points of agreement" on the role that elements of difference have, not less significant that the role belonging to any elements of unity. In this regard, they will wish to be alert to "hard choices" posed within the collection's discussion, wherein one only of two identified options can be true. Readers will not fail to observe that such an election is required between certain of the collection's ultimately paired options: i.e., whether the knowledge of moral truth requires reference to God or not; whether moral knowledge emerges historically or not; whether a philosophical basis exists or not for bridging particularist ethical traditions; whether human rights are to be justified in the objective or the subjective sense; and whether Thomas Aquinas or William of Ockham is right about what can be known of the good. The reader will then wish to look for points of agreement on just how far the principle of noncontradiction suffices to decide these elections in a trajectory leading towards some overall synthesis in unity, but equally for points of agreement on the ways in which no such optimism is warranted with the better course being to labor on, with integrity, under conditions of irreconcilable difference.

Readers will wish to search for points of agreement, as well, on the ways in which, even with regard to this deep-seated opposition of options, unity may be available nonetheless on a secondary level. On such a secondary level, readers can look for points agreement, for example, with respect to a universal value of negative critique, liberating us for integrity in local traditions and partial insights by clearing away false systems and ideologies creating only a specious unity threatening to alienate us from
the depth and truth of our existences and freeing us from any unconscious proclivity to misapply the drive for systematic moral knowledge merely to enshrine a preconceived preference for ourselves. In the case of theological authors, the readers will wish to look for points of agreement on the importance of avoiding the temptation of pride that might mislead us into substituting universal domination for the more modest and humble goal of simple understanding. In the case of Christian authors, readers may look for points of agreement on the role of eschatological hope for a unity not yet possible in the order of Creation under existent conditions. In a positive vein, readers can look with advantage, for points of agreement on functional and constructive methodologies assuming irreconcilable difference but yet bridging it to some degree with respect for localities and particular traditions, whether such bridges are projected by way of analogy, some shared grammar, or floating signifiers enabling us to exercise a negative capability transcending cognitive differences.

As they consider the certain divergence of views the collection contains as between agreement that is more optimistic and that which is more pessimistic on the possibility of moral knowledge, readers will also wish to consider any points of agreement that emerge on whether "irreducible" difference can itself ultimately be overcome in some transcendentual dynamic of the integration of knowledge, such that points of difference, while true, can somehow yet become subject to eventual integration in some progress in time towards the, at least, asymptotic goal of unity. If not that, then, readers will, nonetheless, wish to look for points of agreement on ways in which viewpoints tending towards difference can nonetheless dialectically somehow incorporate elements of viewpoints tending towards unity, as, for example, through the idea that a moral philosophy presented as true apart from tradition might serve the truth where expressive precisely of a particular tradition, and, in parallel, the ways in which viewpoints tending towards difference can be incorporated into approaches tending towards unity, as in the universal usefulness of the technique of negative critique.

Finally, readers will recall that the basic underlying telos that Cardinal Ratzinger articulated for the project, that his initiative launched was sounder knowledge of the "fundamental criteria for laws affecting the rights and duties." Therefore, readers will also look for points of agreement on how exactly a transit is to be imagined from the various points of philosophical, religious, and theological agreement or difference mentioned thus far, to greater acknowledgement of key "fundamental criteria" within the realms of public policy, political decision, and lawmaking. Readers will wish to consider where points of agreement are being proposed regarding the advocacy of adoption of concepts, norms or values within the terms of or even as the constitutive parts of legal institutions, and where, by contrast, such points of agreement are suggested for vivifying communities contributing separately from law as such to the realm of civil society. No less, they will wish to consider where the collection offers points of agreement on the nature of the ideal of justice that should guide society or

236 Ratzinger Letter, supra note 1.
suggests, by contrast, a rule of civil law as a first principle of justice. And, undoubtedly, readers will wish to reflect, as well, on what particular role rights play either as an expression of justice considered as an ideal or as a feature of a system of laws allocating freedom and power.

Ultimately, the value of the ideas this collection contains, or suggests, cannot be separated from their value for the particular communities that have come together to create the collection and the communities that will read, evaluate, and decide its reception. The collection and its reception are themselves, then, a testimony to the existence and generosity of a number of intersecting communities dedicated to inquiring into the questions identified as important in an initiative of Pope Benedict XVI and less directly of Pope John Paul II. In considering these essays, readers may, then, benefit most of all by becoming better acquainted with some of the key representatives of these communities and taking the opportunity themselves to join or to participate more fully in dialogue with them, and perhaps these communities may themselves, to some small degree, be fortified as they, by way of the collection, become perhaps even better acquainted with themselves.

It is also hoped that the collection may by example in keeping with Pope Benedict’s vision of mutuality of respect between the teaching office of the Church and the Church’s universities, serve to advance the cause of creative interchange between the academy and the pastoral office in the Catholic Church. It is hoped no less that because readers will be members of civil society and participants in its political process they will avail themselves of the opportunity to reach “catch as catch can” into the rich array of ideas the collection contains or may yet inspire, to make their own concepts for creative deployment in public debate, in whatever perhaps surprising ways that may help yield solutions to the pressing problems of the contemporary day for the sake of realizing the ideal of an ever more adequate respect for the value of the human person as created unconditionally in the image of God, for the authentic good of the human community, and for fulfilling the call to stewardship of a natural and human world entrusted to human care.