



Josef Fuchs' Revised Natural Law: Possibilities for Social Ethics

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Abstract

In the second half of the twentieth century Josef Fuchs put forward a major re-visioning of the natural law, but this re-visioning did not include a robust social ethic. In this paper the author first undertakes an explication of the development, context, and major features of Fuchs' theory. Next, in order to locate it within other twentieth century developments in natural law theory, Fuchs' theory is related to Jacques Maritain's re-visioning of natural law, with its clear social-ethical implications. Finally, the author draws out some of the potential implications and applications of Fuchs' revised natural law for social ethics.

Keywords

Josef Fuchs, Natural Law, *Humanae Vitae*, Jacques Maritain, Moral Theology

The influential German moral theologian Josef Fuchs (1912–2005) provided a major re-visioning of the natural law in the second half of the twentieth century. However, part of this project was a wariness of overly specific articulations of the natural law, and unlike other natural law re-workings of the past century, he did not provide a robust social ethic. This paper seeks to explicate Fuchs' revised natural law theory, noting how it evolved and assessing its relationship to, and ongoing relevance for, social ethics. Basically, it will answer the following questions: What was Fuchs' understanding of natural law, how did it change, and how did his new understanding relate to other renewals in the twentieth century? How does his understanding of natural law relate to other natural law theories with clear social ethical applications and the developing understanding of natural law going into twenty-first century? What can be drawn from it for social ethics?

It will conclude that, in short, Fuchs shifted the focus away from a narrow understanding of 'human nature' and toward the human

person understood as a whole; that his understanding fits in with the broad trend of seeing natural law as dynamic but may go farther in its unique stress on the individual person's ongoing discovery of the natural law; that it does not necessarily preclude certain universal norms and fundamental requirements for respecting human dignity; and that it has several other unique contributions to, and implications for, social ethics and social teaching going forward.

The paper will begin with a discussion of Fuchs' natural law thought prior to 1966 and his "intellectual conversion" after this time. It will then proceed to outline his "post-conversion" thought, beginning with his appropriation of Karl Rahner's "turn to the subject," proceeding to his thoroughgoing reexamination of the natural law and its anthropological underpinnings, his articulation of *recta ratio* as the proximate norm of morality, his circumscribing the role of the magisterium and intrinsic evil in natural law reasoning and articulation, and his expansion of the principle of *epikeia*. Subsequently, it will briefly discuss his relationship to trends of renewal in both moral theology and natural law in the mid-twentieth century before turning to discuss first his wariness of social ethics, then how his natural law theory relates to that of Jacques Maritain, and finally what other contributions his unique understanding can make to social ethics going forward.

Josef Fuchs' thought on the natural law can be clearly and helpfully delineated into two distinct periods: before his service on the papal birth control commission and after the intellectual "conversion" that this service wrought. In the "pre-conversion" period (up until roughly 1966) Fuchs' task as a moral theologian was, as Mark Graham characterizes it, "to articulate, clarify, refine, extend, and defend received teaching on natural law."¹ Thus, the main tenets of the received tradition of natural law were seen as embodiments of moral truth, and so although Fuchs might have disagreed on some peripheral matters, he was strongly committed to the core claims of the received tradition. This tradition was characterized by an anthropology dependent on the neo-Thomist manualists and so by a focus on discrete, isolated acts and on demands arising from human nature, demands which could be expressed in universal and exceptionless norms that would serve as embodiments of moral objectivity. Further, the locus of moral competency was heavily centered on the magisterium.

But a substantial conceptual shift occurred for Fuchs in the mid-1960s.² It is highly plausible that the primary factor in this conceptual

¹ Mark Graham, *Josef Fuchs on Natural Law* (Washington D.C.: Georgetown University Press, 2002), p. 112.

² I will rely primarily on Chapter 3 of Graham's *Fuchs on the Natural Law*, pp. 83–110 to give a brief overview of the relevant factors in this conversion. This shift has also been discussed in other works. See especially, James F. Keenan, *A History of Catholic Moral*

shift or “conversion” was Fuchs’ service on the Pontifical Commission on Population, Family and Birth. While on this commission Fuchs was exposed to faithful and committed Catholic couples who had tried to adhere to the papal teaching on birth control and who expressed the many and varied impacts this teaching had on them. Fuchs began to question both the ability of the traditional understanding of natural law to deal with artificial conception and whether this potential deficiency might mean more systemic flaws in that understanding. A pivotal question was whether the natural law seeks to protect the integrity of the natural end of intercourse or the well-being of concrete persons.³ He gradually became convinced that individual moral agents possess key knowledge about themselves, the effects of their actions, and their particular circumstances and that these enable them to judge objectively what should be done in their respective situations. These insights would prompt Fuchs to undertake a reexamination and reconstruction of his understanding of moral competency, moral objectivity, moral epistemology, and the adequacy of moral norms in concrete situations.

In the so-called “Majority Report” on “Responsible Parenthood,” of which Fuchs was the primary author, one can already see the emergence of a very new understanding. The document explains that “since moral obligations can never be detailed in all their concrete particularities, the personal responsibility of each individual must always be called into play. This is even clearer today because of the complexity of modern life: the concrete moral norms to be followed must not be pushed to an extreme.”⁴ In presenting the report Fuchs further explained that “objective morality” should not be confused with “prescriptions of the Church,” but that instead “we grow to understand” reality “with our reason, aided by law” and so the task is to “educate people to assume responsibility and not just follow the law.”⁵ Thus, as James F. Keenan explains, Fuchs made clear that the “locus for finding moral truth” had shifted from utterances and

Theology In the Twentieth Century: From Confessing Sins to Liberating Consciences, (New York: Continuum, 2010), pp. 120–126, and “Josef Fuchs and the Question of Moral Objectivity in Roman Catholic Reasoning,” *Religious Studies Review* 24 (1998); Ronald Amos Mercier, “What is Nature? The Development of Josef Fuchs’ Thought on Moral Normativity,” (PhD. Diss., Regis College, 1993); Timothy E. O’Connell, “Changing Roman Catholic Moral Theology: A Study in Josef Fuchs,” (PhD. Diss., Fordham University, 1974).

³ Graham, *Josef Fuchs*, p. 128.

⁴ The Majority Report on “Responsible Parenthood,” in Robert McClory, *Turning Point* (New York: Crossroad, 1995), pp. 171–187.

⁵ Robert Kaiser, *The Politics of Sex and Religion: A Case History in the Development of Doctrine 1962–1984* (Kansas City, MO: Leaven Press, 1985), p. 154.

manualist teachings to persons judging in conscience.⁶ Further, as Mark Graham explains, Fuchs had clearly concluded that natural law seeks to protect the “the well-being of concrete persons” and that it can be determined “only in reference to ‘the good of the whole person.’”⁷

Subsequently, Fuchs would proceed to a more thorough reexamination of natural law. In undertaking this task, he was undeniably characterized by deconstructionism yet simultaneously concerned with constructing a new understanding and with putting forth a positive, substantive case for his version of the natural law.⁸ We turn now to spelling out the features of his post-conversion natural law and its underlying theological anthropology; in so doing, we will see the intertwined nature of his deconstructive and constructive task.

At base, Fuchs undertook a thoroughgoing reconstruction of the anthropological foundations of natural law. First, in articles published between 1966–1968, Fuchs began an appropriation of the Rahnerian conception of transcendental Thomism. The culmination of this shift was in the distinction between personal moral goodness and “categorical” rightness, a distinction that overturned the tendency in Catholic moral theology—including the pre-conversion Fuchs himself—to link salvation with the performance of actions conforming to the natural law.⁹

Basically, the pre-conversion Fuchs had a traditional act analysis: a person’s moral standing was more or less equivalent with the morality of her acts.¹⁰ Karl Rahner—along with other notable transcendental Thomists—undertook a “turn to the subject” by analyzing and articulating the implications of the necessary conditions of human subjectivity. The conception of the human person that emerged from this turn challenged the traditional theological anthropology of Catholic natural law theory, particularly regarding notions of human freedom, acts, and salvation. Drawing on and developing Rahner for moral theology, Fuchs uncovered and articulated the implications of “basic freedom,” which goes beyond freedom of choice (focusing on discrete acts and internal and external impediments that might limit free choice) and looks to the human person as a whole. It is through the exercise of basic freedom that the person establishes a “fundamental option,” or a self-commitment and abiding disposition arising from either the rejection or acceptance in love of God. This self-realization tends to escape thematic reflection; indeed it

⁶ Keenan, *History of Catholic Moral Theology*, 121; “Vatican II and Theological Ethics,” *Theological Studies* 74 (2013), pp. 162–190.

⁷ Graham, *Josef Fuchs*, p. 128.

⁸ Graham, *Josef Fuchs*, p. 113.

⁹ Graham, *Josef Fuchs*, p. 137.

¹⁰ Graham, *Josef Fuchs*, p. 117.

cannot properly be accessible in the center of the 'I' to full thematic reflection."¹¹

Fuchs' understanding of a fundamental option has a decisive impact on his understanding of salvation. His pre-conversion understanding was that accepting salvation required both the performance of right actions and the presence of charity through which acts are referred to God. But his appropriation of the Rahnerian fundamental option means that right actions do not have the same soteriological import. Persons can act rightly (even regularly) and not have made a fundamental option in love for God, and conversely, persons can act wrongly (and possess qualities that inhibit right action) and still have made a fundamental option for God. The fundamental option conditions a person's character, dispositions, attitudes, and values, and so freely chosen acts are manifestations of an underlying reality; it is this underlying reality that is the proper object of moral evaluation.¹² Goodness for Fuchs is, then, as James Keenan describes it, "our experience of a transcendent call and our response to God's invitation in that call."¹³ Rightness or wrongness of action does not necessarily reflect a person's fundamental option, and so does not tell the whole story on her goodness or badness. A person's transcendental relationship with God is the decisive factor in her soteriological standing.

Thus, Fuchs has established the possibility of an antecedent moral evaluation of the person as distinct from her acts. Based on this distinction, Fuchs divides morality into two spheres: the transcendental, which concerns the moral quality of a person's self-realization through her fundamental option, and the 'categorical', which concerns the way in which concrete goods are realized through particular acts.¹⁴ However, he importantly still maintains a subtle connection between these two spheres: one who has made a fundamental option for God is not unconcerned with acting rightly; indeed she "tends toward the good" and strives to cultivate habits conducive to acting rightly, or, in other words, seeks to know the requirements of the natural law both generally and in concrete situations and to act according to those requirements.¹⁵ Further, this means that the critical link between a person's fundamental option (goodness or badness) and "categorical" behavior (rightness or wrongness) is *striving* to act rightly, to act according to the natural law.¹⁶

¹¹ Fuchs, *Personal Responsibility*, p. 56.

¹² Graham, *Josef Fuchs*, p. 124.

¹³ Keenan, *History*, p. 187.

¹⁴ Graham, *Josef Fuchs*, p. 123; Fuchs, *Personal Responsibility*, p. 55.

¹⁵ Graham, *Josef Fuchs*, p. 124.

¹⁶ Graham, *Josef Fuchs*, p.124.

Beyond this turn to the subject, Fuchs moved to a more thorough reworking of the theological anthropology underpinning his natural law theory (a project that continued in myriad essays over many years wherein Fuchs would weigh in on various debates for the rest of his writing career). Basically, the human person emerges as the center of natural law deliberation, and the person is understood as “a being of becoming” rather than a being created in “full development.”¹⁷ Because God has created humans “complete with the possibility” of their development, the “best manner of existence” is not whatever exists in any given reality, but rather what one can become by undertaking the “duty” to constantly make ourselves more human, more expressive of our “inner possibilities.”¹⁸ Thus, it is not the preservation of natural givens that is the ideal of human perfection, but rather constant self-development and self-perfection that enables one to act in accordance with the natural law.¹⁹

Fuchs' conception of personhood also conveys a new understanding of historicity and natural law. In his pre-conversion thought, Fuchs spoke in terms of “primary”(or absolute) and “secondary” (or relative) natural law, the former being changeless and needing to be applied in different historical situations and the latter being the specifications and concrete applications in each historical situation.²⁰ In his post-conversion writings, there is still an understanding that different and evolving social, political, economic, and cultural situations warrant different moral judgments to realize human flourishing. However, as Mark Graham explains, he also understands historicity as “an inherent subjective condition affecting the manner in which we understand ourselves and our world,” for history is both “an epistemological precondition for the acquisition of knowledge and a potential epistemological limitation of our ability to interpret data correctly.”²¹

It is important to stress that the post-conversion Fuchs still maintains the traditional natural law methodological presupposition “*agere sequitur esse*.” He also maintains that the proper subject of natural law is “categorical” behavior, and thus that it is concerned with right realization of the world, actualizing certain concrete human goods, regulating the manner in which goods are pursued and systematizing and articulating appropriate modes of behavior in moral norms.²²

¹⁷ Fuchs, *Christian Ethics in a Secular Arena*, translated by Bernard Hoose and Brian McNeil, (Washington D.C: Georgetown University Press, 1984), p. 119.

¹⁸ Fuchs, *Human Values and Christian Morality*, translated by M.H. Heelan, et al., (Dublin, Gill and Macmillan, 1971), p. 117.

¹⁹ Graham, *Josef Fuchs*, p. 128.

²⁰ Fuchs, *Natural Law: A Theological Investigation*, translated by Helmut Reckter and John A. Dowling, (New York: Sheed and Ward, 1965), pp. 86–101.

²¹ Graham, *Josef Fuchs*, p. 131.

²² Graham, *Josef Fuchs*, p. 123.

But the post-conversion Fuchs also holds that alterations of the human person's *esse* might warrant corresponding adjustments in the behavior considered to be required by natural law, and this is to be determined concretely by considering whether the specific change in fact requires different behavior to promote flourishing.²³ And, as noted, he holds that the transcendent relationship was of primary soteriological import. He therefore, as Cristina Traina explains, retains the "traditional natural law rootage of precepts in nature" and the traditional telic structure of human moral life, the telos for him being complete existential openness to the Absolute which occurs in concrete and active commitment in the world.²⁴ But he also responds to the "contemporary sense of dynamism and pluralism and the renewed interest in the link between public action and private relationship with the divine."²⁵

There was thus a clear turn away from the task of discerning natural law's specific, concrete contents as derived from human nature. For the post-conversion Fuchs, human nature can determine a general conception of the human good and set (broad) parameters for acceptable conduct, but it cannot support detailed, proximate conclusions by itself.²⁶ Indeed, natural law is not primarily determined by the universal dictates of nature, but rather by whatever constitutes integral, concrete flourishing for the human being, understood as a concrete aggregate developing over time.²⁷ Thus Fuchs deconstructed the role of nature as the visible manifestation of God's essence and will and the intelligible link between the eternal and natural law, an understanding which had predominated Catholic moral theology in the twentieth century.²⁸ Instead, Fuchs developed the understanding that human reason must assess and interpret the concrete situation and determine the demands of natural law and thus what constitutes concrete, integral flourishing. More precisely, this is the task of *recta ratio*, which "understands the person in the totality of his reality."²⁹

First, it is important to stress that he does indeed understand natural law to be a preexistent order which we discover and do not invent. Consistent with his pre-conversion thought, Fuchs claims that natural law is a "*lex interna*," but in his post-conversion writings he makes clear that it is *recta ratio* that recognizes and discovers this

²³ Graham, *Josef Fuchs*, p. 129; Fuchs, *Personal Responsibility*, pp. 126–7.

²⁴ Traina, *Feminist Ethics and Natural Law* (Washington, D.C.: Georgetown University Press, 1999), p. 183.

²⁵ Traina, *Feminist Ethics*, p. 183.

²⁶ Graham, *Josef Fuchs*, p. 125.

²⁷ Graham, *Josef Fuchs*, p. 128.

²⁸ Graham, *Josef Fuchs*, p. 148.

²⁹ Fuchs, *Human Values*, p. 143.

internal law and allows humans to participate in eternal law.³⁰ Importantly, human reason necessarily operates through reflecting on lived experience, which makes manifest how human beings function, the conditions necessary for human fulfillment, and how actions promote or inhibit human flourishing.³¹ This process of reason reflecting on experience is necessarily ongoing. Moreover, it is concrete experience and knowledge that are necessary for determining *recta ratio*: according to the post conversion Fuchs, the determination of right and wrong requires consideration of “the mode and ‘color’ of the nuanced particularity of the individual or societal situation, and in the contextualized givenness of the person.”³²

Crucially, this means that the primary locus of moral competency is individual moral agents and not the magisterium. Indeed, Fuchs' pre-conversion confidence in the magisterium's competency in moral matters has shifted to a clear insistence on the magisterium's limits in interpreting and proposing natural law. Unlike his pre-conversion position, Fuchs does not make the magisterium the sole recipient of the *assistentia Spiritus* promised to the Church; indeed this assistance is “guaranteed to the Church as a whole.”³³ And in fact, Fuchs makes clear that the magisterium may be limited in its competency particularly because of lack of knowledge on a particular subject or lack of practical knowledge of concrete situations.³⁴ Moreover, the magisterium is not exempt from personal biases, limitations, and weaknesses arising from original sin.³⁵ Thus, in the process of discovering natural law (by reflecting on human nature and concrete human beings, identifying and articulating goods necessary for fulfillment and how to pursue those goods, and continually reevaluating societal and cultural judgments based on new data and changing circumstances) the magisterium is “in the same boat”³⁶ as the rest of us. They can be good or bad at discovering non-revealed natural law depending on how thoroughly they investigate and understand both the issue at stake and the circumstantial data, and how willing they are to strive to uncover what is right.³⁷

³⁰ Fuchs, *Personal Responsibility*, p. 127 and Graham, *Josef Fuchs*, p. 149.

³¹ Graham, *Josef Fuchs*, p. 153.

³² Fuchs, *Moral Demands and Personal Obligations*, translated by Brian McNeil (Washington, D.C.: Georgetown University Press, 1993) p. 114.

³³ Fuchs, *Christian Ethics*, p. 148. Graham argues further that it is not entirely clear to whom Fuchs refers when he speaks of “the individual missions” that pertain to persons outside the magisterium, but that at the very least he does not consider the Holy Spirit's aid to be confined exclusively to the magisterium (160–1).

³⁴ Graham, *Josef Fuchs*, pp. 162–163.

³⁵ Graham, *Josef Fuchs*, pp. 164–5.

³⁶ Fuchs, *Moral Demands*, 142, quoted in Graham, *Josef Fuchs*, p. 163.

³⁷ Graham notes that Fuchs distinguishes moral matters connected to the “deposit of faith” and those that are not and so are not matters on which the magisterium has any

Having concrete circumstances and judgment in conscience as the absolute moral norm also means that the post-conversion Fuchs has little room for 'intrinsic evil.' He clarifies that "viewed theoretically, there seems to be no possibility of behavioral norms of this kind for human action in the inner-worldly realm" because "an action cannot be judged morally at all considered purely in itself, but only together with all the circumstances and the intention."³⁸ Further, it is very difficult to arrive at a behavioral norm that "universally valid in the full sense" because such a norm would "presuppose that those who arrive at it could know or foresee adequately all the possible combinations of the action concerned with circumstances and intentions, with (pre-moral) values and nonvalues," and "a priori, such knowledge is not easily attainable."³⁹

Of course, there is still a role in natural law deliberation for widely accepted moral norms, official church teachings, and of course for the Bible and the Tradition. Indeed, a person needs to be well-formed in the Tradition and Scripture, and needs to be striving to act according to the natural law in order to actually do so. Moreover, practically, "norms properly formulated as universals have their worth" and we can arrive at carefully articulated norms "to which we cannot conceive of any kind of exception."⁴⁰ However, none of these sources (and particularly not overly-rigid norms based on negative values) offer complete and pre-determined guides. Thus, moral norms derived from varied sources, "inasmuch as they are directed to concrete moral truth, i.e. to correct behavior" are a "possible, valuable, indeed frequently necessary help- but never an 'imposed' help- in the establishment of concrete moral truth."⁴¹ Individual integrity and conscience is thus clearly key for Fuchs: norms and teachings can be helpful, but figuring out what is required in individual circumstances (widely considered) is what moral deliberation and arrival at concrete, *objective* (though not necessarily universally valid) truth is all about. And in fact, a "greater objectivity" (and not, importantly, subjectivism) is the result when there is a "mutual influencing of norm and subject, with a view to the actual human situation."⁴²

Relatedly, Fuchs also expanded the interpretive principle of *epikeia*. The post-conversion Fuchs did not see *epikeia* merely as a way of arriving at dispensations from norms, but rather as a means of more

special competency; few (if any) moral matters are of the former sort, and so most official teaching deals with non-revealed moral truths, on which the magisterium has not no special competence. pp. 160–1.

³⁸ Fuchs, *Personal Responsibility*, pp. 140.

³⁹ Keenan, *History*, p. 153.

⁴⁰ Fuchs, *Personal Responsibility*, p. 141.

⁴¹ Fuchs, *Christian Ethics*, p. 46.

⁴² Fuchs, *Christian Ethics*, p. 45.

fully enacting a norm and mitigating perceived incongruity, harm, or ill consequences of a rigid interpretation.⁴³ Following Aristotle, Fuchs thought that concrete reality must not be “sacrificed for the sake of humanly formulated abstract norms.”⁴⁴ Thus as James Keenan explains, Fuchs saw that *epikeia* “helps not only to apply, but also to mediate between norms and concrete reality” and that competent moral agents can recognize “that existing norms might not express adequately the values that are at stake in a particular area of concern.”⁴⁵ *Epikeia*, then, helps us realize the capacity to reformulate moral norms.⁴⁶

Overall, his renewed understanding of natural law will admit a certain degree of moral pluralism. Indeed, as Mark Graham point out, “Fuchs makes clear that concretizing natural law’s contents need not culminate in one exclusive behavioral response to moral issues, and that the quest to attain human flourishing in diverse, cultural, historical, and social contexts might legitimately take different forms as humans discover the manifold ways in which human well-being can be attained.”⁴⁷ And for the post-conversion Fuchs, such pluralism is not a deviation from objective morality, nor does it result from ignorance of personal flaws; instead it is the “price natural moral law ought to pay for the predicate of honor, *recta ratio*.”⁴⁸

His renewed understanding also fits in with other shifts in the twentieth century- both in moral theology generally and in natural law. In short, he exhibits key characteristic shifts in moral theology since Vatican II: toward the human person as the most appropriate point of departure for morality, toward greater historical consciousness and a broader field of moral material with which to engage in moral reflection and action, toward the primacy of conscience, and an assumption of greater personal responsibility. He is also a prime exemplar of the contemporary trend in moral theology to develop the rational aspect of the natural law tradition, an effort which seeks to grasp the whole of human reality in all its relationships, and yet is also aware of the need to be open to revision since it is always possible to discover more of what it means to be human.⁴⁹ Further, the reality upon which Fuchs and other revised theories are based is necessarily experiential, interested in consequences, historical, proportional and personal.⁵⁰

⁴³ Traina, *Feminist Ethics*, p. 187.

⁴⁴ Fuchs, *Personal Responsibility*, pp. 197–8.

⁴⁵ Keenan, *History*, p. 154.

⁴⁶ Keenan, *History*, p. 155.

⁴⁷ Graham, *Josef Fuchs*, p. 171.

⁴⁸ Fuchs, *Personal Responsibility*, p. 70.

⁴⁹ Richard Gula, *Reason Informed By Faith*, (Mahwah, NJ: Paulist, 1989), pp. 235–236.

⁵⁰ Gula, *Reason Informed By Faith*, pp. 242–6. Gula draws on Timothy E. O’Connell’s characteristics of contemporary natural law: real, experiential, historical, and proportional.

In short, then, to use the characterization of Cristina Traina, Fuchs “splendidly fulfills the twentieth-century mandate to reconstruct casuistry around the holism and integrity of the subject”⁵¹ and provides a “powerful and engaging *moral theology*.”⁵² However, despite this success and achievement, he “lacks an *ethic* in the concrete practical sense,”⁵³ and regarding our slightly more narrow focus in this paper, he fails to demonstrate how we should connect the interior moral authenticity and the objectivity it brings “to the prophetic, decisive, and even sometimes coercive mandate of social ethics.”⁵⁴

But social ethics is arguably more necessary than ever for moral theology, even as it deals solely with individuals—questions of responsibility of individuals to an increasingly global society must be addressed, as well as what policies and structures should be constructed. So, can a social ethics be drawn from, or at least supported by, Fuchs’ post-conversion theological anthropology and natural law? And how does his natural law fit in with other uses of natural law that have clear social ethical implications? Before addressing these questions, it is helpful to first explain Fuchs’ reluctance to spell out a social ethics and then turn to potential appropriations below.

For a start, given his emphasis on individual integrity, the task of social ethics could be considered outside Fuchs’ theological concern. In other words, the communal project of concrete, changeable moral decision making does not fit within his focus on individual integrity in determining concrete decisions toward authentic individual openness to the Absolute. Thus, his focus on goodness over rightness (especially social rightness which he believes has no bearing on the eschatological) is not conducive to determinations of social ethics: individuals and their striving for goodness through an effort at right action is the concern, not structural injustice, which though harmful, is only analogously immoral because there are no clear, current agents.⁵⁵ Moreover, Fuchs considers social rightness and wrongness to be matters of practical reason, not faith.⁵⁶ Finally, and relatedly, he is clearly opposed to magisterial teaching being overly codified generally, and as noted above, he does not deem the magisterium to have any special competence with regard to *recta ratio*. This is all the more true with regard to social issues, and can be extended to theologians as well as the magisterium. Thus, both the magisterium

and adds ‘personal.’ See O’Connell, *Principles for a Catholic Morality* (New York: Seabury Press, 1978), pp. 144–154.

⁵¹ Traina, *Feminist Ethics*, p. 188.

⁵² Traina, *Feminist Ethics*, p. 195. Emphasis original.

⁵³ Traina, *Feminist Ethics*, p. 195.

⁵⁴ Traina, *Feminist Ethics*, p. 188.

⁵⁵ Traina, *Feminist Ethics*, p. 185.

⁵⁶ Traina, *Feminist Ethics*, p. 185.

and theologians have no special competence in the area of social issues, and may even be less competent than secular experts.⁵⁷ Even secular experts will not be able to reach a permanent and definitive social ethic, for concrete, local wisdom is the key to objectivity.⁵⁸ Clearly, all of this will affect how his natural law can support a social ethical agenda, but it does not mean that such support is impossible.

How does he fit in with other re-visionings of the natural law that have clear social ethical implications? We can look at one effort in particular: Jacques Maritain's attempt to unite Thomistic and Aristotelian traditions with the human rights thrust of modern political philosophy. It is helpful to explain how Fuchs might support this project and to thereby further clarify Fuchs' project and how it fits with a Thomistic natural law ethic with clear social ethical results.

Basically, Maritain distinguished two elements in natural law, the ontological and the "gnoseological." The former is the "*normality of functioning* which is grounded on the essence of that being: man."⁵⁹ It is "an *ideal order* relating to human actions, a *divide* between suitable and the unsuitable, the proper and the improper, which depends on human nature or essence and the unchangeable necessities rooted in it."⁶⁰ Firmly rooted in this element are all the "natural obligations or rights of which we perhaps have no idea."⁶¹ Because natural law is not "a written law," human beings know it "with greater or less difficulty, and in different degrees."⁶² But, at least some of us do gradually become aware, and this leads us to the "gnoseological" element, or the natural law *as known*. In short, Maritain thinks there are certain claims to protect or secure flourishing, rooted in natural law and gradually discovered and articulated; these are "human rights." And importantly, as Brian Stiltner explains, Maritain does not understand these human rights as solely "zones of protection for personal autonomy- although many rights imply or involve such protection- but more fundamentally as the inviolable claims the person may take to protect or secure the conditions of her flourishing."⁶³

To be sure, Fuchs is decidedly less than confident in determining the content of human nature and in specifying goods constitutive of human flourishing, and this is in contrast to Maritain. Indeed, he does not provide a normative account of the conditions and goods

⁵⁷ Fuchs, *Christian Morality*, pp. 114–115.

⁵⁸ Traina, *Feminist Ethics*, p. 185.

⁵⁹ Maritain, *Man and the State*, (Chicago, University of Chicago, 1951), p. 88. Emphasis original.

⁶⁰ Maritain, *Man and the State*, p. 88. Emphasis original.

⁶¹ Maritain, *Man and the State*, p. 89.

⁶² Maritain, *Man and the State*, p. 90.

⁶³ Brian Stiltner, *Religion and the Common Good* (Lanham, MD: Rowman & Littlefield, 1999), p. 116.

conducive of human well-being.⁶⁴ He does provide a picture of the human as transcendent, historically situated, self-conscious, and free, but this does not exhaust the list of what it means to be authentically human, nor does it tell us anything about what is needed to realize these characteristics and to flourish. In contrast, Maritain says a great deal about the 'essence' of human nature (the "normality" of functioning) and the requirements for flourishing.

But Fuchs is not entirely different from Maritain at base. First, Fuchs' presumptions about free, transcendent, historically situated persons are very similar to Maritain's, and these could help clarify the ultimate aim of securing the fundamental requirements of respect for human dignity; we will return to this below. Second, both Maritain and Fuchs see the natural law (at least as it is *known*) not as a something static, but as necessarily dynamic and developing. In other words, both are committed to historicity and a dynamic understanding of expressions of the natural law, which must be arrived at inductively and in myriad contexts. In this way, both fit into a larger trend in natural law thinking over the last century: it should *not* involve primarily deduction from a static conception of human nature, but rather should proceed inductively from diverse empirical realities.

Now, Fuchs' understanding of this dynamism is slightly different than Maritain's. Fuchs surely holds that we do not create natural law but discover it. But importantly, his focus is on the individual human person seeking and discovering the moral order corresponding to her concrete circumstances, broadly understood: we are to seek our "being-as-God's-image" not through letting ourselves "be told about it" but through our own "fashioning of right behavior" and bringing ourselves to "fulfillment."⁶⁵ Thus, there will be evolution in natural law's concrete precepts, and natural law itself is seen as "the ever new and still to be solved problem of being a person of this world."⁶⁶ Maritain would not deny that it is through the subject coming into contact with the preexistent moral order through reason broadly understood (though he might place more emphasis on the "connatural" dimension of *recta ratio*). But Maritain is more explicitly focused on the developing awareness and *articulation* of the human essence and the requirements for human flourishing. We come to know gradually, but we do come to know and do develop totally valid expressions of the preexistent moral order or natural law. Fuchs does not deny this, but his focus is much more clearly on the dynamism and the concrete individual.

But, even given the profound dynamism and understanding of development in Fuchs' understanding of natural law and his resistance

⁶⁴ Graham, *Josef Fuchs*, p. 135.

⁶⁵ Fuchs, *Personal Responsibility*, p. 99.

⁶⁶ Fuchs, *Human Values*, p. 184, quoted in Traina, *Feminist Ethics*, p. 182.

to overly specific articulations, it does not seem he would reject Maritain's notion of fundamental requirements for human flourishing. Indeed, Fuchs certainly aims at realizing human flourishing, and it seems that his concern about specifications is really about not being restrictive of individual human freedom and responsibility in determining what is right and striving to do it (and, relatedly, about restrictive articulations of the natural law being wrong due to a lack of adequate competence). Restricting human decision making and action is not at all what inductively arrived-at accounts of the fundamental requirements of respect for human dignity are all about; indeed, quite the opposite. Articulations of human rights are meant to protect people, to foster basic requirements for their flourishing, and so ultimately to help create conditions for them to be moral. Thus, in a way, Fuchs' vision requires, or presupposes, this type of social ethics drawn from the natural law. In other words, in order for there to be a space for developing openness to the Absolute, many other basic requirements need to be met. Further, as long as these requirements are arrived at inductively, in various contexts, and gradually (exactly as Maritain thinks), Fuchs would not seem to have a problem, because they are clearly discovered *a posteriori* and with significant attention to concrete and diverse contexts.

It seems, then, that Fuchs' natural law could support the development of an expression of the fundamental requirements for the respect of human dignity (i.e. the drafting of the Universal Declaration of Human Rights, or in the way Martha Nussbaum would like to garner contemporary consensus around central capabilities, which correspond closely to the full spectrum of human rights⁶⁷). Of course, in undertaking such a task, consensus and compatibility with myriad circumstances, as well as significant mutability beyond a certain point would be essential for Fuchs. And in the implementation of the rights, the freedom of the individual to act according to conscience, to live out a commitment to God within limits imposed by the rights of others and of society,⁶⁸ would be essential. Further, Fuchs would likely insist that much work remains to be done after the codification of fundamental requirements of respect for human dignity, even on the social-ethical end: the communal project of moral decision making must carefully determine the structures and institutions that will embody and administer the rights in each locale and historical context (this would have been true even in his pre-conversion conception of natural law and historical consciousness⁶⁹). But overall, it can be said that although he himself does not construct an account of the

⁶⁷ See Martha Nussbaum, *Creating Capabilities* (Cambridge, MA: Belknap Harvard, 2011).

⁶⁸ Fuchs, *Christian Ethics in a Secular Arena*, p. 124.

⁶⁹ Graham, *Josef Fuchs*, pp. 130–131.

requirements of respect for the human person as she concretely is, his understanding of natural law does not preclude arriving at certain fundamental requirements for this.

Importantly, however, it is helpful to stress that this was not Fuchs' task in undertaking a new understanding of the natural law. The real arena of *moral theology* and the natural law for Fuchs comes in when individuals strive to act rightly within the local contexts and among the social structures that are in place. It is here that the individual will live out her responsibility of discovering and acting on the pre-existent moral order, of seeking and discovering her "being-as-God's-image." Importantly, this may involve rejecting unjust arrangements and striving to make them more just,⁷⁰ but, again, the individual and her integrity is the focus and not the social structures and institutions themselves.

Another possible contribution to social ethics is that, as noted above, Fuchs' goal of openness to the Absolute may help clarify the ultimate goal of articulations of rights and human flourishing as expressed in CST. Fuchs' natural law ethics is, at base, about the right-realization of the person and integral human flourishing. Authentic human development as articulated in CST since Paul VI's *Populorum Progressio* (1967) also seeks the greater realization of human wellbeing and flourishing, and as Benedict XVI most recently clarifies in *Caritas in Veritate* (2009), this means a goal of "rescuing people, first and foremost, from hunger, deprivation, endemic diseases and illiteracy," and further, fostering all peoples' "active participation, on equal terms, in the international economic progress," their "evolution into educated societies marked by solidarity," and their enjoyment and participation in "democratic regimes capable of ensuring freedom and peace."⁷¹ Fuchs can be seen as supporting this agenda through the support for, articulation and greater achievement of certain fundamental requirements for human dignity, as noted above. A more substantive contribution, however, would be to clarify that human development has as its ultimate end the development of a vertical relationship with God, of striving to live according to the natural law and responding to God's invitation in a transcendent call. Thus, utilizing Fuchs' vision, moral theology can develop Christian criteria for true human progress (ultimately toward the fundamental option for love of God), which is a Christian's duty to pursue as

⁷⁰ Traina points out that for Fuchs it is sinful simply to accept a majority position uncritically. See pp.185 and 199, n.86.

⁷¹ Benedict XVI, *Caritas in Veritate* available at: http://www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate_en.html, no. 21.

“continuously converted people.”⁷² And this means that, as Christina Traina explains, for Fuchs Christians must be “both worldly, or immanent, and world-renouncing, or transcendent, in their attitudes toward progress.”⁷³

This also means that Fuchs' natural law theory might alter the way we should think about the morality of individual, everyday actions, and this has definite social ethical implications. As Mark Graham explains, by insisting that “all pre-moral values and disvalues of an action be considered to determine its rightness or wrongness, whether proximate or remote, or direct or indirect, or slight or readily apparent, Fuchs has effectively expanded our understanding of an action's moral import to include all the repercussions for and influences on human well-being.”⁷⁴ This is enormously important for long-term problems in social ethics, because human actions have not only immediate effects but also aggregate into structures and institutions and thereby have much longer term effects than are immediately apparent. Fuchs' natural law theory acknowledges and accounts for the interconnectedness of actions and the schemes of recurrence, structures, institutions, and long-term consequences they cause, support and perpetuate. It thus offers an accurate assessment of the full moral import of individual acts, but also, as Mark Graham explains, raises awareness that human well-being is not confined to momentous and rare decisions that are the concern of dilemma ethics but also includes many of “the ordinary, mundane actions that constitute daily life and shape the larger world in which we live for better or worse, from the types of food we buy and consume, to the way we treat friends, colleagues and coworkers, to the businesses we frequent, to the way in which we spend disposable income, to the types of energy we use, to the material standard of living we pursue.”⁷⁵

Fuchs' insistence on responsibility for each moral agent is surely a leap in the right direction, and this also has implications for social ethics. The focus on responsibility and individual integrity means that at base each person has the task of moral discernment, and included in this is the task of working out what we owe and to whom (in other words, each person is responsible for working out questions of justice in her life). Thus in Fuchs' system, there will be no set criteria for the contribution each person should make to efforts at social justice and the common good. Openness to the Absolute entails striving to do right actions, and so certainly entails *some* concern for others in society, but there is no set criteria of right actions in accord

⁷² Traina, *Feminist Ethics*, pp. 185 and 199 n.87; and see Fuchs, *Human Values*, pp. 200–3.

⁷³ Traina, *Feminist Ethics*, pp. 185.

⁷⁴ Graham, *Josef Fuchs*, p. 250.

⁷⁵ Graham, *Josef Fuchs*, p. 251.

with justice that are required for any one person. Each person, in her concrete circumstances and with her concrete abilities, will have to work out what she is called to do for others and for society. This can be quite liberating and helpful, especially if Fuchs's concern with the actualization or erosion of the fundamental option through concrete right or wrong acts is taken seriously, and so the necessity of a great deal of moral formation is maintained. If both freed from the perception that morality is about avoiding things proscribed by the Church and encouraged to undertake the determination of the demands of justice and the common good, Catholics will be in a much better position to creatively and authentically manifest the contribution best fitting their individual circumstances and gifts (or limits).

Finally, Fuchs' focus on the concrete and on social ethics being the purview of experts might also have various implications for social teachings more generally. Fuchs surely recognizes the constraints to the competence of the magisterium in determining the natural moral law, and there is no reason to think that there should be much more confidence in social teachings than in medical- sexual teachings: in all realms the magisterium is "in the same boat" as everyone else. But, in this critique Fuchs lays out some criteria for what good teaching looks like: it is connected to reality and the wide array of moral knowledge, in touch with context, aware of and knowledgeable about its subject, not overly precise or negative in its articulation norms, which themselves should be inductively arrived at in part. Clearly these criteria go to support changes in medical-sexual teaching toward a greater alignment with social teaching methodology along the lines of what Charles Curran has outlined: toward a more historically conscious, personalist, relational-responsibility model.⁷⁶ However, Fuchs' foundational understanding of what is required for teaching to be in touch with the natural law could go far to support changes (or revival of brief periods that have recently languished) in how social teaching is undertaken as well.

For example, bishops should follow the advice found in Paul VI's 1972 apostolic letter *Octogesima Adveniens*, in which the pope calls for Christian communities to "analyze with objectivity the situation which is proper to their own country."⁷⁷ This would mean a greater realization of the model found in the American bishops' pastoral letters of the 1980's, which evinced a clear engagement with diverse elements of the Tradition (scripture, previous moral reflection from myriad sources, and past official teaching), wide consultation to gain adequate knowledge of the subject matter and

⁷⁶ Charles Curran, "Official Catholic Social and Sexual Teachings: A Methodological Comparison," *Readings In Moral Theology No. 8*, pp. 555–56.

⁷⁷ Edward DeBerri and James E. Hug, *Catholic Social Teaching, Our Best Kept Secret* (Maryknoll, N.Y.: Orbis, 2003), p. 131.

concrete circumstances and adequate realization that there is a distinction between moral principle and application. Thus, rather than the abandonment of magisterial guidance in social matters, Fuchs seems to prescribe a better way of formulating such social guidance: engaging with much more than past—and relatively recent—official teaching in formulating concrete principles and norms, acquiring as much competence as possible on the subject so as to apply the norms, and realizing that the application of norms to reality are neither infallible nor universally valid.

In short, then, Fuchs may not have provided a concrete social ethic in his revision of natural law theory, but he does provide resources for such. Fuchs' natural law theory could be seen as in line with indicative way of arriving at the fundamental requirements for concrete human flourishing and may provide a clearer articulation of the ultimate aim of authentic human development. Further, his view of natural moral law might alter the way we should think about the morality of individual, everyday actions, as well as how we view the responsibility of each individual to engage in public action, both of which have clear social-ethical implications. He also raises questions about the articulation of norms and principles after a certain point of specificity and so limits the magisterium's claims to competency in all teaching; yet rather than abandonment of magisterial guidance on social issues he seems to prescribe a better way of going about such teaching.

Of course, much more could be said about Fuchs' relation to other natural law theories with social-ethical implications and about what he can contribute to social ethics more generally. It is also surely true that there are myriad criticisms and complications resulting from Fuchs' vision of the natural law. However, it has not been my aim to give a full account of either the implications or criticism of Fuchs' revised natural law theory. Instead, I have merely tried to give a sketch of the development, context, and major features of his theory, to relate it to another revisioning of natural law with social-ethical implications, and to adumbrate some of the other potential implications and applications of Fuchs' natural law for social ethics.

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