

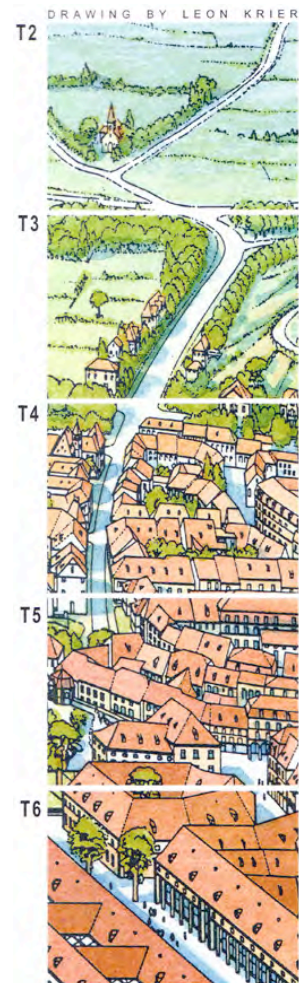
THE *POLIS* AND NATURAL LAW:
THE MORAL AUTHORITY OF THE URBAN TRANSECT¹

Abstract:

The Aristotelian-Thomist intellectual tradition's understanding of natural law---which is the broad pre-modern tradition of western culture---is that there are certain foundational principles of morality that are (according to Thomas Aquinas) "the same for all, both as to knowledge and to rectitude"---in other words, principles of morality that are not only *right* for all human beings but knowable (and at some level *known*) to all human beings. These foundational principles of morality, along with their first few rings of implications, are known as the natural law.

The Urban Transect is an heuristic device discovered, developed and employed by New Urbanist theorists, both to explain certain essential formal characteristics of traditional urban design and as the basis for alternatives to modern single-use-based zoning codes. The Urban Transect is defined here as that range of human habitats that support human flourishing, within which human settlements are part of a sustainable (albeit not necessarily locally bio-diverse) eco-system. These habitats, diagrammatically depicted as Transect-zones ("T-zones"), range from less dense human settlements to more dense human settlements; but each urban T-zone denotes a walkable and mixed-use human environment wherein *within each urban T-zone* many if not most of the necessities and activities of daily human life are within a five-to-ten-minute walk for persons of all ages and economic classes.

It is the thesis of this paper that, given this understanding and characterization of both natural law and the Urban Transect, the proposition "Human beings should make mixed-use walkable settlements" is generally valid for all human beings in all times and places---and therefore constitutes a natural law precept. If this is true, such a precept would be binding in conscience for---and acted upon *with prudential judgment* by---all persons who act in accordance with right (practical) reason; and most especially for and by persons who understand themselves to be a part of the Aristotelian-Thomist intellectual tradition.



¹ In the characterizations of natural law that follow I am particularly indebted to extended conversations with Jay Budziszewski, Benjamin Lipscomb, Randall Smith, and Dino Marcantonio.

Introduction

It is common knowledge among architects that contemporary societies are pluralistic and multi-cultural; and common wisdom among many architects (though not all) that moral relativism is one of the necessary implications of this truth of social pluralism. It is part of the purpose of this paper to challenge the limits of this common wisdom; and specifically---the great variety of historic human settlement patterns notwithstanding---to ask whether and how it may be possible to defend the propositions that 1) some types of human formal settlements are truly better than others in promoting human flourishing; and 2) all human formal settlements that succeed in promoting human flourishing share some common (and more importantly, identifiable) formal characteristics which, once understood, suggest a moral imperative to promote---to the best of one's ability and within the constraints of one's historical and biographical situation---the creation of human settlements possessing such formal characteristics.

Although I know of no formal surveys on the subject, I think it is safe to say that there would be widespread assent to both of these propositions among both the architects and the non-architects who constitute the Congress for New Urbanism. And yet, paradoxically, there appears to be much objection among New Urbanists to the notion of objective standards of morality in other areas of human life. The intellectual problem therefore is this: a general objection to the notion of objective morality calls into question New Urbanist claims for the objective goodness of traditional urban form. If it is true that there are no objective moral goods, then how can the New Urbanist claim that traditional urbanism is itself an objective moral good be true?

Now I myself happen to find New Urbanist arguments on behalf of the goodness of traditional urban form persuasive.² But it should be clear that in order for these arguments to be what New Urbanists actually seem to believe that they are---viz., a cumulative argument for traditional urban form as a genuine human good---the New Urbanist arguments both presuppose and require a larger theoretical framework about what is genuinely good for human beings. And lest the reader be tempted to dismiss this issue as a merely internal matter, a matter of consequence only to New Urbanists, let us note that the issue being considered is precisely the New Urbanist claim

² Here I would encourage the serious reader to not confuse New Urbanism with the easy caricatures of its critics: e.g., that New Urbanism is *primarily* about front porches, or *primarily* about traditional architectural styles (which indeed are characteristic of many New Urbanist projects but about which there is much debate among New Urbanists; and which is explicitly *not* an "article of faith" in the *Charter of the New Urbanism*), or *primarily* just a different form of suburban development. Because New Urbanism makes a conscientious effort to succeed in the contemporary marketplace---and note well that although the New Urbanist definition of "success" would include the notion of "success in the marketplace," its definition of success is hardly exhausted by this notion---these are all features of *some* New Urbanist developments. Nevertheless, the essential New Urbanist objective is to promote the creation of traditional towns, neighborhoods and cities; and specifically to do this in a cultural and legal context that currently at best discourages and at worst forbids the creation of such settlements.

By the standards of excellence to which New Urbanists aspire, even the best New Urbanist projects at this point invariably fall short. What critics of New Urbanism generally seem to overlook however is that no good traditional city or town ever became such overnight; and also that today nobody other than the New Urbanists are even attempting to systematically challenge the legal regime and cultural habits and mind-set of post-WWII suburban sprawl development. This said, it remains true that in the opinion of some (myself included) New Urbanism remains vulnerable to certain modernist habits of thought *among New Urbanists ourselves* that threaten our ability to achieve our professed urban objectives. These modernist habits of thought have primarily to do with recognizing---or sometimes failing to recognize---that good urban form is a necessary but not sufficient condition for good urbanism. This is a partial theme of this essay, but developed earlier in greater detail in my "Virtuous Reality: Aristotle, Critical Realism and the Reconstruction of Architectural and Urban Theory," *The Classicist, Volume 3* (1996): pp.6-18.

that traditional urban form is a genuine good for all human beings and that post-WWII sprawl is not. In other words, like it or not, New Urbanists are making a truth claim; indeed, New Urbanists are making a truth claim with moral implications. Since such a claim makes no sense in a theoretical context of epistemological skepticism and moral relativism, in what kind of theoretical context does such a claim make sense?

I intend to argue shortly that New Urbanist arguments on behalf of traditional urbanism both rehearse the arguments of and only make sense in a broad intellectual and cultural context called natural law theory. But first, since I have just referred generally to the professed arguments, beliefs and objectives of the Congress for New Urbanism, I would like to demonstrate how these generalizations can be supported by specific references to New Urbanism's founding document the *Charter of the New Urbanism*,³ a document that presents itself as an appeal to reason on behalf of the common good.⁴ From the *Charter* I excerpt the following passages⁵ that concern themselves primarily with the relationship between urban form, long-term sustainable eco-systems that also accommodate human beings and our activities, and a social order grounded implicitly in the virtue of justice:

The Congress for the New Urbanism views disinvestment in central cities, the spread of placeless sprawl, increasing separation by race and income, environmental deterioration, loss of agricultural lands and wilderness, and the erosion of society's built heritage as one interrelated community-building challenge. [Intro.1]

We stand for the restoration of existing urban centers and towns within coherent metropolitan regions, the reconfiguration of sprawling suburbs into communities of real neighborhoods and diverse districts, the conservation of natural environments, and the preservation of our built legacy. [Intro.2]

We recognize that physical solutions by themselves will not solve social and economic problems, but neither can economic vitality, community stability, and environmental health be sustained without a coherent and supportive physical framework. [Intro.3]

We advocate the restructuring of public policy and development practices to support the following principles: neighborhoods should be diverse in use and population; communities should be designed for the pedestrian and transit as well as the car; cities and towns should be shaped by physically defined and universally accessible public spaces and community institutions...[Intro.4]

³ See the Congress for New Urbanism web site, specifically http://www.cnu.org/cnu_reports/Charter.pdf

⁴ I.e., just to be clear: by "common good" I mean a set of goods implicitly shared by political liberals and conservatives, religious believers and unbelievers, rich and poor, young and old, men and women, heterosexuals and homosexuals, and persons of all racial and ethnic backgrounds; which is to say, a set of goods we share because of our common human nature.

⁵ References are to the *Charter* Introduction, sections I, II, and III, and paragraphs therein.

We are committed to reestablishing the relationship between the art of building and the making of community, through citizen-based participatory planning and design. [Intro.5]

Where appropriate, new development contiguous to urban boundaries should be organized as neighborhoods and districts, and be integrated with the existing urban pattern. Noncontiguous development should be organized as towns and villages with their own urban edges, and planned for a jobs/housing balance, not as bedroom suburbs...[I.5]

Cities and towns should bring into proximity a broad spectrum of public and private uses to support a regional economy that benefits people of all incomes. Affordable housing should be distributed throughout the region to match job opportunities and to avoid concentrations of poverty. [I.7]

Many activities of daily living should occur within walking distance, allowing independence to those who do not drive, especially the elderly and the young. Interconnected networks of streets should be designed to encourage walking, reduce the number and length of automobile trips, and conserve energy. [II.3]

Within neighborhoods, a broad range of housing types and price levels can bring people of diverse ages, races, and incomes into daily interaction, strengthening the personal and civic bonds essential to an authentic community. [II.4]

Concentrations of civic, institutional, and commercial activity should be embedded in neighborhoods and districts, not isolated in remote, single-use complexes. Schools should be sized and located to enable children to walk or bicycle to them. [II.7]

Civic buildings and public gathering places require important sites to reinforce community identity and the culture of democracy. They deserve distinctive form, because their role is different from that of other buildings and places that constitute the fabric of the city. [III.7]

The careful reader will note that in these eleven short paragraphs the word “should” occurs eleven times. Also occurring are the words “deserve,” “require,” “we stand for,” “we advocate,” and “we are committed to.” From these words and paragraphs taken from the foundational document of the Congress for New Urbanism, and also from observing the actions of New Urbanists in the world, we can infer that New Urbanists regard traditional urbanism as a genuine human good that human beings *ought* to pursue. The subject matter of the rest of this essay is the nature and the status of that “ought.”

Is traditional urbanism *really* good for all human beings everywhere, or not? Why *ought* human beings to live in walkable mixed-use neighborhoods---i.e., traditional towns and neighborhoods---instead of sprawl? Is the

promotion of traditional urbanism a mere expression of preference, no different in its moral status than a preference for sprawl (a preference which today certainly *seems* to be wide-spread)? Or would one be correct in regarding the promotion of traditional urbanism in opposition to sprawl as morally obligatory? These are the kinds of questions I propose to consider here, under the rubric of “natural law;” and I simply note at the outset that both the structure of the New Urbanists’ founding document and the behavior of New Urbanists in the world suggest that New Urbanists promote a substantive view of urbanism and believe it to be a genuine human good. The Charter does *not* say:

The CNU views disinvestment in central cities, the spread of placeless sprawl, increasing separation by race and income, environmental deterioration, loss of agricultural lands and wilderness, and the erosion of society’s built heritage as problems directly related to the triumph of the post-1945 suburban ideal--*but we may be wrong*. Should you disagree, well, we really can’t say which of us (or whether either of us) might be right. But we really do like traditional cities; and we hope you will too....

On the contrary, the tenor of actual New Urbanist arguments is declarative and prescriptive; cumulatively, it is both an ontological and a moral argument, an argument about the way things *are* as well as an argument about the way things *should be*. As such, the New Urbanist argument seems on its face to constitute an implicitly natural law argument---good or bad---on behalf of traditional urbanism; though I remind the reader again that this is a conclusion denied and rejected, often vehemently, by many New Urbanists. Why this is so, and whether such denial and rejection are intellectually coherent, are also subjects upon which I here intend to touch. But first let us turn to the question: What is natural law?

Natural Law

From extensive conversation with fellow New Urbanists I have learned the difficulty of achieving consensus upon a definition of natural law. I therefore of necessity must consider self-consciously the idea of natural law from out of a particular *tradition* of thinking about natural law: in this instance, the tradition of natural law thinking that looks to Aristotle and Thomas Aquinas as intellectual touchstones for a community of intellectual inquiry that operates to this day, not exclusively but most prominently in the intellectual tradition of the Catholic Church. But this tradition is not, as we shall see, the only tradition of natural law theory. There is currently a widespread revival of interest in natural law theory within both Protestant and Jewish circles, and to some extent in non-biblical religious and cultural traditions as well. Nevertheless, the Aristotelian – Thomist tradition has been particularly important, if not foundational, for natural law thinking throughout the whole of western culture. The methods of this tradition are empirical and rational (i.e., based upon both sense observation and reason); but even so I must acknowledge here a point developed most persuasively and at length by Alasdair MacIntyre,⁶ viz., that rationality is always rationality within a certain shared narrative structure, within a shared story---what sociologist Peter Berger has characterized as a “plausibility structure,” another name for which is a tradition. Nevertheless, the fact that rationality can only be judged as such from within a tradition does not mean that truth claims made from within an intellectual tradition can

⁶ First in *After Virtue*, developed subsequently at greater length in *Whose Justice? Which Rationality?*

not be universally true; but it does mean that the truth of such claims may or may not be apparent to those who are outside the intellectual tradition. In other words, considering here the example of natural law: although a tradition may make a genuinely rational and true argument on behalf of natural law and its universality, and although this argument may be understandable to *some* people outside the tradition, we nevertheless should not necessarily expect everyone everywhere to understand it. Something may be understandable but not necessarily understood; someone may possess the capacity to understand but not necessarily understand.

This caveat notwithstanding, the broad western understanding of natural law is that there are certain foundational principles of morality that are (according to Thomas Aquinas) “the same for all, both as to knowledge and to rectitude”⁷---in other words, principles of morality that are not only *right* for all persons but knowable (and at some level *known*) to all persons. These foundational principles of morality, along with their first few rings of implications, are known as the natural law.

The term “natural law” necessarily implies something about both nature and law. Each of these subjects is complex; but of the two, “nature” seems the more difficult because of the multiple meanings of the word “nature” we employ even in everyday speech. We speak of “nature” substantively: in the sense of everything that exists (except God and other supernatural beings); or, alternatively, theists can speak of “nature” in the (slightly different) sense of “all created being/s.” We say that it is in the “nature” of rocks to be hard or of turtles to be slow, in the sense of “characteristic of;” or we say that it is in the “nature” of male and female mammals to mate, in the sense of an instinct they possess. Likewise, we say that Michelangelo Buonarroti and Peter Paul Rubens personified the “nature” of a sculptor and a painter respectively, in the sense that they were exemplary of their kind, specimens of the full and appropriate development of a certain kind of artist. In the case of the natural law, we generally mean that law is natural in at least two or three different senses: first, in the sense of referring to something real, as in the judgment “murder is wrong” is not merely a subjective feeling or an illusion, but rather speaks of genuine knowledge about the moral character of a certain kind of act; and second in the sense that the purpose of the natural law is to help guide human beings from the way we are at any given moment in our lives toward our full and appropriate development as human beings, i.e., the achievement of our life’s purpose, the fulfillment of our “nature.” We might also speak of a third sense in which the natural law is “natural:” that such law is knowable by, authoritative for, and binding upon all human beings by virtue of the kind of beings we are (i.e., by virtue of our *nature*); and that while such law can be ignored or broken, we can do so only at peril to our own well being.

The idea of “law” may be easier to define, though perhaps less easy for many moderns to accept. Thomas Aquinas argued that genuine law has four essential characteristics: Law, he says, is “nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”⁸ In other words, Thomas

⁷ *Summa Theologica*, Part I of Second Part, Question 94. Article 4 (I-II 94, 4)

⁸ *Ibid*, I-II 90, 4

argues first that genuine law is rational, something that the mind grasps as right; second, that it necessarily is for the common good rather than the good of a select few; third, that it must be initiated by the person or persons authorized to initiate it; and fourth, that it must be promulgated / announced / made known to those toward whom it is directed. And this is characteristic of all law, not merely the natural law.

To further consider the adequacy of this definition of law, as a mental exercise we might consider item by item the negative of Thomas's definition. Most if not all of us would object to a law that is unreasonable, or be suspicious of a law designed for special interests rather than the common good.⁹ We would not recognize as law that which is not articulated and enacted; and we would not grant status to "laws" made by individuals who have not the standing to do so (which is but another way of saying that no human being is recognized by others as properly being, having or making a law unto him or her self).

Now Thomas himself---who was a Christian, and therefore concerned with the issue of reconciling an understanding of natural law with the revealed law of Christian scripture---speaks of several different kinds of law; the relations between which are diagrammed below:

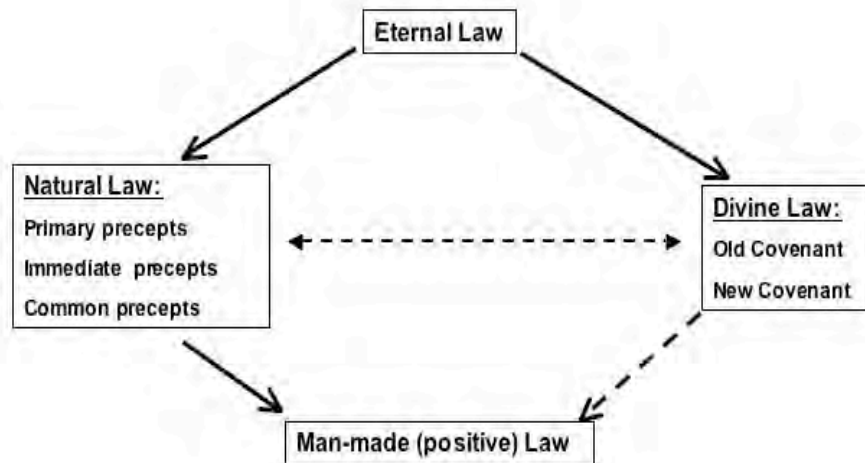
⁹ This "common sense" of the nature of law as existing for the common good is of course very different from the way contemporary jurists and legal theorists think about the law. Edward Oakes, in his review of Craig Bernthal's *The Trial of Man: Christianity and Judgment in the World of Shakespeare* in the June / July 2004 issue of *First Things* (pp. 45-46) quotes Bernthal's characterization of law as it is understood in the modern west:

The prevailing theory of law in our time is that the law is rational, utilitarian and secular. Legislators create rules to accomplish policy objectives. Laws are the instruments used to promote the finite material interests of particular groups and individuals. Judges, in reaching decisions, use legal precedents to solve problems, not to propound universal truths or to make the will of God explicit. Laws are not evaluated with respect to any universal standard of right and wrong, but by workability.

Oakes contrasts this with the view of law that prevailed in Shakespeare's England (among both Protestants and Catholics). "For Elizabethans," writes Oakes

positive law derives from natural law, which itself flows from the divine will. This means above all that a just verdict in a human court must in some way reflect, and be validated by, the divine verdict; and when the two diverge, divine judgment waits in the wings and will not ultimately be stayed or thwarted. For example...the great Anglican [legal theorist and] divine Richard Hooker asserts: "The judgments of God do not always follow crimes as thunder follows lightning, but sometimes the space of many ages comes between..."

Few if any New Urbanists of course would describe traditional urbanism, the imperative to make traditional urbanism, and the deficiencies of post-WWII suburban sprawl environments, in such Elizabethan terms; the cultural air we breathe is the cultural air we breathe. Nevertheless, New Urbanist arguments for traditional urbanism are not *substantially* different from Hooker's: there is hell to pay (so to speak) both environmentally and socially for human beings who habitually and systematically make human settlements that are not mixed-use and walkable. Moreover, as I have already suggested, the *Charter of the New Urbanism* itself describes its traditional urban objectives not as a special interest but rather in terms of the common good. This suggests one of two things: either the *Charter* is an exercise in bad faith, presenting itself as something it is not; or its objectives are better described in terms of implicit natural law assumptions than by the utilitarian / interest-group understanding of law common to the modern age. New Urbanists will have to decide for ourselves whether we wish to represent ourselves as just another special interest group; and if not, whether we wish to be intellectually coherent.



There are first the two broad categories of eternal law and man-made law (the latter of which is also called positive law). Under the category of the eternal law there are the natural law and the divine law (the latter of which is itself then divided between the old law of the Hebrew scriptures and the new law of the Christian New Testament). The natural law consists of primary precepts, immediate precepts, and common precepts; and these in turn also inform the making of human / positive law (as do the old and new law in those human cultures existing within the biblical orbit and still influenced by it, here indicated by the dashed line linking the divine law to the positive law). The dashed arrows between the natural law and the divine law allude to the similarity and overlap between the natural and divine law, but also to the idea that the natural law and the divine law are not identical.

But let's consider the distinction between natural law and positive law less abstractly. Positive law is man-made law: 60 mph speed limits, life in prison for murder, zoning laws, etc. The natural law is made by God. More specifically, the natural law is that part of the eternal law which is immediately accessible to human reason without special revelation: e.g., do not murder, do not steal, etc. So the natural law is *discovered* by human beings while the positive law is *made* by human beings---but the positive law made always *with reference to* the natural law. When the positive law contradicts the natural law, it is said to be an unjust law (e.g., a law requiring, or even allowing, all two-year old boys with, say, red hair or Down's Syndrome to be killed). Likewise, although both natural law and positive law refer to property, the natural law does so in a general way (theft is wrong), while the positive law does so in a particular way (car theft will get you ten years in prison). The positive law changes as circumstances change (you can't have a law against cloning until cloning is invented), while the natural law is eternal (deliberate killing of an innocent person is always and everywhere wrong).¹⁰

¹⁰ I am indebted to Dino Marcontonio for the succinctness and clarity of these characterizations.

Having said this, it is important to add that most of the law that regulates human behavior is in fact positive (i.e., man-made) law; and it obviously varies not only from culture to culture, but even from city to city within the same larger culture. Nevertheless, any and all of these different positive laws may be regarded as legitimate so long as they do not violate the natural law. Thus it is a mistake to think that in identifying the moral limits of human behavior (including human habitats) the natural law is somehow contrary to cultural pluralism. The natural lawyer simply maintains that there are certain behaviors that really are morally wrong for all persons in all places. The contrary view is that there is no natural law, but rather only positive / man-made law. But if this latter point of view is true, its corollary is that there are no human acts that are inherently and intrinsically wrong. If there is no natural law, everything---at least potentially and in principle---is permissible.

It is important to say a few things about what the natural law is *not*.¹¹ The natural law is not “innate.” We are not born knowing it, but rather with the capacity for knowing it and an inclination to it. A child is not born knowing that murder is wrong; but as soon as a child is capable of understanding what is meant by “murder” and “wrong,” he or she is capable of understanding that murder in fact is wrong.¹² Natural law is not mere instinct; though it is not unrelated to certain biological realities of human beings as mammals, and the effects of these biological realities upon and their implications for the practical requirements of love and the care for children in the context of families. Neither is natural law mere custom; though the customs of almost all times and places more or less acknowledge the natural law. Natural law is not simply a theory; rather it is a reality which theories attempt with greater or lesser success to describe. Finally, natural law is not a “law of nature” in the same sense that gravity is a “law of nature.” Indeed, given Thomas’s previous characterization of law, gravity is a law of nature only by analogy, since falling apples or rocks or other inanimate bodies are not freely and rationally aligning their behavior with a rule they know to be right.

So what are some precepts of the natural law? I must say “some,” because no one of whom I know has ever proposed a definitive and exhaustive list of the natural law and its requirements. Indeed, Aquinas (and John Calvin as well) argues that one of the reasons that human beings require a specially revealed and specific divine law is because all but the most highly abstract principles of the natural law can be driven or obscured from the human mind by ignorance or by the corruption of sin.¹³ Aquinas also offers as one of the principal justifications for a positive divine law that people reason very imperfectly in matters of natural law.¹⁴ And Calvin adds that “the Lord has

¹¹ Again, I am especially indebted in what follows to Jay Budziszewski.

¹² St. Paul writes that there is a moral law distinct from divinely revealed law which is “written on the heart” of every person (Romans 2:15), suggesting there is a correspondence between every individual’s inner capacity for moral knowledge and the objective moral order of the universe. An obvious analogy here is with mathematics, which on the one hand seems purely a product of the human mind, but on the other seems to correspond in ways both observable and yet to be discovered with the physical structure of the universe. The reason this can be so---in the realms of both morality and science---is because human beings are ourselves part of the same universe we are seeking to understand, and share its basic structure.

¹³ Thomas Aquinas, *op. cit.*, I-II 94, 4.

¹⁴ *ibid.*, I-II 91, 4.

provided us with a written law [i.e., the Torah, or old law] to give us a clearer witness of what was too obscure in the natural law, [to] shake off our listlessness, and [to] strike more vigorously our mind and memory."¹⁵

The preceding caveat notwithstanding, consider ten natural law precepts about which natural law theorists (as well as most ordinary people) more or less agree; and then consider a new and hypothetical eleventh precept relevant to the making of human habitats and the Congress for New Urbanism. These precepts are founded upon the observation-based premise that man (male and female) is essentially and by nature a social animal who desires to know the truth about himself and the world, even if the latter desire sometimes appears uncharacteristic of some individual members of the human species. I reiterate that there are more than ten natural law precepts, and that the list that follows is not exhaustive.¹⁶

The first two are commonly regarded as “primary precepts” of the natural law---the moral precepts upon which all other moral precepts are based. These precepts are always right and always known; there are no exceptions.

- 1) good should be pursued and evil avoided¹⁷
- 2) harm no one gratuitously

From these primary precepts are derived more or less by direct inference a whole series of “immediate precepts,” including the following (in no particular order):

- 3) render impartially what is due to every person (i.e., “be just”)
- 4) do not take innocent human life
- 5) honor marriage and don’t commit adultery
- 6) care for children and the elderly
- 7) keep promises
- 8) don’t steal
- 9) treat others as you yourself would wish to be treated

The tenth precept is an example perhaps less widely known, and is an instance of a common natural law precept. A common precept is a more detailed immediate precept, and more remote from the primary precepts. Common natural law precepts are called “common” rather than “immediate” because there may be exceptions to them, and

¹⁵ John Calvin, *Institutes of the Christian Religion*, Book II, Chapter VIII, Section 1.

¹⁶ The fact that I have chosen ten is just coincidental; but neither should the fact that some of these ten natural law precepts overlap with the biblical Decalogue be a surprise, in light of Aquinas’s understanding of the eternal character of both the natural law and the old law of the Hebrew scriptures.

¹⁷ This is the equivalent in practical reason of the law of non-contradiction in speculative reason: that “a” cannot simultaneously be both “a” and “non-a” at the same time and in the same respect. See Thomas Aquinas, *op. cit.*, I-II 94, 2.

because they may not be so widely known as the primary and immediate precepts. The tenth precept, concerning the principle of subsidiarity, is implicit in much of the Aristotelian–Thomist natural law tradition, but was not really recognized and articulated as a natural law principle until the first third of the 20th century.¹⁸

- 10) observe and obey the law of subsidiarity (viz., that it is wrong “to assign to a greater and higher association what lesser and subordinate associations can do;”¹⁹ i.e., larger institutions should not attempt to do what smaller institutions do better)

Now, a detailed discussion of the idea of the Urban Transect is still a few pages away. Nevertheless, insofar as the Urban Transect may be regarded not simply as a tool but also as a discovery, I want to suggest that in its historic specificity the discovery and articulation of the Urban Transect is perhaps not unlike the discovery and articulation of the principle of subsidiarity, because prior to the rise of sprawl the Urban Transect was likewise not in need of articulation. So here is my eleventh natural law precept, a new one describing something heretofore understood implicitly, one perhaps best thought of for now as a common precept because it is not inferred directly from the primary precepts of the natural law but rather more circuitously; and because it requires an argument---not least an argument about the Urban Transect---in order to recognize it as a natural law precept. So here it is:

- 11) human beings should make mixed-use walkable settlements

Before I go into greater detail however about why and with what corresponding definitions I think this eleventh precept can be considered a natural law precept, I still need to say more about what the natural law can and cannot do with respect to guiding moral behavior, both generally and with regard to the built environment.

Note first therefore the different character of the natural law precepts I have just articulated, specifically this: that some are formulated as positive admonitions (do this!) and some as negative admonitions (don’t do this!) more commonly understood as prohibitions. Now it is a fact that in the modern world, if most of us do not actually think of moral behavior as a matter of following rules, most of us are nevertheless *taught* to think of moral behavior as a matter of following rules; as in the sense of: “If I don’t break the rules, I am a good person.” But this is not at all the meaning of moral behavior in the natural law tradition, which is more characteristically focused upon the moral life as the development of good character habits (also known as *virtues* or *excellences*). It is impossible to overemphasize this point. To the list of ten natural law precepts here cited it would not be at all inappropriate to add any number of other moral virtues, some of which are already implied in my list of ten. One could say, for example, that the following positive admonitions are also declarations of natural law precepts: be courageous; be temperate;

¹⁸ Indeed, the historic circumstances of the articulation of the principle of subsidiarity are quite precise, viz., in response to the rise of the totalitarian state, prior to which the articulation of the principle had not been necessary. The principle of subsidiarity was intended to counter that idea of government perhaps most succinctly described by Mussolini as “all within the state, nothing outside the state, nothing against the state.”

¹⁹ Pope Pius XI, *Quadragesimo Anno*, paragraph 79, May 1931.

be just; make good judgments; be magnanimous; be a friend; be steadfast; be faithful; be hopeful; love your neighbor.

Nevertheless, moral behavior *does* require prohibitions---as for example against killing the innocent, against theft, and against bearing false witness---because certain acts are *intrinsically* destructive of those communities within which it is necessary for individuals to discover and realize their good. Still, although obeying the natural law prohibitions is obligatory, in the Aristotelian-Thomist intellectual tradition such rules are nevertheless clearly secondary for the substance of the moral life. It is noteworthy, for instance, that Aristotle has no explicit theory of natural law; though he does have an extensively developed argument that the best life for individual human beings is the life of moral and intellectual virtue lived in community with others, and especially, n.b., *in a polis*, or city. Likewise, although Thomas Aquinas develops in great detail in his *Summa Theologica* a theory of natural law, his so-called *Treatise on Law* follows immediately *after* his *Treatise on Habits*---follows, that is, Thomas's detailed theory of the primacy of place in the moral life of virtues rather than rules.

But perhaps an example from the realm of sports will make this point clearer. Michael Jordan is acknowledged to have been the premier basketball player of his era; and he could not have been so had he not known and obeyed the rules of his game. Nevertheless, what made him the best player of his time was not simply that he *followed the rules*, but rather that he possessed certain skills and above all *character habits* that permitted him to succeed in basketball. (Please note that I am not saying that Michael Jordan is a very good *person*---he may or may not be---only that he was very good at basketball.) Michael Jordan was a great basketball player not only because he had the skill to succeed and because he played in such a way as to make his team-mates better; but also because he knew how to exercise *good judgment* on the basketball court: when to shoot, when to pass, when to speed up the game's tempo, when to slow it down, judgments all determined by his orientation to the *telos* or purpose of basketball, which is to win. The result was success at the highest levels of his game: not only the championships that his teams won, but also the standards of excellence he established that have become reference points for anyone who plays the game of basketball. In exactly the same way, success in the moral life---in negotiating our way within and through and on behalf of the communities of which we are necessarily and inevitably part---entails not simply following rules but even more importantly developing the good character habits (i.e., the virtues) that help us to live well both as individuals and as members of communities. Likewise, in the making of good cities, although it may be necessary for urban designers, architects, builders and patrons to obey the natural law precept to make walkable mixed-use human settlements, this is not even close to being a sufficient condition for good city-making. What is needed to accomplish *that* objective is the productive reason and ability of the artist (i.e., the urban designers, architects and builders), which is not only a matter of not breaking rules but much more of exercising skill and making good judgments, of knowing and being accountable to the highest standards of the art of urban design.

It is important to note therefore that in the Aristotelian-Thomist tradition discussion of the virtues occurs under the rubric of considerations of *practical* reason. Virtues are the good character habits that enable human beings to

negotiate our way successfully in the world; and “reason” in the Aristotelian-Thomist tradition is not limited to the kind of strict rationality that we in the modern world associate with mathematics, or geometry, or analytic philosophy.²⁰ This latter rationality is only one kind of rationality (an extremely important kind but only one kind nonetheless) that in the Aristotelian-Thomist tradition is foundational for what is commonly called “speculative reason”---the kind of reasoning engaged in by scientists and philosophers and other theoreticians who of necessity have to use language very precisely. My point here however is that there are *other kinds of reason*, two of which in particular are germane to the subject of urban design.

One kind, as I have just noted, is called “practical reason,” the category under which falls consideration of ethics and morality. What does it mean to say that ethical behavior in the Aristotelian-Thomist tradition is an instance of practical reasoning? What it means is that the concern of ethics is with those forms of behavior conducive to the highly practical matter of individuals and communities living a good life. Indeed, the *meaning* of a “virtue” in this tradition of thinking is a character habit the exercise of which is conducive to achieving some desired good purpose or end. Thus courage: the willingness to risk discomfort, pain, or danger in pursuit of some important objective. Thus justice: rendering impartially to persons what they deserve. Thus charity: acting generously toward someone out of a sympathetic capacity to imagine their plight, whether or not they deserve generosity. And thus prudence: the habit of making good judgments. So when Andres Duany says publicly, as he often does for rhetorical purposes, that New Urbanists should be more interested in being practical than in being virtuous---as in something along the lines of “New Urbanists work communally in the world to promote environmentally sustainable human habitats (i.e., good urbanism), in the course of which we make pragmatic decisions in order to achieve the best projects we can under the constraints within which we have to work; in contrast to the ‘higher morality’ of environmentalists who care nothing for the human habitat, and/or to high-minded urban theorists and academics unwilling or unable to make such decisions and who therefore get much less good work built in the world”²¹---he is in fact making a category mistake; because what he fails either to understand or to acknowledge publicly is that “practicality,” insofar as it is intended toward the realization of some genuine good or goods, is essentially synonymous with “virtue.” The *de facto* implication of such rhetorical statements employed in defense of the “pragmatism” of New Urbanists---pragmatism being a less precise term in contemporary parlance, alas, than prudential judgment---is that the willingness to make prudential judgments and their concomitant compromises in the course of advancing traditional urbanism in a cultural and legal context of sprawl is *actually* the better (and hence more “moral”) way to advance the good of traditional urbanism. Or to put the substance of Duany’s argument in a more familiar way: Sometimes prudential judgment requires New Urbanists to not allow the perfect to be the enemy of the good.²²

²⁰ With regard to rational precision, Aristotle’s marching orders remain unsurpassed in their wisdom: “It is the mark of an educated [person] to look for precision in each class of things just so far as the nature of the subject admits; for it is equally foolish to accept probable reasoning from a mathematician and to demand from a rhetorician scientific proofs” (*Nicomachean Ethics*, Book I, Ch. 3).

²¹ This, of course, is my paraphrase; a gifted rhetorician, Duany is simultaneously more eloquent and less prolix.

²² On the other hand, sometimes the excellent *does* have to be defended tenaciously, even in order to advance the good. European architect Leon Krier, the intellectual godfather of New Urbanism and a major influence upon Duany’s work, once

Regardless of the wisdom of any particular prudential judgment, Duany's most serious intellectual error (at least from the Aristotelian-Thomist perspective) is in professing (if not thinking) that in making a *pragmatic* decision he is acting outside the arena of "morality." And this may be partly because Duany is failing to see prudential judgment as a virtue, but even more significantly because I suspect he is thinking of morality in terms of rules rather than virtues. But what makes prudence a virtue in the Aristotelian-Thomist tradition is precisely that good judgment is necessary not so much to decide between good and bad (such choices for most of us are relatively easy to determine; though not always so easy to act upon), but rather especially because good judgment is necessary to make choices that involve a conflict of goods in which *no rule or set of rules can guarantee the moral correctness of one's choice*. Indeed, if we think of some popular films from the last twenty years or so, such as "Witness" or "The Fugitive" or "Babette's Feast," much of what makes them dramatically compelling is less the conflict between good and evil found therein (and there is genuine evil represented in these stories, particularly in "Witness" and "The Fugitive"), but rather the conflict between goods: the rough justice of the Catholic Philadelphia cop who falls in love with the pacifist Amish woman he is trying to protect; the conflict between the bulldog detective chasing down a fugitive who we (but not the detective) know to be innocent; the conflict between the self-chosen asceticism and good works of two rural Danish Lutheran pietist sisters and the urban Catholic sacramental sensibility of their Parisian housekeeper who unbeknownst to the sisters is a master chef. With whom does one identify and for whom does one inwardly "cheer" in these dramatic encounters? For me, it is hard to avoid identifying with and cheering for all of them; except that we recognize the inherently tragic circumstance that no single and contingent individual can choose and embody all these various goods, and that hard existential choices must necessarily be made---though in a religious framework these tragic choices are redeemed, making the dramatic narrative, in fact, inherently comic (as "Babette's Feast" exhibits explicitly).

In addition to speculative reason and practical reason, there is yet a third kind of rationality, to which I have already alluded but here can mention only in passing; and this is what we might think of as "productive reason." To engage in the making of something---which is the very broadest definition of artistic activity---is to exercise "productive reason," i.e., reason-in-making (which is, n.b., Aquinas's very definition of "art"). Architects, planners and engineers for well over a century have mistakenly argued for the application of canons of speculative reason to the making of architecture and cities in an attempt to "rationalize" architecture and urbanism in the modern age. But the practices of architecture and urbanism at their highest levels have *always* been rational; it's just that the type of rationality they exhibit is not the *speculative* reason of the mathematician, scientist or philosopher, but rather the

famously declared that he did not and would not build buildings in the context of the contemporary world of sprawl precisely *because* he---Krier---is an architect. Happily, Krier has reconsidered, now that he has the opportunity to design prominent buildings in the context of Duany Plater-Zyberk designed traditional town plans. But ethically speaking, both Krier's strict position and Duany's more flexible position can be defended as moral behaviors insofar as they represent exercises of prudential judgment: they are penultimate and strategic positions adopted in the service of good urbanism. My own sense, unavoidably informed by my own Catholic / catholic sensibilities, is that individual prudential judgments are necessarily related to and in part justified by the particular vocation (in the full religious / existential sense of that term) of the individual making the judgment---presuming that the end being sought is a genuine good.

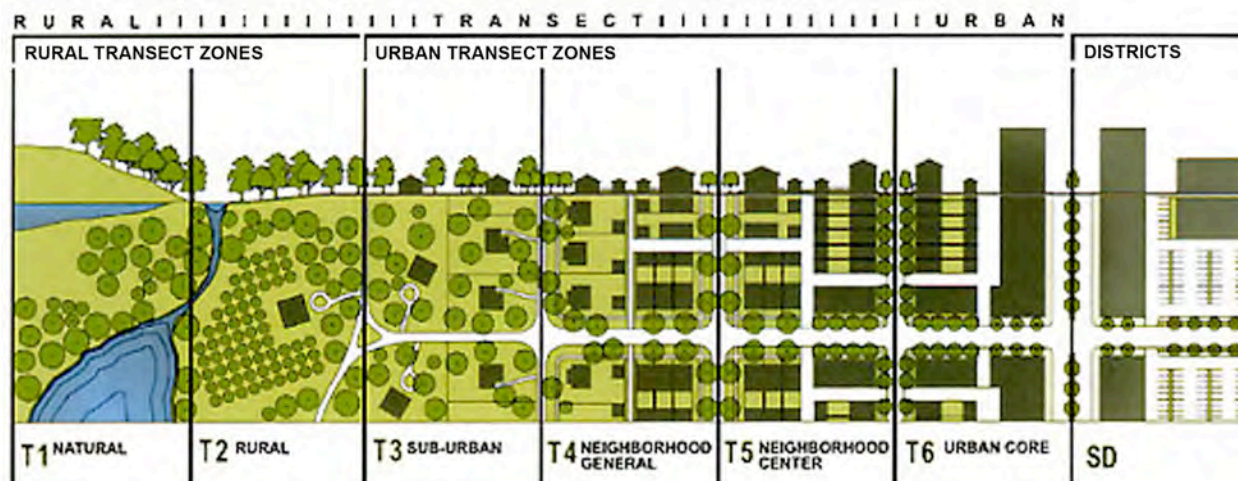
productive reason characteristic of any living artistic tradition that hands down from generation to generation the very best standards of the *arts* (n.b., not sciences) of architecture and urbanism---the accumulated human knowledge of which in the 20th century was lost within two generations by architects, engineers, planners and politicians who mistakenly alleged to practice architecture and urbanism according to the canons of speculative reason rather than the necessarily less precise but far more efficacious canons of productive reason.

Before turning to the Urban Transect and whether and under what circumstances we might think of it as having natural law implications, I want to say one last thing about natural law pertaining specifically to its universality. It will not have gone unnoticed that to this point I have been considering natural law in terms provided by a 5th century B.C. pagan Greek and a 13th century A.D. Italian Catholic. The fact that I have been doing so has only to do with the quality of their thinking about the natural law, not with whether the natural law is right for and knowable by all persons. As I mentioned earlier, the foremost institutional exponent of the natural law in the world today is the Roman Catholic Church; but there are very interesting reconsiderations of the natural law currently taking place among Orthodox Jews (see for example David Novak's recent book *Natural Law in Judaism*) and among Reformed Christians of the Calvinist tradition, both of whom are looking to resources for natural law thinking from within their own authoritative traditions rather than to Aristotle and / or Aquinas.²³ The importance of natural law thinking within any of these religious communions is not to provide a rationalist substitute for the specific authoritative traditions of these several communities of faith. It is rather to acknowledge, identify, and when necessary appeal to a foundational moral sensibility shared by all human beings, even if the natural law may be less perfectly understood by persons whose ability to understand the natural law by virtue of reason has not been supplemented by revelation; and also to understand the natural law as a potential piece of common ground if and when religious believers engage persons from outside their own faith community in civil discourse in the public realm.

Here it is necessary also to note that belief in natural law---i.e., again, in objective standards of morality that are right for all and knowable to all---is not by any means peculiar to or the prerogative of the classical-biblical culture of the west. Perhaps the very best brief 20th century argument for the reality of the natural law is C.S. Lewis's slender book *The Abolition of Man*, in which Lewis refers to the natural law as the *Tao*, precisely in order to emphasize that even if the implications of natural law theory are theistic, natural law itself is a foundational idea recognizable in cultures which are not necessarily theistic at all. Not the least interesting part of the book is its appendix, wherein Lewis catalogs references to eight different precepts of the natural law drawn from cultures and sources as diverse as ancient Egyptian, old Norse, pagan Roman, ancient Babylonian, Indian Hinduism, native

²³ An early version of this paper was presented as a talk at Andrews University, which is a Seventh-day Adventist institution. I am not intimately acquainted with the writings of Ellen White, and don't know whether similar implicit natural law resources exist therein for Seventh-day Adventists; though historic SDA concerns for human health and well-being perhaps provides Seventh-day Adventists an immediate opening to natural law thinking. Regardless, the scriptural resources foundational for Catholic natural law thinkers can also provide a starting point for evangelical Protestant Christian thinking about the natural law--especially verses 14-15 of the second chapter of St. Paul's letter to the Romans, and the theological implications to be derived from the Genesis account of creation.

American, the Analects of Confucius, ancient Greek and Anglo-Saxon epics, Australian aboriginal oral traditions, and 17th century English literature---as well, of course, as Plato, Aristotle and the bible.



The Transect and Natural Law

I turn now to the subject of the Urban Transect and its relationship to natural law. The Congress for New Urbanism has undertaken the revival and creation of traditional towns and neighborhoods in a physical context of sprawl and the legal and cultural context that promotes it. One of the intellectual tools increasingly employed by New Urbanists is called the Transect, an idea presented by New Urbanists not only as a tool and intellectual construct but also as a discovery and articulation of a general principle of both land use and historic human settlement.

Though multiple diagrams exist and many more are possible, a common New Urbanist diagram of the Transect depicts six distinct Transect Zones (T-1 through T-6). Zones T-1 and T-2 refer to *Rural Transect* zones in the most general way, insofar as they relate to the development of human habitat. The *Urban Transect*, strictly speaking, is described by zones T-3 through T-6; and together with the Rural Transect zones constitute the Transect proper. The Transect seeks and purports to describe some general conditions of good human settlements, and can itself be used as the basis for



The Urban Transect: T-3 / Sub-Urban

locally particular zoning codes.²⁴

Andres Duany has referred to the Transect as a “natural law,” adopting a dictionary definition of natural law as “a principle derived from the observation of nature by right reason and *thus* ethically binding in human society” [emphasis added]; and in a footnote likens natural law to Thomas Jefferson’s references in the Declaration of Independence to “self-evident truths.”²⁵ But although I intend to argue shortly for a relationship between a certain understanding of the Transect and natural law, Duany’s dictionary formulation of natural law seems to me almost but not quite right; and would have been better formulated had it said instead that a natural law *precept* is “a principle derived from the observation of nature and recognized by right reason to be ethically binding for individuals and human society.” The big problem with the dictionary formulation employed by Duany is the word “thus,” which blithely purports to leap the huge chasm that in the modern world divides what we believe to be our extensive knowledge of what *is* from what we believe to be our excessively modest knowledge of what *ought to be*. But how we get from the “is” to the “ought” depends entirely upon our understanding of human nature: and specifically upon whether or not human beings even *have* a nature, and if there is a *telos* or end or good toward which all human beings are



The Urban Transect: T-4 / Neighborhood General

²⁴ In this respect the Transect as a discovered principle is like the natural law, and particular zoning ordinances are like positive law---except that I am arguing here for identity rather than similitude; i.e., the Transect (or at least the proposition that human beings should make walkable mixed-use settlements) *is* a natural law precept, and particular zoning codes *are* positive laws.

With respect to the latter: for any particular New Urbanist town or neighborhood proposal there are typically four kinds of inter-related Transect-based legal documents that New Urbanists propose as alternatives to the current zoning ordinances that mandate sprawl. These are (in descending order of importance): a *Master Plan*, a *Regulating Plan*, an *Urban Code*, and a *Traditional Neighborhood District (TND) Ordinance*; and the most important fact to note about them is that they zone on the basis of *density* and *building type* rather than use, because Transect-based zoning presumes and permits a mix of adjacent uses, and presumes also that uses will in fact change over time. The Master Plan includes the project site plan and all of the various graphic and visual information that constitutes the design vision for the project. The Regulating Plan depicts the parcelization of the site into public and private land according to Transect zones that support the design intentions of the Master Plan. The Urban Code indicates the building types permitted on private land in the various T-zones, and governs their location on the site, their height, their off-street parking requirements, and the general range of their permitted primary and secondary uses. These three documents are all visual and---compared to conventional zoning ordinances---brief and easy to understand. The fourth document, the TND Ordinance, is a verbal document written to support the design intentions of the Master Plan, Regulating Plan and Code; and it too is comparatively short. In 2005, owing to the growing influence and popularity of New Urbanist ideas, the New Urbanist firm of Duany Plater-Zyberk and Company created and published *The Smart Code*, a Transect-based document available for adoption by municipalities as an alternative zoning code that contains much of the information previously covered in project-specific urban codes and TND ordinances.

²⁵ Andres Duany, “Introduction to the Special Issue: The Transect,” *Journal of Urban Design*, Vol.7, No.3, p. 253.

oriented that is in fact definitive of our nature.²⁶

Duany's reference to Jefferson is particularly illuminating. The Declaration of Independence refers at the outset to the separate and equal political station of a people "to which the Laws of Nature and Nature's God entitle them;" and continues with the assertion that all men are created equal and "endowed by their Creator with certain inalienable rights," including life, liberty and the pursuit of happiness. But here we must note two things in particular. The first is that although Jefferson is enumerating a list of inalienable human rights, he is careful to anchor them in an account of our divinely created status. In other words, the revolutionary implications of the idea of "inalienable [read "natural"] rights" *follow from* a traditional (if not here extensively articulated) understanding of natural law. However, it is quite clear that the rights Jefferson enumerates are *not* (even if true) "self-evident." If they were, why would it be necessary to enumerate them?²⁷ The second thing to note is the distressing turn in modern culture subsequent to Jefferson where we increasingly are confronted with assertions of "natural rights" *independent of* their grounding in natural law---an idea of rights once aptly referred to by British Utilitarian philosopher Jeremy Bentham (himself no fan of natural law) as "nonsense on stilts."

But let me return to an argument for the Urban Transect both consistent with much of the behavior of New Urbanists and that also acknowledges two contentions prominent in the Charter for the New Urbanism itself: first, that conventional post-war sprawl development is unjust; and second that conventional post-war sprawl is culturally and environmentally unsustainable. Taking these factors into account, I would propose the following definition of the Urban Transect:



The Urban Transect: T-5 / Neighborhood Center

The Urban Transect refers to that range of human habitats that support human flourishing within which human settlements are part of a sustainable (albeit not necessarily locally bio-diverse) eco-system.²⁸ These

²⁶ The famous modern difficulty of deriving evaluative judgments from descriptive accounts---that is, to describe something that *is* as something that *is good* or *is bad*---only exists because modernity denies that human beings *have* a nature. In cultures and/or sub-cultures where there is greater consensus about the purpose of being a human being, there is no more trouble commonly recognizing from empirical observation a "good" human being than sports fans have recognizing that Derek Jeter is a "good" baseball player, or that Tiger Woods is a "good" golfer.

²⁷ The same line of reasoning incidentally applies also to the moral authority of the Urban Transect as a discovered principle: it may be true, but is clearly *not* "self-evident."

²⁸ The distinction between "sustainable" and "biologically diverse" is important. Biologists and environmentalists tell us that preserving bio-diversity in the aggregate is important for preserving earth's eco-system as a whole, hence the necessity of T-1 / Natural zones as part of the larger Transect. But it seems to me that the important environmental issue with regard to making

habitats, depicted diagrammatically as Transect-zones (“T-zones”), range from less dense human settlements to more dense human settlements; but each urban T-zone denotes a walkable and mixed-use human environment wherein *within each urban T-zone* many if not most of the necessities and activities of daily life are within a five-to-ten-minute walk for persons of all ages and economic classes.

This definition of the Urban Transect owes much to a larger discussion of the Transect that has been occurring among New Urbanists for several years now. Nevertheless, while I acknowledge my debt to that discussion, the definition of and claims for the Urban Transect that I am here putting forth may or may not find wider support among New Urbanists, in part because I am trying to make more precise what some New Urbanists perhaps prefer to leave ambiguous.²⁹ But while there are surely occasions when prudential judgment warrants ambiguity rather than precision, this appears to me not to be one of them, at least insofar as current New Urbanist ambiguity about the nature of our own claims on behalf of traditional urbanism and the Transect may reflect intellectual incoherence more than justifiable strategy.

The first thing to note about my definition of the Transect therefore is its *generality*. The New Urbanist Transect diagrams I have shown above and on page 1, as well as the specific images I am including herein, are inevitably culturally specific; but the *idea* of the Transect is general and could be *represented* in a variety of cultural modes. Indeed, in this understanding, specific places in the world---each presumably reflecting a locally specific climate, within a locally specific culture and economy---relate to the Transect in a way exactly analogous to the relationship of culturally specific positive laws to the natural law.

human habitat is not that every local species be preserved (e.g., that there must be trout streams in T-6 zones; or that mosquitoes must not be harmed) but rather that the urban environment must be environmentally sustainable, in the sense that it is imperative that human habitat not disrupt or destroy the natural conditions that make human thriving itself possible.

²⁹ My positing in this essay of a normative definition of the Urban Transect in the interest of greater precision is only the most important of several thoughts about the Transect that I perhaps do not share with many if not most other New Urbanists. But if a normative definition of the Urban Transect seems to me fundamental, the points that follow may be more like issues about which thoughtful urbanists of good will simply disagree. For example: I concur with most of my New Urbanist colleagues that urban T-zones can be regarded as “locally calibrated,”---meaning that what is T-3 (“Sub-Urban”) or T-6 (“Urban Core”) in Italy or Indonesia may not be T-3 or T-6 in the United States. Nevertheless, I think that with regard to *absolute density* T-zones should be regarded as similar; and also that it is *not* necessarily the case that every human settlement must have every (or even most) of the urban T-zones within its borders. (The whole point of a T-zone is precisely that it is mixed-use and walkable, and hence potentially capable of standing on its own.) Or to take a second example: Should the Urban Transect *diagram* include Districts (which are defined as large parcels of land devoted to a single-use, e.g., hospitals, colleges, power generating plants, modern convention / exhibition facilities, etc.)? In my opinion---the conventional Transect diagram previously illustrated notwithstanding---it should not; not because single-use Districts are not to be permitted or because Districts don’t occur or because Districts are not needed, but simply because Districts are *exceptional* whereas the Urban Transect diagram is typical and normative. Or, to take a third example (with respect to what appears to be the unfortunate temptation of some New Urbanists to view the Transect as the comprehensive organizing principle of all of life): Are some rural-to-urban “transects”---e.g., rural-to-urban gradients of shoes, of hats, of building styles---better understood as manifestations of custom and tradition (i.e., as *cultural*) rather than as *natural*? That is: are some rural-to-urban gradients more analogous to positive law than natural law? In my opinion, absolutely yes---considering, for example, that there may be local manifestations of the Rural-to-Urban Transect zones in which the human occupants don’t even *have* shoes or hats....

The second thing to note is that my definition of the Transect is *normative*: it is intentionally defined not only to *include* good forms of human settlement but also to *exclude* bad forms of human settlement.³⁰ Although my normative definition of the Transect acknowledges and leaves room for a wide variety of human settlements---from the single family house of the T-3 village to the dense mixed-use blocks of T-6 London---it nevertheless does not include *every* form of human settlement; it makes distinctions. A normative definition of the Transect proposes that we really can distinguish between good and bad human settlements with respect to human flourishing and environmental sustainability. It suggests for example that large parts of late 18th century Manchester, England really were bad human settlements, for both human beings and local ecosystems. It suggests for example that large parts of contemporary Mexico City really are bad forms of human settlement that need to be reclaimed and ought not to be emulated.



The Urban Transect: T-6 / Urban Core

And then there is the question of conventional post-WWII sprawl development. Here are some of the problems commonly associated with sprawl, problems that are either direct consequences or unintended byproducts of sprawl's formal patterns of development:

- sprawl makes it impossible for people of different generations and different incomes to live in proximity to one another, and to work, shop, play, learn and worship in the same neighborhood
- sprawl effectively de-mobilizes and disenfranchises those without cars and those unable to drive, notably children (whose parents must become chauffeurs) and the elderly



Conventional Sprawl Development

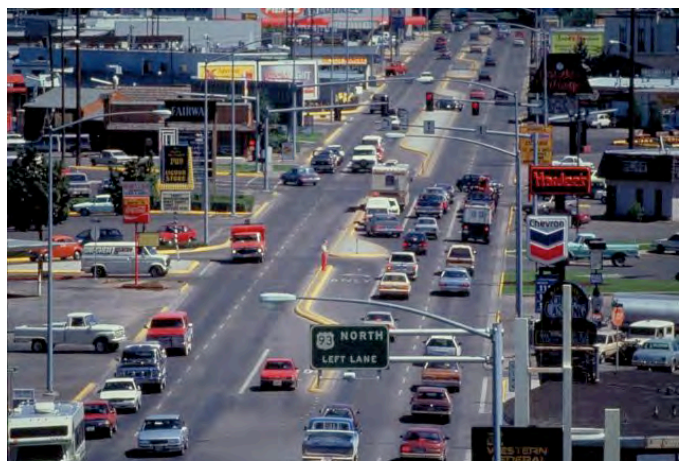
³⁰ I realize it is possible to define the Urban Transect descriptively rather than normatively, as a gradation of every conceivable human habitat; but since those of us who are New Urbanists are obviously evangelists on behalf of a normative idea of urbanism, if we don't use the Transect as an intellectual tool to help us define and promote normative urbanism, then we are going to have to find some other intellectual tool to describe and articulate our normative agenda. I would argue therefore that my proposal here to define the Transect as normative commends itself not least because a normative understanding of the Transect is so eminently *practical*.

- sprawl injures the common good by concentrating both wealth and poverty; by separating people by income, age, and race; and by failing to provide a genuinely public realm shared by all;
- because sprawl separates housing settlements by class, it promotes extreme inequality of educational opportunity;
- sprawl hastens the loss of agricultural lands and wilderness, and the settlements it creates are not worth the tradeoff;
- sprawl, by its automobile-dependent lifestyle, contributes to our currently unprecedented rates of obesity;
- sprawl is ugly, and produces nothing in the public realm worthy of aesthetic contemplation;



Sprawl Residential Thoroughfare

- although suburbia has become a cultural ideal, it is a contradictory ideal because sprawl consumes the landscape that is the very substance of its promise; and finally
- because sprawl cannot deliver on its promise of convenience, mobility, natural beauty, individual freedom and well-being for all, its self-contradictory dynamic is culturally problematic and undermines the common good. This is evidenced in part by the observation that often the persons most recently arrived at the fringes of suburbia are also the persons most vociferously opposed to its continuing extension (the political phenomenon that has come to be known as NIMBYism—“Not In My Back Yard”).



Sprawl Arterial

The conclusions I draw are that because the formal patterns of sprawl encourage unjust and environmentally unsustainable human settlements, therefore 1) sprawl development should not be emulated and perpetuated; and 2) sprawl development should not be regarded as part of the Transect.

Now, part of my claim that the New Urbanist argument on behalf of traditional urbanism is implicitly a natural law argument is simply the nature of the arguments that New Urbanists ourselves already make on behalf of urbanism: viz., that we appear to be arguing that traditional urbanism is an objective good not *simply* by virtue of its aesthetics nor *simply* by virtue of its utility, but by virtue of its promotion of both the good of individuals *and* the common good as implied in the Charter. But as I have heretofore alluded, this argument meets resistance among some New Urbanists. So what exactly are the objections I've encountered from New Urbanists to my contention that New Urbanists both do and should argue for our objectives from natural law assumptions? Essentially, there are four:

- 1) that natural law arguments are “conservative” arguments (and therefore shouldn't be associated with the Congress for New Urbanism);
- 2) that natural law arguments are used by those who oppose homosexual marriage and abortion-on-demand (and therefore shouldn't be associated with the Congress for New Urbanism);
- 3) that natural law arguments presume that human beings have a “nature” (and therefore shouldn't be associated with the Congress for New Urbanism); and
- 4) that natural law arguments imply the existence of God (and therefore shouldn't be associated with the Congress for New Urbanism).

My reply to these objections must be brief:

To the first objection I would say that although many if not most persons who hold the Aristotelian-Thomist view of natural law are indeed cultural conservatives, this does not necessarily make them political conservatives. To cite but two counter-examples: Libertarians appear to have little use either for the positive estimation within the natural law tradition of the legitimate authority of government, or for the natural law notion that the common good is something more than the sum of individual desires. And Martin Luther King, Jr.'s famous “Letter from a Birmingham Jail” is an explicit appeal to an eternal if not natural law understanding of justice. But more importantly with respect to this particular New Urbanist objection---and setting aside the interesting if unspoken assumption that political liberals have a monopoly on correct thinking about the relationship of good urbanism to the common good---it is the natural law insistence upon objective standards of justice that offers the only non-theistic intellectual justification for protecting the weaker members of society from the stronger members of society, a

concern that has traditionally been a moral cornerstone of the liberal social agenda (though whether that remains true is today a matter of debate).

To the second objection I would say first that the Congress for New Urbanism, because its primary concern is with the formal order of a common public realm, has no need to take any position at all on the issues of homosexual marriage and abortion-on-demand. That said, the more important point is that just because there is disagreement about the implications of the natural law when applied to one issue or set of issues does not mean that there cannot be consensus about the implications of the natural law for another issue or set of issues. Considering the fact that most of the arguments (good or bad) one hears *in favor* of homosexual marriage are *also* themselves implicitly natural law arguments (good or bad) from justice, the fact that there are natural law arguments against homosexual marriage clearly does not constitute a persuasive argument that *therefore* there is no such thing as the natural law.³¹

The third objection---that natural law theory presumes human beings have a nature---is a much more serious and substantive complaint, because the history of much of the modern west is premised upon the idea that there is no such thing as human nature, and that human beings are both self-made and infinitely malleable. The unfortunate consequences of that belief in the 20th century for both global politics and the human habitat seem to me plainly evident; and I infer not only from these negative witnesses but also from the positive witnesses of history, anthropology, natural law theory and traditional human habitats themselves that human beings do indeed have a nature---the existence of which does not in the least diminish the influence, significance and necessity of good culture in the attainment of human well-being.³² If the idea implied in the Charter for the New Urbanism that human beings do indeed have a nature is perhaps less well articulated in the *Charter* than it is in natural law theory, rectifying that is both an immediate and long-term objective of this essay.

Finally, the fourth objection, which in fact is related to the third---that natural law theory implies the existence of God. I agree that it does. It seems to me that if there is a natural law that is a reality and not simply a metaphor, then there is a natural law-giver that most plain people would understand to be “God”---though natural law theory in and of itself *at best* provides human beings with a much more generic view of God than that provided by any living religious tradition that is itself theological. Nevertheless, I find this last New Urbanist objection to natural law and natural law theory particularly unfortunate because recognition of the requirements of natural law *by definition* does not depend upon theological premises, even if one *may* draw theological conclusions from natural law requirements; precisely because one also *may not* draw theological conclusions from them. The objection appears to reside in a fear among some secularist New Urbanists of religious believers who bring their beliefs to bear upon law and public

³¹ I reiterate that the CNU has no need to take a corporate stance on the issues of homosexual marriage and abortion. Nevertheless, the dismissal by some New Urbanists of natural law theory otherwise *supremely* supportive of New Urbanist objectives on the grounds that much forceful intellectual opposition to abortion-on-demand is indeed founded upon natural law arguments is yet another example of how the 1973 *Roe v. Wade* decision and its aftermath continue to corrupt American political and cultural life generally, and contemporary political liberalism in particular.

³² For more on this, see the “thirteen propositions” in the conclusion below.

policy, a fear of “bringing God into civic affairs.” But (aside from the fact that in the United States both Article VI and the 1st Amendment to the Constitution guarantee the right of both believers and non-believers to bring their convictions to bear upon law and public policy; though, n.b., *not* judges) to the extent that some natural law theorists make any theological claims whatsoever on the basis of natural law, such claims are *a posteriori* conclusions drawn from observed human moral beliefs and behaviors—including the moral beliefs (cf. the *Charter*) and behaviors of New Urbanists who are atheists and agnostics as well as theists. So here I would make two points: first, the lesser point that it’s too late for New Urbanists to “keep God out of civic affairs” because for better or worse most human beings generally (and Americans in particular) have always been bringing God into civic affairs; and second, the more important point that—without any theistic arguments whatsoever, either *a priori* or *a posteriori*—New Urbanist arguments for traditional urbanism already have both the structure and the substance of natural law arguments. For some New Urbanists to deny that this is true because others—including other New Urbanists—draw theistic conclusions from natural law theory seems to me a case of cutting off the New Urbanist practical nose to spite the New Urbanist theoretical face. New Urbanists are either making objective claims for the goodness of traditional urbanism—and hence a moral imperative to make good urbanism—or we are not. If we are, this has *at the very least* realist metaphysical implications.³³ New Urbanists can hardly make a credible intellectual claim that traditional urbanism is a genuine good, but all other goods are relative.³⁴

Many of the leading architectural figures of the Congress for New Urbanism have worked hard to overcome the dogmatic modernist architectural and urban ideologies they learned in school. But although New Urbanists have begun to wean ourselves away from the ideology of modernist urbanism and to relearn the art of traditional urban design, to the extent that we still recoil from the notion of obligation—even as we evangelize others on behalf of the

³³ I myself am willing to pursue the point further, not as an article of New Urbanist faith but rather in the interest of the intellectual pursuit of truth. The modern world’s denials of human nature, natural law and God together constitute a foundational dilemma the practical effects of which manifest themselves in numerous existential, political and cultural dilemmas of modern life. The foundational dilemma can be described as something like this: If human beings have no nature, then we have no natural *telos* or purpose. And what this has meant in the modern world, where the belief that human beings have no nature is widespread, is that rather than the purpose of an individual life being to discover one’s unique vocation—literally, one’s calling from God; i.e., that work which an individual *needs to do* both for his or her own gladness and for the world’s—rather than discovering one’s own vocation (which in the modern view is an illusion) one instead makes an artifact of one’s life. One is *forced* to become an artist because one has no un-chosen obligations. Likewise, the implication of there being no natural law (and *eo ipso*, no God) is precisely that there are no un-chosen obligations; and therefore that everything—genocide, murder, chattel slavery, cloning, totalitarian politics, abortion-on-demand, sprawl—is in principle permitted, if only as an aesthetic and experiential “choice.” To be sure, I am *not* suggesting that persons who deny the existence of natural law therefore necessarily favor any or all of these aforementioned practices; rather only observing that to the extent that such persons regard any of these practices as *intrinsically* (as opposed to merely situationally) wrong, they are thereby implicitly affirming the existence of the natural law. Nor is it germane for the non-believers in natural law to point out that some *believers* in natural law have at times supported some of these activities; because the obvious inference of this criticism is that the believers, by engaging in such practices, have themselves behaved immorally, i.e., *in violation of the natural law*.

³⁴ In contending here that building in accordance with the Urban Transect—i.e., making mixed-use walkable settlements—is properly understood as a moral imperative, it is no part of my contention that individual urbanites are necessarily and inherently “more moral” than persons who live in sprawl suburbs. It *is* my contention that acquiring the virtues necessary to living a good life does require communities of propinquity, which are both more numerous and more accessible in traditional urban environments than in sprawl environments. It is therefore by these criteria that efforts to build more of the former and fewer of the latter, as cultural and institutional conditions permit, should be regarded as morally obligatory to all persons possessing right (practical) reason.

goodness of traditional urbanism---we have still not weaned ourselves from the individualist and emotivist moral sensibilities of the modern world. There remains, I fear, a modernist anthropology very near the heart of New Urbanism that I suspect is in fact incompatible with traditional urban culture and our own professed urban and cultural objectives; and the danger of this, as always, is that an incorrect understanding of human nature has detrimental consequences for the making of our cities. If we mis-understand what cities are for, we will surely make them badly.

The merit of the natural law intellectual tradition is that it allows New Urbanists to argue in good faith for why traditional urbanism is a genuine human good and why suburbia is objectively problematic. By attending to the complex inter-relationship between biology, culture, and human agency (i.e., will) with respect to individual and collective human behavior, and without denying either our social or biological natures, the natural law intellectual tradition draws us away from modernist temptations to social and/or biological determinism by its dogged insistence that character is the key to civilization, not only in terms of social justice and human happiness but also in terms of artistic production and aesthetics. It reminds us that it is a false objective to seek for what T.S. Eliot called “social arrangements so perfect that they will make us good.” And it allows us as architects and urban designers to steer ourselves away from sterile notions of the *zeitgeist* and personal “authenticity” in favor of the fecund language of craftsmanship and of moral and intellectual and artistic excellence.

Conclusion

It will be clear from the preceding that although I think there is much intellectual coherence for New Urbanism to gain by recognizing its affinities with and deepening its understanding of the natural law intellectual tradition, it is nevertheless true that the natural law tradition is grounded in a variety of intellectual assumptions that are in many ways at odds with the (often contradictory) assumptions that underlie contemporary architectural and urban theory and practice. I therefore wish to conclude by articulating a set of thirteen propositions about nature, human nature, and traditional urbanism that condense some of the main natural law arguments of this paper into a more concise form. Because the language of these propositions is terse and declarative and warrants elaboration, I hope it will be clear why I am offering them here at the end rather than at the beginning of this paper, because my intent throughout has been elaborative.

1. "Nature" includes everything that exists, except for God.
2. Nature exists independently of human beings.
3. Human beings are animals, and "human nature" is part of nature. Human beings characterize ourselves by our capacity for productive, practical and theoretical reason; hence man has traditionally understood himself as the “rational animal.” Human membership in nature and the human capacity for reason are what make it both possible and morally obligatory for human beings to be good stewards of nature.

4. The best life for individual human beings is the life of moral and intellectual excellence lived in community with others, typically in a town or city.
5. It is part of human nature to make culture, including physical culture made from found nature transformed by human efforts into cultural artifacts.
6. Human beings are by nature social, and different cultures are the historic social forms of individual and communal human aspirations for, and understandings of, the very best kind of human life.
7. The cultivated landscape, buildings, and cities in turn are the physical and spatial forms of culture.
8. Arts such as agriculture, architecture, and city making are *therefore* most precisely understood as cultural interventions in nature (and, n.b., have histories of development) that are *also* themselves in some sense natural.
9. It is in this sense that one can say that reason is the most distinctive tool with and by which man (male and female) *participates* in nature; and that art---in the broadest possible sense, the making of things, *choses*, artifacts---is "reason in making."
10. It is also this sense in which one can say that "art imitates nature," i.e., the human artist acts towards his or her desired ends in a manner analogous to the way nature acts towards her ends; and human beings do so owing to our peculiar place in nature as "rational animals."
11. Both nature and history are dynamic, and from the recognition of this dynamism two important points follow: a) that while our knowledge of both nature and history may be true, it is necessarily always incomplete; and b) that a true understanding of any particular thing or class of things must always take into account not only its or their observed characteristics, but also the good that constitutes its or their end or *telos*.
12. Traditions are artifacts, but necessarily the way human beings make sense of the world; and traditions both maintain continuity and themselves change as they are confronted with changing contingent circumstances.
13. Although unintentionally debased by the Enlightenment and its aftermath, "progress" is a perfectly good word that nevertheless must always be measured and considered as movement toward a goal; in the case of progress in human history, movement toward the achievement of our nature, our end, our *telos*.

Finally, though I have no idea how much interest there is among New Urbanists (most of whom are not theorists) in the subject matter of this essay, of equal concern to me is how these arguments---not only for natural law, but also for traditional urbanism---might be received within a variety of faith communities to whom these arguments at different times have also been directed. There is a lot that Catholics and Jews and Calvinists and Seventh-day Adventists can and should learn from New Urbanists about the merits---and especially the formal characteristics---of good towns and neighborhoods. But Catholics and Jews and Calvinists and Adventists also bring with us certain cultural resources of which New Urbanists may be in shorter supply than we realize. I am thinking in particular of the fact that such faith communities (and others as well) are already communities in which membership is not a strict function---either theoretically or “on the ground”---of age, class, or race. It will be interesting to see whether it will be easier for our ever-so-suburbanized contemporary communities of faith to learn and adopt the principles and practices of traditional urbanism, or for New Urbanists to learn and adopt the principles and practices and obligations of mixed-class, mixed-age and mixed-race communities. I myself think it will be salutary if each can learn to do both.

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