From top to bottom:
Suburban zone T-3, Skaneateles, New York
General Urban zone T-4, Skaneateles, New York
Urban Center zone T-5, Skaneateles, New York
Urban Core zone T-6, London

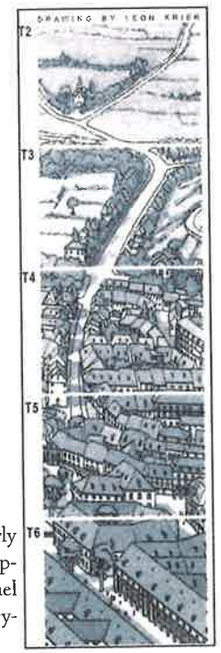
XII

The Polis and Natural Law: The Moral Authority of the Urban Transect[1]

The Rural-to-Urban Transect [Fig. 1] is a 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 biodiverse) ecosystem. These habitats, diagrammatically depicted as Transect-zones ("T-zones"), range from less dense settlements to more dense settlements; but each urban T-zone denotes a walkable and mixed-use human environment wherein 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 what follows that, given this un-

Fig. 1: The Rural-to-Urban Transect. Drawing by and courtesy of Leon Krier.



1. In the characterizations of natural law found herein I am particularly indebted to extended conversations with Jay Budziszewski, Benjamin Lipscomb, Randall Smith, Dino Marcantonio, Domiane Forte and Michael Benedikt, though I do not assume they will necessarily agree with everything that follows.

derstanding and characterization of 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 ought to be 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 acting within the Aristotelian-Thomist intellectual tradition of natural law theory.

The Moral Content and Agenda of the New Urbanism

Modern societies are pluralistic, and it is common wisdom among many architects that aesthetic and moral relativism are necessary implications of social pluralism. Part of the purpose here is to challenge the limits of this common wisdom. Specifically—the great variety of historic human settlement patterns notwithstanding—I want to ask whether and how it may be possible to defend the propositions that 1) some forms of human settlement are truly better than others in promoting human flourishing; and 2) all human settlements that succeed in promoting human flourishing share some common—and more importantly, identifiable—formal characteristics that, once understood, suggest a moral imperative to promote the creation of settlements possessing such formal characteristics.

I think it safe to say that there would be widespread assent to these two propositions among both the architects and the nonarchitects who constitute the Congress for the New Urbanism. And yet, from much discussion with fellow New Urbanists in recent years, I find that we are divided over the issue of whether there is such a thing as objective standards of morality. 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?

I find New Urbanist arguments on behalf of the goodness of traditional urban form persuasive.[2] But taking New Urbanist arguments as a single cumulative argument for traditional urban form as a genuine human good both implies and requires a larger theoretical framework, one which makes plausible claims about what is genuinely good for human beings generally. And lest the reader be tempted to dismiss this issue as a merely internal matter, of consequence only to New Urbanists, be it noted that what is at stake is precisely the New Urbanist claim that traditional urban form is a genuine good for all human beings and that post–World War II 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—indeed, this is a primary reason for the hostility toward New Urbanism that exists within the architectural academy—in what kind of theoretical context does such a claim make sense?

I contend that New Urbanist arguments on behalf of traditional urbanism both rehearse the arguments of and make the most sense in the broad intellectual and cultural context of natural law theory. But first, since I have been referring to the Congress for the New Urbanism (CNU), I would like to demonstrate how New Urbanism's founding document, *The Charter of the New Urbanism*,[3] presents itself as an appeal to reason on behalf of the common good.

2. Here I encourage the reader not to confuse New Urbanism with the easy caricatures and mischaracterizations of its critics: e.g., that New Urbanism is primarily about front porches (which is characteristic of many New Urbanist projects, but not all, and certainly in New Urbanist thinking not prerequisite for good urbanism), or primarily about traditional architectural styles (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—note well, however, 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 overlook however is that no good traditional city or town ever became so overnight—and that today nobody other than the New Urbanists is even attempting to systematically challenge the legal regime and cultural habits and mindset of post–World War II suburban sprawl development.

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

From the *Charter* I excerpt the following passages that concern themselves primarily with the relationship between urban form, long-term sustainable ecosystems that accommodate human beings, and a social order grounded in 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]
- 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. . . .[Section 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. [Section 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. [Section 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. [Section 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. [Section 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. [Section III.7]

In these eleven short paragraphs the word "should" occurs eleven times. Also occurring are the words "deserve," "require," "we stand for," "we advo-

cate," and "we are committed to." From the *Charter*, and from observing the actions of New Urbanists in the world, one can infer that New Urbanists regard traditional urbanism as a genuine human good that human beings ought to pursue. The rest of this essay concerns itself with 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 settlements—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 widespread)? Or would one be correct in regarding the promotion of traditional urbanism in opposition to sprawl as in some tangible way morally obligatory?

These are the kinds of questions to be considered in this chapter, under the rubric of natural law. Note that both the structure of the New Urbanists' founding document and their behavior 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 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. Yet this is a conclusion denied and rejected, often vehemently, by at least some New Urbanists.

Natural Law

My conversations with fellow New Urbanists have reminded me of the difficulty in an emotivist culture of achieving consensus about the meaning of natural law. Of necessity, therefore, I must begin to speak of natural law from out of a particular *tradition* of natural law thinking: in this instance the tradition that looks to Aristotle and Thomas Aquinas as intellectual touchstones for a community of inquiry that operates to this day not exclusively but most prominently in the intellectual tradition of the Catholic Church. But this tradition is not the only tradition of natural law theory. There is currently a revival of interest in natural law theory in both Protestant and Jewish circles; and there are strands of implicitly natural law thought in nonbiblical and nontheistic 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. And although its methods are empirical and rational, I must nevertheless acknowledge here a point developed persuasively and at length by Alasdair MacIntyre first in *After Virtue* and subsequently in *Whose Justice? Which Rationality?* MacIntyre argues 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 cannot be universally true, as, for example we take the claims of science to be. 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.

These caveats notwithstanding, the broad Western understanding of natural law is that there are certain foundational principles of morality that

are (according to St. Thomas Aquinas) "the same for all, both as to knowledge and to rectitude"[4]—in other words, principles of morality that are not only right for all persons but knowable to all persons by reason alone (i.e., without need for divine revelation), and also at some level known to all persons who have attained the age of reason. These foundational principles of morality, along with their first few rings of implications, are known as the natural law.

The term "natural law" implies something about both nature and law. Of the two, "nature" seems the more difficult because of its multiple meanings. We speak of nature substantively, in the sense of everything that really exists (except God and other supernatural beings); on the other hand, 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.

The term "natural law" generally is used to mean that law is natural in two or maybe 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 objective 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*—per Aristotle's "the nature of a thing is its end, for what each thing is when fully developed we call its nature." We might also speak of a third sense in which law can be natural: that such law is knowable by, authoritative for, and binding upon all human beings by virtue of the kind of beings we are by *nature*; and that while such law can be ignored or broken, we can do so only at peril to our own well-being.

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

"Law" appears easier to define. Aquinas contends 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."[5] In other words, Aquinas argues first that genuine law is rational, something that right reason 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 consider the adequacy of this definition of law, consider as a mental exercise the negative of Aquinas's definition. Most 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.[6] We would not recognize a law not both

5. *Ibid*, I-II 90, 4.

6. This common sense of the nature of law as existing for the common good is of course very different from the way contemporary legislators, jurists, and legal theorists typically think about the law. Edward Oakes, in his review of Craig Bernthal's *Trial of Man: Christianity and Judgment in the World of Shakespeare* in the June/July 2004 issue of *First Things* (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 describe traditional urbanism, the imperative to make traditional urbanism, and the deficiencies of post–World War II suburban sprawl environments in such Elizabethan terms. 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

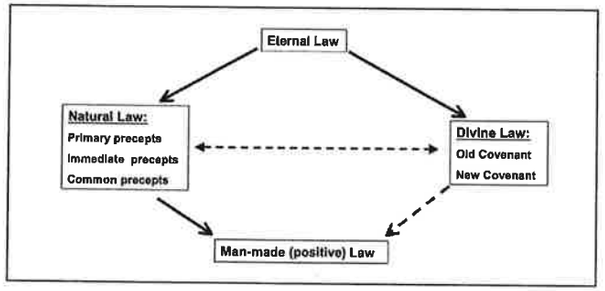


Fig. 2: Diagram of eternal and man-made law, after Thomas Aquinas. Courtesy of Jay Budziszewski.

articulated and enacted; and we would not grant status to "laws" made by individuals who have not the authority 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).

Aquinas speaks of several different kinds of law, the relations between which are diagrammed in Figure 2.[7] 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 1) the natural law, knowable through reason unaided by revelation; and 2) the divine law, known only by revelation and itself 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 some similarity and overlap between the natural

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 or 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.

7. My concern in this chapter is only with the relationship of natural law to urbanism. Aquinas, as a Christian, was concerned (as the diagram indicates) with explaining the relationship of the natural law to the revealed law of Christian scripture. But this particular issue, however interesting in itself, is neither essential nor opposed to the intellectual coherence of New Urbanism.

and divine law, but also reiterate the idea that the natural law and the divine law are not identical.

But let us consider Aquinas's distinction between positive and natural law less abstractly. Positive law is made by man: sixty m.p.h. speed limits, life-in-prison for murder, zoning laws, and so on. The natural law is made by God. More specifically, the natural law is that part of the eternal law made by God which is immediately accessible to human reason without special revelation: e.g., that we know to not murder, to not steal, to be good, and so forth. The natural law therefore is *discovered* by human beings, whereas the positive law is *made* by human beings—but positive law is made by human beings always *with reference to* the natural law. Thus, when a 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 Syndrome to be killed). Likewise, although both natural law and positive law refer to property, the natural law does so in a general way (e.g., theft is wrong), while the positive law does so in a particular way (e.g., theft of a car will get you two years in prison). 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).[8]

Most law that regulates human behavior is positive law; and positive law clearly differs not only from culture to culture, but even from city to city and town to town within the same larger culture. Nevertheless, any and all of these different positive laws can be truly legitimate so long as they are in accordance with and 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 at all times. The contrary view is that there is no natural law, but rather only positive or man-made law. But if this latter point of view is true—if laws are made only by the powerful without reference to *some* constraining notion of right that I am here characterizing as the natural law—it follows that there are no human acts that are inherently

8. I am indebted to Dino Marcantonio for the succinctness and clarity of these characterizations.

and intrinsically wrong. If there really is no natural law, everything—at least potentially and in principle—is permissible.[9]

It is important to say here a few things about what the natural law is *not*. 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 stealing is wrong; but as soon as a child is capable of understanding what is meant by "theft" and "wrong," he or she is capable of understanding that stealing in fact is wrong.[10] Natural law is not mere instinct; though it is not unrelated to certain biological realities of human beings as mammals and their implications for the practical requirements of love and child care in the context

9. A friendly critic—who I'll not identify here but who I promise does exist—objects to this formulation; and with some exasperation urges I drop it "because [it's] not true:"

> Atheists, humanists, existentialists, evolutionists, Taoists, Zoroastrians, Confucians, Buddhists and secular moralists of all kinds—utilitarians, virtue ethicists, Kantians, Pragmatists—are all capable of arguing that certain actions really are bad and wrong from every point of view, and can do so without reference to a biblically styled (or any) God. (E.g., natural law may come from . . . nature, as sociobiologists argue.) Besides which, traditional Western believers have the prevalence of evil in a God-ruled world to account for, as you well know, plus innumerable instances of God not seeming to obey his own natural/eternal law (e.g., not preventing the [deaths] of innocent human lives by the thousands a day world over. . .). Bottom line: you cannot here imply as self-evident the statement: Believe in Aquinas's God-endorsed natural law or "everything is permissible."

Setting aside the issue of theodicy—which is a genuine problem for biblical religion, but not I think for natural law theory—and noting also that the provenance of natural law is *human* behavior, I think my critic's objection proves my point. For I did not say (though I do think) "if there is no God everything is permissible." Rather, more modestly, I said "if there is no natural law everything is permissible." In response, I am advised of large numbers of nontheists who do not think everything is permissible. But it is exactly the human sense that not all things are permissible—objectively, "from every point of view"—that I am characterizing as evidence of and for the natural law. My point is not that one must believe in God in order to believe in natural law; my critic helpfully provides a whole list of persons who do not believe in God but do believe that some things are intrinsically bad and wrong. But since the notion that some things are intrinsically bad and wrong is one of the implications of natural law, my original point stands.

10. St. Paul writes that there is a moral law distinct from divinely revealed law that 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 hand 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 mathematics—is because human beings are ourselves part of the same universe we are seeking to understand, and share its basic structure.

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 Aquinas's characterization of law, it is gravity that is a law of nature by analogy to natural law, 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.

With no Mosaic pretensions, here are ten precepts about which natural law theorists as well as ordinary people everywhere more or less agree;[11] to this list I am going to propose an eleventh precept relevant to making human habitat (and, *eo ipso*, New Urbanism). The first two are commonly regarded as primary precepts of the natural law—the moral axioms upon which all other moral precepts are based.

1) Good should be pursued and evil avoided.[12]

2) Harm no one gratuitously.

From these primary precepts are derived more or less by direct inference various 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.

11. I am loath to suggest a putatively exhaustive list of natural law precepts. Both Aquinas and John Calvin contend 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 (see, e.g., *Summa Theologica*, I-II 94, 4). Thomas also offers as one of the principal justifications for a positive divine law that people reason very imperfectly in matters of natural law (*ibid.*, I-II 91, 4). And Calvin adds that "the Lord has 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" (*Institutes of the Christian Religion*, book II, ch. 8, sec. 1).

12. This first natural law precept 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 Aquinas,*ibid.*, I-II 94, 2.

7) Be trustworthy.

8) Don't steal.

9) Treat others as you yourself would wish to be treated.

The tenth precept is an example of a common precept of the natural law. More detailed than an 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 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 twentieth-century, in response to the rise of the totalitarian state:

> 10) Observe and obey the law of subsidiarity (viz., that—in the words of Pius XI's 1931 encyclical *Quadragesimo Anno*—it is wrong "to assign to a greater and higher association what lesser and subordinate associations can do"; i.e., larger institutions should not attempt to do what smaller ones do just as well).

We remain some distance from a more detailed discussion of the Urban Transect. Nevertheless, insofar as the Urban Transect may be regarded not simply as a tool but also as a discovery, the historic specificity of its discovery and articulation is similar to the historic specificity of the discovery and articulation of the principle of subsidiarity, inasmuch as prior to the rise of sprawl the Urban Transect was likewise not in need of articulation. So here is an eleventh natural law precept, a new one describing something real but heretofore understood only implicitly. It is best thought of as a common natural law precept because it is not inferred directly from the primary precepts of the natural law, and because it requires arguments of the kind I am here offering—not least an argument about the Urban Transect—in order to recognize it as a natural law precept.

11) Human beings should make mixed-use, walkable settlements.

Before I go into greater detail about why this eleventh precept should be considered a natural law precept, I must say just a bit 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 therefore that of the several natural law precepts proposed, some are formulated as positive admonitions and some as prohibitions. Alasdair MacIntyre has pointed out that most of us in the modern West have been taught either formally or informally to believe that moral behavior is primarily a matter of following rules. But this is not at all the meaning of moral behavior in the natural law tradition, which rather focuses upon the moral life as the development of good character habits, historically characterized as virtues or excellences.

It is impossible to overemphasize this point. To the list of natural law precepts I have cited one could easily add any number of positive admonitions: be courageous; be temperate; make good judgments; be magnanimous; be a friend; be steadfast; be faithful; be hopeful; love your neighbor. Moral behavior does entail prohibitions—against killing or harming the innocent, against theft, against bearing false witness—because certain acts are intrinsically destructive of those human communities necessary for individuals to discover and realize our good. Nevertheless, although obeying natural law prohibitions is obligatory, in the Aristotelian-Thomist intellectual tradition such rules are unquestionably secondary to 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 in a polis. Likewise, though Aquinas develops a detailed theory of natural law in the *Summa*, his so-called *Treatise on Law* therein follows immediately *after* the *Treatise on Habits*—follows, that is, St. Thomas's detailed theory of the primacy of place in the moral life of virtues rather than rules.

Success in the moral life therefore entails not simply following rules but even more importantly developing the habits of moral and intellectual excellence that enable us to live well both as individuals and as members of communities. Similarly, though it is necessary for urban designers, architects, builders, and patrons to obey the natural law precept to make walkable, mixed-use

human settlements, this necessary obedience is not even close to being a sufficient condition for making good towns, neighborhoods and cities. What is needed above all for making good urbanism is rather the productive reason and ability of artists (i.e., urban designers, architects, engineers and builders), whose art 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.

To engage in the making of something is to exercise "productive reason;" indeed, Aquinas's very definition of art is "reason-in-making." In the Aristotelian-Thomist tradition the practices of architecture, urban design, or any other art at their highest levels have always been regarded as 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 productive reason of the artist. Discussion of the moral virtues on the other hand occurs under the rubric of "practical reason." Moral virtues are, collectively, the good character habits that enable human beings to negotiate our way successfully in the world; but whereas justice is the individual and corporate bond of human beings in political society, the foremost of the cardinal ("secular") virtues is prudence: the habit of making good judgments, especially in situations where virtues may be in conflict.

Thus, when architect, principal of Duany Plater-Zyberk & Company (DPZ), and CNU co-founder Andres Duany says publicly, as he often does for rhetorical purposes, that New Urbanists both are and should be more interested in being practical than in being virtuous, he seems to be making a category mistake. The substance of Duany's argument may be summarized in the following variation of a familiar aphorism: prudential judgment requires that New Urbanists not allow the perfect to be the enemy of the good. Now there is nothing self-evidently wrong about this argument.[13] Duany's error is

13. At times of course 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 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, in part because he has been provided the opportunity to design prominent buildings in the context of DPZ-designed traditional town plans. But ethically speaking, both Krier's strict position and Duany's more flexible posture can be defended as moral behaviors insofar as they represent exercises of prudential judgment: each is a penultimate and strategic position adopted in the service of the *telos* of good urbanism. My own sense, unavoidably informed by my own Catholic (and 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 both that the vocational end being sought is a genuine good and that the means employed in its pursuit is not in violation of the natural law.

rather his apparent belief that in making pragmatic decisions he and we are acting outside the arena of morality, i.e., are not being "virtuous." This may be because Duany is failing to see prudential judgment as a virtue, or possibly because he is thinking of morality only in terms of rules.[14] Regardless, what makes prudence a virtue in the Aristotelian-Thomist tradition is precisely the necessity of good judgment not so much to decide between good and bad (such choices for most of us are relatively easy to determine, if not always so easy to act upon), but rather especially because good judgment is necessary to choose between conflicting goods in which *no rule or set of rules can guarantee definitively the moral correctness of one's choice.* Indeed, if we think of some popular films from the last twenty years or so—*Witness* or *The Fugitive* or *Babette's Feast*—what makes them dramatically compelling is less the conflict between good and evil found therein (although 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 whose son 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 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 be made.[15]

14. Another possibility is that Duany is quite aware that prudence is both practical and a virtue, but simply appealing to the vestigial transgressive fantasies and emotivist sensibilities of his audience.

15. In a religious framework these tragic choices are redeemed, making the dramatic narrative in fact inherently comic—as *Babette's Feast* exhibits explicitly.

The Transect and Natural Law

The Congress for the 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 ideas increasingly employed by New Urbanists is called the Transect, put forth by New Urbanists not only as a tool and intellectual construct but also by some as a discovery and articulation of a general principle of both land use and historic human settlement.

Though several Transect diagrams exist (some of which are illustrated in various editions of DPZ's *SmartCode*) and many depictions are possible, the most common New Urbanist diagram of the Transect [Fig. 3] depicts six distinct Transect Zones (T-1 through T-6). Zones T-1 and T-2 refer to *Rural Transect* zones, but only in the most general way, insofar as such zones are considered with respect to the development of human habitat, with T-1 defined as uncultivated wilderness ("Natural") and T-2 as cultivated landscape ("Rural"). The *Urban Transect*—essentially, where human beings make settlements larger than the family—is described by zones T-3 through T-6 [Figs. 4–7], which together with zones T-1 and T-2 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 locally particular zoning codes. 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. The Transect (or rather, the proposition that human beings should make walkable, mixed-use settlements) *is* a natural law precept, and particular Transect-based zoning codes that promote walkable, mixed-use settlements *are* positive laws.

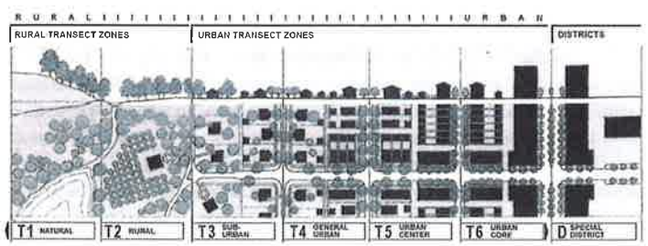


Fig. 3: The Rural-to-Urban Transect, with unofficial modified T-3 zone by Andrew von Maur. Courtesy of Duany Plater-Zyberk & Company and Andrew von Maur.

Fig. 4 (top): The Urban Transect: T-3 / Sub-Urban (Skaneateles, New York).
Fig. 5: The Urban Transect: T-4 / General Urban (Skaneateles, New York).

Duany himself 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." He likens natural law to Thomas Jefferson's references in the *Declaration of Independence* to "self-evident truths."[16] Duany's dictionary formulation of natural law seems to me almost but not quite right, 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 problem with the 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 oriented that in fact defines our nature.[17]

16. Andres Duany, "Introduction to the Special Issue: The Transect," *Journal of Urban Design*, 7, no.3 (2002), 253. Duany's dictionary source is uncited, but his own gloss on the idea of the Transect as a natural law is worth quoting:

> The Transect . . . can be observed anywhere and everywhere. [It] emerged organically in human settlement, preceding any conceptual formulation. That it is timeless and crosscultural can be easily observed by walking from the center to the outskirts of Pompeii. It is illustrated in Chinese scrolls and assumed by the Spanish Laws of the Indies. It is still inhabited in thousands of towns and cities in the United States. The Transect as a natural law may be immanent, but its suppression by modernist transportation and zoning has catalysed the current need to re-present it as a viable alternative theory.

17. The famous modern difficulty of deriving evaluative judgments from descriptive accounts—

Fig. 6: The Urban Transect: T-5 / Urban Center (Skaneateles, New York).
Fig. 7: The Urban Transect: T-6 / Urban Core (London).

Viewed in the light of New Urbanist efforts to recreate traditional urbanism in a modern legal, political, and cultural context, Duany's reference to Jefferson is particularly poignant. 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 it 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. Here we must note two things. 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, for Jefferson and his colleagues the revolutionary implications of the idea of "inalienable [read "natural"] rights" *follow from* a traditional (if not in the *Declaration* extensively articulated) understanding of natural law. The second thing to note is the turn in modern culture subsequent to Jefferson, where increasingly we are confronted with assertions of natural rights (today more commonly characterized as "human rights") *independent of* their grounding in natural law. Thus, there is no shortage today of persons appealing for recognition of their human rights. But what collection of intellectuals today—except for some religious intellectuals and (maybe) evolutionary psychologists—would or could in good intellectual faith write of "inalienable rights" and ground them in "the Laws of Nature"[18] (let alone "Nature's God")?[19] To so argue today would be (and is) perceived as a mark of cultural conservatism, not a dangerous political stance

that is, to describe something that is as something that *is good* or *is bad*—only exists to the extent that moderns deny that human beings have a nature. In cultures and/or subcultures 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 modern sports fans have recognizing that Derek Jeter is a "good" baseball player or that Tiger Woods is a "good" golfer.

18. There are arguments from contemporary sociobiologists and evolutionary psychologists that purport to demonstrate that sociability and cooperation are "hard-wired" into the human brain as an evolutionary survival mechanism—a materialist hypothesis that to me seems merely to corroborate the Aristotelian observation that "Man is by nature a social/political animal." Thus, we are to understand from the evolutionary psychologists that human beings have evolved "instincts" that dispose us to act in ways that premoderns would have characterized as virtuous, and that these instincts rather than some notion of natural law are or should be the natural foundation for morality and the positive legal codification of rights. The problem here is not the idea that morality, laws, and rights are properly grounded in our biological nature, or even the idea that our instincts (affected also by culture) have "evolved." The problem is rather that human beings cannot ground morality, laws, and rights in our instincts alone, because we in fact have warring instincts. By what instinctual criteria therefore do we determine which of our instincts to follow? Why *ought* I to be cooperative today when I am actually *feeling* more aggressive? I'm not sure what answer the sociobiologists can give in defense of cooperation (or even aggression)—or counsel about the same in any particular existential circumstance—other than in terms of some argument either about what is "really good" for me or in terms of what is "the right thing" to do. But "really good" and "the right thing" are themselves natural law categories that reflect a teleological view of human nature. And even though the moral force of doing the right thing that is really good for me is indeed grounded in human biology, it necessarily transcends any materialist assumption that the universe is nothing more than matter-in-motion and lacking a teleological structure. Nietzsche provided a different and more lucid argument on behalf of an ethic grounded solely in a materialist view of nature and instinct. But his conclusions about the primacy of the will-to-power were quite the opposite of (and to me more plausible than) the conclusions of the evolutionary psychologists, who take as a premise the goodness of the behaviors they wish to justify in strictly materialist terms. This is not to say that the evolutionary psychologists are wrong about either the goodness of the virtues or their grounding in human biology, only that Nietzsche better understood the moral and social implications of the materialist metaphysic.

19. This reticence of modern intellectuals suggests of course that the "self-evident truths" presumed by the signers of the *Declaration* are perhaps not so self-evident. But as Hadley Arkes has written: "[T]he founders never meant 'evident' to every 'self' who happened down the street. As Aquinas pointed out, 'it [is] true for all that the three angles of a triangle are together equal to two right angles, although it is not known to all.' A self-evident truth was something that could be grasped as true *per se nota*, as something true in itself, with the force of an axiom. When it came to 'all men are created equal,' it was a matter of grasping, with Aristotle, the distinctions that ran between humans and other animals. Even in this age of 'animal liberation' the partisans of animal rights still do not sign labor contracts with their horses and cows. Nor do they seek the informed consent of their household pets before they authorize surgery on them. But we continue to think that beings who can understand reasons over matters of right and wrong deserve to be ruled with the rendering of reasons, in a regime that elicits their consent." (Hadley Arkes, "The Rights and Wrongs of Alan Dershowitz," the *Claremont Review of Books*, 5, no. 4, Fall 2005.) A similar line of reasoning, by the way, may be pertinent to the moral authority of the Urban Transect as a discovered principle: It may be true for all that human beings should make walkable, mixed-use settlements, though it is not known to all.

in a truly free society but unquestionably anathema in the secular academy and among the elites of modern high culture. Most human rights advocacy today is typically an appeal that some right be enshrined (or is already implicit) in positive law. But the authority of positive law itself—which has historically been grounded in natural law, and certainly was so at the time of the *Declaration*—is virtually nowhere articulated, but rather assumed as *sui generis*. Alas, this assumption represents a widespread cultural habit of mind that shrinks from the fact that rights created solely by positive law can likewise be invalidated solely by positive law—the very meaning of "alienable."[20] But even the *Declaration* itself originates at a moment in time where the understanding of "rights" and "laws" in Western political philosophy, insofar as they increasingly were premised upon various social contract theories of human society, were being rebuilt upon faulty foundational misunderstandings of nature and human nature.[21]

20. This exact point is made succinctly by Edward Oakes, S.J., in his review of Rabbi David Novak's *Natural Law in Judaism* ("Nature as Law and Gift," *First Things* 93 (May 1999), 44–51):

> [N]atural law . . . provides the only possible long-term grounding for human rights [because] only a theory of natural law can rescue the campaign for human rights from being anything more than disguised power politics or cultural imperialism. The idea of human rights has usually assumed that these rights can simply be posited without the enunciation of any ontology underlying them, that they create themselves as it were. . . . But unlike the idea of human rights, [the concept of natural law] does not claim to be self-constituting. By its real assertion of nature, it indicates that it is rooted in an order that transcends any immanent society. Here is where it parts company with [modern] liberalism....

21. Again Oakes, *ibid*:

> [T]he modern problem really lies in the fact that so many Enlightenment thinkers relied on a concept of "natural" that was anything but a reflection of human nature as it actually exists. . . . [T]oo much of natural law theory, especially that derived from those thinkers from Grotius on who transposed natural law into natural rights (which after the French Revolution usually became known as "human rights"), relies on a concept of nature that is not natural. Vast swaths of political theory stemming from the Enlightenment speak of human beings as presocial monads whose sociality stems from a subsequent decision to join a group from a prior isolation. . . . This notion . . . is called the theory of "the social contract." Unfortunately for its advocates and despite its vast influence, it is a total fiction, a complete distortion of the nature of the social life of humans. The absence of any historically authentic social contract in the life of primitive man makes all political theories founded on this airy cloud equally fictional. Most people today categorize political divisions into the binary categories of liberal and conservative. . . . A much more central dichotomy in modern politics, however, is rooted in those who accept the fiction of a social contract and those who see it for the fiction that it is.
>
> [The] view . . . that accepts the social contract theory leads to a hyper-individualism. . . . The position that recognizes the social contract as a fiction, however, sees community as the locus for individual meaning. . . . [H]ere is where an authentic theory of natural law proves to be indispensable . . . but only when the social contract theory is abandoned, a task that [quoting David Novak] "requires radical criticism of the key political idea of the Enlightenment . . . that human beings can construct their own primary society autonomously. . . ." Once it is recognized that the notion of a social contract is a fiction and that human sociality is an essential component of human nature, it then becomes immediately clear that community takes priority, not over the individual as such...but over society. . . . [A]ll contractual relationships are first founded on a prior community of kinship relations, which themselves are founded on ineluctable biological realities of mammalian life: mother/child, begetter/conceiver, infant/adult, and so forth. Human sociality is entirely an outgrowth and expression of these unavoidable relationships, which are no more "agreed upon" by some hypothetical caucus of *Australopithecenes* than is human existence itself. No one chooses to be born, or to be born male or female, etc., nor does anyone in primitive communities choose the role of hunter, gatherer, and so on. Even later social identities of status—king, shaman, crone, warrior, matriarch, seer—are grounded in these more fundamental mammalian relations and not in some fictitious contract or verbal agreement. In other words . . . the individual always comes from society (in the wider sense), not to it.

But let us consider a Transect theory argument consistent with the way that New Urbanists actually *use* the Transect that also acknowledges two prominent contentions implicit in the *Charter for the New Urbanism* itself, previously cited: 1) that conventional postwar sprawl development is unjust; and 2) that conventional postwar sprawl is culturally and environmentally unsustainable. Taking these factors into account, I offer the following definition of the Urban Transect:

> The Urban Transect refers to that range of human habitats that support human flourishing, within which human settlements are part of a sustainable ecosystem.[22] These habitats, depicted diagrammatically

22. A distinction between "sustainable" and "biologically diverse" ecosystems is important. Biologists and environmentalists tell us that preserving biodiversity in the aggregate is important for preserving the earth's ecosystem as a whole. Hence the practical necessity of T-1/Natural zones as part of the larger Transect, in addition to the aesthetic imperatives to preserve wilderness that together help shape our common and proper human understanding of the obligation of environmental stewardship. But it seems to me that the important environmental issue with regard to making *human* habitat is not that every local species of flora and fauna 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 immediate environmental conditions that make human flourishing itself possible—literally and metaphorically, that human beings must not spoil our own air, soil and water.

> as Transect-zones ("T-zones"), range from less dense settlements to more dense 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.[23] 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

23. 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 other New Urbanist Transect theorists. But if a normative definition of the Urban Transect seems to me fundamental (see note 24 below), 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 one (or even most) of the urban T-zones within its borders. (The whole point of a T-zone is precisely that it is walkable and allows a mix of uses, and hence is 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 here 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 Transect diagram is typical and normative. Or, to take a third example, with respect to what appears to be the 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 not merely of human habitat but of human artifacts such as shoes, hats, 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.

our own claims on behalf of traditional urbanism and the Transect may reflect intellectual confusion more than justifiable strategy.

The first thing to note about this definition of the Transect therefore is its *generality*. The New Urbanist Transect diagrams I have shown here (i.e., Figs. 1 and 3), as well as the specific examples of T-zones, 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 towns and cities 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.

The second thing to note is that this 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.[24] Although this definition of the Transect acknowledges and leaves room for a wide variety of human settlements—from the single family house of the village T-3 to the dense mixed-use blocks of London T-6—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-eighteenth-century Manchester, England—where human life expectancy was about one-half what it was in the adjacent countryside—really were bad human settlements, for both human beings and local eco-systems; 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; that the post–World War II sprawl developments of, in, and around the historic lowlands of New Orleans really are bad human settlements with respect to the long-term flourishing of local communities.

24. It is possible to define the Urban Transect descriptively rather than normatively, as a gradation of every conceivable human habitat. However, since we 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 identify 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.

Fig. 8: Conventional sprawl development: not part of the Urban Transect.

The recent tragedy of New Orleans in particular raises larger general questions about conventional postwar sprawl development [Figs. 8–10]. Following are some of the problems commonly associated with sprawl, problems that are either direct consequences or unintended byproducts of sprawl's physical patterns of development:

- sprawl systematically separates different human activities from each other and makes them accessible only by car, which makes it impossible for people to both live and work, shop, play, learn, or worship within the context of a walkable neighborhood;
- sprawl effectively demobilizes and disenfranchises persons without cars and those unable to drive, notably children (whose parents must become chauffeurs) and the elderly;
- 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;

Fig. 9: Sprawl residential thoroughfare. Courtesy of Kevin Klinkenberg.

Fig. 10: Sprawl arterial. Courtesy of Laurence Aurbach.

- 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 mono-cultural single-use unwalkable settlements it creates are not worth the tradeoff;
- sprawl, by its automobile-dependent lifestyle, both increases air pollution and discourages national energy self-sufficiency in a period of global political conflict;
- sprawl, by its automobile-dependent lifestyle, contributes to North America's currently unprecedented rates of obesity;
- sprawl is ugly, and produces nothing in the public realm worthy of civic and aesthetic contemplation;
- 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,
- sprawl is culturally problematic and undermines the common good because its dynamic is self-contradictory. Sprawl is unable to deliver on its promise of convenience, mobility, natural beauty, individual freedom, and well-being for all. Hence the phenomenon that often the persons most recently arrived at the fringes of suburbia are also the persons most vociferously opposed to its continuing extension (NIMBYism).

The inference to draw is that because the formal patterns of sprawl encourage unjust, ugly, and socially 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.

I am contending here that the arguments New Urbanists already make on behalf of traditional urbanism cumulatively (if only implicitly) constitute a natural law argument: viz., 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 these goods are implied in the *Charter*. But as I have alluded, this contention meets resistance among some—by no means all—New Urbanists, mostly colleagues active on one or several New Urbanist–related listserv discussion groups. So what exactly are the objections I encounter to my contention that New Urbanists both do and should argue for our urban 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 the New Urbanism);

2) that natural law arguments are used by those who oppose homosexual marriage and legalized abortion (and therefore shouldn't be associated with the Congress for the New Urbanism);

3) that natural law arguments presume that human beings have a "nature" (and therefore shouldn't be associated with the Congress for the New Urbanism); and

4) that natural law arguments imply the existence of God (and therefore shouldn't be associated with the Congress for the New Urbanism).

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 (which

is what I take to be the underlying concern). Like New Urbanism itself, both support for and criticism of natural law theory come from across the contemporary political spectrum. "Conservative" libertarians, for example, 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—including the idea of a public realm—is something more than the sum of individual desires. Likewise, Martin Luther King Jr.'s *Letter from a Birmingham Jail*, a foundational document of the "liberal" 1960s civil rights movement, is an explicit appeal for political rights grounded in a natural law understanding of justice. Again, prior to the Supreme Court's *Roe v. Wade* decision of 1973 and the contemporary Democratic Party's enthusiastic embrace of that decision and its implications, Catholics voted overwhelmingly Democratic; and about half of them still do today. 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.

To the second objection I would say first that because its *raison d'etre* is the formal order of a common public realm, it would be imprudent for the Congress for the New Urbanism to take any official or collective position at all on the issues of homosexual marriage and legalized abortion. 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, for example, the fact that most of the arguments one hears in favor of homosexual marriage are also themselves either implicitly natural law arguments (well-conceived or badly) from justice or about "human [read "natural"] rights," 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 natural law and that it is irrelevant to making human settlements.

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 for both global and domestic politics and human habitat in the twentieth century are evident. From these negative witnesses as well as positive witnesses from history, anthropology, natural law theory, biology, and traditional human habitats themselves, it is not unreasonable to infer 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 for human flourishing. If the idea implicit in *The Charter of the New Urbanism* that human beings have a nature is less clearly articulated in the *Charter* than in natural law theory, drawing out that implication from the *Charter* is both an immediate and long-term objective of my argument.

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. Nevertheless, this last New Urbanist objection to natural law and natural law theory is particularly problematic 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 therefore to reside in a fear among some (by no means all) New Urbanists of religious believers who bring their beliefs to bear upon law and public policy, a fear of "bringing God into civic affairs." But to the extent that 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, possibly, 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—may 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.[25] New Urbanists can hardly make a credible intellectual claim that traditional urbanism is a genuine good, but all other goods are relative.[26]

25. I'm willing to pursue this point further here, not as an article of New Urbanist faith but simply in the interest 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. 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 the purpose of an individual life is not 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, it is to make an artifact of one's life. More precisely, one is forced to become the artisan of one's own life because one has no un-chosen obligations. The implication of there being no natural law (and therefore no God) is that there are no un-chosen obligations; and therefore, as I've suggested earlier, everything—genocide, murder, chattel slavery, cloning, totalitarian politics, abortion, sprawl—is in principle permitted, if only as an aesthetic and experiential "choice." To be clear, I am not suggesting that persons who deny the existence of natural law therefore favor any or all of these aforementioned practices. I am 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. For the obvious implication of this criticism is that the believers, by engaging in such practices, have themselves behaved immorally, i.e., in violation of the natural law.

26. 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 (including New Urbanists) 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 generally 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.

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 architecture 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 goodness of traditional urbanism—we have still not weaned ourselves from the individualist and emotivist moral sensibilities of the modern world. There remains a modernist anthropology very near the heart of New Urbanism that I suspect is in fact incompatible with traditional urban culture and New Urbanism's own professed urban and cultural objectives. 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 misunderstand human nature, we will surely not make good cities.

For New Urbanists, the merit of the natural law intellectual tradition is that it allows us 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 interrelationship between biology, culture, and human agency 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 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 "systems so perfect that no one will need to be 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.

The ideas in this essay were rehearsed in numerous exchanges with various members of the Congress for New Urbanism; in a seminar at Calvin College in the summer of 2003; and in lectures at Andrews University, the University of Notre Dame, and Calvin College in the spring of 2004.

XIII

New Urbanism and Politics: A Conservative Case for Urbanism

Is "urbanism" a partisan concept? More specifically, is urbanism a liberal partisan concept? In this chapter I want to argue that urbanism *is* a partisan concept, and that urbanism as a good way of life needs to be vigorously defended and advanced in the modern world. But I also want to maintain that such a commitment to urbanism need not, should not, and does not break down along either liberal-conservative, political party or geo-demographic lines. So herewith my own brief conservative defense of urbanism.

Political conservatism as a morally and intellectually serious idea refers to a temperament or disposition to value, preserve, and transmit what is good. This is to be distinguished immediately from valuing things simply because they are old, and from the notion that to be a conservative means to oppose change. The conservative disposition inherently entails not opposition to change, but rather caution about and a suspicion of change—usually because political conservatives (having by nature an interest in history) recognize that political action always carries with it unanticipated consequences, and that these are usually for the worse. This does not mean, however, that conservatives don't act; it just means that, comparatively, they must be really riled up before they do, which of course is arguably the story of American politics over the last forty years.

My conservative argument for urbanism is the same argument I have shared in many public and academic settings over the past twenty years. It