

## CHAPTER 9

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# REASON AND NATURAL LAW

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THE centre of theological ethics is God—the ‘ineffable one’, ‘the nameless one’, and ‘holy mystery’, who remains always incomprehensible to human reason (see Rahner 1985: 46–7, 65–6). The conclusions reached through exercising the powers of human intelligence will therefore have a secondary significance to the kind of knowledge communicated in revelation and experienced in faith. The God of Christian theological ethics, the concern of this essay, is revealed as Creator and Redeemer. Faith in this God leads one to affirm that an ordering wisdom lies behind both the inherent *logos* of the natural world and the explicit revelation communicated in Scripture and the Christian tradition.

Scripture, the written record of God’s self-communication to humanity, is the single most important source for theological ethics. Yet, since theology is generated by faith seeking understanding, theological ethics employs the various cognitive capacities that we group together under the term ‘reason’. Scholars of course differ, sometimes vehemently, over what ‘reason’ means, how it functions, and what role it ought to play within theological ethics (see Gustafson 1978).

The doctrine of ‘natural law’ constitutes a particular subset of the larger question of the place of reason and philosophy in theological ethics. Its adherents tend to be Roman Catholic, but not always so. Its meaning is anything but unproblematic and obvious. In spite of having been subject to wave after wave of criticism in the history of philosophy and theology, natural law continues to appeal to those who believe that ethics must be grounded in being and the moral life based on what is

good for human beings. Periodic disclosures of human wickedness and horrors—lynchings, secret police abductions, or death squad assassinations—reawaken our sense of the importance of objective moral standards to which evil-doers can be held accountable. Reminders of human goodness inspire gratitude for positive moral capacities bestowed on us by the Creator and elicited by grace.

Theological ethics is drawn to natural law for two fundamental reasons. First, it advances a form of moral realism which affirms that moral standards are based in reality, and in this sense ‘objective’, rather than manufactured by human decisions. Second, some ethicists are attracted to natural law for its universal scope and its claim to apply to all human beings—rich as well as poor, conqueror as well as conquered, men as well as women.

Yet the ancient and medieval contexts from which natural law doctrine emerged are now long gone. It is thus helpful to keep in mind that concepts taken out of context can generate misunderstanding and confusion unless explicated with care and interpreted in ways that make sense to new audiences. Consider the meaning of ‘natural’. When the ancients understood the good life to be ‘according to nature’, they meant according to what is best, most noble, or most excellent in human nature. Moderns, on the other hand, understand ‘nature’ according to the methodology of the natural sciences as what occurs with some frequency under natural conditions. Classical philosophy and modern science refer to ‘nature’ in entirely different senses, but references to both continue to shape contemporary moral discourse. Even to understand what is meant by ‘natural law’ presents a significant challenge for us.

This essay begins with a brief discussion of the historical origins of the notion of natural law and its medieval development, then proceeds to examine its modern transformations, more recent theoretical developments, and contemporary challenges. Since not every aspect of such a complex topic can be examined adequately in an essay-length treatment, this essay will focus on how ‘nature’ functions normatively within natural law ethics.

## ORIGINS

The ancient precursors to natural law appealed to nature (*physis*) as morally prior to social convention and positive law (*nomos*). Plato’s *Gorgias* argued against Callicles’ understanding of natural justice as the ‘law of nature’ by which the strong rule the weak (Plato 1961a: 483E). The *Republic* examined the ‘natural justice’ that exists in the properly ordered soul and city-state (Plato 1961b). Aristotle distinguished actions that are ‘legally just’ from those that are ‘naturally just’ (Aristotle

1941a: 1134<sup>b</sup>18). Cicero's *De Re Publica* (1929: 3. 22) first advanced the explicit claim that the 'natural law' provides universal moral principles obliging not only Roman citizens but all human beings. He opposed the claim of what later came to be called 'moral positivism', according to which binding moral claims are not discovered in human nature but rather are 'posited' by the will of some authority. Outside such a will, positivism holds, there is no binding moral standard.

Though the early Church and the Patristic age reflected on the virtues, the moral law, and natural justice, the first high tide of natural law reflection came with Thomas Aquinas. He understood natural law in the context of a more encompassing theological framework that assimilated Aristotelian and Neoplatonic metaphysics to Christian doctrine. Thomas appropriated Aristotle's definition of 'nature' as an intrinsic principle of movement and rest (see Aristotle 1941b: 192<sup>b</sup>14 ff.; Aquinas 1948: I, 29, 1 ad 4; all subsequent references to the work of Thomas are also to the *Summa Theologiae*; citations specify volume, question, and article). In this philosophy, a being's 'nature' is what it is when fully developed. A being's *telos*, or end, then, reveals its nature, both how it characteristically acts and how it is characteristically acted upon. In Thomistic cosmology, the Creator governs the world by arranging the parts in proper relation to the whole cosmos and by providing individual beings with natures proper to their own actions. Just as grace perfects, and does not destroy, nature, so the cardinal virtues are perfected by the theological virtues. The virtues lead to 'beatitude', or complete flourishing.

As 'rational animals', human beings must freely choose and intelligently pursue their end. Morality provides a path to true and perfect happiness, experienced partially in this life and completely in the next. 'Flourishing' functions as the justification for virtues and moral standards rather than as the intentional and direct goal of every act. The agent asks herself, 'What is the right thing to do?' or 'What would a good person do in this situation?' rather than 'Which of these actions will most contribute to my flourishing?' (let alone, 'Which of these options will make me happier?').

Of all animals, human beings alone possess intellect. Thomas followed Aristotle in distinguishing between the speculative intellect, which considers truth for its own sake, and the practical intellect, which seeks to understand in order to act appropriately. Both forms of intellectual activity move from premisses to conclusions. Practical reasoning begins from fundamental premisses known by the intellect to be true and grasped by the natural disposition that Thomas called 'synderesis'. The properly functioning human mind recognizes without effort that every agent acts for an end, and that 'the good is what all things seek after' (Aquinas 1948: I-II, 94, 2). From this principle flows the first precept: do good and avoid evil. Every specific moral decision ought to accord with this first principle of practical reason.

Practical reasoning directs human action in two ways: general and particular. Reason applies general knowledge of moral principles to particular cases in light of

specific knowledge of their details. The virtue of prudence, or practical wisdom, habitually leads the moral agent who possesses it to act in a 'fitting' manner (Aquinas 1948: I-II, 57, 2, 5). Moral reasoning can go astray either through ignorance of the particulars of a case or by ignorance of the general moral principle (or principles) relevant to it (Aquinas 1948: I-II, 76, 1).

The process of moral reasoning results in an act of conscience, a particular judgement to act or refrain from acting. Good judgements are based on proper understanding and lead to reasonable decisions. Reason is competent to control, and proper control is exercised in light of reason shaped by the right purposes (Aquinas 1948: I-II, 18, 9). Being directed to an appropriate end, of course, is not simply a matter of reasoning about it. Appetites must be well disposed to their proper end through the 'habits' of the moral virtues—not only prudence, but also justice, temperance, and fortitude. If they are not disposed to their proper end—if 'right reason' is not complemented by 'right desire'—then moral reasoning itself will be derailed (Aquinas 1948: II-II, 47, 4). Natural law is thus 'rational' but not 'rationalist'.

Thomas's understanding of 'nature' and 'reason' converged in his account of law. Thomas understood 'law' as an ordinance of reason, ordered to the common good, made by one who has care for a community, and communicated publicly (Aquinas 1948: I-II, 90, 4). 'Law' governs in analogous ways the created world ('eternal law'), human behaviour ('natural law'), particular human political communities ('temporal law' or 'positive law'), and the Christian life ('divine law'). The human person is made in the 'image of God' and endowed with free choice. Since each person has the capacity to choose to accept (or to reject) the moral principles of the eternal law, Thomas defined natural law as 'the rational creature's participation in the eternal law' (Aquinas 1948: I-II, 91, 2). ('Natural' for Thomas did not mean 'automatic' or 'mechanistic'.) This participation is both reasonable and natural: each person must use his or her reason to discover what accords with 'right reason' in any particular situation, and 'right reason' always conforms to the order inscribed by the Creator in nature.

Practical reason proceeds from indemonstrable or self-evident principles. The most fundamental obligation, as we have seen, is to 'do good and avoid evil'. The principles of the natural law take as their 'matter' natural inclinations: the inclination for existence common to all beings, the generic inclinations to reproduction and sexual relations shared by all animals, and the specifically human inclinations to political life, truth seeking, and spirituality held in common by all human beings. Practical reason thus applies the principles of the natural law to the expression of natural human inclinations expressed in different domains of existence—sex, marriage and family, life, communication, property, and so forth.

Two additional features of practical reason must be kept in mind. First, practical reasoning, unlike speculative reasoning, deals with individual and contingent matters, and therefore its judgements are not characterized by absolute necessity (see Aquinas 1948: I-II, 3, 6 ad 2). They are true 'for the most part', but do not



always hold. Moral principles therefore need to be interpreted with sensitivity to the particular nuances of concrete cases, not applied rigidly and mechanistically (see Aquinas 1948: I-II, 96, 1, 6).

Second, this process of derivation acknowledges a gradation in the authority made by different kinds of moral claims. What is taken by one community to be an application of the natural law can be dispensed with in another community when it is determined to be detrimental to the common good, justice, and virtue (see Aquinas 1948: I-II, 100, 8; see also I-II, 97, 6; 97, 4 ad 3). A change in circumstances can mean that the secondary precepts of the natural law do not apply in these cases; it does not imply, however, that the secondary precepts are invalidated (see Kossel in Pope 2002: 169–93).

Since human nature includes body and soul, the human good is material as well as spiritual, intellectual, and moral. Human nature and the good proportionate to it, like both the political community and the universe as a whole, is structured hierarchically. Human nature is oriented to lower goods (of the body), to relatively higher goods (of the soul), and to an ultimate good (God). Practical reason is equipped to grasp the essentials of this order, though it also benefits from the detail, clarity, and assurance of revelation. Most importantly, divine law orients the person to an otherwise unknown destiny—the Beatific Vision—but rather than obliterating the naturally human in favour of an exclusively other-worldly good, this end calls forth its deepest potentialities.

The moral life orders the lower powers to serve the higher, and both to contribute to love of God and love for neighbour. Acts of virtue are rewarding in and of themselves; vicious acts constitute their own punishment. The wicked do not always recognize their own misery, but this kind of ignorance is in itself an added dimension of self-inflicted punishment. The thief, liar, and murderer work contrary to their own happiness not only in the afterlife but also in this one. The saint, on the other hand, achieves true beatitude even when suffering.

## NATURAL LAW CHALLENGED

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The Thomistic interpretation of the natural law has been subjected to a wide variety of significant criticisms throughout the history of philosophy and theology. Rather than examine each particular criticism in detail, a task that would require volumes, I will confine myself to a broad overview of a few important features of this challenge. After this brief overview, I will consider various ways in which natural lawyers have responded to these challenges and then make an assessment of the current state of the question.

A series of massive shifts in the way we understand nature began in the seventeenth century and had a seismic effect on how we think about natural law (see Taylor 1989; Pinckaers 1995; MacIntyre 1981). One of the most important of these shifts for our topic was triggered in 1859 by the publication of Charles Darwin's *The Origin of Species*. 'Darwin's dangerous idea', as philosopher Daniel Dennett (1995) calls it, called into question many of the presuppositions taken for granted by natural law ethicists. Investigations into animal intelligence deflate exaggerated claims about the uniqueness of human reason; the field of genetics has been taken to lower our estimate of the moral power, or freedom, at the disposal of human agents; neurophysiology and cognitive science raise questions about the influence of the brain on the mind (and even the existence of the soul); and studies of animal sociality suggest that morality is only an extension of primate strategies for affiliation, coalition building, and the management of aggression. Evolutionary theory regards human behaviour in an increasingly mechanistic way, and as the discoveries of genetics multiply, the prestige of mechanistic anthropology expands.

Scientific views of the natural world and our place in it are not particularly comforting. Evolutionists typically depict nature as a heartless, cruel, cold place where all species are eventually eliminated by the relentless, wasteful, and bloody process of natural selection (see Huxley 1894; Williams 1988; Hausfater and Hrdy 1984). Nature is morally purposeless, so whatever purposes it is given must come from human choices. Since human action is itself the product of the same causal forces that control the rest of nature, the argument runs, we cannot be expected to break from those forces in a very dramatic way.

Reason on this view works most powerfully in a scientifically reductive manner, breaking down problems into their most elementary parts and then subjecting them to empirical investigation. Evolutionists studying the behaviour of particular organisms can make testable predictions in light of certain constraints. Reason also functions in other ways, of course, but once reason moves away from the scientific (and mathematical) enterprise, it declines in reliability. Reason, *contra* Kant, is not the primary guide for human life—'Genes are the primary policy makers; brains are the executives' (Dawkins 1976: 60). This is especially the case when reason moves into morality. Instrumental reason is competent to indicate the means for implementing moral values, but it has no way of examining the legitimacy of these values themselves (see Weber 1958 [1919]).

The destructive implications of this view for the 'moral law' are clear. Nature is purposeless and amoral. Morality is the product of cultural evolution, which facilitates co-operation, group bonds, and social control. Nature contains neither an objective moral law nor an inherent moral order within which human beings function. Nature belies the claim made by the South African human rights activist Archbishop Desmond Tutu, for example, and accepted by all natural law ethicists, that 'this universe has been constructed in such a way that unless we live in accordance with its moral laws we will pay the price for it' (Tutu 1997: 196).

Evolutionists do not infer, however, that we are fated to be immoralists. In fact, the opposite is the case: they argue that our only hope lies not in the rescue operation of a transcendent deity but in the willingness of courageous human beings to assume responsibility for building more fair, just, and tolerant communities. Instead of legitimizing selfishness, clannishness, and chauvinism, most evolutionary moralists strive to endorse mainstream liberal values such as liberty, individual rights, and tolerance. Because there is no natural law, in other words, moral order has to be *created* by human agents. Morality allows us to override, at least to some extent, the complete indifference of nature to human affairs (see Nitecki and Nitecki 1993; Rose 1998; O'Hear 1997).

## CONTEMPORARY APPROACHES TO THE NATURAL LAW

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All ethical theories operate on the basis of a description, implicit or explicit, of the morally relevant traits of human nature; relatively more sound ethical positions are based on relatively more adequate accounts of human nature. Conversely, defective presuppositions about human nature can cripple an ethical theory.

Contemporary advocates of natural law ethics work within the context of a cultural world that lacks any consensus about an objective basis for moral claims. Natural law is challenged by historicism as well as by naturalism. Naturalism, we have just seen, denies that there is either a transcendent purpose to life or a metaphysical basis for affirming that any moral claims are true and binding on all human beings. Historicism claims that reality is composed only of individual entities, and that it is therefore impossible to make claims that apply to all people. Because human beings exist only as particular individuals living at particular times and in particular cultures, there can be no universal moral claims. Both naturalism and historicism work with the underlying premiss that the world is valueless and purposeless, except when values and purposes are created by human choices. There is no shared humanity, only a vast collection of individuals from the same species locked in various modes of competition against one another.

Natural law ethicists respond to this challenge in a variety of ways. One strategy suggests a return to the golden age of natural law. Those who defend what can be called, for lack of a better term, 'revived Thomism' continue to produce translations and commentaries on Thomistic texts and their modern commentators (see, e.g., McInerny 1982, 1992).

A second approach to natural law focuses on the exercise of practical reason within the context of specific problematic cases. The 'public philosophy' developed

by John Courtney Murray, SJ, pursues natural law as the basis of moral discourse in pluralistic societies governed by representative democracy (see Murray 1960). Murray and other admirers of Pope John XXIII's *Pacem in Terris* critically appropriate modern insights into the nature of human rights and combine them with the older Thomistic focus on duties and the common good (see Hollenbach 2003).

A third, revisionist position interprets natural law in light of the 'historical consciousness' promoted by the Second Vatican Council (see, e.g., McCormick 1989). Revisionist natural law holds that the rightness or wrongness of acts depends on whether they are beneficial or harmful to the person, rather than on their conformity to nature. Identifying an act as 'contrary to nature' indicates its 'relative disvalue', but not necessarily its moral impermissibility. An act is only morally wrong when, other things being equal, there is no proportionate reason justifying it (McCormick 1989: 134).

Two other innovative approaches to natural law are particularly important today: the new natural law theory and the personalist natural law theory.

## THE NEW NATURAL LAW THEORY

A new approach to natural law has been developed partly in opposition to both revisionist natural law and revived Thomism. Germain Grisez, John Finnis, and their colleagues constructed a 'new natural law theory' (see Finnis 1980; Grisez 1983), because they did not believe that the received theory was any longer philosophically viable. Their theory holds that the 'first principles of practical reason' give rationality to the process of moral decision making. Its first principles are known 'in themselves' (*per se nota*), comprehended immediately when their meaning and reference are understood, and indemonstrable. Advocates of this theory know that it stands or falls with legitimate metaphysics, e.g., regarding human freedom, but they attempt to eschew the kind of explicit metaphysical foundations for the theory developed by the neo-Scholastics and revived Thomists.

The distinctiveness of this approach lies in its attempt to address the 'naturalistic fallacy' objection by arguing that practical reason, not speculative reason, derives a set of moral implications from a principle that is already normative rather than purely descriptive (Grisez 1965). Rather than draw moral norms from some set of facts about human nature, the new theory derives particular moral norms from more general moral norms. The first principle of practical reason is itself both normative and 'underivable'. All other principles are derived from it by reason alone (for this among other reasons it is often associated with the ethics of Kant).

Practical reason identifies several basic goods: life, knowledge, aesthetic appreciation, play, friendship, practical reasonableness, and religion (see, *inter alia*, Finnis 1980: 86–90). Particular items have from time to time been added to or subtracted from this catalogue, so, for example, it later came to include ‘the marital good’ (George 1996: 5). Basic goods are intrinsically valuable and universally recognized as such. The key moral principle holds that it is *always* wrong to intend to destroy an instantiation of a basic good (see Finnis 1980: 118–23). So, for example, since life is a basic good, murder is always wrong.

The ‘new natural law’ presents a formidable ethical theory in terms that are intelligible to contemporary philosophers. Though this position does not rely on faith in any explicit way, and in fact claims to be purely rational, it has been used by many Catholics to provide a contemporary theoretical defence of the moral teachings of the magisterium. It is no coincidence that the content of the ‘new natural law’ happens to agree with almost every item of moral teaching found in the *Catechism of the Catholic Church*.

The ‘new natural law theory’ has been subject to significant philosophical criticisms. First, lists of basic goods are notoriously ambiguous—e.g., are all religions, including cults, instantiations of a basic value? Second, it holds that basic goods are incommensurable and cannot be subjected to ‘weighting’, but it is not clear that one cannot reasonably weight, say, religion as a more important good than play. The claim that basic goods cannot be ‘attacked’ seems to deny the experience of deep moral conflict between competing goods.

Finally, this position is criticized for isolating its philosophical interpretation of human nature from other descriptive accounts of the same and for operating without empirical evidence. It proposes natural law without nature. Finnis opines, for example, without offering any evidence, that same sex relations of every kind fail to offer intelligible goods of their own, but only ‘bodily and emotional satisfaction, pleasurable experience, unhinged from basic human reasons for action and posing as its own rationale’ (Finnis 1998: 153, 151). This theory reasons a priori from principles to what must in fact be the empirical case, but not in the reverse direction.

## Personalist Natural Law

A fifth reading of the natural law comes from Pope John Paul II, the tradition’s most representative figure in living memory. A staunch opponent of the widespread moral relativism of the modern world, the pope denounced the departure of historic Christian cultures from the gospel and their gradual slide away from the objective moral law.

Unlike the previous approaches to moral knowledge, John Paul II spoke first and foremost from an explicitly scriptural perspective. This pleased Protestants, who have been critical of natural law on the grounds that it assigned reason more



authority than revelation (see Barth 1961: 3–31; Niebuhr 1979 [1935]: ch. 5, but modified in 1941: I; but also Hütter and Dieter 1998). The pope's account of natural law drew from Scripture, but also built on Thomistic precedents, and incorporated modern notions of human dignity and human rights. This account of natural law was developed on the distinctively personalist and Christocentric anthropology presented by the Second Vatican Council's 'Pastoral Constitution on the Church in the Modern World': 'only in the mystery of the incarnate Word does the mystery of man take on light' (Flannery 1988: 922).

Yet the pope did anything but break away from the natural law—on the contrary, he assumed its relevance even when he engaged in scriptural exegesis on moral matters. The encyclical *Veritatis Splendor* enunciated familiar themes from the natural law tradition. Natural law is 'inscribed' in the heart of every person, grounded in the human good, and prohibits 'intrinsically evil acts' (John Paul II 1993: par. 81). Reason is a gift of God, but takes its proper orientation from faith—especially today, when knowledge of the natural law has been blurred in the 'modern conscience'. Unlike the emphasis of 'public philosophy' and the 'new natural law theory', the pope's ethic repeatedly insisted that an adequate grasp of the natural law depends on revelation, faith, and adherence to the teachings of the magisterium. As an 'expert in humanity', the Church has the most profound grasp of the principles of the natural law, and also the best vantage point from which to understand its secondary principles and their application.

This is not to say that the pope gave up on reason or regarded natural law as less intrinsically intelligible than did other natural lawyers. He, like the others, would have agreed with the revisionist denial that there are any 'mysterious ethical norms which are simply impervious to human insight' (McCormick 1989: 204). John Paul II continued to reaffirm the ancient view of moral standards as inherently intelligible. The increasing appeal of human rights around the world (by ordinary people, if not always by their governments) confirms the accessibility of the moral law. Natural law *qua* human rights provides the basis for the infusion of ethical principles into the political arena of pluralistic democracies. It also provides criteria for holding accountable criminal states or transnational actors that violate human dignity by engaging, for example, in 'genocide, abortion... deportation, slavery, prostitution... [and] degrading conditions of work which treat laborers as mere instruments of profit' (John Paul II 1993: par. 80, citing *Gaudium et Spes*, par. 27). Natural law holds out the best resource for countering both amoral relativism and the tyrannical misuse of power (see John Paul II 1995: par. 70).

The pope's personalist natural law theory gave an important place to fixed, knowable, and clear moral rules that apply to communities as well as to individuals. Its treatment of reproductive issues is illustrative. States as well as couples, no matter what difficulties and hardships they face, 'must abide by the divine plan for responsible procreation' (John Paul II 1995: par. 97). Sounding a theme from Pope Pius XI and Pope Paul VI, John Paul II warned his listeners that 'The moral law

obliges them in every case to control the impulse of instinct and passion, and to respect the biological laws inscribed in their person' (1995: par. 97).

Natural law thus proscribes not only artificial contraception, abortion, infanticide, and euthanasia, but also newer biomedical procedures regarding experimentation with human embryos and human cloning. Natural law also provides moral criteria for assessing economic and political systems. Though there is no one correct model of an economic or political system, natural law does require that any given economic or political order affirm human dignity, promote human rights, foster the unity of the human family, and support meaningful human activity in every sphere of social life (see John Paul 1987: par. 41, in O'Brien and Shannon 1992: 424–5; John Paul II 1991: par. 43, in O'Brien and Shannon 1992: 471–2).

John Paul II's personalist interpretation of natural law has been criticized on several grounds. First, it stressed law at the expense of reason and nature. As the Dominican Thomist Herbert McCabe observed of *Veritatis Splendor*, 'despite its frequent references to St. Thomas, it is still trapped in a post-Renaissance morality, in terms of law and conscience and free will' (McCabe 1994: 67; see also Spohn 1995). Second, the pope was criticized for an inconsistent eclecticism that did not coherently relate biblical, natural law, and rights-oriented language in a synthetic vision. He switched from one kind of argument to another without indicating how the different parts are integrated into a coherent whole. Third, he was charged with a highly selective and ahistorical understanding of natural law. Thus, what he described as 'unchanging' precepts prohibiting intrinsically evil acts have at times been changed. As John Noonan put it, in the long history of Catholic ethics, one finds that 'what was forbidden became lawful (the cases of usury and marriage); what was permissible became unlawful (the case of slavery); and what was required became forbidden (the persecution of heretics)' (Noonan 1995: 194). Fourth, critics argued that John Paul II had an underdeveloped sense of 'historical consciousness', and therefore consistently slighted the contingency, variability, and ambiguities of historical particularity (see Curran 2002: 61–6). This can lead to an absolutist and legalistic reading of the natural law that obscures the need for the virtue of prudence. Fifth, this approach to natural law also led feminists to accuse the pope of failing to attend sufficiently to the oppression of women in the history of Christianity and to downplay the need for change in the structures of the Church (see Cahill 1998; Traina 1999).

To his credit, the pope was more concerned with the fundamental basis of the natural law than are proponents of most of the other positions examined here. His approach was theological and ontological: nature is creation, the human creature must be understood in personal terms, and the person must always act in accordance with the plan of the Creator. This theological understanding of creation, however, is never informed, co-ordinated with, or even placed in contact with scientific ways of viewing nature. This is not because the pope denied the proper

autonomy of science. On the contrary, his treatment of the Galileo case, the status of evolutionary science, and his endorsement of the dialogue between science and theology all indicate the contrary (see John Paul II 1986: 22, 1996). His categorization of evolutionary science as pertaining to the body but not to the soul, however, implies that the core of the person lies outside the province of science. His approach to natural law proceeded on the basis of phenomenological, metaphysical, and theological reflection on the human person, while ignoring scientific data and theories about human behaviour. The insulation of this theological perspective is understandable in the writings of a figure whose concern is primarily pastoral, but the same is not true for others of like mind in the academy who have the time and talent to address this important but neglected issue.

## PROSPECTS FOR NATURAL LAW

These natural law theories fail to relate their teleological views of human behaviour—its orientation to the good—to contemporary accounts of humanity or the natural world. This lacuna is due in part to disciplinary specialization, but it will need to be addressed if the natural law tradition is to continue to develop. The natural law tradition generally disagrees with those modern ethical theories that deny the necessity of considering broad metaphysical and anthropological issues. Natural law doctrine roots moral standards—both ‘precepts’ and ‘virtues’—in the human good. Its interpretation of the human good depends in turn on an account of human nature—its powers, potentialities, and inclinations. The question, ‘What is right and wrong?’ can only be addressed in light of the broader question, ‘What is the human good?’, and helpful reflection on this question in turn depends on how one answers the question, ‘What is human nature?’

The most fundamental philosophical issue here concerns ‘teleology’, or the presence of ‘purpose’ or ‘goals’ in nature. The early modern opponents of natural law first denied the existence of purpose in the natural world as a whole, and then extended this denial to human nature itself, where purposes came to be identified with human choices, conventions, or cultures. Natural law ethics evaporates if nature is purposeless.

The intellectual journey of philosopher Alasdair MacIntyre illustrates the importance of re-establishing a sense of the purposeful character of nature. His seminal work *After Virtue* attempted to retrieve Aristotle’s virtue ethics without also drawing on what MacIntyre called his ‘metaphysical biology’ (MacIntyre 1980: 152, 183). At that time MacIntyre believed it possible to base virtue ethics on a social teleology provided by the goods internal to communal ‘practices’ (MacIntyre

1981: 175 f.). A person is a 'story telling animal' whose identity and purposes come not through nature but through the narratives of living traditions. His next major work, *Whose Justice? Which Rationality?* moved beyond Aristotle to an appropriation of Thomas Aquinas's virtue ethics, thus inclining him towards a greater appreciation of the moral significance of the natural law and human nature (MacIntyre 1988: 181, 194 f.). MacIntyre's more recent writing, *Dependent Rational Animals* (1999), employs naturalistic observations about natural functions of animals (notably dolphins) as a means for thinking about natural purposes. 'I now judge that I was in error in supposing an ethics independent of biology to be possible,' writes MacIntyre (1999: p. x). But here MacIntyre draws from biology to underscore the reality of human vulnerability and disability in relation to which the 'virtues of acknowledged dependence' (1999: ch. 10) must be developed and exercised. Unfortunately, MacIntyre's interest in animality is usually restricted to various forms of weakness or disability. He does not reflect on how the behavioural traits of animals are related to larger questions of natural purposes. He thus begins, but does not complete, the development of a new teleological view of human nature upon which a revitalized natural law could be built.

The continued development of natural law ethics depends on re-establishing a sense of the purposefulness of the natural world in general and of human nature in particular. Given the magnitude of this task, an essay of this sort can provide only rudimentary outlines of how such reflection might proceed.

First, we need to reflect more carefully on the way in which the cosmos is structured to sustain moral purpose—i.e., 'teleologically'. The term 'teleology' is used in so many ways that it is nearly impossible to avoid misunderstanding (see Ayala 1970 and 1989); yet natural law ethics has no alternative but to use it or something like it. Natural law ethicists need to be clear that they are not suggesting that every event in the universe exists to produce a predetermined goal: e.g., that the occurrence of mutations in DNA is directed by some sort of biological planning agent. The purpose of the universe exists in and through the interaction of chance and necessity that constitute its overall design.

The universe has been 'fine-tuned' to give rise to at least one planet with physical conditions that allow for the emergence and maintenance of life. The Earth provided conditions that were hospitable first to beings marked by some elemental forms of information processing, then to beings capable of consciousness, and finally to beings capable of self-consciousness. The earliest forms of life gave rise to organisms with increased capacities for movement, sensitivity, awareness, and responsiveness. Organisms moved only by chemical reaction gave rise to organisms moved by apprehensions, drives, and emotions. Spontaneity was complemented by restraints imposed by the social ordering of animals living in groups. Increased environmental demands called forth expanding behavioural repertoires, increasingly complex emotional responses, and more and more sophisticated mechanisms of information processing.

This broad evolutionary context gave rise to a particularly intelligent primate, *Homo sapiens*, whose social life, even in its earliest phases, was made possible by complex forms of symbolic communication, especially language. Human intelligence, like that of other primates, was originally suited to simple problem solving—e.g., how to move across complex terrain to get food or how to fend off threats from aggressors—but our ancestors gradually gained capacities of heart and mind that allowed them to be captivated by wonder and to reflect on questions for their own sake. Music, art, poetry, and religion came to express ‘contemplative’ as well as ‘practical’, or socially functional, purposes.

A closely related development occurred morally: the necessity of making choices for instrumental purposes gave rise to the capacity to care about goods and persons for their own sakes. The development of the human sense of compassion and awareness of justice came to extend moral concern beyond one’s own circle of ‘reciprocators’ to any human being in need or any person suffering from injustice. Some aspects of the basic human sense of fairness expand upon a proto-moral sense of equity shared with other social primates (see de Waal 1996; Brosnan and de Waal 2003). The universal appeal of the golden rule testifies to this moral development in the species and to the natural roots of justice. The emergence of human cognitive and moral abilities was also accompanied by the emergence of a capacity for religious self-transcendence. The culmination of the evolutionary process consists in the ability of the cosmos, through human beings, to understand its existence as gift, to respond to its Creator with awe, gratitude, and fidelity, and to undertake responsibility for the well-being of those spheres of creation within which it is possible to do so.

The word ‘teleology’ is used here in two senses. First, the ‘cosmic evolution’ of the universe as a whole is teleological in that it has given rise to increasingly complex structures and forms of life from which a species capable of intelligent and loving behaviour has emerged. Second, human nature is also teleological in that it is naturally oriented both to specific goods and, more importantly, to the good as such. Moral systems around the world bear witness to this natural orientation.

Human nature is inclined to a variety of goods. The human good includes, as Thomas would put it, ‘external goods’ and ‘goods of the body’, and therefore ethics must take into account the considerable pre-rational, biological roots of human nature (see Porter 1999: ch. 1). Biology considers a range of goods that comprise part of what Thomas called ‘temporal happiness’, but this end is, at its best, radically incomplete, since the biological does not encompass even psychological, social, or cultural goods, let alone moral and religious ones, in their own right. Evolutionary theory, then, will always fail to satisfy those who seek in it a complete account of the natural law. Indeed, evolutionists need to be subjected to critical scrutiny when they present a kind of quasi-natural law argument suggesting that the values of our own particular culture are best suited to address our natural needs as human beings (see Beckstrom 1993 and Buss 1994).



The human good also includes not only 'external goods' and 'goods of the body' but 'goods of the soul' that are not reducible to other goods. Since what is 'natural' for the human person is not simply what is 'biological' or 'organic' or 'genetic', the attempt comprehensively to explain or justify natural law in terms of evolutionary theory is bound to fail. The 'natural' includes the full range of inclinations identified by Thomas, including those desires common to rational beings: for knowledge, for life in political community, and for union with God. These distinctively human orientations point to the highest good which we are capable of desiring: the knowledge and love of God. They also imply, in contrast to the 'new natural law theory', a kind of general hierarchy among the goods to which human beings are naturally oriented.

Clearly, human nature is ordered not only to the good. History attests to our susceptibility to corruption, bias, and excessive self-concern. The juxtaposition of various kinds of adaptations and motivations leaves the modern human psyche fraught with moral complexity, ambiguity, and tension. At the same time, though, widespread resentment over such evils and their passionate uncovering and denunciation themselves testify to the more fundamental human inclination to the good.

The teleological interpretation of humanity makes it absolutely critical to distinguish two senses of the word 'natural': the statistical and the normative. The statistical sense of nature is merely what occurs with some frequency under natural conditions. In this sense of the word it is entirely 'natural' for some male animals to practice infanticide, to kill conspecifics from other groups, and to engage in forced copulation with fertile females (see Daly and Wilson 1988). Acts like these were probably also placed by natural selection on our own evolved menu of behavioural options in the course of our evolutionary past because in the distant past they were 'fitness enhancing' under certain conditions (see Midgley 1978; Barkow, Cosmides, and Tooby 1992; Pinker 1997).

The normative sense of the 'natural' relates this repertoire of behavioural 'givens' residing in our human nature to the morally more fundamental inclination to the good. The latter provides a comprehensive position from which to interpret the former. Biologically based emotional proclivities and motivations are objects of deliberate moral choices and behaviourally developed habits. The 'phenotypic plasticity' of 'open programs' (Mayr 1988: 68) allows for, and even requires, choices that accumulate to shape our more or less persisting habits. Natural law ethics, then, is not an alternative to an account of ethics in terms of 'virtues', but closely dependent on it. We distinguish pre-moral natural *proclivities* like sexual attraction and in-group loyalty from moral *virtues* like marital love and ordered patriotism and *vices* like sexual promiscuity and xenophobia. The proclivities are pre-personal and pre-rational inclinations; the virtues are a reasonable and morally ordered set of dispositions. Higher-level intellectual and affective capacities enable us to act in ways that run counter to our 'fitness interests', so the moral challenge put to us—as both responsible agents and as moral communities—is to shape the expression of

the array of our evolved proclivities in ways that accord with 'right reason'. The moral life is a matter of gradually shaping these emotional responses into forms that promote the human good.

This view of reason and nature provides a way of interpreting the moral law. A right way of acting is not ethically obligatory or legitimate simply because it is 'natural', in the scientific sense, as 'evolved' or 'genetically based', but it is obligatory because it accords with what is good for human beings, considered comprehensively. The obligatory character of morality—the 'law'—binds the person to moral standards that promote the well-being, or flourishing, of the person and his or her community. It is wrong to murder, to be sexually unfaithful, to steal, to lie, and to cheat, because doing so undermines the good of both self and others. General norms are not matters of arbitrary taste or idiosyncratic preferences, but reflect judgements about structures of living that promote human flourishing. Our basic orientation to the good is not extinguished by wrongdoing: even liars resent being lied to, and those who steal get morally outraged when stolen from. Virtues and law, like reason and nature, are generally complementary to one another.

In natural law ethics, true moral objectivity is achieved in concrete acts through the exercise of the virtue of prudence. What is objectively binding in a particular situation, in other words, is what is most in keeping with the first principle of practical reason: do good and avoid evil. General moral knowledge includes various beliefs about which aspects of our inherited behavioural repertoire ought to be approved of, acted upon, and promoted—and which ought to be inhibited, sublimated, or closely monitored. It also includes general knowledge of which kinds of acts tend to undermine the human good and which kinds of acts promote it, but moral decision making only succeeds when attention is focused on concrete goods and evils at stake in particular situations. The virtue of prudence is lacking when moralists insist on adhering to rules that, in concrete situations, damage human lives. Rather than prescribing a universal and exhaustive moral code proper for all times and all people, our understanding of natural law must be dynamic, flexible, and open to new developments as a result of changing human circumstances.

The virtue of prudence functions most effectively when it enables the agent to perceive the morally salient factors at stake in concrete human experiences. It is in and through concrete experience that people discover, appropriate, and deepen their understanding of what constitutes true human flourishing. Interpretations of these experiences are influenced by membership in particular communities shaped by particular stories. Discovery of the natural law, Pamela Hall notes, 'takes place within a life, within the narrative context of experiences that engage a person's intellect and will in the making of concrete choices' (Hall 1994: 37).

Our grasp of the natural law and our ability to exercise the virtue of prudence are tutored in community. A properly social understanding of human nature underscores the dependence of virtue generally on community. People are formed and

trained in virtue by the stories and exemplars handed down through traditions. Life in community shapes the affections, imagination, and practical rationality through which moral standards are interpreted (see Spohn 1999). This returns us to the importance of Scripture, tradition, and the Church, all of which play critically important roles in shaping identity and one's sense of the full range of what is meant by human flourishing. Advocates of natural law ethics, then, draw not only from science and moral philosophy, but also from Scripture and tradition in their effort to develop a more appropriate, precise, and comprehensive account of genuine human flourishing. Only in this way will contemporary natural law reasoning contribute to the development of an ongoing moral tradition, rather than simply perpetuate time-worn platitudes and abstract, universal rules.

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