1. The natural law outlook

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INTRODUCTION

The term 'natural law' has historically led to a great deal of confusion. This is partly due to the ambiguity of the term 'law', which can be understood in at least two different senses, each of which plays a significant role in natural law thought. First, the use of the term 'law' in this context is sometimes taken to refer to the rule-like character of natural law standards.[1] The idea that natural law represents a set of rules or commands analogous to positive law, but emanating from God rather than humans, is certainly an influential aspect of the natural law tradition. There is, however, a second and equally important sense of 'law' at play throughout the history of natural law thought. This is the sense of 'law' as a teleological notion. Natural law, on this conception, is best analogised not with positive legal enactments, but with the regularities captured in the 'natural laws' of physics or biology. Humans are governed by natural law in the sense that their actions are guided by certain normative ends; these ends are what are good for humans with the nature they have.

The dialectic between these two conceptions of natural law can be seen historically in the long-running dispute between voluntarism and naturalism in meta-ethics.[2] Roughly, voluntarists hold that whatever God wills is good, whereas naturalists hold that some things are inherently good by nature, and even God may not override those values. However, defenders of one or the other of these positions frequently recognise an interplay between them, rather than preferring one to the complete exclusion of the other.[3] A voluntarist, then, may hold that God, although in principle capable of willing anything to be good, would in practice will those things to be good that are in accordance with nature. A naturalist, meanwhile, may hold that those things that are good by nature are so because of God's wise and beneficent design; the constraints imposed on God's will by these natural values, then, are ultimately self-enacted. The two conceptions of 'natural law' outlined above – law as command and law as teleology – are therefore far from mutually exclusive. They may converge to yield a coherent picture of the natural law outlook.

There is a tendency in contemporary discussions of natural law – particularly by those not working within the tradition – to focus on the idea of natural law as divine command to the exclusion of its naturalistic aspect. This simplification has a number of unfortunate consequences. One is that it leads people to reject natural law because they are sceptical about God, whereas even leading theistic defenders of natural law such as Thomas Aquinas have emphasised that it primarily depends on natural human dispositions and intellect, rather than divine

[1] See, e.g., Jeremy Waldron, 'What Is Natural Law Like?' in John Keown and Robert P. George (eds), Reason, Morality, and Law: The Philosophy of John Finnis (OUP, 2013).

[2] See, in particular, the chapters by Anna Taitslin and Terence Irwin in this volume.

[3] Compare the contribution by Jonathan Burnside in this volume.

revelation.[4] Another is that it encourages people to conceptualise natural law as a collection of rules – yielding something like the Ten Commandments or the detailed prescriptions of Exodus and Leviticus. However, this conception overlooks perhaps the most distinctive and radical contribution of natural law thought to ethical, political and legal debates: namely, that it makes little sense to talk about rules (or related concepts, such as rights and interests) without embedding them in discussions of the good.

The emphasis that natural law theory places on the foundational role of the good in normative discourse has been our central theme in compiling this book. Our selection of the chapters was informed by a deliberately broad and open-ended definition of the natural law outlook as the view that (1) there are certain forms of life that are intrinsically good for humans by virtue of their nature, and (2) these forms of life play a fundamental role in explaining the nature and purpose of social, political and legal institutions.[5] The natural law tradition focuses, in other words, on exploring what constitutes a flourishing human life and using this to understand the ways we connect with each other in communities. This outlook entails that any adequate theory of ethics, politics or law – whether descriptive or normative in its objectives – must begin by exploring the nature of human goods, before asking how pursuit of these goods shapes human communities and institutions. The depth and breadth of ideas within this general framework, both historically and in contemporary discussions, is amply illustrated by the work in this volume.

One reason why we adopted a broad definition of natural law in planning this collection was to allow authors to advance their own interpretations of the tradition. The contributions all speak in some way to the core theme identified above, but they also engage other common natural law concerns, such as the objectivity, rationality, universality and divine provenance of human values, their role in generating prescriptions for individual and social conduct, and their relationship to human governments, laws and constitutions. A number of contributors offer their own accounts of the natural law outlook – although these generally take the form of characteristic theses, rather than prescriptive definitions. A second reason for adopting a broad approach is that we did not want to rule out cutting-edge or innovative work that pushes the boundaries of the natural law perspective, while still engaging its central concepts and figures. Contemporary natural law theory, as we mentioned in the Preface, has somewhat of a narrow and austere image. One of the aims of this book is to illustrate the diversity of natural law thought, by showcasing themes from a range of cultural, religious and philosophical traditions.

WESTERN FOUNDATIONS

The first part of the book considers the contributions and significance of foundational figures in Western natural law thought, including Aristotle, the Stoics, Augustine, Aquinas and early modern authors such as Suarez, Grotius and Pufendorf. George Duke's chapter examines the question of whether Aristotle is properly regarded as a natural law theorist. He discusses three claims about law historically associated with the natural law tradition: the existence and content of law depends on a *divine* normative foundation; the existence and content of law depends on a *natural* normative foundation; and the existence and content of law depends on

[4] See the chapter by Anthony J. Lisska in this volume.

[5] See Jonathan Crowe, 'Introduction' in *Natural Law and the Nature of Law* (CUP, 2019).

a *rational* normative foundation. Duke provides a detailed and nuanced discussion of whether Aristotle should be understood as endorsing any of these propositions. He concludes that, while Aristotle does not endorse the first claim, he does endorse the second and third claims (albeit in a qualified sense).

Anna Taitslin's intriguing chapter explores Stoic understandings of natural law. She argues that the core of the Stoic legacy for natural law theory lies in the notion of natural law as 'Right Reason'. Furthermore, the Stoic idea of Right Reason changed significantly between the early and late Stoic thinkers. Early Stoic authors, such as Zeno and Chrysippus, identified Right Reason with the natural causality of the universe; the role of reason was merely to assent to what fate had already ordained. However, later Stoics, such as Panaetius and Posidonius, identified Right Reason with participation in a distinctively human good, producing a greater emphasis on the role of human rationality in discerning right actions and overcoming the corrupting influence of the passions. This more rationalistic conception of natural law influenced Roman authors, such as Seneca and Cicero. It also paved the way for the Christian view of natural law as the universal law of God, grasped naturally by humans before the Fall and afterwards known through God's Commandments.

Richard J. Dougherty's chapter examines Augustine's contribution to natural law thought in view of its growth out of and beyond classical understandings. He offers an illuminating overview of the extent to which the classical tradition is reflected in, distinguished from and ultimately expanded upon in Augustine's natural law theory. Dougherty provides a nuanced reading of Augustine's natural law theory, emphasising the distinctive and complementary roles played in his account by human law, natural order and divine grace. He notes that the radical character of Augustine's natural law lies in his incorporation of Scripture – particularly Pauline doctrines – in the interpretation of the role of law more generally. He further suggests that Augustine's development of natural law beyond Stoic conceptions is a consequence of reformulating goodness in relation to divine grace and thus reconceptualising the link between human realities and the normative standard for law. Natural law, on this view, serves to orient humans towards their ultimate end, providing a standard for judging human institutions to be properly or improperly ordered.

The next chapter, by Anthony J. Lisska, examines the contributions of Thomas Aquinas to natural law theory by placing his work in the context of contemporary analytical philosophy. The chapter draws together themes from Lisska's work on this topic over the past two-plus decades. Lisska argues that Aquinas's account of natural law does not depend ontologically on the existence or commands of God (although God and eternal law evidently hold an important place in his theory). Rather, Aquinas's moral theory is based on a metaphysical ontology of natural kinds. His views therefore resonate with ethical naturalist views in contemporary analytical philosophy. In advancing this interpretation, Lisska rejects the claim defended by Germain Grisez and John Finnis that Aquinas is not (as Finnis puts it) an ontological reductivist. The natural law described by Aquinas, Lisska argues, is logically derived from an ontological account of human nature – and, specifically, the dispositional properties of human persons that lead them to pursue particular forms of flourishing.

Constance Youngwon Lee then considers the possibility of retrieving a natural law theory from the theological works of John Calvin. She begins by acknowledging that, on first impressions, Calvin's bleak anthropology appears adverse to a system of natural law. Nonetheless, Lee contends that unfair interpretations of Calvin's texts are responsible for the orthodox reluctance to develop natural law theory from the Reformer's works. Heavily caricatured

readings of Calvin have overshadowed his statements that 'some sparks [of the divine image] still shine' in human nature.[6] Lee proposes that on a nuanced reading of Calvin – being mindful of the dialectical method he employs and the broader relational framework in which his exegeses unfold – a formal doctrine of natural law is entirely possible. By applying a hermeneutic methodology and taking account of authorial intent, readers can see how Calvin successfully holds two seemingly irreconcilable notions in tension: the natural moral agency of humans, on the one hand, and their fundamental fallibility, on the other.

Terence Irwin's chapter examines some divergent conceptions of natural law in the work of early modern authors. He considers the question of whether 17th-century theories should be viewed as making a distinctive – and even ground-breaking – contribution to the natural law tradition. Irwin identifies Jean Barbeyrac as an influential defender of the distinctiveness of 17th-century natural law theorists. Barbeyrac sees Hugo Grotius as a pioneer who radically modernised the natural law perspective. However, Irwin argues that Barbeyrac's view contains a number of serious errors. First, Barbeyrac misinterprets Grotius, ascribing to him innovations that are better traced to Samuel Pufendorf (and, in the process, disregarding Pufendorf's criticisms of Grotius). Second, Barbeyrac overlooks flaws in both Grotius's and Pufendorf's understandings of the different options in the dispute between voluntarism and naturalism. The true innovator, Irwin argues, was Francisco Suarez, who charted a middle way between extreme versions of these two positions. However, Grotius, Pufendorf and other early modern thinkers failed to fully grasp the nature and importance of Suarez's conceptual innovation. They therefore moved natural law thinking backwards, rather than forwards.

TEXTS AND TRADITIONS

The second part of the book examines natural law ideas in a range of religious and cultural traditions. Jonathan A. Jacobs's chapter explores why there is relatively little discussion of natural law by Jewish philosophers and considers whether aspects of Jewish thought might be susceptible of natural law interpretations. He argues that something very much like natural law – understood as rational, objective and authoritative 'general principles of practical reason … reflecting objective goods for human beings' – is reflected in Jewish tradition by way of the 'reasons for the commandments', rather than having fully independent standing. Thus, there can be significant overlap with natural law theorising (and conceptions of practical wisdom), but Jewish thinkers tend to regard the Law – the 613 commandments – as the primary source for guidance about how to lead an excellent life. Some influential thinkers, such as Maimonides, held that there are rational justifications for all of the commandments and that seeking those justifications is an integral element of Jewish tradition. The justifications for many commandments can be ascertained in terms of their rationality, apart from revelation, but they are still to be understood in terms of their role in a distinctive covenant between God and the Jewish people. Thus, the fundamental notion is the rationality of the elements of a *tradition* anchored in covenant, even if many of those elements are rationally explicable. These features, for Jacobs, mean that some important currents of Jewish thought are not quite congruent with some key themes of the natural law outlook.

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[6] John Calvin, *Institutes of the Christian Religion* (Ford Lewis Battles tr., John T. McNeill ed., WJK Press, 1960) II.ii.12.

Islamic thought, by contrast, is more readily hospitable to natural law ideas, according to Nadirsyah Hosen. Debates over the interpretation and application of Islamic law illustrate central issues in natural law theory about the interaction between timeless principles and contemporary social norms. On the one hand, Hosen notes, the *Qur'an* and the *Hadith* are considered immutable and timeless. In this sense, Muslim societies may change, but Islam never changes. On the other hand, Islamic teaching depends on human interpretation of divine sources. Those interpretations may evolve over time, reflecting shifts in human understanding. Different Islamic schools take different views of the extent to which interpretations of the Holy Books can and should change over time. The centrality of *ijtihad* or interpretation in Islamic law, for Hosen, illustrates the importance of reason, tradition and consensus as tools of understanding. Concepts such as *istislah* or public interest may also have a role to play. As a consequence, Islamic jurists and ordinary Muslims hold diverse opinions about how Islamic teaching applies in the modern world. Hosen argues for a balanced approach where scholars develop new interpretations of original sources while studying and learning from historical scholarship. In this way, contemporary interpreters can help advance human knowledge of what natural law entails today.

Norman P. Ho's chapter serves as an insightful guide to natural law ideas in Confucian thought, including various schools of Confucianism, namely pre-Qin Confucianism, Han dynasty Confucianism and Neo-Confucianism. The strong influence of Confucian theory on cultural norms and government institutions throughout East Asia renders this chapter a valuable resource in understanding the global significance of natural law thinking. Ho considers the distinct interpretations of key terms such as 'nature' and 'law' in traditional Chinese legal thought in contrast to their connotations in Western legal theory. He examines the understandings of the concept of ritual propriety (*li*), as well as the concept of Principle (*Li*), from the viewpoint of major schools of thought in the Confucian tradition, emphasising their relationship to other concepts such as positive law (*fa*), human nature and Heaven (*tian*). Confucian natural law thinking, Ho argues, centres on a ranking of moral attributes, with *li*-based principles like filial piety (*xiao*) at the top of the hierarchy and positive law (*fa*) near the bottom. This metaphysical hierarchy invites fruitful comparisons with natural law ideas from other cultural traditions. Ho argues that Neo-Confucian ideas are the most promising source of natural law thinking in the Confucian tradition. He further suggests that Confucian natural law provides valuable insights into governance in contemporary China, given the influence of Confucian ideas on the philosophy of the ruling party.

Jonathan Burnside's chapter considers the role of natural law in the Bible. He explores this topic through a close reading of a single text, namely, Psalm 19. Burnside employs this text to draw out the nuanced biblical relationship between natural law and revelation. It is commonly (and erroneously) assumed that because the Bible is a revealed text, it has little or nothing to say about natural law in the sense of moral truths discerned by humans independently of revelation. However, Burnside's reading of Psalm 19 shows this assumption to be false. The Psalm emphasises what Burnside aptly calls 'the very philosophical foundation of natural law theory, namely, a relationship of harmony between the natural and the ethical'. It shows that creation and *Torah* are inherently related, although not equivalent, and thereby undermines the assumed dichotomy between nature and revelation. In so doing, the Psalm shows biblical law and natural law to be mutually supporting concepts. Burnside concludes his chapter by examining a number of continuities between the divine and natural realms which help us understand

how the Bible in general – and Psalm 19 in particular – bring the two forms of normativity into dialogue.

The following chapter, by David VanDrunen, examines Reformed Christian approaches to natural law theory. Catholic perspectives, as we mentioned in the Preface, have played a leading role in the recent revival of natural law ideas. Protestant approaches, meanwhile, have gained less attention. VanDrunen's chapter explores some of the reasons for this neglect, while also highlighting the current renewal of Reformed natural law scholarship. VanDrunen argues that natural law ideas retained a significant role in Reformed theology throughout its history, as shown by the work of Calvin, Girolamo Zanchi, Franciscus Junius, Johannes Althuisus and Francis Turretin, as well as more recent Reformed theologians such as John Witherspoon and Charles Hodge. The idea that Reformed theology is inimical to natural law, VanDrunen contends, only really took hold during the 20th century, due to the influence of Karl Barth and Dutch neo-Calvinism. Recent years, by contrast, have seen a resurgence of Reformed natural law thinking. There are, VanDrunen suggests, sound theological reasons for this. However, it is necessary for Reformed scholars to address a range of biblical, philosophical, ecumenical and political questions if they are to afford natural law the kind of reception it has long enjoyed in the Catholic tradition.

Vincent Lloyd's chapter considers the role of natural law in African American perspectives on law and justice. He begins by discussing the place of natural law ideas in the thought of three prominent African American political leaders: Frederick Douglass, Anna Julia Cooper and Martin Luther King, Jr. Lloyd argues that the embrace of natural law by these thinkers lies squarely within the mainstream of black political thought and activism. Furthermore, it suggests a distinctive way of understanding the concept that is characteristic of African American communities. Black natural law, for Lloyd, involves reflection on human nature to draw normative conclusions. However, this reflection does not take place individually or abstractly, but occurs within communities. Furthermore, black natural law challenges the reduction of human nature to reason, embracing the complexity and ineffability of human existence. The ineffability of human nature, Lloyd argues, provides the basis for a natural law critique of racist, gendered or other exclusionary legal boundaries. This critique can then be extended to laws that prevent people from accessing their human nature – for example, by denying them food, housing, health care, education and security.

The final chapter in this part, by Catherine Carol, considers an important but neglected topic in natural law theory: the distinctive standpoint of women in relation to natural law. Carol argues that the writings of the French philosopher Luce Irigaray can be understood as offering a kind of natural law theory. Specifically, Irigaray's theory of sexual difference highlights a neglected human value – that of generativity – that properly belongs on any list of basic human goods. Carol explores and develops the idea that generativity has been neglected because of its close alignment with women's perspectives and social roles, which tend to be overlooked in favour of privileged male interests. Irigaray's work, by contrast, enables us to see how men have positioned women and nature more generally as mirrors for their own selves, rather than paying them close attention in their own right. This realisation paves the way for a more embodied – and therefore more truly natural and universal – conception of natural law in which generativity plays its proper role. This, in turn, has important implications for the content of positive law, as well as the ways in which we organise our communities.

NORMATIVE CONCEPTS

The third part of the book engages with current debates about the normative foundations of natural law theories. Gary Chartier and Jere L. Fox's chapter casts light on a central theme in contemporary natural law theorising: the idea that categories of intrinsic human goods are incommensurable, in the sense that they cannot be quantitatively compared, while individual human goods are not only incommensurable but also non-fungible, in the sense that they cannot be substituted for each other without loss or remainder. Chartier and Fox seek to motivate this account by appealing to the phenomenology of practical choice. We experience ourselves as pursuing a range of diverse objectives in life, many of which seem valuable for their own sake. These goods strike us as diverse, heterogeneous and not readily interchangeable. The notions of incommensurability and non-fungibility therefore make sense of how intrinsic goods figure in our practical reasoning, while undermining the appeal of consequentialism as an account of the same phenomena. The authors then respond to some critics of this picture, arguing that the counterintuitive results these critics identify can be avoided when the view is properly articulated.

Amalia Amaya's clear and engaging chapter discusses the connections between natural law theory and virtue. Amaya notes that natural law views have received relatively little emphasis in the recent resurgence of virtue theory in ethics and jurisprudence. Contemporary natural theories have likewise given scant attention to the virtues. This mutual neglect is surprising, Amaya argues, given the commonalities between the two approaches. Virtue jurisprudence, like contemporary natural law theories, focuses on the end of human flourishing and takes the values that law seeks to be plural and incommensurable. The classical natural law theories of Plato, Aristotle and the Stoics likewise gave a central place to virtuous dispositions, although this aspect has been neglected in the leading contemporary theories. Amaya's chapter ends with a plea for rapprochement between natural law and the virtues. Virtue has the potential to play a constitutive, epistemic or corrective role within the natural law outlook. The chapter ends by highlighting several ways in which contemporary work from both perspectives can benefit from engaging with the other.

Yannick Imbert's chapter offers a deep and thought-provoking discussion of the interconnections between natural law and imagination. It is tempting to think of natural law and imagination as belonging to different realms, since natural law attempts to describe reality, while imagination is often associated with fiction. However, Imbert suggests that this line of thought is misleading. Both natural law and imagination, he argues, can be understood as having normative, situational and existential dimensions. These three aspects are represented in natural law by the notions of divine order, natural order and moral order; in imagination, they correspond to sense perception, human thought and aesthetics. This threefold scheme, Imbert contends, enables us to see how imagination can help to unite the diverse aspects of natural law into a coherent whole. We use the forms of imagination to help us connect divine order with natural order, natural order with moral order, and moral order with divine order. Imagination helps us to think through our place in the world in a way that helps us understand not only the various manifestations of natural law, but also the underlying relationship between God, nature and human existence.

The next chapter, by Jonathan Crowe, considers the relationship between three pivotal concepts in contemporary natural law thinking: practical reason, intelligibility and the common good. The so-called new natural law theorists, such as Grisez and Finnis, argue that there is a

plurality of basic goods that render human action intelligible. The intelligibility of an action, on this view, is a necessary, but not sufficient, condition for its reasonableness. However, the new natural law theorists have relatively little to say about what it means for an action to be intelligible or unintelligible. Crowe builds on this picture to argue that actions are intelligible or unintelligible relative to a context of social practices. This understanding of intelligibility, he argues, reveals an important connection between the basic goods and the common good. The common good, understood as the project of creating a society that enables all its members to pursue flourishing lives, not only facilitates participation in the basic goods, but makes the goods possible. It does this by creating a context within which judgments can be made about the intelligibility of human conduct.

Tim Murphy's chapter offers Thomistic accounts of natural law and natural justice that differ in important respects from other accounts often associated with Aquinas. Murphy begins his discussion by considering Aristotle's taxonomy of justice in the *Nicomachean Ethics*, adopted by Aquinas in the *Summa Theologiae*. This view of justice, Murphy argues, does not emphasise rules or norms laid down by some higher source, as contemporary natural law accounts often do; rather, it emphasises what Murphy, following Aristotle, calls *particular justice*: the personal virtue through which individuals are disposed to respect the legitimate claims – that is, the entitlements – of others. This conception of justice differs significantly from the general or social justice that is emphasised in contemporary political philosophy and jurisprudence. According to Murphy's interpretation, natural justice is what is owed naturally to members of the community – it provides a pre-conventional yardstick for social dealings, independently of formal legal codes or institutions – and Thomistic natural law is primarily an ethical phenomenon that has been consistently misconstrued in voluntarist and positivist accounts of what natural law entails. Instead of the idea that natural law represents some kind of juridical standard, Murphy insists that Aquinas's theory of natural law concerns the intrinsic ethical demand on individuals to act reasonably and responsibly.

We are delighted to include in this volume a chapter by Michael Detmold, one of the most innovative and insightful natural law theorists of the last century, whose work has been formative for us both. Detmold's chapter, drawn from his long-awaited work on *The Law of Love and Freedom*, considers the physical and embodied character of natural law, focusing in particular on its relationship to causality. Natural law, Detmold argues, has its basis in human bonds, as exemplified by the law of contract. Contracts bind the parties – and they do so in a physical sense, by giving form to the parties' freedom to act. A breach of contract disrupts the relations between the parties in a way that directly shapes their physical world. The natural law, understood in this way, is not something imposed on humans from some third position, as in Rawlsian accounts of justice or legal positivist theories of law – rather, it arises from the first and second positions of the parties themselves. Two parties in an original position have no choice but to deal with each other – without dealings, there would be no common world between them. Between two humans, many dealings may be possible, but the shortest distance between them – the one that least impedes their mutual freedom – is that dictated by the natural law (or what Detmold calls 'the law of love'). Natural law, in this sense, creates causal order out of pure random. The beginning of the moral universe therefore mirrors the origins of the physical world.

LAW AND GOVERNANCE

The fourth and final part of the book examines the implications of natural law theory for questions of law and governance. The part begins with a chapter by Chartier and Fox concerning the relationship between natural law and the state. Contemporary natural law theorists, particularly those working in the Aristotelian-Thomist tradition, have tended to view the state as necessary to secure human flourishing. Chartier and Fox seek to undermine this assumption. Natural law theorists, they argue, should deny that the state is necessary or desirable to secure the common good. The authors draw attention to an alternative natural law tradition represented by evolutionary social theorists such as Adam Smith, Lysander Spooner and Friedrich A. Hayek, arguing that these theorists' understandings of the basis of social order holds lessons for adherents of the Aristotelian-Thomist outlook. Chartier and Fox begin their chapter by exploring the role of consensual social institutions in securing the common good (understood in a narrow sense as the good of just social order). They then critically assess the influential natural law arguments for state authority offered by Grisez, Joseph Boyle and Finnis, before explaining why non-state norms and institutions should be regarded as a viable route to ensuring social stability.

Nicholas Aroney's ambitious and valuable chapter addresses the relationship between natural law and federalism. Natural law theories have sometimes been seen as harbouring a bias towards centralised and unitary conceptions of legal order, but Aroney contends that this view misunderstands the tradition. Natural law theory, he argues, has consistently supported the independent existence of a multiplicity of political communities and jurisdictions, bound by agreements or understandings with one another. Aroney then asks what kind of account of human nature and human sociality would be necessary to ground the legitimacy of this federalist outlook. He argues that human relationships and social ordering are initially local and particular, but harbour inherent aspirations to more distant and universal community bonds. In this sense, social relations are both fundamentally covenantal in origin, reflecting bonds and obligations, and federal in structure and orientation. Actual federal arrangements often reflect messy and perhaps unstable compromises between the social, economic and political interests of different groups and communities. On a deeper level, however, federal arrangements have a normative basis in the fundamental character and orientation of human social relationships.

Augusto Zimmermann's chapter takes up similar themes in the context of the principle of subsidiarity. The notion of subsidiarity captures the idea that higher governing orders are under an obligation to help or assist lower orders to flourish, rather than seeking to supplant or frustrate them. This concept forms one of the central and persistent features of the Catholic Church's social doctrine. Zimmermann offers a defence of subsidiarity grounded in the wider natural law tradition, emphasising its basis in the work of Aquinas and John Locke. Aquinas's conception of natural law, Zimmermann argues, emphasised the supremacy of natural law over human enactments, along with the distinct roles of various authorities and citizens in advancing the common good. Locke likewise stressed the limited nature of human authority and the importance of local organisations in securing social order – ideas that profoundly influenced the framers of the United States Constitution. Zimmermann concludes his chapter by exploring the link between subsidiarity and the values of autonomy and self-respect. Centralised governance, he argues, tends to harm the common good by undermining individual self-reliance and displacing local institutions that foster dignity, responsibility and self-determination.

Eoin Carolan's chapter then considers the potential role of natural law in legal reasoning by considering the case study of the Irish Constitution. The Irish courts have a long history of engaging with natural law as a source of constitutional norms, particularly in relation to abortion and end-of-life issues. Carolan notes that the Irish experience is often seen as demonstrating the drawbacks of natural law as a form of constitutional reasoning, due to its apparently indeterminate and subjective nature. However, Carolan argues that this picture is too simplistic – indeed, natural law reasoning continues to play a role in recent Irish case law. It is more accurate, he suggests, to see the Irish experience as abandoning some forms of natural law reasoning in favour of others. Carolan concludes that even in a jurisdiction like Ireland, which has moved away from explicit references to natural law, there remain some constitutional issues that naturally involve recourse to underlying moral norms with a natural law character. These norms do not function as overriding sources of constitutional authority, so much as standards for testing competing interpretations of the constitutional text. This reflects a broader shift in social discourse away from explicitly theological understandings of natural law and towards an emphasis on human dignity.

The book's final chapter, by Crowe, examines natural law perspectives in contemporary philosophy of law. Natural law views in jurisprudence are united by the *natural law thesis*: law is necessarily a rational standard for conduct. This thesis entails that anything that is not a rational standard is either not law or a defective example of law. Crowe begins by surveying the various arguments natural law theorists have presented for their favoured versions of the thesis. He then defends his own preferred route to the thesis, which involves analysing the nature of law as a human artifact. The function of law, Crowe argues, is to serve as a deontic marker for human conduct by creating a sense of social obligation. A law that is poorly suited to this function – such as a badly drafted, unjust or unreasonable standard – will therefore be legally defective, while a putative law that is incapable of playing its function – such as an incomprehensible or deeply repugnant standard – will be no law at all. This view – which Crowe calls the *artifact theory of law* – vindicates the natural law claim that law is necessarily a rational standard. It also refutes the legal positivist slogan that '[t]he existence of law is one thing; its merit or demerit is another'.[7]

CONCLUSION

The importance of a shared human conception of the good in guiding discussions about politics, governance and law is the central theme of the natural law outlook, as defined at the start of this chapter. The natural law perspective, thus conceived, is in many ways alien to dominant Western discourses around politics and law. Contemporary ethical, political and legal discussions often focus primarily on the allocation of rights and interests, rather than on the best ways of promoting social or human goods. Indeed, they often seem to proceed from the assumption that humans have irreconcilable interests, rather than sharing goals by virtue of their nature. Ethics and politics, from this vantage, takes on the appearance of a zero sum game, where the gains of some community members must invariably come at the expense of others. Liberal political philosophy, meanwhile, has become preoccupied with the question

[7] John Austin, *The Province of Jurisprudence Determined* (Weidenfeld and Nicolson, 1954) 184.

of how people who have different ideas of the good can live together in communities,[8] while philosophy of law is dominated by the view that law is purely a matter of social fact and has no necessary or unified normative purpose.[9]

The natural law outlook not only provides a useful counterpoint to this contemporary context, but also holds potentially radical implications for how we conceive of our social arrangements. It is not enough, on this view, to think about politics and law as a set of formal rules for social interaction. Rather, we must engage in deeper forms of discourse about the forms of life we wish to nurture in our communities and how they connect with our shared project of human flourishing. We must, in other words, ask what we are trying to accomplish through our community projects – at individual, social and global levels – before identifying the practices or institutions that advance that objective. This kind of deep normative discourse can be challenging and may yield what seem, at first, to be irreconcilable answers. Natural law theories, however, hold that there is a shared truth to be uncovered about such issues, despite the undoubted diversity of human social and cultural environments. The chapters in this collection illustrate the various ways that this natural law project may be instantiated and carried out. We hope they might make a modest contribution to wider social discourse about what it means for humans to flourish together in community.

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8 See, e.g., John Rawls, *Political Liberalism* (Columbia UP, 1993).
9 See, e.g., H. L. A. Hart, *The Concept of Law* (2nd ed., OUP, 1994).