



JOURNAL of CHRISTIAN LEGAL THOUGHT

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NATURAL LAW IN EDUCATION & PRACTICE

JOURNAL of CHRISTIAN LEGAL THOUGHT

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Christian Legal Society (CLS), founded in 1961, seeks to glorify God by inspiring, encouraging, and equipping Christian attorneys and law students—both individually and in community—to proclaim, love, and serve Jesus Christ through the study and practice of law, through the provision of legal assistance to the poor and needy, and through the defense of the inalienable rights to life and religious freedom.

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The inside design symbolizes the spirit of a builder in its dislocated features resembling the architecture of layered bricks and the four pillars representing the four ministries of CLS. The branches represent harvest and the ongoing mission of the Church to toil the land, water the seeds, and pray to God to send the increase. The circle represents completion—embodied in the incarnation and second coming of Christ as the proverbial Alpha and Omega.

“For we are co-workers in God’s service; you are God’s field, God’s building.” (1 Corinthians 3:9)

STATEMENT OF PURPOSE

The mission of the *Journal of Christian Legal Thought* is to equip and encourage legal professionals to seek and study biblical truth as it relates to law, the practice of law, and legal institutions.

Theological reflection on the law, a lawyer’s work, and legal institutions is central to a lawyer’s calling; therefore, all Christian lawyers and law students have an obligation to consider the nature and purpose of human law, its sources and development, and its relationship to the revealed will of God—as well as the practical implications of the Christian faith for their daily work. The *Journal* exists to help practicing lawyers, law students, judges, and legal scholars engage in this theological and practical reflection, both as a professional community and as individuals.

The *Journal* seeks, first, to provide practitioners and students a vehicle through which to engage Christian legal scholarship that will enhance this reflection as it relates to their daily work; and, second, to provide legal scholars a medium through which to explore the law in light of Scripture, under the broad influence of the doctrines and creeds of the Christian faith, and on the shoulders of the communion of saints across time.

While the *Journal* will maintain a relatively consistent point of contact with the concerns of practitioners and academics alike, it will also seek to engage outside its respective milieu by soliciting work that advances the conversation between law, religion, and public policy. Given the depth and sophistication of so much of the best Christian legal scholarship today, the *Journal* recognizes that sometimes these two purposes will be at odds.

EDITORIAL POLICY

The *Journal* seeks original scholarly articles addressing the integration of the Christian faith and legal study or practice, broadly understood, including the influence of Christianity on law, the relationship between law and Christianity, and the role of faith in the lawyer’s calling. Articles should reflect a Christian perspective and consider Scripture an authoritative source of revealed truth. Protestant, Roman Catholic, and Orthodox perspectives are welcome as within the broad stream of Christianity.

However, articles and essays do not necessarily reflect the views of Christian Legal Society or any of the other sponsoring institutions or individuals.

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BUT DOES IT WORK? NATURAL LAW AT THE RETAIL LEVEL

by Jeffery J. Ventrella*

“[T]he law is good, if one uses it lawfully.”
(1 Timothy 1:8)

“[T]he work of the law is written on their hearts.”
(Romans 2:15)

“Is the law sin? By no means.”
(Romans 7:7)

“[I]n your light do we see light.”
(Psalm 36:9b)

“[N]apalming babies is bad.
Starving the poor is wicked.
Buying and selling each other is depraved....
There is in the world such a thing as evil.
[All together now:] Sez Who? God help us.”
(Arthur Allen Leff)

A Needed Conversation

Francis Schaeffer rightly quipped that the problem with evangelicals is that they see (and think) in parts and not totals.¹ This is increasingly true in a broader sense when considering public justice and today’s law profession culture: hyper-specialization, legal positivism, legal realism, critical legal studies, et al. all contribute to this as they detach law from transcendent truths,²

authority, and the permanent things,³ and thus over time these truncated and piecemeal legal methodologies tend to undermine human flourishing.

Is natural law jurisprudence an important path for correcting these trends? Does it work outside the Ivory Tower?!! Spoiler alert. Answer: yes, sort of and sometimes. And so, the conversation begins.

Natural Law Over the Ages in Life and Law

Natural law enjoys a rich and long pedigree, crossing time and cultures: the Greeks (Sophocles and Aristotle), the Romans (Cicero), early and medieval Christianity (Augustine and Aquinas). And within the academy today, a renaissance of sorts is occurring in natural law thinking and jurisprudence.⁴ But this recent development has not viably migrated into the retail level of practicing law through litigation, advocacy, and counseling. Yet, natural law thinking enjoys a history in American jurisprudence and legal practice. While it’s mostly dormant in today’s legal practice, natural law is not an historical outlier. Natural law should not be viewed as an alien invader. The question posed, however, is this: Should natural law be revived and deployed by practitioners?

* Visiting professor and director of the Center for Public Legal Theology, Trinity Law School.

1 FRANCIS SCHAEFFER, *A CHRISTIAN MANIFESTO* 17 (1981).

2 No small contributor to this is the influence of John Rawls’s notion of “public reason,” which asserts that comprehensive narratives (other than his own, evidently) should play no role in determining public policy. See JOHN RAWLS, *A THEORY OF JUSTICE* (rev. ed. 1999). It has been postulated that “new” natural law theory arose in part to meet Rawls’s challenge on its own terms.

3 See RUSSELL KIRK, *ENEMIES OF THE PERMANENT THINGS: OBSERVATIONS OF ABNORMITY IN LITERATURE AND POLITICS* (1969).

4 See, e.g., JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980); HADLEY ARKES, *FIRST THINGS: AN INQUIRY INTO THE FIRST PRINCIPLES OF MORALS AND JUSTICE* (1986); ROBERT P. GEORGE, *MAKING MEN MORAL: CIVIL LIBERTIES AND PUBLIC MORALITY* (1993); J. BUDZISZEWSKI, *WRITTEN ON THE HEART: THE CASE FOR NATURAL LAW* (1997); CHARLES RICE, *50 QUESTIONS ON THE NATURAL LAW: WHAT IT IS AND WHY WE NEED IT* (1999); RUSSELL HITTINGER, *THE FIRST GRACE: REDISCOVERING THE NATURAL LAW IN A POST-CHRISTIAN WORLD* (2007); JOHN LAWRENCE HILL, *AFTER THE NATURAL LAW: HOW THE CLASSICAL WORLDVIEW SUPPORTS OUR MODERN MORAL AND POLITICAL VALUES* (2016).

Natural law thinking entered American jurisprudence early,⁵ largely due to it being suffused by the heavy influence of English law and Sir William Blackstone.⁶ Yet, that influence and use of natural law declined sharply and today, plays little role in day-to-day law practice.⁷ Query whether the academy's renewed interest in natural law⁸ provides a pathway for utilizing it for litigating today's issues.

This Article evaluates—at an intentionally general, tentative, and introductory level⁹—the possibility for using natural law today at the practitioner's level. Does it have, can it have, and should it have practical retail traction? Is prudently using natural law within the legal profession profitable, a panacea, or a pitfall?¹⁰

Legal Representation, Duty, and an Analogy to Consider

The practice of law—in contrast to the philosophy of law—is regulated, action-oriented, situationally and relationally conditioned, and rarely can afford to be “purist.” This is true for several reasons. First and traditionally, an advocate serves clients. And the advocate must by regulatory fiat “represent his client zealously and diligently within the bounds of the law.”¹¹ Perfection and idealism are frequently the enemy of discharging this ethical duty. Why? The extant

and available “bounds of the law” may include less than optimal, but nevertheless effective, doctrines to advance the client's interests. One cannot be zealous while discarding or ignoring potentially effective legal doctrines.

Second and relatedly, an advocate exists to influence real outcomes—achieve wins and mitigate losses, whether involving the client's money or his physical liberty. The point is that effective lawyering produces desired outcomes that can be seen or measured. Negligent lawyering fails to do so and may comprise professional malpractice. An attorney advancing the most grandiose theories—without gaining actual results—fails as an advocate and again may be committing malpractice.¹² Or as one law professor put it: “Your job is not to secure a judgment for your client; your job is to *collect* the judgment for your client.”¹³ In sum, an attorney's ethical duties may cabin or constrict his incorporation of natural law devices in the course of his representation.

Now for the analogy. Two of our sons have been commissioned as USMC Infantry Officers. When they are down river, that is, deployed, and chaos ensues, if their weapon jams or lacks ammo and they see a neutralized enemy's functional weapon, they don't say, “Well, that's not what we use, and it's not my rifle preference, so forget it.” No, they pick it up and use it to ventilate the enemy even with the weapon's inherent

5 See, e.g., *Calder v. Bull*, 3 U.S. 386 (1798).

6 See generally 1 WILLIAM BLACKSTONE, COMMENTARIES.

7 See STUART BANNER, THE DECLINE OF NATURAL LAW: HOW AMERICAN LAWYERS ONCE USED NATURAL LAW AND WHY THEY STOPPED (2021).

8 See *infra* note 10.

9 In this vein, I have endeavored to be scholarly, not stuffy; accurate, yet not arcane. No doubt some specialists may find my generalities off-putting at some points, but I am primarily writing for legal practitioners and Christian laymen. I intentionally also toggle between third-, second-, and first-person voices and even use the occasional contraction. Because “I know better,” I am permitted to do so.

10 This Article assumes (1) the existence of something resembling basic natural law, and (2) that humans at some level can access natural law's moral precepts. This Article, however, will not delve into academic natural law theory and the hairsplitting that often occurs there, nor will this Article consider in any depth natural law's use in other spheres like public policy, societal norms, or private personal ethics.

11 See CHRISTIAN LEGAL SOC'Y, ABA MODEL RULES OF PRO. CONDUCT: ATTORNEY-CLIENT RELATIONSHIP 1 (2023), <https://www.christianlegalsociety.org/wp-content/uploads//2023/05/Starting-CLA-Clinic-Handout.pdf>. This rule has been amended so as to ameliorate the perceived “hired gun” mentality; an attorney must now “act with reasonable diligence and promptness.” *Id.*

12 For example, if an advocate rejects for purist reasons a doctrine or line of cases that otherwise benefits his client, he does his client a disservice. The exclusionary rule, for example, which suppresses evidence obtained unlawfully, lacks any grounding in the text of the Fourth Amendment, yet has become a vital weapon in defending against the state's prosecution and overreaching police power.

13 Professor Howard M. Downs, Civil Procedure Class, University of California, Hastings College of the Law [now UC Law SF] (1983).

limitations and defects, despite it not being their personal preference.

Why? Because in combat, results matter. Litigation is similar: having the right or purist theory often becomes secondary or unavailable¹⁴ in the heat of the battle. A correct result supported by a less-than-optimal rationale is better than losing while invoking the optimal rationale. How so?

Here is an illustration. One hundred years ago, the United States Supreme Court recognized the fundamental right of parents to direct the upbringing, health, and education of their children—an unenumerated right.¹⁵ In other words, this right appears nowhere in the Constitution's text. The Court did this via a non-textual doctrine known as “substantive due process,” a doctrine most legal conservatives loath.¹⁶ So, a less-than-optimal doctrine produced a good result. While room exists for tolerating such situations, it's preferable to use the better legal means for achieving righteous goals. Yet on balance, it's better to recognize this fundamental right using a less-than-optimal reason than not recognizing it at all. Now, using special revelation, one could reach a similar result, but in today's environment that would be a bridge too far.¹⁷ Stupid for Jesus is still stupid. And, arguably, this use of substantive due process instantiates and protects this spiritual truth, which also reflects a natural law reality.¹⁸

All this raises another concern—a methodological one—before one assesses natural law's

efficacy at the retail level: WHO determines the content of natural law to be used within a constitutional republic? Many choices exist. Attorneys who are advocating, so that a court now faces competing natural law claims? Jurists? Academicians? Legislators? The Executive Branch? The “People”? Some combination of some or all of the foregoing?

And note: natural law does not inform us who or how to use it in this—or any other—context. Put differently, the fact and apprehension of natural law fails to inform us of WHO and HOW it's to be employed in addressing public moral—let alone legal—matters. Natural law is like a fine car delivered without an owner's manual.

And yet, if these methodological hurdles can be resolved through the exercise of political compromise and prudence, other obstacles remain. These will be considered soon, but first some personal notes and some important distinctions must be made.

A Brief Biographical Excursus: 40 Years an Attorney who Studies Theology

My training stems from the presuppositional apologetic approach of Cornelius Van Til and his students, several of whom were my mentors and friends.¹⁹ Now, to be sure, Van Til possessed a dim view of natural law,²⁰ and John Frame, Van Til's successor, raised serious questions about its efficacy as well.²¹ And yet, here I am an attorney

14 As litigation proceeds, a judge's ruling may trim certain claims or defenses, thereby removing their further consideration from the litigation.

15 See Erik M. Zimmerman, *Defending the Parental Right to Direct Education: Meyer and Pierce as Bulwarks Against State Indoctrination*, 17 REGENT UNIV. L. REV. 311 (2005) (discussing the seminal decisions *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)).

16 Substantive due process and its adjacent “liberty doctrines” are quite capacious and often reduce to the predilections of the judge or the court. These doctrines “evolved” to codify and federalize abortion, sodomy, same-sex “unions,” and same-sex “marriage” while also rejecting moral rationales for opposing such things, classifying moral objections as reflecting animus. See, e.g., *Romer v. Evans*, 517 U.S. 620 (1996). Many originalist legal scholars equate “natural law” with substantive due process, unmoored to the constitutional text and pliable like a wax nose serving judicial supremacy with a result-oriented jurisprudence.

17 See *Psalm 127:3* (ESV). All Scripture references are to the ESV unless otherwise indicated. *Ephesians 6:1-4*.

18 See, e.g., G.A. Res. 217 (III) A, Universal Declaration for Human Rights (Dec. 10, 1948), a post-war document heavily influenced by natural law thinker Jacques Maritain. Article 16.3 states: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” And Article 26.3 reads: “Parents have a prior right to choose the kind of education that shall be given to their children.”

19 These include J. Peter Vosteen, Greg L. Bahnsen, John M. Frame, and Alfred J. Poirier.

20 See, e.g., Thomas K. Johnson, *Cornelius Van Til and the Natural Moral Law*, https://www.academia.edu/37371652/Cornelius_Van_Til_and_the_Natural_Moral_Law (last visited Jan. 17, 2026).

21 See, e.g., John Frame, *Is Natural Revelation Sufficient to Govern Culture?*, FRAME-POYTHRESS (May 21, 2012), <https://frame-poythress.org/is-natural-revelation-sufficient-to-govern-culture/>; JOHN M. FRAME, *THE DOCTRINE OF THE CHRISTIAN LIFE* 243-50 (2008).

and law professor who formally studies—and applies—theology. What’s to be done?

Integrating law, and in particular, law practice and theology, has proven both interesting and fruitful. For example, understanding epistemology²² greatly helped in constructing cross-examinations to “pull the rug out” from under opposing witnesses and experts and by identifying fallacious contentions advanced in litigation.²³

I then entered the nonprofit world after 15 years of “Big Law” practice. There, I was charged with developing and executing a program to form and train Christian law students. I designed a curriculum to address the deceits and deficits of standard legal education using Psalm 78 as a template for impacting future generations.²⁴ One of the deficits, engendered by legal positivism, legal realism, and later, critical legal studies, centered on the lack of any transcendent moral standard for “doing law.” I needed a resource to introduce and serve this philosophical cookie on the bottom shelf to law students lacking theological and philosophical formation. They assuredly were not getting anything like this from their law school classes.

Though a committed presuppositionalist with an admitted mild skepticism to natural law thinking, I commissioned and edited a key volume to (re)introduce moral transcendence to these students.²⁵ I figuratively picked up a non-preferred foreign weapon and began training others to use it.²⁶ While its sights, scope, and optics may be off, and its lethality at distance less than optimal, it could still be effective in some contexts.

What are the contours of doing this? What are the pitfalls and limitations of doing this? What are the benefits for doing this and how can

they be maximized and navigated in a way that avoids both the Scylla and Charybdis, that is, treating natural law as either a pious panacea or a profitless pitfall?

Three Preliminary—Yet Important—Distinctions

Before assessing natural law’s utility vis-a-vis “cases and controversies,”²⁷ prudence demands keeping three distinctions in mind. First, understanding natural law as *fact*. In other words, natural law is the claim that the cosmos is morally ordered and that order can be apprehended at some level by reason. Scripture demonstrates this point in several ways. Psalm 19 informs us that:

The *heavens declare* the glory of *God*,
and the sky above *proclaims his*
handiwork.

Day to day pours out speech,
and night to night *reveals*
knowledge.

There is no speech, nor are there words,
whose voice is not heard.

Their voice goes out through all the
earth, and their words to the end
of the world.

In them he has set a tent for the sun.²⁸

Psalm 8 alludes to the relationship between the Creation and knowledge of God’s *handiwork* in it.²⁹ Paul speaks about the moral regularity of Creation:

Do not be deceived: God is not mocked,
for whatever one sows, that will he also
reap. For the one who sows to his own

22 JOHN M. FRAME, *THE DOCTRINE OF THE KNOWLEDGE OF GOD* (1987).

23 Jeffery J. Ventrella, *Identifying and Refuting Fallacious Argument*, FOR THE DEFENSE, Dec. 1995.

24 Psalm 78 informs us that if one seeks to influence our children’s children, he needs to have them study God, His works, and His law. This triad reflects John Frame’s perspectival taxonomy: Person—Situation—Norm. See John M. Frame, *A Primer on Perspectivalism*, FRAME-POYTHRESS (June 4, 2012), <https://frame-poythress.org/aprimer-on-perspectivalism/>.

25 J. BUDZISZEWSKI, *NATURAL LAW FOR LAWYERS* (Jeffery J. Ventrella ed., 2006).

26 Though I am convinced by and committed to an optimistic eschatology, the present state of the legal ecosystem would not reasonably permit attorneys to tell the judge “the Bible says so.” The Overton window first needed to shift, and reintroducing natural law concepts began to do just that. Just as Lewis’s *Abolition of Man* did this for the general culture in 1942, I hoped this work would contribute to doing the same in the law profession culture.

27 U.S. CONST. art. III, § 2.

28 *Psalm* 19:1-4 (emphasis added).

29 See *Psalm* 8:1, 3.

flesh will from the flesh reap corruption, but the one who sows to the Spirit will from the Spirit reap eternal life. And let us not grow weary of doing good, for in due season we will reap, if we do not give up.³⁰

Paul also describes how even unbelieving Gentiles possess some knowledge of God as Creator:

For what can be known about God is plain to them, because God has shown it to them. For his invisible attributes, namely, his eternal power and divine nature, have been clearly perceived, ever since the creation of the world, in the things that have been made. So they are without excuse. For although they knew God, they did not honor him as God or give thanks to him, but they became futile in their thinking, and their foolish hearts were darkened.³¹

In fact, this general moral knowledge is “imprinted” in each human:

For when Gentiles, who do not have the law, by nature do what the law requires, they are a law to themselves, even though they do not have the law. They show that the work of the law is written on their hearts, while their conscience also bears witness, and their conflicting thoughts accuse or even excuse them³²

The foregoing outlines the prima facie fact of natural law. This point—the *fact* of natural law—needs to be distinguished, however, from

the various and sometimes divergent *theories* of natural law, our second key distinction.³³

As both Christians and pagans have contemplated this fact of moral knowledge, *explanations* for it have taken many forms over the millennia. These include the Thomistic approach of Aquinas, the “new” natural law approach of Finnis and his followers, the “mere” natural law approach of Arkes, and various pagan approaches.³⁴ Here’s the point: explaining natural law does not equate to *employing* natural law at the retail level. Volleying natural law theories like pickle ball does not resolve the extant moral issues. Put bluntly, one ought not trounce into court asking the court to rule such and such because that’s what the “seven human goods” of John Finnis require.³⁵

The plot thickens, however: these various theories compete and often clash, particularly regarding the role, if any, Scripture plays in doing moral exegesis. This is true even among Christian natural law advocates. One of the key proponents of natural law candidly puts it this way:

Even among Christian philosophers ***the doctrine of natural law often fails to measure up.*** Either it focuses on matters peripheral to the text and the device of the heart, ***or it wanders from its scriptural foundation.*** To one degree or another these have been flaws of almost all previous natural-law theorizing, including my own—and nearly all books about it, perhaps including the present one.³⁶

What is the relationship between Scripture and natural law precepts? The theories conflict, and this produces uncertainty, if not confusion. Should Scripture be consulted or cabined? How does one handle—and in what priority—the availability of both natural law and Scripture?

30 Galatians 6:7-9.

31 Romans 1:19-21.

32 Romans 2:14-15.

33 This point is not unlike the various competing theories regarding Christian apologetics: Van Til’s presuppositionalist approach, Montgomery’s evidentialist approach, Protestant scholasticism’s classical approach, Clark’s axiomatic presuppositionalist approach, Craig’s rationalistic approach, etc.

34 For a pre-Aristotelian example, consider *Antigone* by Sophocles: Antigone wrestles with whether to obey the King’s (Creon) law—“don’t bury the traitorous brother”—or natural law—“honor your brother and bury him.” See SOPHOCLES, *ANTIGONE*.

35 See Finnis’s *Seven Basic Human Goods*, UOLLB (July 14, 2014), <https://uolib.com/blogs/uol/finnis-seven-basic-human-goods>. And naturally, no faithful follower of Finnis would consider doing such a clunky and inept thing.

36 J. BUDZISZEWSKI, *WRITTEN ON THE HEART: THE CASE FOR NATURAL LAW* 186 (1997) (emphasis added).

Do both apply? If so, does one trump the other? When and how?

The third distinction to maintain involves whether natural law is a *tool* or a *goal*. If the former, we can incorporate natural law precepts instrumentally to achieve just results by acceptable, if not optimal, means. If the latter, then the push would be to constitutionally codify Aquinas or Finnis. Tool and goal should not be confused, particularly if it devolves into spawning party-spirit factions: I am of Thomas, I am of Finnis, I am of Arkes.³⁷

If one (1) resolves the methodological challenges, (2) avoids the sideshow of party-spirit factions and competing theories, and (3) navigates the gauntlet of special and general revelation, then obstacles of varying degrees still remain to employing natural law at the retail level. What are they, and how significant are they?

Seven Obstacles to Applying Natural Law Jurisprudence (and Two Pesky Questions)

1. Creation: Governed by Special Revelation

Law should be applied to the world as it exists and as it has been designed to exist: dependent on and designed by God. With Christian cosmology, special revelation—not natural theology—governs. Severing life from God and His Word never produces optimal human flourishing. Man—whether redeemed or not—is to live “by every word that comes from the mouth of God.”³⁸ Any ethical system that severs itself from God’s Word is suspect, incomplete at best and dangerous at worst.

God not only spoke the cosmos into existence, but He also directed His will to His image—Adam and Eve—verbally. In other words, the Lord did not place Adam and Eve in the garden to “figure out life” for themselves aided only

by their own empirical observations and reasoning. Note carefully: in the garden, the Fall had yet to occur and yet God did not leave Adam and Eve to rely upon their own innate human faculties, including their reasoning. They were to do as God verbally instructed them. They were to act in accordance with special revelation, with God’s command or law. To be sure, reasoning plays an important role because it reflects being created *imago Dei*, but it’s a tool, not a judge.³⁹ Its object is special revelation; it’s a tool for understanding and applying it.

Too often natural law advocates dispense with special revelation or contend that it’s not necessary. Or natural law advocates take harbor by contending that they are making a “philosophical argument, not a theological one.”⁴⁰ Whatever the motivation for these moves, they structurally sever special revelation from ethical methodology. It’s one thing to fire a weapon with only iron sights; it’s quite another to do so blindfolded.

A major idea underlying natural law methodology is that reason alone⁴¹ can reliably guide the moral conversation. Two problems arise, however. First, in a post-lapsarian world—the only world humans can know—what counts as “natural” may not be morally desirable. In other words, observing facets of a fallen world creates no reliable moral standard. And we can only know pristine pre-lapsarian reality by using special revelation, which corrects our observations of the sin-marred world.

Second, many morally repugnant things have arisen and recur *naturally*: Kinism, racism, polygamy, segregation, miscegenation. Most recently, advocates of so-called “Christian Nationalism” explicitly predicate their ethic on a people’s natural affinity to prefer their own—all

37 In some ways, this is reminiscent of and analogous to “worship war” debates regarding which Psalter—red or blue—should be used in regulated worship.

38 *Matthew* 4:4.

39 See Greg L. Bahnsen, *Ready to Reason*, GRACE ONLINE LIBRARY, <https://graceonlinelibrary.org/apologetics/presuppositionalism/ready-to-reason-by-dr-greg-bahnsen/> (last visited Jan. 17, 2026).

40 ROBERT P. GEORGE, SHERIF GIRGIS, & RYAN T. ANDERSON, *WHAT IS MARRIAGE?: MAN AND WOMAN: A DEFENSE* (2012). This is the tact taken by the authors.

41 Aquinas rejects that notion that the *will*, as opposed to reason, pertains to the law. See THOMAS AQUINAS, *SUMMA THEOLOGICA* I.II.Q90 (1274).

(supposedly) based on reason, observation, and natural law.⁴²

While special revelation may not be necessary to establish certain mediate moral points, it certainly is necessary to fully understand and guide justice as designed by God. Frame notes the proper balance:

What use is natural law, when we have the Bible. [citing Budziszewski's answer: apologetics] ... [P]rinciples that cannot be established from Scripture cannot be established by natural-law arguments either. When people try to add to God's word by natural-law arguments, they violate the sufficiency of Scripture. This is not to say that it is wrong to use natural-law arguments.... [*N*]atural law is an important apologetic tool, but it does not provide ethical norms in addition to those in Scripture.⁴³

This obstacle foreshadows the next obstacle.

2. Pilot Error: The Noetic Effects of Sin v. Assuming Something Like Unaided Reason

The realities conveyed by the Bible do not disappear simply because they are ignored, whether through ignorance or by design. For example, Nazis claimed that Jews were not human. Yet, every Jew exterminated at Dachau had been made in the image of God.

One of the revolutionary claims of Christianity involves the shift from shame to sin.⁴⁴ A culture predicated on shame behaves very differently from one based on sin. The latter includes sin's remedy: redemption and reconciliation. The "category" of sin "behaves differently" from

the "category" of shame. Yet, whether acknowledged culturally or not, sin remains a reality that impacts reality, including humanity's faculties. Natural law thinking on occasion ignores or downplays the reality of sin's pervasiveness and, by sidelining theology, likewise sets aside sin as a factor precipitating societal malady. But there's more. Sin causes an additional problem for natural law jurisprudence.

The Fall of man is totalistic in the sense that sin affects every aspect of reality, including Creation.⁴⁵ Scripture also notes that sin impacts mankind's thinking, distorting his *reasoning*—in other words, the notion of "unaided" or unfallen reason is illusory. Scripture's witness is unmis-takable:

For those who live according to the flesh **set their minds on the things of the flesh**, but those who live according to the Spirit set their minds on the things of the Spirit. **For to set the mind on the flesh is death**, but to set the mind on the Spirit is life and peace. **For the mind that is set on the flesh is hostile to God**, for it does not submit to God's law; indeed, it cannot.⁴⁶

For although they knew God, they did not honor him as God or give thanks to him, but **they became futile in their thinking**, and their foolish hearts were darkened. Claiming to be wise, they became fools.⁴⁷

Now this I say and testify in the Lord, that **you must no longer walk as the Gentiles do, in the futility of their minds**.⁴⁸

42 For a devastating critique of this effort, see Brian Mattson, *A Children's Crusade: Stephen Wolfe and the "Great Restoration,"* THE SQUARE INCH (Nov. 15, 2022), <https://brianmattson.substack.com/p/a-childrens-crusade>. Additionally, see the essays collected in the following volumes, all edited by P. Andrew Sandlin, which address these and adjacent matters: *VIRTUOUS LIBERTY: A CHRISTIAN DEFENSE OF CLASSICAL LIBERALISM AND THE FREE SOCIETY AGAINST CULTURAL LEFTISM AND THE NEW RIGHT* (P. Andrew Sandlin ed., 2023); *THE SANCTIFIED STATE: POLITICS IN THE CHRISTIAN WORLDVIEW* (P. Andrew Sandlin ed., 2024).

43 FRAME, DOCTRINE OF THE CHRISTIAN LIFE, *supra* note 21, at 246, 248 (emphasis added).

44 See KYLE HARPER, FROM SHAME TO SIN: THE CHRISTIAN TRANSFORMATION OF SEXUAL MORALITY IN LATE ANTIQUITY (2016).

45 See *Romans* 8:19-23. Creation itself "awaits" release from sin's bondage.

46 *Romans* 8:5-7 (emphasis added).

47 *Romans* 1:21-22 (emphasis added).

48 *Ephesians* 4:17 (emphasis added).

And you, **who once were alienated and hostile in mind**, doing evil deeds[.]⁴⁹

But **their minds were hardened**. For to this day, when they read the old covenant, that same veil remains unlifted, because only through Christ is it taken away.⁵⁰

In their case **the god of this world has blinded the minds of the unbelievers**, to keep them from seeing the light of the gospel of the glory of Christ, who is the image of God.⁵¹

To the pure, all things are pure, but to the defiled and unbelieving, nothing is pure; but **both their minds and their consciences are defiled**.⁵²

Accordingly, our fallen minds must be *opened* and *renewed*:

Do not be conformed to this world, but **be transformed by the renewal of your mind**, that by testing you may discern what is the will of God, what is good and acceptable and perfect.⁵³

[A]nd to be **renewed** in the spirit of your **minds**.⁵⁴

Then he said to them, “These are my words that I spoke to you while I was still with you, that everything written about me in the Law of Moses and the Prophets and the Psalms must be fulfilled.” **Then he opened their minds** to understand the Scriptures.⁵⁵

We destroy arguments and every lofty opinion raised against the knowledge of God, and **take every thought captive to obey Christ**.⁵⁶

The reality of this noetic effect of sin⁵⁷ spawns consequences, particularly for those natural law advocates who seek to “put aside” theology or special revelation. Someone quite familiar with the natural law tradition (Pope Benedict XVI), who’s also a stellar theologian, recognizes this problem:

Of course, **the attempt to use a strictly autonomous reason** that refuses to know about faith, to pull ourselves out of the slough of uncertainties by our own hair, so to speak, **can hardly succeed in the end. For human reason is not autonomous at all**. It is always living in one historical context or other.⁵⁸

49 *Colossians* 1:21 (emphasis added).

50 *2 Corinthians* 3:14 (emphasis added).

51 *2 Corinthians* 4:4 (emphasis added).

52 *Titus* 1:15 (emphasis added).

53 *Romans* 12:2 (emphasis added).

54 *Ephesians* 4:23 (emphasis added).

55 *Luke* 24:44-45 (emphasis added).

56 *2 Corinthians* 10:5 (emphasis added).

57 Parsing the implications stemming from this reality quickly becomes nuanced and complicated. See, e.g., Matt Marino, “Noetic Effects of Sin” Objections, REFORMED CLASSICALIST, <https://www.reformedclassicalist.com/home/noetic-effects-of-sin-objection> (last visited Jan. 17, 2026); see also David Haines, *Thomas Aquinas on Total Depravity and the Noetic Effects of Sin*, THE GOSPEL COALITION: THE MELIOS (Aug. 2023), <https://www.thegospelcoalition.org/themelios/article/thomas-aquinas-on-total-depravity-and-the-noetic-effects-of-sin/>; Dewy J. Hoitenga, *The Noetic Effects of Sin: A Review Article*, 38 CALVIN THEOLOGICAL J. 68 (2003). The simple point here is that one cannot simply or glibly invoke “unaided reason” as if that human faculty is unaffected by sin. Yet, “reason” often carries a heavy, but leaky, bucket of water in natural law exercises.

58 JOSEPH CARDINAL RATZINGER, TRUTH AND TOLERANCE: CHRISTIAN BELIEF AND THE WORLD RELIGIONS 135-36 (2003) (emphasis added). It may well be that Ratzinger, as a theologian rather than being a philosopher, grants more gravitas to the Scripture’s witness to the noetic effects of sin. Philosophers tend to rely more on reason; theologians tend to rely more on revelation.

How can one reliably trust fallen supposedly autonomous reason to propel proper moral conclusions? At some point that enterprise needs the corrective lens of what is called “mixing the metaphor.” Both books—Genesis and Revelation—they go together.⁵⁹ Invoking and relying on reason alone—without accounting for noetic sin, and thereby ignoring revelational insight and correction—will collide with ethical reality and ultimately leave the advocate ethically disarmed. Natural lawyering cannot ultimately succeed without accounting for this reality. As one man also familiar with natural law put it, faith and reason must go together.⁶⁰

3. A Big Gap: The Lack of Epistemological Granularity, Specificity, and Breadth

To illustrate this obstacle to applying natural law at the retail level, consider this thought experiment. Suppose as you are working at your desk or cubicle, a co-worker approaches you. He says that upon entering the building today, he had to “step over” a “body” near the doorway. Do you call 911? If so, what do you tell the operator? You plainly need more information:

- Was the body *human*?
- Was the body *lifeless*?
- If lifeless:
 - Was it a *natural* death?
 - If not, was there a *crime* committed?
 - If so:
 - Was it *murder*?
 - Was it *manslaughter*?
 - Was it *suicide*?
 - Was it “*assisted*” *suicide*?
 - Was it a *justified killing* in self-defense?
 - Was it an *excused killing* because of mental defect or diminished capacity?

Each of these questions—and the key distinctions made from them—arise from and occupy significant places in the Western legal tradition.⁶¹ However, none of them can be infallibly derived from the “basic goods” of natural law.⁶² Natural law morally informs us that life is a good, for example, but lacks substantive specificity to go

59 Brian Mattson, *The Two Books Go Together: Pipe and Dram: On Natural Theology*, THE SQUARE INCH (Jan. 18, 2024), <https://brianmattson.substack.com/p/the-two-books-go-together>; see also N.T. WRIGHT, *ESCHATOLOGY AND HISTORY: JESUS AND THE PROMISE OF NATURAL THEOLOGY* (2019). Further note that Paul confesses he “would not have *known*” what it meant to covet unless the law (special revelation) had so informed him. *Romans* 7:7 (emphasis added). Plainly, natural law is not as comprehensive as, nor co-extensive with, the Law of God.

60 *Encyclical Letter Fides et Ratio of the Supreme Pontiff John Paul II to the Bishops of the Catholic Church on the Relationship Between Faith and Reason*, THE HOLY SEE (Sept. 14, 1998), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_14091998_fides-et-ratio.html. Note the title’s intentional use of the conjunctive “and” [et], not the disjunctive “or” [aut]. This idea is to link, not separate, faith and reason.

61 See, e.g., HAROLD BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1985).

62 As one commentator summarized Finnis’s theory:

Finnis thinks that these 7 “basic goods” are universal—they apply to all humans at all times. To flourish as human beings, we need all of these basic goods. Let’s look at them in more detail. . . . Life = the drive for self-preservation; it includes every aspect of life which puts a human being in good shape for self-determination; it includes bodily health, freedom from pain; also the transmission of life by procreation. NOTE: in a 2011 postscript, Finnis added the institution of marriage (a man and a woman) to this category.

R.S. THOMAS TALLIS, JOHN FINNIS—NATURAL LAW—A QUICK SUMMARY, <https://rsthomastallis.weebly.com/uploads/2/3/6/7/23674516/johnfinnis.pdf> (last visited Jan. 17, 2026).

Query: Why did Finnis originally omit the supposedly knowable “basic good” of marriage from his system until 2011? Finnis is brilliant and a treasure; the point is that his system reflects a lack of granularity, even at a basic, fundamental societal level. This facet highlights concerns of using natural law in a way that operates at the legal retail level. While “new” natural law is certainly profitable, it’s simply not a panacea. And to be fair, the better natural law advocates recognize this and do not claim natural law to be an ethical cure-all.

much beyond that axiom. Just how does one distinguish between murder and self-defense? Or between murder and manslaughter? Scripture makes these distinctions.⁶³

Moreover, Western law includes the notion of repose and finality. An ordered society with a functioning legal system faces situations to coordinate the flow and finality of disputes. Doctrines arose by necessity to regulate the limitations upon actions and collaterally attacking final judicial rulings. How soon must a claim be made before it's time-barred? If a matter has been adjudicated, how or under what circumstances can it be reconsidered by attacking it collaterally? None of these can be reliably deduced from "basic goods" or other natural law traditions. The natural law attorney may claim these are "prudential matters" beyond the ambit of natural law.⁶⁴ Fine. If this is thoroughly so, then what becomes of moral transcendence?⁶⁵ Does natural law mean anything for such situations? Is natural law therefore only a partial or hybrid tool? Who decides and how?

Natural law also manifests deficiencies as to its breadth; it is underinclusive. Briefly, simply note that while natural law cannot contradict eternal law and the revealed Law of God,⁶⁶ it's not the case that natural law is co-extensive with them. Paul makes this point on epistemological grounds:

What then shall we say? That the law is sin? By no means! ***Yet if it had not been for the law, I would not have known sin. For I would not have known*** what it is to covet if the law had not said, "You shall not covet."⁶⁷

Paul is saying he could not have reasoned to the wrongfulness of covetousness, absent the law of God. Plainly, on Paul's testimony, natural law, though meaningful and instructive to a point,⁶⁸ remains morally incomplete and insufficient.

4. *Incomplete Anthropology: The Absent Imago Dei*

Law applies to people. The object of law attaches to humans and humanity and their lives, relationships, and endeavors. What kind of thing is a human? Special revelation trumpets the creational norm that humans—all humans, pre- and post-Fall—are made in the image and likeness of God.⁶⁹ This norm supplied a crucial predicate for valorizing humans and erecting a just system of law.⁷⁰

The *imago Dei* is also fundamental to grounding and justifying numerous legal doctrines: the sanctity of life;⁷¹ the inherent dignity of each person;⁷² equality under the rule of law;⁷³

63 See *Exodus* 22:2-3 (self-defense); *Deuteronomy* 19:1-13 (manslaughter). For further and more comprehensive insight into the taxonomies of biblical law, see JONATHAN BURNSIDE, *GOD, JUSTICE, AND SOCIETY: ASPECTS OF LAW AND LEGALITY IN THE BIBLE* (2010).

64 Does this mean that such inquiries lack moral ballast altogether? If so, the retail use of natural law seems truncated considerably. And, if these are only purely prudential matters, WHO and WHAT determines the best and wisest approach(es) for resolving them?

65 This begins, if pushed, to operationally sound almost like Deism: yes, there exists this higher moral standard, but operationally, it contributes nearly nothing actually helpful at the retail level.

66 If one arrives at a conclusion that undermines or contradicts the revealed law of God, error has occurred. This is the case of the Kinists and racialists such as Corey Mahler and Michael Spangler claiming that natural law justifies their vile positions.

67 *Romans* 7:7 (emphasis added).

68 See *Romans* 2:14-15.

69 *Genesis* 1:26-27; 9:6.

70 Ironically, even pagans acknowledge this point often gratefully. See LARRY SIEDENTOP, *INVENTING THE INDIVIDUAL: THE ORIGINS OF WESTERN LIBERALISM* (2014); LUC FERRY, *A BRIEF HISTORY OF THOUGHT: A PHILOSOPHICAL GUIDE TO LIVING (LEARNING TO LIVE)* (2011); TOM HOLLAND, *DOMINION: HOW THE CHRISTIAN REVOLUTION REMADE THE WORLD* (2019); STEVEN D. SMITH, *PAGANS AND CHRISTIANS IN THE CITY: CULTURE WARS FROM THE TIBER TO THE POTOMAC* (2018).

71 See, e.g., *Genesis* 2:7; *Acts* 17:25; *Psalms* 36:9; *1 Samuel* 2:6.

72 See *James* 3:9.

73 Scripture condemns the sin of partiality. See, e.g., Jeffery J. Ventrella, *The Ugly Monsters of "Baptized" Partiality*, TRUTHXCHANGE (Sept. 30, 2024), <https://truthxchange.com/the-ugly-monsters-of-baptized-partiality/>.

the basis for just desserts and proportionality in criminal matters,⁷⁴ to name a few.

Here's the problem: just as no traditional "proof for God" arrives at the true and living Triune God,⁷⁵ no natural law theory deduces that humans are made *imago Dei* of that true and living Triune God: no Triune God, no *imago Dei* of that God. While fallen man knows God's attributes from the Creation,⁷⁶ he lacks knowledge of being made in His image and worse, he unrighteously suppresses the truth he does know.⁷⁷

This presents a large problem when doing cultural apologetics involving "gender identity" claims. The predicate for opposing "gender transition" requires the foundation that humans exist as immutable sexual dimorphs, male and female.⁷⁸ Natural law assumes it but cannot prove it rationally. As law and culture begin to challenge metaphysics, rebutting those challenges requires a knowable, immutable, and firm anthropology that reflects reality. Natural law may assume this but cannot, on its own terms, prove or justify it.

5. Tension: Telos and the Naturalistic Fallacy

Natural law thinkers often rely on teleology in advancing moral claims. For example, the purpose of the eye is to see; but gazing into the sun, while possible, undermines the eye's purpose and should be avoided. The purpose of the lungs is to oxygenate the blood; but inhaling water, instead of air, while possible, under-

mines the lungs' purpose and should be avoided. Both uses are misuses based on the design of the implicated organ.⁷⁹

The challenge here is to justify how one knows that what one observes is "right" in a moral sense. Non-consensual sex (sexual assault) and fornication (non-married sexuality) also exist naturally, but no natural law attorney would condone them as moral. The problem percolating under the surface here is known as the is/ought fallacy: How can one derive an "ought" from an "is" reliably?⁸⁰ Unaided and fallen reason lacks reliability at this very point.

To avoid this problem, natural law attorneys often argue that some "ought's" can be derived from "is's" IF they embody the Creator's purpose. Budziszewski puts it this way:

An "is" which merely "happened to be" has no moral significance because it is arbitrary; that's why it cannot imply an "ought." ***But an "is" which expresses the purpose of the Creator is fraught with "ought" already.*** Such are the inbuilt features of our design, including the design of deep conscience.⁸¹

Note carefully: to avoid the naturalistic fallacy, reliance on the *Creator's purpose* becomes necessary. How are the Creator and His purposes known? By special revelation, not natural law alone.

Yet to conclude that Creation is neutral or lacks design, as contoured by the Creator's pur-

74 Genesis 9:6; Matthew 5:30; Exodus 21:24; Leviticus 24:20.

75 The "traditional proofs" like Anselm's ontological argument or the various cosmological proofs (whether that's Jonathan Edwards's or William Lane Craig's Kalam argument) never "prove" the Triune God of the Bible. Rather, the certain proof that the God of the Bible exists is that without Him, one couldn't prove anything and thus must be based on special revelation. See Greg L. Bahnsen, *Arguments for the Existence of God*, THE BAHNSEN INST. (Mar. 13, 2022), <https://www.bahnseninstitute.com/arguments-for-the-existence-of-god/>.

76 See Romans 1:19-21.

77 See Romans 1:18.

78 When natural law thinkers address this issue, they often smuggle special revelation into their contentions; in other words, they do not—and cannot—solely rely on natural law principles. See *infra* text accompanying note 87.

79 These illustrations involve personal morality; query whether they justify imposing societal prohibitions on such conduct.

80 Philosophers banter and debate this point, but at the retail level, how can one persuade a jurist or a jury that just because something is X, it's supposed to be X? See, e.g., *Has the "Is/Ought" Problem Finally Met Its Match?*, PHILOSOPHY: STACKEXCHANGE, <https://philosophy.stackexchange.com/questions/94028/has-the-is-ought-problem-finally-met-its-match> (last visited Jan. 17, 2026).

81 J. BUDZISZEWSKI, *WHAT WE CAN'T NOT KNOW: A GUIDE* 117 (rev. & expanded ed. 2011) (emphasis added).

pose, produces a number of dangerous implications. As Nancy Pearcey explains:

If nature [creation] does not reveal God's will, then it is a morally neutral realm where humans may impose their will. There is nothing in nature humans are morally obligated to respect. Nature becomes the realm of value neutral facts, available to serve whatever values humans may choose.

And because the human body is part of nature, it too is demoted to the level of an amoral mechanism, subject to the will of the autonomous self. If the body has no intrinsic purpose, built by God, then all that matters are human purposes. The body is reduced to a clump of matter—a collection of atoms and molecules, not essentially different from any other chance configuration of matter. It is raw material to be manipulated and controlled to serve the human agenda, like any other natural resource.⁸²

This in turn informs us how to best love others. Oliver O'Donovan and Nancy Pearson make this point, predicated on the God-given human telos:

Responsibility in sexual development implies a responsibility to nature—to the ordered good of the bodily form which we have been given.⁸³

In a teleological ethic, ***the way to love people is by supporting their telos—what is genuinely good for them in light of the way God designed us to function and flourish.***⁸⁴

If law applies to real people, which it does, law must be informed by the reality about people as

they really are. Consequently, law requires both nature and special revelation that sets forth the purpose and design of Creation, including the human person.

6. Strong Headwinds: Judicial Skepticism

As noted, the common law tradition included natural law thinking in several respects. Yet, early in the American experience, jurists expressed reluctance, if not skepticism, at least regarding whether jurists could avail themselves to natural law when judging. Justice Iredell early on questioned whether the judiciary could use natural law:

I cannot think that under such a government [separation of powers in a constitutional republic] any court of justice would ***possess a power*** to declare it so [voiding a statute under NL].... ***[T]he court cannot pronounce it to be void merely because it is*** in their judgment ***contrary to the principles of natural justice.***⁸⁵

Note carefully: the Court is not denying natural law as a fact but ruling that a court lacks authority to employ it. And, by implication, he seems to be saying that natural law lacks a place in constitutional analysis because if the jurist cannot apply it, the advocates have no business employing it.

Later, some 200+ years after Justice Iredell's statement, a similar debate among justices became public. Justice Black wrote bluntly rejecting the judicial use of natural justice:

I cannot rely on the Due Process Clause or the Ninth Amendment or any mysterious and uncertain natural law concept as a reason for striking down this state law. . . . [citing *Lochner*] ***That formula, based on subjective considerations of "natural justice" is no less***

82 NANCY R. PEARCEY, LOVE THY BODY: ANSWERING HARD QUESTIONS ABOUT LIFE AND SEXUALITY 24 (2018) (emphasis added).

83 OLIVER O'DONOVAN, BEGOTTEN OR MADE? 34 (2022).

84 PEARCEY, *supra* note 82, at 171 (emphasis added).

85 *Calder v. Bull*, 3 U.S. 386, 398-99 (1798) (emphasis added).

dangerous when used to enforce this Court's view about personal rights than those about economic rights.⁸⁶

These concerns raise the broader question of jurisdiction: WHO may properly invoke natural law? Significant judicial headwinds continue to blow strongly opposing natural lawyering in and by the judiciary. Perhaps the debates concerning how to use which transcendent moral standards should rest with more deliberative bodies like policy makers, or perhaps the executive. Natural law, however, provides no guidance for resolving this jurisdictional dilemma. So, advocates, at best, may be left with persuading jurists that natural law exists, but that same natural law fails to instruct them whether or how to employ it.

7. Contra Mundum: Deeply Rooted Political and Philosophical Opposition

The legal academy, deeply impacted by Critical Legal Studies and Cultural Marxism, as well as Critical Race Theory, deplors transcendent standards. For these academics, moral categories exist to reinforce the oppressors' hegemony. For modern legal educators, the only real issue centers are power dynamics as manifested in the essentially Marxist dialectic of the oppressed versus the oppressor. Accordingly, these academics stand opposed to moral standards tethered to anything transcendent. Feuerbach, for example, in no way masks his opposition to transcendent theological standards:

Whenever morality is based on theology, wherever the right is made dependent on divine authority, the most

immoral, unjust, infamous things can be justified and established.... Hence, self-delusion, if not wicked, insidious design, is at the root of all efforts to establish morality, right, on theology.⁸⁷

Even if the foregoing seven obstacles stand less than formidable and can otherwise be contained, mitigated, or ameliorated, several pesky questions remain that must be addressed.

Those Pesky and Persistent Questions

1. What About Penology?

Remedies in the criminal law involve applying punishments to convicted offenders. How does natural law guide that enterprise with any specificity or granularity? "Be fair" and "act justly" provide little guidance.⁸⁸ For example, if someone defrauds another, one remedy upon conviction could be restitution. Should just restitution consist of 1% of the monies stolen, 35% of the monies stolen, 99% of the monies stolen, 100% of the monies stolen plus interest, or 1200% of the monies stolen? Why or why not on natural law principles?⁸⁹ So, the question is how, under those principles, one could oppose a properly debated and passed law that prescribes life imprisonment for (say) parking violations?⁹⁰ How does natural law set standards for evaluating punishments that are too lenient or too harsh?⁹¹ Says who?⁹²

Professor Leff pushes the more general point, highlighting the need for a knowable transcendent standard, yet ignoring its true source himself:

86 Griswold v. Connecticut, 381 U.S. 479, 522 (1965) (Black, J., dissenting) (emphasis added).

87 LUDWIG FEUERBACH, ESSENCE OF CHRISTIANITY 274 (George Elliot trans., 1989) (emphasis added).

88 On the other hand, Scripture commands the doctrine of fair proportionality, *lex talionis*, or an "eye for an eye." See, e.g., Exodus 21:23-25; Deuteronomy 19:21; Leviticus 24:17-22.

89 In biblical justice, in contrast, the older testament's judicial laws specified penology involving property crimes (Exodus 22:1-4). The New Testament contends that under that scheme "every transgression or disobedience received a just retribution" (Hebrews 2:2). In other words, those penalties discharged justice. Penology under the Bible comprises a moral category.

90 There's little question that imposing such a draconian punishment would be effective, but would it be just?

91 Similarly, in a highly regulated administrative state, by what standard can a particular regulatory scheme be deemed just or successful? It seems that one must become a pragmatist and ask whether "it works," but that calculus can be both arbitrary and unjust.

92 See Arthur Allen Leff, *Unspeakable Ethics, Unnatural Law*, 1979 DUKE L.J. 1229 (1979).

All I can say is this: it looks as if we are all we have. Given what we know about ourselves and each other, this is an extraordinarily unappetizing prospect; looking around the world, it appears that if all men are brothers, the ruling model is Cain and Abel. Neither reason, nor love, nor even terror, seems to have worked to make us “good,” and worse than that, there is no reason why anything should. Only if ethics were something unspeakable by us, could law be unnatural and therefore unchallengeable. As things now stand, everything is up for grabs. Nevertheless:

[N]apalming babies is bad.

Starving the poor is wicked.

Buying and selling each other is depraved.

Those who stood up to and died resisting Hitler, Stalin, Amin, and Pol Pot—and General Custer too—have earned salvation. Those who acquiesced deserve to be damned.

There is in the world such a thing as evil. [All together now:] Sez who? God help us.⁹³

Can natural law, on its own terms, redress these assorted societal evils Leff identifies? If so, how so and to what extent? Natural law thinkers have yet to provide a fully adequate answer. Penology remains a pesky question under a pure natural law regime.

2. What About Process?

In the same vein, law consists of both substance (norms) and procedure (processes).⁹⁴ Natural law says little, if anything, directly about proce-

dural norms. Oh, sure, folks can contend that ex post facto laws are “unfair” or that an accused is entitled to “due process,” a “fair trial,” a presumption of innocence, and may not self-incriminate, but how can those important procedural precepts be derived from natural law principles, unless they are stipulated *a priori*?

Should a convicted person be entitled to appeal? Is this a matter of justice? What process—how many bites at the apple—is justly due? Why does an acquittal conclude the criminal matter, but a conviction does not, under the U.S. system? Is an appeal an accessory or a matter of right, that is, a matter of fundamental justice? Again, as with penology, procedure is a pesky question that largely stands unanswered by natural law principles.

A Skeptical Supporter Goes Forward: Five Benefits to Using Natural Law

Given the foregoing impediments, should attorneys, particularly Christian advocates, seek to employ natural law in their profession? Decidedly, yes—without question—for several reasons. Using natural law and natural law thinking moves society’s moral needle in several key ways. How so? By:

1. Pressing Moral Universals

In the first place, invoking the vocabulary of transcendence aligns with and helps put flesh on more abstract notions of justice and “fairness.” By intentionally using natural law concepts and categories, advocates help move the Overton Window, normalizing moral notions in law.

2. Exposing the Myth of Moral Neutrality

As a consequence of doing so, using natural law exposes the myth of neutrality. All laws draw lines, and those lines contain moral content—what society *ought* to do and *ought not* to do. Law is therefore an inherently moral enterprise, whether acknowledged or not. By in-

93 *Id.* at 1249.

94 The line between substance and procedure is not hard and fast. Often the lack of procedure becomes normatively unjust, a substantive concept. And, the converse can also be true.

voking moral language and concepts, advocates point to things that jurists and policy makers “can’t not know.”⁹⁵

3. Exposing Moral Relativism

Likewise, by utilizing moral norms, natural law exposes the moral relativism currently suffused in the law. Once stripped of faux legitimacy, true legal renovation can occur. Only when people (like jurists) realize the legal emperor has no clothes, can the legal haberdashers come to his aid. A legal system resting on moral relativism simply becomes about power, devoid of true moral content.

4. Affirming and Relying Upon Human Essentialism

Natural law, because it rejects man as mere animal, affirms and relies upon human essentialism and exceptionalism. All humans—at all times, in all places, and in all stations—share the same metaphysical essence and valorization. Law applies to persons who possess inherent and immutable natures. This reality, as noted, provided a key justification for developing critical and, in some cases, indispensable legal predicates.

5. Shifting the Cultural Overton Window

Finally, because law is a teacher,⁹⁶ the use of these moral precepts teaches the culture in terms of moral norms, something desperately needed. Law informs and shapes culture.⁹⁷ The good news is that on-ramps and predicates exist for instantiating these points.

Many benefits therefore exist for intentionally incorporating natural law at the retail level. How can that be accomplished well? Here are some ideas.

The Proposed Path Forward: Invoking the Christian Echo of U.S. Constitutionalism Warrants Natural Law Reflection

1. The Moral Attorney and Ethics: ABA Model Rule 2.1

Rules of professionalism govern attorneys. Far from confining lawyering to legal positivism⁹⁸ or other legal ideologies, those rules actually *grant permission* to attorneys to act outside the positivist legal box, including using transcendent standards. Consider ABA Model Rule 2.1:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, ***a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.***⁹⁹

Attorneys need not be chagrined to invoke and apply moral substance. In fact, one could argue that, depending on the situation, failing to do so could be a dereliction of one’s duty to the firm’s client.

2. The Federalist Papers Presupposes and Sounds in Natural Law Predicates

Moreover, the context underlying American constitutionalism is steeped in natural law categories, concepts, and allusions. Appealing to the Constitution presupposes appealing to natural law and, at points, even precepts of special revelation.

Consider the following illustrative excerpts from *The Federalist Papers*:¹⁰⁰

95 See BUDZISZEWSKI, WHAT WE CAN’T NOT KNOW, *supra* note 81.

96 See *Romans* 7:7.

97 See JEFFERY J. VENTRELLA, “LAW FOLLOWS CULTURE!”: EXCEPT WHEN IT DOESN’T (2020).

98 Legal positivism “emphasizes the separation of law and morality.” See *Legal Positivism v. Legal Naturalism*, UOLLB (July 3, 2024), <https://uollb.com/blogs/uol/legal-positivism-vs-legal-naturalism>.

99 MODEL RULES OF PROF. CONDUCT r. 2.1 (emphasis added).

100 *The Federalist Papers*, YALE L. SCH.: LILLIAN GOLDMAN LIBRARY: THE AVALON PROJECT, https://avalon.law.yale.edu/subject_menus/fed.asp (last visited Jan. 18, 2026) (emphasis added).

i. No. 1—Hamilton

[T]o decide the important question, *whether societies of men are really capable or not of establishing good government from reflection and choice*, or whether they are *forever destined to depend for their political constitutions on accident and force*.

ii. No. 6—Hamilton

A man must be far gone in Utopian speculations who can seriously doubt that, if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other. . . .

To look for a continuation of harmony between a number of independent, unconnected sovereignties in the same neighborhood *would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages. . . .*

The causes of hostility among nations are innumerable. There are some which have a general and almost constant operation upon the collective bodies of society. *Of this description are the love of power or the desire of pre-eminence and dominion—the jealousy of power, or the desire of equality and safety.*

iii. No. 10—Madison

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the

human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. . . .

No man is allowed to be a judge in his own cause, *because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity*. With equal, nay with greater reason, a body of men are *unfit to be both judges and parties at the same time*; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? . . .

The inference to which we are brought is, that the **CAUSES** of faction cannot be removed, and that relief is only to be sought in the means of controlling its **EFFECTS**.

iv. No. 15—Hamilton

IN THE course of the preceding papers, I have endeavored, my fellow-citizens, to place before you, in a clear and convincing light, *the importance of Union to your political safety and happiness*. I have unfolded to you a complication of dangers to which you would be exposed, should you permit that sacred knot which binds the people of America together be severed or dissolved *by ambition or by avarice, by jealousy or by misrepresentation*.

v. No. 24—Hamilton

If we mean *to be a commercial people*, or even to be secure on our Atlantic side, we must endeavor, as soon as possible, *to have a navy*. To this purpose there must be dock-yards and arsenals; and for the defense of these, fortifications, and probably garrisons. When a nation has become so powerful by sea that it can protect its dock-yards by its

fleets, this supersedes the necessity of garrisons for that purpose; but where naval establishments are in their infancy, moderate garrisons will, in all likelihood, **be found an indispensable security** against descents for the destruction of the arsenals and dock-yards, and sometimes of the fleet itself.

vi. No. 37—Madison

It is a *misfortune*, inseparable from human affairs, **that public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public good**; and that this spirit is more apt to be diminished than promoted, by those occasions which require an unusual exercise of it. . . .

The genius of *republican liberty* seems to demand on one side, not only that all power should be derived from the people, but that those intrusted [sic] with it should be kept in independence on the people, by a short duration of their appointments; and that even during this short period the trust should be placed not in a few, but a number of hands. Stability, on the contrary, requires that the hands in which power is lodged should continue for a length of time the same. A frequent change of men will result from a frequent return of elections; and a frequent change of measures from a frequent change of men: **whilst energy in government requires not only a certain duration of power, but the execution of it by a single hand. . . .**

When we pass from *the works of nature, in which all the delineations are perfectly accurate*, and appear to be otherwise only *from the imperfection of the eye which surveys them, to the institutions of man*, in which the obscurity arises as well from the object

itself as from the organ by which it is contemplated, we must perceive the necessity of moderating still further our expectations and hopes from the efforts of human sagacity. . . .

It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution.

vii. No. 51—Madison¹⁰¹

It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: **you must first enable the government to control the governed; and in the next place oblige it to control itself.**

These excerpts testify to the explicit role natural law plays in the unique American constitutional project. And those precepts have spawned a number of substantive and procedural matters inspired, if not justified, by natural law and/or echoes of special revelation.¹⁰² They include:

1. Separation of Powers
2. Ex post facto Laws proscribed
3. Due Process of Law required
4. Privileges and Immunities protected
5. Equal Protection of Law
6. Bankruptcy Laws
7. Intellectual Property Laws
8. Witness Requirements for Treason

101 The Yale collection posits that Hamilton may have penned this.

102 Make no mistake, the Framers engaged in their task with what could be said “their Bibles in hand.” See DANIEL L. DREISBACH, *READING THE BIBLE WITH THE FOUNDING FATHERS* (2016).

Natural Law at the Retail Level Yesterday

1. Is Any Human a Specie of Property?

Western legal history—pre- and post-constitutional ratification—illustrates how natural law concepts can be utilized by advocates and the courts. In both the English and the American contexts, the issue of chattel slavery produced tensions between positive law and pre-political matters sounding in—to some extent—natural law.

A leading seminal case is *Sommerset v. Stewart*.¹⁰³ That case concerned whether a slave who had escaped could be held in England.¹⁰⁴ The deeply respected Lord Mansfield, after calling for a hearing, addressed something beyond the narrow legal issue presented, stating:

The state of slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political; but only by positive law, which preserves its force long after the reasons, occasion[s], and time itself from whence it was created, is erased from memory. . . . [I]t's so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.¹⁰⁵

With this language, Lord Mansfield sent shockwaves throughout the legal establishment. He appealed to transcendent matters that were

pre-political, thereby confining positive law, which allowed slavery, to its own jurisdiction and not beyond. In other words, positive law could not travel with the slave. Once freed and outside positive law's jurisdiction, the "black [man] must be discharged."¹⁰⁶ So, while in the jurisdiction, slavery was not negated by natural law; natural law confined its application to that jurisdiction alone.¹⁰⁷

This sort of pre-political reasoning came across the pond in several American cases. *The Antelope*¹⁰⁸ involves pirates who stole slaves, that is, "property" as part of their bounty. The question became whether that bounty—after the thieves were apprehended—had to be returned to the original owners. Francis Scott Key defended the slaves, contending along natural law lines. The case pitted the right to property against the right of liberty. Which should prevail? Key argued that it is impossible "to derive a right from a wrong."¹⁰⁹ He also pressed the point by asking whether a human can ever be a specie of property. Chief Justice Marshall's opinion expressed a decided repugnance to slavery as a general matter, calling it contrary to the law of nature.¹¹⁰

A more famous case followed: *La Amistad*.¹¹¹ There, slaves mutinied on a slave ship resulting in the death of several sailors. Defending the slaves, John Quincy Adams invoked Marshall's general repugnance to slavery as an axiom. Adams faced a populist notion rooted in a slogan often heard today: "Let the people decide!" But what if the people get it wrong? What if positive law conflicts with natural law and produces unjust results?

Adams candidly acknowledged that the Constitution set forth a political bargain con-

103 See *Sommerset v. Stewart*, (1772) 98 E.R. 499.

104 The actual facts involved several twists and legal nuances that are unimportant to the discussion here.

105 *Sommerset*, 98 E.R. at 510 (emphasis added).

106 *Id.*

107 The court noted for pragmatic reasons that societal chaos would ensue if all the slaves in England—some 15,000+—were to be freed. This decision likewise reflects a natural law notion that order is better than chaos.

108 See *The Antelope*, 23 U.S. (10 Wheat.) 66 (1825).

109 These matters are helpfully summarized and catalogued in (and drawn from) Justin Buckley Dyer's *Natural Law and the Antislavery Constitutional Tradition* (2012). Accordingly, the narrative here will not substantiate via citation each jot and tittle asserted. The interested reader should consult Professor Dyer's helpful encapsulation of these cases and their natural law implications.

110 *The Antelope*, 23 U.S. at 120.

111 *The Amistad*, 40 U.S. (15 Pet.) 518 (1841).

cerning slavery. Yet, that bargain comprised a matter of *fact*, not *right*, and existed in tension with the fundamental right of liberty. Adams then advanced his argument based on a commitment to anthropology, which also is pre-political. Humans cannot be a species of property.

Next, Adams addressed the tension created by Marshall in *The Antelope*. Recall that Marshall deemed slavery, as a general matter, repugnant. Yet, Marshall defaulted to the positive law of war. The notion was that property—including slaves—comprised “spoils of war.”

Rebutting this, Adams engages in natural law reasoning. He noted that Marshall’s precept assumed that slavery is a morally legitimate consequence of war. Or it assumes that the Court possesses authority to recognize a legal right that contradicts a natural right. Neither could be justified, Adams contended, under natural law.

Justice Story resolved the tension between natural law and positive law by concluding that only in the absence of positive law does natural law apply.¹¹² Thus, the key question centered on what the positive law—the constitutional text—expressed. Adams then analyzed the text of the Constitution—positive law. What did it really say about slavery?

Adams noted that the word “slaves” does not appear textually in the Constitution. They are instead referred to as “persons” other than free persons. Because they are persons, Adams contended, the writ of habeas corpus applies; slaves, as persons, possess an inherent right to challenge their detention.

Henry Gilpin, who represented the slave owners, responded by contending that the

consequences of war produce rights. Adams replied that this frames rights as products of, and reducible to, force and violence.¹¹³ Moreover, Calhoun’s position, which Gilpin was channeling, is incoherent: on the one hand, slaves who rioted are pirates acting with accountable moral agency and therefore can be punished, and on the other hand, they are mere merchandise to be returned to their owners. Both cannot be true, and, as James Madison noted, if slaves are men, they have the “right to revolution,” which is precisely what the slaves did when mutinying.¹¹⁴

Natural Law at the Retail Level Today

Today’s jurisprudential real world presents a number of opportunities that require pre-political metaphysical analytics. These current legal problems will remain mired in the unsettled and unstable “push-pull” will of political power plays without identifying and applying these truths—dare we say, natural law truths.

1. *Is the Organism Developing in the Womb Human?*

One of the most shameful—and certainly the bloodiest—Supreme Court opinions is *Roe v. Wade*.¹¹⁵ Gratefully the Court—after 49 years—overruled *Roe*.¹¹⁶ While the Court did not conclude that every human life is protected constitutionally, it did return the question to the states. Many states have acted to protect life, and litigation has ensued as expected. Yet, decisive clarity could be reached if a crucial pre-political question is posed: Is the organism developing in the women’s womb human? If so—and no respectable embryologist would dispute this—

112 *Id.* at 595-96.

113 This echoes, if not alludes to, Hamilton’s words in Federalist No. 1:

It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, *whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.*

The Federalist Papers: No. 1, YALE L. SCH: LILLIAN GOLDMAN L. LIBRARY: THE AVALON PROJECT, https://avalon.law.yale.edu/18th_century/fed01.asp (last visited Jan. 18, 2026) (emphasis added).

114 Compare Federalist No. 54 with Federalist No. 28. *The Federalist Papers*, *supra* note 100.

115 *Roe v. Wade*, 410 U.S. 113 (1973).

116 *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022).

then that human, regardless of its size, location, degree of dependency, etc., should be protected against being killed.¹¹⁷

2. Can a Male Actually Become a Female?

In the decade following the Supreme Court's constitutionalizing same-sex "marriage,"¹¹⁸ the LGBTQ activists have been pressing the "T" in their progressive agenda. Many states stand opposed to this agenda and have enacted protections for girl athletics, as well as medical protections for minors against harmful medical "transitioning"¹¹⁹ involving puberty blockers, cross-sex hormones, and surgeries.

The Supreme Court recently issued an opinion regarding Tennessee's statute regarding minor medical transition.¹²⁰ The Tennessee provision bans these procedures if performed on minors. This is a good thing, but note that it pits the state's police power to regulate medicine against parental rights concerning the care and treatment of minor children. How so? Both comprise important interests.

If parents oppose "gender transition" and the state permits it, Christians should argue for parental rights. However, as in Tennessee, if parents favor this dangerous treatment, Christians must argue against parental rights and for state police power. The result is that either parental rights will be diminished and state police power elevated or vice versa. This will lead to a check-

ered patchwork of laws depending on where and how the issue arises—hardly a just outcome.

Yet by invoking a pre-political metaphysical matter, the entire question can be put to rest. What is that question? Can a man (boy) become a woman (girl)?¹²¹ The true answer can only be avoided by crabbed and foolish ideology, not reality. Costumes, cosmetics, chemicals, and carvings do not—and cannot—convert a male into a female. This entire line of activism can be arrested by asking and answering a single question, a question rooted in "real reality," the reality designed by the Creator. Blackstone, the natural lawyer, asked and answered this same question centuries ago as noted by Angelo Codevilla:

In his classic commentary on the laws of England, Sir William Blackstone wrote that *the British Parliament could do anything not naturally impossible, such as turning a man into a woman.*¹²²

The best answers to the life and trans issues are available and simple; it's simply a matter of possessing moral clarity, conviction, and courage to "make knowledge acceptable."¹²³ In doing so, natural law concepts may prove beneficial.

117 For a robust and comprehensive apologetic in this space, see SCOTT KLUESENDORF, *THE CASE FOR LIFE: EQUIPPING CHRISTIANS TO ENGAGE THE CULTURE* (2d ed. 2023).

118 See *Obergefell v. Hodges*, 576 U.S. 644 (2015).

119 Some states also seek to protect conscience and free speech rights against "social affirmation and transitioning" tactics like compelling the dissenter to use "preferred personal pronouns" and avoiding "dead-naming." For a theological justification for establishing these protections, see Jeffery J. Ventrella, *Who Do YOU Say that I AM: "Preferred Personal Pronouns," Ethics, Language, and the Gospel*, CTR. FOR CULTURAL LEADERSHIP: CULTURE CHANGE (June 2, 2018), <https://docsandlin.com/2018/06/02/who-do-you-say-that-i-am-preferred-personal-pronouns-ethics-language-and-the-gospel-by-jeffery-j-ventrella-j-d-ph-d/>.

120 See *United States v. Skrmetti*, 605 U.S. 495 (2025).

121 For those unfamiliar with these trans claims, understand that the activists have moved beyond the notion that a "trans woman" is a man "presenting as a female" and instead now claim that a "trans woman" IS a woman. This is a form of jurisprudential alchemy and nothing more. See generally RYAN P. ANDERSON, *WHEN HARRY BECAME SALLY: RESPONDING TO THE TRANSGENDER MOMENT* (2018).

122 ANGELO M. CODEVILLA, *THE CHARACTER OF NATIONS: HOW POLITICS MAKES AND BREAKS PROSPERITY, FAMILY, AND CIVILITY* 65 (1997) (emphasis added).

123 *Proverbs* 15:2 (NASB).

Afterword: Law, Lordship, and Liberty

The universe is God-rigged; God's center is everywhere, and His circumference is nowhere.¹²⁴ He has ordered His Creation, and He expects—and requires—those made in His image to do likewise. But, for that task, known as the cultural mandate,¹²⁵ He has not left us ill-equipped nor left to our own devices or unaided reason. His law permeates His Creation and our own hearts,¹²⁶ and His word upholds and governs all reality¹²⁷ and sanctifies us.¹²⁸ Natural law at the retail level is therefore neither panacea nor pitfall. Natural law is instead profitable, if used lawfully. And so, the conversation continues.

124 A quote attributed to St. Bonaventure. See Maureen O'Brien, *God's Center is Everywhere*, FRANCISCAN MEDIA: ST. ANTHONY MESSENGER (Jan. 2025), <https://www.franciscanmedia.org/st-anthony-messenger/let-us-pray-gods-center-is-everywhere/>.

125 See *Genesis* 1:28; *Genesis* 9:1.

126 See *Romans* 2:15.

127 See *Hebrews* 1:3.

128 See *John* 17:17.

HUMAN DIGNITY AS VIRTUE OR AS VALUE

by Sean Coyle*

Introduction

What does it mean to ascribe a value to a thing, or a person, or an object? And what is meant by the act of ascribing? Does it involve an assertion, or a statement of fact, or a claim for which an argument is needed? And what is being ascribed? A property? An attribute? Or something else entirely? Is the act of ascription, or assertion, the same no matter what is the object of the ascription or assertion? Or does their form and significance change if one is ascribing value to, say, a house, or money, or a person? Or to a child of tender years or a foetus in the womb? Such questions could fill several books, but I will try to give an outline answer to them in the next part of this Article and then apply it to an object that seems to require above all an ascription of value: human dignity.

The concept of dignity has its modern roots in Kant's philosophy but is central to the Christian thought that both preceded and succeeded it. But what is the source of human dignity? Let me first explore its Christian foundations. They are laid out in the doctrines of natural law, particularly in Aquinas's *Summa Theologiae* I. 77-83 and 115-119.

One might immediately seek to draw human dignity from the *imago Dei*, the truth that all human beings are made in the image of the Lord, a doctrine first encountered in Genesis 1:27 (male and female He created them in His likeness) through Revelation: God creates us in His life, His mercy, and His love. And, as Aquinas never loses an opportunity to remind us, quoting Scripture, "The light of Thy countenance, O Lord, is signed upon us" (like a signet ring pressed into hot wax).¹

The Three Heresies

To get a sense of human dignity's foundation in the *imago Dei*, we can briefly examine three doctrines, denounced as heresies by the Catholic Church. (This may strike the reader as an odd way to proceed in clarifying a natural law, but my motives shall become clear in due course.)

The first of these is the Gnostic heresy which holds, amongst other things, that body and soul are separate substances: the soul being dignified and the body more or less evil. It followed that one could visit any insult or indignity to the body without staining the soul that is the true person ("you" or "I"). The body is a mere vessel, not a bearer of dignity. Logically therefore, this vessel can perform an abortion, engage in depraved sexual acts, or live like an animal whilst "I" (the person/soul) remains pure. It fell to Saint Irenaeus² to point out the fallacies of this position: if I suffer a compound fracture of my arm in three places, it would seem to follow that I can say, "My arm is in excruciating pain, but I am not." Thus, the *imago Dei* pertains to both body and soul, which together form one organism, intertwined in this life until the death of the body,³ but being reunited in glory.⁴ (I return to this theme below).

The second heresy is that of the Pelagians, who believed (roughly speaking) that good works alone are sufficient for our eternal salvation: operative Grace on the part of God is not required. This, it seems, inflates the *imago Dei* to the point at which we are all gods, the one true God being one among countless others, for we dictate the terms upon which we enter heaven, we have become God, not merely like God (highly counterfactually). From this heresy we

* Professor of jurisprudence, Birmingham Law School (UK).

1 THOMAS AQUINAS, *SUMMA THEOLOGICA* I.II.Q91.a2c (1274) (referencing Psalm 4:6).

2 See also ST. IRENAEUS, *AGAINST HERESIES*: BOOK II.

3 See 1 Corinthians 15:50.

4 See generally 1 Corinthians 15.

can draw the conclusion that operative Grace is needed to assist us into heaven.

The third and final heresy is the Jansenist heresy. Jansenism holds (again very roughly) more or less the opposite of the Pelagian heresy: it speaks of the fact that good works in this life count for nothing, that only operative Grace alone can bring us to our everlasting reward. The person is marked out at conception as one of the elect, or as one of the non-elect; if one is a member of the non-elect, even a life of superlative virtue and moral excellence will be of no significance. This heresy appears to shrink the *imago Dei* to nothing: for if we are not called to be good, if we are not intended to imitate the life of Christ, then in what sense are we made in God's image at all? Contra-Jansenism therefore suggests that good works form part of our likeness to God.

The encyclical *Gaudium et spes* § 19 states that human dignity lies in the person's call to communion with God.⁵ Such a call is made possible by virtue of the *imago Dei*. A question arises: Can one so utterly reject that call that one loses all of one's dignity?

I raise these Christian doctrines to set the stage for a discussion later on. But before we get there, more philosophical arguments will be needed to persuade a secular audience. And perhaps the first philosophical question to arise is whether human dignity belongs to a philosophy of the virtues or a philosophy of value.

Dignity as a Value

It might seem as if everything I have said so far indicates that dignity is a value; and certainly if one reads virtually any modern-day tract on ethics, this position will be reinforced. Perhaps the most famous of these is John Finnis's *Natural Law and Natural Rights* (NLNR),⁶ written for a secular audience, which dismisses the virtues in a few lines out of almost 500 pages. Fa-

mously, the book is centred upon seven basic "values" (or "goods"): if a person engages with such values in a productive way, he or she leads a practically reasonable, happy, "good" life; but if that person stands to those goods in postures of hostility and destruction, then he or she leads a practically unreasonable, unhappy, "bad" life. Finnis does not discuss the concept of dignity in any extended way in NLNR, but it seems likely that he would regard it as a value rather than a virtue. Here are some of the arguments and questions that give shape to such a view.

First, § 1 of the Universal Declaration of Human Rights states that men and women are "born free and equal in dignity and rights."⁷ Let us put aside for the moment the question of whether the unborn child has any rights or dignity to focus on the actual content of the provision. Is it a truth or a mere proposition that the provision is recognizing? Is it a true norm of justice or a mere convention? The document goes out of its way to avoid an answer. But here again, dignity seems to be treated as a value (something valuable and perhaps in virtue of *synderesis*) impossible not to have, rather than a virtue. Perhaps the reason for this is that virtue tracks rationality. Virtuous people are rational in their choices, their actions, and their decisions (even in their desires). Non-virtuous people are irrational, irresponsible, and guided by emotion (*cupiditas*) rather than reason in shaping their choices, decisions, and actions. This being the case, a newly born baby would possess a great deal less dignity than a responsible adult. A person with learning difficulties would be less dignified than a learned person, and a Persistent Vegetative State (PVS) patient would possess no dignity at all.

Virtue tends to present as a modulated line, rising from birth and variously waxing and declining as one commits good or bad acts. On the contrary, one would expect to depict dignity as a straight line beginning at birth (or conception) and extending to death (and beyond, as we do not dispose of bodies in the trash). This is perhaps the reason why the 1965 declaration *Digni-*

5 *Pastoral Constitution on the Church in the Modern World Gaudium et spes* Promulgated by His Holiness, Pope Paul VI on December 7, 1965, THE HOLY SEE, https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html (last visited Nov. 20, 2025).

6 See JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (2d ed. 2011).

7 G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

tatis Humanae of Pope Paul VI states in § 1 that the Christian is exhorted to live a life devoted to the “values proper to the human spirit.”⁸

Why? Perhaps the most widespread argument derives from the context of human rights: that a person is the bearer of human rights (or human dignity) precisely in virtue of their humanity, or alternatively, precisely in being human.⁹ Despite the traction this argument has gained in recent years, it appears circular, however, and it is difficult to see why it should be so extensively adopted. Supposing human dignity to be a quality rather than, say, a status,¹⁰ the argument still seems unsatisfactory: even if its circularity is untroubling, it is rather banal and uninteresting, for it amounts to an attempt to reveal what a human being is (its properties) by reference only to a *concept* of the human being itself. Its underlying circularity remains no matter how it is ornamented by qualifications.

Let us therefore turn to the claim that human dignity is a virtue.

Dignity as a Virtue

Let us begin with a few modern classics of natural law theory. In Chapter 1 of *The Morality of Law*, Lon Fuller argues that the purpose of law is “to rescue [the human being] from the blind play of chance, and put [him or her] on the path to a purposeful and creative existence.”¹¹ Not just any kind of existence (such as that of a slave), but a purposeful and creative one. This image suggests a ripening of the personality over time; and when does that time begin? If we examine (for example) the biblical passages pertaining to the Blessed Mother, we find that they begin, not with her birth or her formative years, but with her (immaculate) conception.¹² At this point, we may recall Saint Irenaeus’s response to the Gnostic heresy, that soul and body form one organism from conception: the conceptus itself is rich in properties that will blossom and grow

exponentially in complexity as the baby moves through its embryonic and fetal stages. As Finn is said long ago (on the television programme *After Dark*), there is much about the person that is already determined at conception: such as propensities to height, build, hair colour, eye colour, and even temperament (subject, we may add, to environmental factors). Given this rate of growth from conception (mind and body forming one unity) ultimately into adulthood, birth is a rather arbitrary marker for life’s beginning: for a baby born in late October may have been due in mid-November, or vice versa.

The embryo thus gains in capacity at every moment; thus the womb is the true *semenalia virtutum* (seedbed of the virtues). But clearly the child is more capable than the embryo, and the adult than the child; thus, because virtue tracks rationality, one must conclude that human dignity does indeed fluctuate with virtue: the baby is less dignified than the responsible adult, and the multiple murderer languishing in prison has less dignity than a good person free to pursue various goods. I feel able to say this because I believe that the bright line, the straight line that we possess from conception and all through our life, is *sacredness*, not dignity. Certainly, the conceptus, the foetus, the baby and the adult (even the prisoner) are made equal in sacredness. Sacredness is a status, whereas dignity is a quality. Sacredness can unlock many of the puzzles mentioned earlier. It is constant in the human condition; when we say that human beings have it from conception it is not because it is in virtue of their humanity, for in reality, it is God’s gift to human beings. The circle is broken. Many will be repulsed by the idea that PVS patients or babies with cognitive abnormalities in the womb do not possess dignity, or are of less dignity than the ordinary human, or even, perhaps, the prisoner. Two responses are necessary here: (1) in all ethical explanation, we should follow Aristotle’s

8 Declaration on Religious Freedom *Dignitatis Humanae* on the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious Promulgated by His Holiness Pope Paul VI on December 7, 1965, THE HOLY SEE, https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html (last visited Nov. 20, 2025) (emphasis added).

9 See, e.g., JAMES GRIFFIN, ON HUMAN RIGHTS (2008).

10 A suggestion put to me by Alex Latham-Gambi.

11 LON FULLER, THE MORALITY OF LAW 9 (2d ed. 1969).

12 See Luke 1:28.

dogma that we should always base our explanation on the fully developed, flourishing example of what is to be explained, not the malformed or diseased instances. The acorn can only be fully explained by reference to its *telos* (proper end) as an oak tree and not by the explanation that it lies crushed on the forest floor. But (2) ethics should not be held to the kind of strict rule one encounters in mathematics. Aquinas gives an example of returning a sword to its owner:

[B]ut it be in a specific situation that it would cause injury, and would therefore be unreasonable, to restore items held in trust; for example, if they are demanded in order to fight against one's homeland. And this principle will be found to fail the more we descend into detail ... because the greater the number of exceptions added, the greater the number of ways in which the principle can fail, so that it is variously not right to restore or right not to restore.¹³

Natural law (as Aquinas says in the same place) is not equally known to all, and even where it is rightly understood, it is not (always) the same for all. So the examples of the child with learning difficulties and the PVS patient possess only in a more limited way the natural law precepts being discussed here. Not that such humans are any less human beings than the rest of us. But we typically speak of treating such persons *with dignity*, and our focus tends to be upon their treatment by others (including us) where inherent dignity is lost.

In this context, I wish to return to the themes introduced at the beginning of this Article. For § 7 of the declaration *Dignitas infinita* of 2024 outlines four different kinds of human dignity: (1) ontological dignity, which is none other than the *imago Dei*; (2) existential dignity, which is the pursuit of good ends; (3) social dignity, which is our sociability as social animals, enjoying good and peaceful relations with

others; and (4) moral dignity, which needs no explanation.¹⁴ The declaration states that thoroughly evil acts can deprive one of the latter three kinds of dignity (moral dignity due to immorality of one's actions, social dignity because such acts always disrupt relationships and the broader social peace, and existential dignity for one is failing to aim at the true good), but one can never lose ontological dignity, the likeness of the human being in Christ. But I wonder if that is true. I wonder, for example, if it is true of the Nazi high command. If Hitler had not died by his own hand, and had been captured and put on trial, would he have expressed any remorse? Did the Holy Spirit continue to rest on the shoulders of the senior Nazis as they carried out their orders and issued their commands?

Natural law theorists are familiar with the doctrine that an unjust law is still a law but is hollowed out with no reason to obey it except that one will face punishment if one doesn't. Are there not, as in T. S. Eliot's famous poem, also hollow men? If, as Saint Irenaeus rightly thought, body and soul are fused together throughout this life, can it be possible so to deform one's moral persona that one resembles a man, walks and talks like a man, eats and sleeps like a man but is in fact somehow different and diminished? It may seem commonsensically wrong to assert that a man is not a man, as one who is severely physically deformed is obviously still a human being, but it is not in the body that human beings are separated from the animals, but in their moral faculty.¹⁵ Where that loss of faculty is so great, as with the Nazis, Stalin, etc., that the effort to live life in the imitation of Christ has been so utterly perverted, it would seem that the first kind of dignity, the *imago Dei*, is lost too. Yet sacredness remains: it is an act of gross injustice to execute the guilty ones, for all life is sacred.

A Brighter Future

To escape such a depressing subject, I want briefly to touch upon Saint Augustine, who famously contended that the reason why we are placed on

13 AQUINAS, *supra* note 1, at I.II.Q84.a4c.

14 See Declaration "Dignitas Infinita" on Human Dignity, THE HOLY SEE, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_dcf_doc_20240402_dignitas-infinita_en.html (last visited Nov. 20, 2025).

15 See *id.*

this earth is to learn how to love: that is, in the right way, for the right ends, on the right occasions, for the right people, and so on. This does not immediately enable us to leap to the love that 1 Corinthians 13 tells us “bears all things, believes all things,”¹⁶ but it gives us hope: indeed that same magnificent passage tells us, when all languages have expired, when all prophecies have passed away and the earth consigned to oblivion, faith, hope and love alone remain: and the greatest of these is love.

16 1 Corinthians 13:7.

FREDERICK DOUGLASS'S NATURAL LAW CONSTITUTIONALISM

by Vincent Lloyd and Timothy J. Golden*

Around 1850, Frederick Douglass changed his mind. Immediately after escaping from slavery, his political views had been shaped by William Lloyd Garrison and the style of abolitionism that he and his followers advocated.¹ That meant rejecting the U.S. Constitution: Garrison viewed it as a “covenant with death and an agreement with hell” because he read it as authorizing slavery.² On July 4, Garrison set a copy of the Constitution on fire. The Constitution and the political society that it created was so contaminated by the moral abomination of slavery that Garrison advocated for withdrawal: no voting, no engagement with a system tainted from the beginning.

Douglass had been shaped by Garrison, but Douglass was not content among the Garrisonians. His mind was restless, and his pursuit of truth and goodness took him not only out of slavery, but also beyond the anti-slavery ideology that first attracted him. Douglass read widely, engaged in deep discussions, and reassessed the Constitution. Perhaps it need not be abandoned. Perhaps it was the Constitution’s interpreters, who were manipulating its meaning to suit their cruel intentions, who had it wrong. Perhaps the Constitution was an anti-slavery document.

How did Douglass arrive at this conclusion? In one of his autobiographies, Douglass recalled that he was motivated by interrogating “the origin, design, nature, rights, powers, and duties of civil government, and also the relations which human beings sustain to it.”³ Specifically, Douglass argued that a legal text such as the Constitution ought to be interpreted based on the “declared purposes” of that document.⁴ The Preamble of the Constitution declared its intent “to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty.”⁵ According to Douglass after 1850, any ambiguous language in the Constitution, including the language that Garrison took to be licensing slavery, ought to be read in light of the Preamble.⁶ And for Douglass, the Constitution’s Preamble named a commitment to natural law. There are eternal moral principles, ultimately ordained by God, that serve as the bedrock of the Constitution.

One of the important sources for Douglass’s view, inspiring his change of heart, was the language of Chief Justice John Marshall’s opinion in *United States v. Fisher*. In 1805, Marshall described natural law at the heart of U.S. juris-

* Vincent Lloyd is a professor of theology and religious studies at Villanova University, where he is also the director of the Center for Political Theology. He is the author of *Black Natural Law* (Oxford Univ. Press 2016). Timothy J. Golden is a visiting professor of philosophy at Whitman College. He is the author of *Frederick Douglass and the Philosophy of Religion: Narrative, Art, and the Political* (2022) and *Rethinking Originalism and Textualism: Frederick Douglass’s Jurisprudence, Black Natural Theory, and a Redemptive Equal Protection Originalism*, MICH. J. RACE & LAW (forthcoming 2026).

1 See generally DAVID W. BLIGHT, *FREDERICK DOUGLASS: PROPHET OF FREEDOM* (2018); DAMON ROOT, *A GLORIOUS LIBERTY: FREDERICK DOUGLASS AND THE FIGHT FOR AN ANTISLAVERY CONSTITUTIONALISM* (2020).

2 WILLIAM LLOYD GARRISON, *SELECTIONS FROM THE WRITINGS AND SPEECHES OF WILLIAM LLOYD GARRISON* 140 (1852).

3 FREDERICK DOUGLASS, *THE LIFE AND TIMES OF FREDERICK DOUGLASS* 186 (Dover Publications 2003) (1881).

4 *Id.* at 187.

5 U.S. CONST. Preamble.

6 See *What to the Slave Is the Fourth of July?: An Address Delivered in Rochester, New York, on 5 July 1852*, THE FREDERICK DOUGLASS PAPERS, <https://frederickdouglasspapersproject.com/s/digitaledition/item/16068> (last visited Feb. 20, 2026).

prudence: “Where rights are infringed, where fundamental principles are overthrown, where the general system of the law is departed from, the legislative intention must be expressed with irresistible clearness, to induce a court of justice to suppose a design to affect such objects.”⁷ The abolitionist attorney Lysander Spooner, Douglass’s contemporary and a major influence on his thought as he moved away from Garrison, drew attention to Marshall’s words and argued that they meant natural law (“fundamental principles” and “rights”) ought to provide the deciding factor when there was a conflict in meaning between legal texts.⁸

Spooner’s position was appealing to Douglass because natural law ideas resonated deeply with him. While enslaved, Douglass realized that he shared a common humanity with those around him regardless of race, and this common humanity entitled each to basic, inviolable rights. If a law trampled those rights, that law must be invalid. In vivid language, Douglass responded to the *Dred Scott* decision: “The Supreme Court of the United States is not the only power in this world. It is very great, but the Supreme Court of the Almighty is greater.”⁹ He added that Justice Taney “cannot reverse the decision of the Most High. He cannot change the essential nature of things.”¹⁰ Not only was Douglass committed to the existence of higher laws, given by God, he was also committed to an account of human nature that made these laws partially accessible to us. There is an “infinite side of human nature,” a way in which God’s image is in the human that we humans can instinctively recognize, but that slavery rejects.¹¹ Even in dire circumstances, every human is “disposed to truth, to goodness and to excellence.”¹² Any law that rejects this reality must itself be rejected; such a law would

besmirch the image of the divine. Douglass’s theory is more elaborate than this, of course: he considers ways in which our perception of human nature is distorted (and makes subsidiary natural law claims about the illegitimacy of laws that contribute to this distortion); he considers the way that emotion and imagination contribute to discerning natural law; he draws attention to the way natural law is collectively discerned; and he shows that process of collective discernment leading to collective action.¹³

Douglass’s philosophical and theological commitment to natural law is important to remember when considering his use of natural law as a principle for constitutional interpretation. It is not just that he is prioritizing one part of the U.S. Constitution (the Preamble) over others. He sees the Preamble committing the Constitution, the United States government it founds, and the laws of the nation to natural law—and to a particular version of natural law.

In *Mere Natural Law*, Hadley Arkes laments that both liberals and conservatives have moved away from natural law jurisprudence.¹⁴ In their suspicion of the new rights that they perceive liberals to be inventing, conservatives have embraced originalism. In tethering their interpretation to the process of discerning original meaning, conservatives pay too little attention to the essential connections between law and morality. Meanwhile, the “living constitutionalism” of liberals substitutes opinions of the day for eternal standards of morality. Despite Arkes’s conservative ideological orientation, he is also critical of Justice Scalia, who he argues has deployed political consensus as a replacement for the moral force of natural law in constitutional interpretation. Arkes writes that Scalia was “adamantly averse to making an appeal to the moral truths of

7 United States v. Fisher, 6 U.S. (2 Cranch) 358, 358 (1805).

8 ROOT, *supra* note 1, at 41.

9 *Speech on the Dred Scott Decision*, TEACHING AM. HISTORY, <https://teachingamericanhistory.org/document/speech-on-the-dred-scott-decision-2/> (last visited Feb. 20, 2026).

10 *Id.*

11 DOUGLASS, *supra* note 3, at 167.

12 *Equal Rights for All: Addresses Delivered in New York, New York, on May 14, 1868*, THE FREDERICK DOUGLASS PAPERS, <https://frederickdouglasspapersproject.com/s/digitaledition/item/17882> (last visited Feb. 20, 2026).

13 See VINCENT W. LLOYD, BLACK NATURAL LAW 1-31 (2016).

14 See HADLEY ARKES, MERE NATURAL LAW: ORIGINALISM AND THE ANCHORING TRUTHS OF THE CONSTITUTION (2023).

the Natural Law because ... those truths could not command a 'consensus.'¹⁵ Arkes then describes how Scalia's friends chided him by pointing out that "the presence of disagreement" does not signify "the absence of truth."¹⁶

For Arkes, then, the moral force of natural law has been largely abandoned, leaving judicial decision-making too often guided by thinly disguised political and ideological interests. Such an abandonment of moral truth in the interest of political expedience is unacceptable for Douglass. Why? Because Douglass's constitutional interpretation operates in a different register than today's incessant ideological framing of every legal issue in terms of right and left. Douglass's principal interest is right and wrong.

Douglass presents an intriguing response to Arkes. When Douglass abandons Garrison and embraces the Constitution, he does so because he believes he better understands the original meaning of the Constitution than Garrison—and that original meaning is anti-slavery. He also believes that natural law plays an important role in determining the original meaning of the Constitution. In Douglass's view, the meaning of a legal text is aligned with natural law unless it explicitly departs from natural law. The process of determining original meaning, therefore, is an exercise that has historical and textual components but that also has a philosophical component.

Does interpretation have a philosophical component, or does it really have a theological component? Does it require a belief in God, or in Christ? Contemporary advocates of natural law often present the basic features of natural law in secular terms: certain inviolable norms can be derived from reflection on human nature, and the salient dimension of human nature is the human capacity to reason.¹⁷ If there is a theological addendum, it may have to do with the way the human capacity to reason participates in God's

reason; humans image the divine insofar as they, unlike other animals, can reason. Natural law views along these lines have attracted suspicion: they are often put forward by people of faith and used to advocate first-order legal and political positions that align with the teachings of their faith, but they ostensibly do not require belief in God, let alone specific Christian beliefs, e.g., in the Incarnation or the Trinity.

Frederick Douglass is very comfortable talking about God. (He is also comfortable evaluating the extent to which Christians are genuinely faithful to God, e.g., when they endorse slavery in the South and segregation in the North.) Douglass moves easily from discussions of natural law that go from the top-down to those that go from the bottom-up, as it were: proclaiming God's decrees and also inviting humans to discern eternal truths.¹⁸ Part of what makes this bidirectional discourse on natural law possible is Douglass's account of the human. Instead of focusing on the human capacity to reason, Douglass focuses on the presence of the infinite in the human. He writes, "Only a few men wish to think while all wish to feel, for feeling is divine, and infinite."¹⁹ The infinite manifests in the capacity to reason and also in the capacity for emotion and for imagination, and for memory and prophecy. None of the characteristic capacities of the human exhausts what it means to be human; ultimately, the human exceeds any worldly description—that is how the human participates in the divine. When human nature is understood in this way, the process of discerning natural law, always a process of drawing on human nature to reach conclusions about norms that trump state law, becomes much more complex and multifaceted. But some things remain crystal clear: state law is illegitimate if it treats a human or groups of humans as if they do not have a nature that reaches toward the infinite.

15 *Id.* at 13.

16 *Id.*

17 See the "new natural law" of John Finnis, Robert George, and their colleagues.

18 See generally FREDERICK DOUGLASS, *The Dred Scott Decision*, in *SELECTED SPEECHES AND WRITINGS* (Philip S. Foner ed., 1999).

19 *Pictures and Progress: An Address Delivered in Boston, Massachusetts, on December 3, 1861*, THE FREDERICK DOUGLASS PAPERS, <https://frederickdouglasspapersproject.com/item/9106> (last visited Feb. 20, 2026).

To believe that human nature is irreducible to worldly terms is to refuse the frame of secularism. It is to at least toy with, if not to embrace, the theological. While Douglass is not a theologian and does not systematically integrate his Christian commitments into his views of natural law, it is not hard to develop his thought in that direction. If Douglass finds the infinite in all humans, that observation may be anchored in the Incarnation, the event when the wholly infinite was wholly human, visible in human history. Moreover, the Christian belief in the resurrection of the dead, and the eschatological promise of full participation in divine life, places in the future another moment at which human finitude and divine infinitude will again fully coincide. The process of discerning natural law in the present, in the fallen world, may yield only partial and unsatisfactory results, but Christian faith in Christ and hope for the raising of the dead ensure that those partial results are not discouraging. What Douglass calls the Supreme Court of the Almighty still judges the laws of the land.

This specifically Christian explication of natural law fits well with Douglass’s focus on the Constitution’s Preamble. Those 52 words signal purpose and hope. They do not claim to know what a world of justice and tranquility looks like, but they claim to be oriented toward such a world. Douglass suggests that such an orientation—toward a world ruled by God’s law, only partially accessible to human beings—is the prerequisite to all constitutional interpretation. By affirming a shared hope for a world to come, in a land of milk and honey, in the realization of the American dream, we can be drawn toward the right meaning of a document composed by specific people in a specific moment. Moreover, that shared hope is not merely an image (or fantasy); we receive a foretaste of it in the present, through reflection on the infinite in our shared human nature, discerning natural law.²⁰

Legal scholars Jack Balkin and Jamal Greene have embraced a “redemptive constitutionalism”

that centers faith in an as yet unrealized American project and draws on religious, sometimes Christian language, resulting in forward-looking and open-ended jurisprudence that is more anchored in deep value commitments than proponents of the “living constitution.”²¹ However, they do not link this forward-looking orientation with an account of natural law that we can discern in the present as Douglass does (nor, of course, do they provide an account of the perfect realization of divine law on earth in Incarnation). Linking past, present, and future in the way Douglass’s account of natural law interpretation does provides sharper constraints, including opening the question of moral absolutes. At the same time, it offers an expansive repertoire of practices for discerning natural law: not only reflecting on reason, but also engaging emotion and imagination; not only discerning alone, but also collectively in a public meeting or church service. Ultimately, the stakes are high. As Justice Clarence Thomas said, “Those who deny natural law cannot get me out of slavery.”²²

The start of Clarence Thomas’s Supreme Court confirmation hearings, before Anita Hill’s allegations dramatically shifted the nation’s focus away from his jurisprudential philosophy, focused on Thomas’s views of natural law. The chair of the Judiciary Committee, then-Senator Joseph Biden, opened the hearings interrogating Thomas about precisely what he meant by natural law, a topic Thomas had discussed in his published writings and that spooked secularists concerned about religious influence on the nation’s courts. Thomas saw himself in a natural law tradition, one which included Martin Luther King, Jr. and Frederick Douglass, as much as Thomas Aquinas and Cicero. It turned out that Thomas’s natural law views were themselves framed in terms conducive to secularism, focusing on the capacity to reason as the starting point for reflection on human nature.

Thomas certainly does represent one aspect of a natural law tradition, but it is rather more

20 See Vincent Lloyd, *The Authority of Hope: Hopeful Illusions in Brown v. Board of Education and Beyond*, in *RACISM AND RESISTANCE: ESSAYS ON DERRICK BELL’S RACIAL REALISM* 145-70 (Timothy Joseph Golden ed., 2022).

21 See JACK M. BALKIN, *CONSTITUTIONAL REDEMPTION: POLITICAL FAITH IN AN UNJUST WORLD* (2011); Jamal Greene, *Fourteenth Amendment Originalism*, 71 MD. L. REV. 978 (2012).

22 Robert P. George interview with Clarence Thomas, in Robert P. George, *The 1993 St. Ives Lecture - Natural Law and Civil Rights: From Jefferson’s “Letter to Henry Lee” to Martin Luther King’s “Letter from Birmingham Jail”*, 43 CATHOLIC UNIV. L. REV. 143, 145 (1993).

narrow than the natural law constitutionalism found in Douglass—and more narrow than the natural law views often found in African American intellectuals, particularly those working outside the academy and the courts, those for whom the complexity of the human condition is difficult to avoid. Even in the courts, Thomas’s approach does not have a monopoly on natural law interpretation that seemingly draws on African American experience. If Justice Thomas focuses on natural law reasoning, Justice Thurgood Marshall drew attention to the forward-looking sense of jurisprudence, the orienting hope for the full realization of justice that is also part of a natural law framework. Regarding his approach to jurisprudence, Marshall said, “What is important is a goal toward which you’re moving. A goal that is the basis of true democracy, which is over and above the law.”²³ And he tapped the characteristically human capacity to imagine, conjuring a day when there is a Black baby born “with the exact same rights as a similar child born to white parents of the wealthiest person in the United States” as an orienting hope, even as the world in which we actually live systematically blocks its realization.²⁴

In her *Students for Fair Admissions v. Harvard* dissent, Justice Ketanji Brown Jackson opens with an appeal to the emotions and to hope—appeals that frame her work of constitutional interpretation. She writes:

Gulf-sized race-based gaps exist with respect to the health, wealth, and well-being of American citizens. They were created in the distant past, but have indisputably been passed down to the present day through the generations. Every moment these gaps persist is a moment in which this great country falls short of actualizing one of its foundational principles—the “self-evident” truth that all of us are created equal.²⁵

Indeed, the first word of the first section of Justice Jackson’s dissent following the above language in the dissent’s introduction is the word “imagine.” Even though she does not name natural law as the basis for her ruling, by explicitly pointing to the clearest invocation of natural law in the Declaration of Independence, drawing on the structure of natural law interpretation, and invoking the imagination, Justice Jackson could see herself participating in a different branch of the same tradition as Justice Thomas. Yet the constraints of office prevent both Justice Thomas and Justice Jackson from fully attending to the richness and complexity of natural law traditions of interpretation in the way that Frederick Douglass was able to do.

23 See *Justice Marshall Receives National Bar Association Award*, C-SPAN (Aug. 10, 1988), <https://www.c-span.org/program/public-affairs-event/justice-marshall-receives-national-bar-association-award/1904>.

24 *Id.*

25 *Students for Fair Admissions v. President & Fellows of Harvard College*, 600 U.S. 181, 384 (2023); see also Timothy J. Golden, *A Page of History: Mills’s Black Radical Kantianism, and American Legal (Racial) Realism*, in *THE PHILOSOPHY OF CHARLES MILLS: RACE AND THE RELATIONS OF POWER* 113-33 (Mark Westmoreland ed., 2024).

NATURAL LAW FOR RABBITS: RECLAIMING MODERN LEGAL EDUCATION

by Constance Y. Lee*

Introduction

The moral status of a person is defined by that which they choose to pursue. Where the moral individual seeks truth, the rest of us often settle for less. This is the metaphor C. S. Lewis employs in his seminal essay, *Man or Rabbit*?¹ Here, Lewis describes those whose primary concern is limited self-contentment and the avoidance of intellectual or spiritual friction as “rabbit.” It is the great irony of the human condition that, in a universal sense (and in a sense we intuitively hate to admit), we remain more rabbit than man. Our basic natures remain intrinsically tethered to a desire for minimal self-satisfaction—an intuitive postlapsarian urge to settle for a “nice patch of lettuce” rather than discharge the inconvenient, onerous responsibility of seeking the objective truth of the universe.

This “rabbit” state does not owe to a mere lack of ambition; it is a symptom of what Reformed Christian traditions identify as a fractured resonance between human nature and the *imago Dei*. Tracing the thoughts from August-

tine, Aquinas, and later Calvin, the human will is hopelessly distorted.² Human judgement is not only significantly impaired when it comes to spiritual things, but it is also “indisposed.”³ In Aristotelian terms, the will is susceptible to *akrasia*⁴ (though the classic philosophers did not see human judgement as inherently distorted⁵)—a weakness that leads us to mistake passing idle inclinations for our true nature. In this human condition, the “lettuce” of procedural efficacy and social recognition feel compellingly natural, whereas the pursuit of the *Summum Bonum* (the Highest Good)⁶ seems distant or alien. Consequently, we are prone to overlook the teleology inherent in the system and practices we inhabit, thus, failing to comprehend their proper ends.

In the context of legal theory, natural law outlook is the jurisprudential tradition that commonly holds these two contradictory aspects of human nature—the “man” (as the seeker of truth or *quaerens veritatem*)⁷ and “the rabbit” (as the seeker of comfort)—in a necessary tension.⁸ As the oldest tradition in legal philosophy, natural

* Constance Y. Lee is a lecturer in law at Adelaide University. She holds a PhD, LLM, and LLB from the University of Queensland; is admitted to legal practice in the Supreme Court of Queensland; and is an external fellow of the Centre for Public, International, and Comparative Law. Her research focuses on constitutional law, jurisprudence, comparative legal theory, and the intersection of law and theology.

- 1 C. S. LEWIS, *Man or Rabbit*, in *GOD IN THE DOCK: ESSAYS ON THEOLOGY AND ETHICS* (Walter Hooper ed., 2001) (1970). I have used this metaphor differently to the way Lewis used it in Christian apologetic terms to distinguish between the materialist and the moralist. Additional note: “man” here will be continued to be used as Lewis intended to describe “humanity” and not to refer to gender.
- 2 See Constance Y. Lee, *The Spark That Still Shines: John Calvin on Conscience and Natural Law*, 8 *OXFORD J.L. & RELIGION* 615 (2019).
- 3 See Constance Youngwon Lee, *Calvinist Natural Law and Constitutionalism*, 39 *AUSTRALIAN J. LEGAL PHILOSOPHY* 1 (2014).
- 4 ARISTOTLE, *Nicomachean Ethics*, in *THE COMPLETE WORKS OF ARISTOTLE: THE REVISED OXFORD TRANSLATION, 1808-25* (Jonathan Barnes ed., W.D. Ross trans., Princeton Univ. Press 1984).
- 5 See SØREN KIERKEGAARD, *THE SICKNESS UNTO DEATH* 144-45 (Walter Lowrie trans., Princeton Univ. Press 1941) (1849).
- 6 AUGUSTINE, *THE CITY OF GOD AGAINST THE PAGANS* bk. XII, ch. I. (R. W. Dyson ed., Cambridge Univ. Press 1998).
- 7 See, e.g., THOMAS AQUINAS, *SUMMA THEOLOGICA* I.Q16.a1 (1274).
- 8 Jonathan Crowe & Constance Youngwon Lee, *The Natural Law Outlook*, in *RESEARCH HANDBOOK OF NATURAL LAW* 2 (Jonathan Crowe & Constance Youngwon Lee eds., 2019).

law posits that law is not a flat, one-dimensional phenomenon, but is a discipline that exists in two inseparable parts:⁹

The first: The Descriptive (The “Is”) is an account of law as it is posited by human authority—i.e., the formal rules, statutes, and manifestations of state power.

The second: The Normative (The “Ought”) refers to the ideal ends and moral purposes to which law must strive.

The aspirational pull of the law exists precisely in the space between these two points. When legal education conflates these two dimensions, or excludes the latter, law ceases to be a noble calling, and legal pedagogy enters a state of dangerous reductionism. This is because when it ignores the second dimension, it effectively abdicates its justificatory responsibility.¹⁰ As law is inherently powerful—possessing the potential to coerce, punish, and redistribute—it must be able to justify itself beyond its own internal logic.¹¹ A law that is seen as merely “a system of rules and precedents”¹² without a deeper understanding of its rationale is an inherently closed system that remains blind to its own inadequacies.¹³

Normative Horizons and Law as *Sui Generis*

Thus, the crisis that has befallen modern legal education is, fundamentally, a loss of vision. We are becoming experts in the utility of law but have forgotten its worth. Modern law schools are undoubtedly under enormous pressure to sell the law for parts, focusing on vocational competency (box-ticking exercises) rather than instilling true academic integrity and appreciation of law’s purpose¹⁴ in their students.¹⁵ This marketisation¹⁶ of law is driven by the perfect storm: the commercialisation of higher education; competitiveness of the industry driven by globalisation and the ambiguous role of AI; the destabilising effects of new technologies; and the role of old technologies on declining student engagement and mental resilience.¹⁷ Sadly, the race for employment readiness means that corners are being cut, the effect of which is to treat law entirely (and conveniently) as a closed system of data rather than encompassing a moral dimension.

A good example of this is in the frequent sense that the term “authentic” is used to describe practical, utility driven legal training.¹⁸ However, this is a misnomer. By focussing solely on the descriptive aspects of law, we are (mis)representing law as a closed system, seen entirely as a procedural tool to be used to advance other social and personal ends rather than one that’s valued in its own right: for its

9 See AUGUSTINE, *supra* note 6, at 679.

10 See RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 34 (1977).

11 “Now law being a practical enterprise, it is concerned to guide, influence or control the actions of citizens.” Michael Detmold, *Law as Practical Reason*, 48 *CAMBRIDGE L.J.* 436, 460 (1989).

12 ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 17-23 (1993). The author elaborates the long term (adverse) implications of Christopher C. Langdell’s orthodox approach to legal education, which has been adopted across the board in law schools and which insists almost exclusively on a scientific approach to law prioritising the doctrinal over the philosophical.

13 Law is a “system of persons, institutions and practices.” John Finniss, *The Nature of Law*, in *CAMBRIDGE COMPANION TO THE PHILOSOPHY OF LAW* 42 (John Tasioulas ed., 2020).

14 See LON FULLER, *THE MORALITY OF LAW* 145-51 (revised ed. 1969). Fuller describes law as a primarily purposive “enterprise.”

15 See Detmold, *supra* note 11, at 436, 460.

16 See Margaret Thornton, *Squeezing the Life Out of Lawyers: Legal Practice in the Market Embrace*, 25 *GRIFFITH L. REV.* 1 (2016).

17 See LUCA SILIQUINI-CINELLI, *SCIENTIA IURIS: KNOWLEDGE AND EXPERIENCE IN LEGAL EDUCATION AND PRACTICE FROM THE LATE ROMAN REPUBLIC TO ARTIFICIAL INTELLIGENCE* 23 (2024).

18 See Nick James & Kelley Burton, *Measuring Critical Thinking Skills of Law Students Using a Whole-of-Curriculum Approach*, 27 *LEGAL ED. REV.* 1, 6 (2017); see also Gabrielle Appleby, Peter Burdon, & Alexander Reilly, *Critical Thinking in Legal Education: Our Journey*, 23 *LEGAL ED. REV.* 345, 363 (2013).

justice-oriented trajectory. This leaves graduates with a painful lack of insight and direction, especially, in the long term.

The greatest evidence of this occurring is the modern denial that law is a *sui generis* (unique) discipline.¹⁹ There is a modern pedagogical tendency to treat law as a subset of the social sciences or humanities whilst adopting the scientific method as the guide.²⁰ This type of interdisciplinary approach to law is having the effect of further diluting its nature.²¹ Though in many ways interdisciplinary approaches can be beneficial in highlighting the common space and provide for fertile conversations between disciplines, when it comes to law, this trend, coupled with the other challenges, has had the pernicious effect of undermining support for the epistemology of thinking like an attorney.²²

This denial of law's fundamental nature reduces legal education, its "descriptive" elements. This descriptive dimension encompasses its factual claims, its coercive attributes such as its formal rules, the black-letter statutes, and presentations of state power.²³ While essential for practice, this descriptive pedagogy treats law as a closed, mechanical system, reducing attorneys to high-functioning technicians who can identify what the law *denotes* without possessing any of the criteria to evaluate its substance—whether the law is justified in light of its purpose. William Blackstone lamented and warned against such a movement in his time when he called upon the profession to train lawyer students to become "gentlemen [sic]" and "scholars"²⁴ as opposed to mere trades people.

The unique dialectic characterising natural law is its emphasis on law as possessing a

normative dimension—or as previously noted, "the ought."²⁵ It is here that law finds its gravitational pull towards purpose. Natural law posits that the "is" and the "ought" form the necessary aspects of law's nature and are therefore held in necessary tension. According to Cicero, "law is the highest reason, rooted in nature, which commands things that must be done and prohibits the opposite. When this same reason is secured and established in the human mind, it is law."²⁶ When we acknowledge the normative dimension, we cease to view law as a product of its social sources or a tool for institutional compulsion, but as a rational guide for human action.

It follows that the normative bases for legal theory must be given mention—a floor for discussion—within legal education. In other words, an intellectually honest approach to legal education views law as a measure of its true substantive quality. This dialectic is what gives law its justificatory quality.²⁷ Posited law is only valid insofar as it satisfies the normative requirements. Unlike a game of chess, where the rules are self-contained, the rules of a legal system must be (at least) justified to the community they govern, if not, a greater moral purpose. That justification cannot be contained within the rules themselves; it must be drawn from a deeper understanding of the good the law intends to serve.

Without a normative horizon, the law student is equipped with the basic technical skills to navigate a system but lacks the intellectual framework to critique its direction. Further, if law is merely a closed system of rules, then critical thinking becomes redundant; simply being relegated to a hollow exercise in logic-chopping.

19 See FREDERICK SCHAUER, *THINKING LIKE A LAWYER: A NEW INTRODUCTION TO LEGAL REASONING* 6-11 (2012).

20 Richard A. Posner, *The Decline of Law as an Autonomous Discipline*, 100 HARV. L. REV. 761 (1987).

21 William Twining, *Rethinking Legal Education*, 52 THE L. TEACHER 241, 241 (2018).

22 *Id.* The expression comes from the famous scene in the now classic 1973 film "The Paper Chase" where the fictional Harvard Law Academic, Professor Kingsfield proclaims in his contract law lecture that "you teach yourself the law. I train your minds. You come in here with a skull full of mush, and if you survive, you'll leave thinking like a lawyer." See *THE PAPER CHASE*, Amazon Prime (20th Century Fox 1973).

23 See Chris Maxwell, *Thinking Philosophically About Law: The Role of Moral and Political Reasoning in Shaping the Law*, 47 MELBOURNE UNIV. L. REV. 229, 249 (2023).

24 I WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAW OF ENGLAND* *34.

25 Aquinas expresses this as the focal meaning of law. See AQUINAS, *supra* note 7, at I.II.Q64.a7.

26 CICERO, *ON THE COMMONWEALTH AND ON THE LAWS* 113 (James Zetzel ed. & trans., Cambridge Univ. Press 1999).

27 See Maxwell, *supra* note 23, at 249.

Law's Teleology: *Phusis* and the "Fullness" of Law

In this backdrop, natural law can fill the vacuum; natural law being characterised by an inherent teleology that is both embedded in its content and its methodology.²⁸ This purpose-driven character of natural law is the very thing that modern legal pedagogy, in its haste for vocational utility, has largely abandoned. Teleological concepts of practical reasoning define the law, not by its starting point—the state or the command—but by certain intrinsic ends that are good for humans given the nature that we have. This orientation flows from a consensus among classical legal theorists such as Plato, Aristotle, and Augustine: that there is a normative basis to ethics, law, and politics that exists independently of human whim.

For these authors, an account of practical rationality is premised in the ultimate ends for human action. For this logic to work, the "order of things" (*ordo amoris*) is significant.²⁹ In natural law, the definition of "nature" (*naturae* in Latin) or *phusis* (in classical Greek) does not refer to our present, flawed condition, but alludes to our fullness of possibility.³⁰

As Aristotle makes clear, the idea of maturity is part and parcel of the definition of "natural."³¹ A seed's nature is not merely to be a seed but to become a tree; likewise, nature of law is something that must be considered to its fullest extent or potential. This fullness is inextricably entwined with the notion of "goodness."³² To

understand the law, one must also grasp the good it is designed to achieve.

While theistic theories account for a preponderance of the natural law tradition—given its historic development and conceptual compatibility with a divine author—more recent scholars have argued for non-theistic accounts based purely on human rationality. Notwithstanding these variations, the natural law outlook can be defined by two core claims:³³

1. There are certain forms of life that are intrinsically good for humans given the specific nature we possess; and,
2. These forms of life play a fundamental role in explaining the nature and purpose of our social, political, and legal institutions.

This sense of basic purpose brings us back to what fundamentally animates the "man" as opposed to the "rabbit"—the transcendental, timeless, and "archetypal forms."³⁴ For the Platonist, for instance, this is found in the Theory of the Forms;³⁵ for the Aristotelian, in the "unmoved mover;"³⁶ and for the Christian, in the *Summum Bonum* (God as the sum of all goods). In each instance, purpose is determinative of what is good.³⁷

As alluded before, the greatest predicament of legal education in modern times is the reductionist legal pedagogy that commits the error of conflating our idle inclinations with our

28 See PLATO, *Laws I*, in PLATO: COMPLETE WORKS 653 (John M. Cooper & D.S. Hutchinson eds., Hackett Publishing 1997); ARISTOTLE, *Nicomachean Ethics*, *supra* note 4, at 1104b, 1744; AUGUSTINE, *supra* note 6, at bk. XV, ch. 22, 679.

29 Augustine describes this as the *ordo amoris*—the right order of things—in *The City of God Against the Pagans*. AUGUSTINE, *supra* note 6, at bk. XV, ch. 22; see also Lee, *supra* note 3, at 153.

30 ARISTOTLE, *Nicomachean Ethics*, *supra* note 4, at 1095b, 1731.

31 ARISTOTLE, *Physics*, in I THE COMPLETE WORKS OF ARISTOTLE: THE REVISED OXFORD EDITION 335 (Jonathan Barnes ed., W.D. Ross trans., Princeton Univ. Press 1984).

32 *Id.*

33 CROWE & LEE, *supra* note 8, at 2.

34 C. S. LEWIS, *STUDIES IN WORDS* 38 (2d ed. 1967) (1960).

35 PLATO, *THE REPUBLIC* bk. III, 402a, 92 (G. R. F. Ferrari ed., Tom Griffith trans., Cambridge Univ. Press 2000).

36 ARISTOTLE, *Metaphysics*, in I THE COMPLETE WORKS OF ARISTOTLE: THE REVISED OXFORD EDITION bk. XI, 1064^a, 1680 (Jonathan Barnes ed., W.D. Ross trans., Princeton Univ. Press 1984).

37 See AUGUSTINE, *supra* note 6, at bk. XII, ch. 1; AQUINAS, *supra* note 7, at I.II.Q6.a1; JOHN CALVIN, *I INSTITUTES OF THE CHRISTIAN RELIGION* I.vii.4 (John T. McNeill ed., Ford Lewis Battles trans., Westminster John Knox Press 1960) (1559).

intrinsic nature.³⁸ In this way, it has the effect of losing law's normative foundation. In natural law terms, however, these baser instincts are a perversion of nature, not its fulfilment. It follows that any forms emanating from a fallible human legislator must ultimately be validated by reference to its purpose.

Natural law thus refers to those innate qualities in us that indicate the fullness of possibility. Just as we refer to an unnatural death to describe one that is untimely or a consequence of extenuating acts (accidents) or a perversion of will (such as murder), a "natural" account of life must be one that leads to the end of a person's days in the fullness of time.³⁹ Similarly, a legal education that only teaches the "is" of law essentially trains the student to embrace the posited formalities, emanating from *akrasia*, as the final and exhaustive version of the law; it teaches them to navigate a fractured world casually, without ever asking them the ontological question as to why this is necessary. It does so by removing the pursuit of justice from law's inherent nature in its most mature form from its formulation.

The Discarded Dialectic and the Technology Paradox

Importantly, subjecting students to these authentic assessments and critical thinking exercises does not protect their roles from being displaced by rapid technological advancement, specifically, Artificial Intelligence (AI). Particularly the model that has advanced rapidly since the 1980s, AI is the large language model that excels at pattern recognition and rote application

of information but lacks the capacity for practical reasoning (including Socratic dialogue), dialectical engagement, introspection, and the nuanced judgment characteristic of traditional legal education.⁴⁰

Paradoxically, it is the very thing that appears most convenient to discard that proves to be the most important safeguard against the future threats posed by technological advancement. The dialectical method cultivates a uniquely human mode of legal reasoning, one that searches for normative coherence through rational inquiry.⁴¹ This capacity for practical reasoning remains beyond the reach of even the most advanced AI because it must account for uniquely human goods and rational engagements with these in a uniquely human manner.⁴²

Natural law epistemology entails a rigorous, dialectical process of inquiry, a method that involves the constant oscillation between *a priori* values—the basic goods—and the immediate, practical realities of the case at hand. This is an interpretive method common to classical, medieval, and reformed accounts of natural law. For example, Aquinas's doctrine of natural law is a doctrine of practical reason and its principles; it is a framework for moral argument, not simply a series of foregone conclusions.

The most famous dialectical method attributable to traditional legal education is the Socratic method as found in Plato's *Apology*.⁴³ Socrates defends himself by explaining that his philosophical practice involves questioning those who deem themselves wise to expose their ignorance.⁴⁴ However, this "thin" form of dia-

38 See DAVID HUME, *TREATISE ON HUMAN NATURE* bk. III, part 1, s. 1, 455 (The Clarendon Press 1888) (1739). Here, Hume refers to the is-ought problem or the "separation fallacy" aka "Hume's Guillotine."

39 ARISTOTLE, *Physics*, *supra* note 31, at bk. I, 335.

40 Studies of AI research show that the explosive growth in AI capability and attention are centred on large language and foundation models (data-based) whereas robotics remain separate and a more challenging domain. This means they are less proficient or incapable of dialectical engagement. See Hoda Fakour & Moslem Imani, *Socratic Wisdom in the Age of AI: A Comparative Study of ChatGPT and Human Tutors in Enhancing Critical Thinking Skills*, *FRONTIERS IN ED.* (Jan. 21, 2025), <https://www.frontiersin.org/journals/education/articles/10.3389/educ.2025.1528603/full>; Rachel Gordon, *Reasoning Skills of Large Language Models Are Often Overestimated*, MIT CSAIL (July 11, 2024), https://www.csail.mit.edu/news/reasoning-skills-large-language-models-are-often-overestimated?utm_source=chatgpt.com.

41 RONALD DWORKIN, *LAW'S EMPIRE* 217 (1986).

42 See Gordon, *supra* note 40.

43 PLATO, *Apology*, in *PLATO: COMPLETE WORKS* 19b (John M. Cooper & D.S. Hutchinson eds., Hackett Publishing 1997).

44 *Id.* at 21b-e.

lectical reasoning entails no inherent trajectory towards truth; it contents itself with exposing weakness in the arguments of others.

Modern legal education often stops here. Critical thinking is taught as a corrosive tool—a way to pick apart a judgement or statute. While this develops the sharp wits of the “rabbit,” it does not feed the “man.” Notably, Plato goes on, in the *Republic*, to transform dialectics from a mere sophistic device (a tool for disputation) into a method for the discovery of truth.⁴⁵ This “thick” dialectic is the hallmark of the natural law outlook.

To seek the value of a legal proposition, the student is required to think dialectically at two different stages:

1. **The intention stage:** the law student is required to question the underlying reasons for human action and the values they aim to serve; and,
2. **The pursuit stage:** the law student is called upon to reflect on how those chosen values are pursued in specific, often complex, circumstances (noting here that each set of human circumstances, though possessing universally shared aspects, are uniquely comprised in each case).

At this point, it is worth noting that in natural law, the innate capacity to recognise first principles is the muscle of synderesis (broadly-speaking, conscience).⁴⁶ Synderesis both facilitates and makes possible moral agency. Through conscience, one uses practical reason to exercise one’s freedom to choose, to use one’s moral agency in a manner that is fully rational.⁴⁷ How-

ever, like any muscle, it requires exercise. Aquinas, like Aristotle, viewed morality as a practice, a repetition of the use of synderesis to greater effect over time.⁴⁸

A legal education that ignores the natural law methodology and the training of the dialectical habit renders law graduates with synderesis atrophy. The central irony in all this is that modern legal curricula take great pains to reinforce critical thinking as one of its supreme graduate attributes. (Clearly, modern universities are under immense pressure to prove their value through graduate employment statistics.) However, this begs the question: What is critical thinking about the legal rules when the exercise is entirely unmoored from law’s purpose? If law is treated exhaustively as a factual, closed system, then why is critical thinking even necessary, assuming it is even possible?

Moreover, does this absence of a stable, normative framework not simply increase the risk that transient social trends or prevailing ideologies be incorporated into the core curriculum without sufficient scrutiny? Without an account of law’s proper ends and an appreciation for its unique epistemology, we run the risk of being guided more by immediacy than by principle. In such circumstances, it is not a far cry to imagine legal education becoming a vehicle for intellectual utility rather than a civic and justice-oriented enterprise.

In this context, natural law outlook provides the necessary framework to fill in the blanks. Natural law holds certain norms—such as life, truth, friendship, practical reasonableness—as innately valuable. These are not merely subjective preferences or social constructs; they are discrete, irreducible, and self-evident goods that are worthwhile to pursue in any given case. These goods offer legal rules a stable horizon for assessment.⁴⁹ The value of these goods does not

45 PLATO, *THE REPUBLIC*, *supra* note 35, at bk. VII, 533^e, 242.

46 Note here that in legal reasoning, settling moral controversies is not simply the process of reaching consensus or arriving at a conclusion. It describes the epistemic process by which we reason, using “conscience, language-based deliberation about reasons for the choice ultimately made.” LARRY ALEXANDER & EMILY SHERWIN, *DEMISTIFYING LEGAL REASONING* 10 (2008).

47 John Finnis, *Natural Law and Legal Reasoning*, 38 *CLEV. STATE L. REV.* 1, 3 (1990).

48 AQUINAS, *supra* note 7, at I.Q6.a1.

49 Thomas Aquinas objected to this specific framing of justice vis-à-vis natural rights in *Summa Theologica. Id.* at I.II.Q58.a1.

depend on their potential to advance some other market-driven end; they remain valuable in and of themselves.⁵⁰

The independent nature of these norms allows them to function as rational guides for human action. An action or legal rule that fails to engage these basic goods is, in a significant sense, worthless; conversely, those that align with them are worthwhile. By providing a substantive vision of justice that is not divorced from law's fundamental nature, natural law ensures that critical thinking is an exercise in discovery rather than just a performance in the dark. It moves the student from reviewing self-referential rules into an open system, where law is a measure of its aspirational trajectory. In this exercise, the outcome is not as important as the aspiration towards the good itself.

Conclusion

The crisis facing modern legal educators is not merely a failure of curriculum design; it is the fundamental loss of the "man" we want our graduates to become. By succumbing to external pressures (and there is no denying that these are many and are also intensive), we have permitted the law school to become a nursery for "rabbits"—practitioners who are technically proficient at applying the legal rules but morally illiterate. We have created an environment where the end goal is a "nice patch of lettuce"—professional status and procedural competence—rather than a lifelong profession of passion, as sages committed to justice. In this context, it is a delusion to create graduates with "hollow chests" yet "expect from them virtue and enterprise."⁵¹

The path forward requires a radical shift from information to reclamation. We must reclaim legal education as a primarily dialectical discipline where students are invited to oscillate between first principles and practical realities on a larger aspirational trajectory. This means transforming our attitudes regarding the core attributes of law and introducing the often-inconvenient responsibility of seeking objective truths.

Natural law outlook, by giving the law a horizon for moral assessment, as well as the dialectical epistemology to pursue it, serves as the

mirror by which we might gain a sobering look at our own shortcomings, as well as one that sheds light on the ideal version of law for which we must strive. Ultimately, it is the natural law perspective that can restore a spirit of Christian humility to legal education so that students can go on to discharge their duties as attorneys, ever conscious of the true weight of law's vision.

50 JOHN FINNIS, *FUNDAMENTALS OF ETHICS* 1-23 (1983); JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 34 (2d ed. 2011).

51 C. S. LEWIS, *THE ABOLITION OF MAN* 27 (HarperOne 2001) (1943).

THE EXILE OF THE SOUL: LEGAL EDUCATION, THE IDOLATRY OF TECHNIQUE, AND THE RECOVERY OF THE PERSON

by Kevin P. Lee*

“Two cities have been formed by two loves: the earthly by the love of self, even to the contempt of God; the heavenly by the love of God, even to the contempt of self.”

–St. Augustine, *The City of God*

Introduction: The Clarity of Exile

There is a terrifying clarity that descends upon the exile. It is not the clarity of the lecture hall, with its well-ordered syllabi and confident assertions of doctrine. It is, rather, the stark, unsparring clarity of the wilderness. The rift between a human being and a sense of place. To be in exile is to be stripped of the comforting illusions of

institutional belonging; it is to stand outside the city walls, shivering in the cold, yet finally free to see the city for what it has become.

This Article is written from that vantage point. It is a dispatch from the margin, a testament offered by one who has stepped out of the machinery of the modern legal academy, not in an act of surrender but in an act of fidelity.¹ It addresses a crisis that is often felt but rarely named: the spiritual hollow at the center of American legal education. We are living through a moment of profound institutional twilight. The modern law school, once conceived as a site of the moral and civic formation of the citizen-lawyer, has now surrendered its birthright for a mess of ad-

* Kevin P. Lee is the executive director of the Institute for AI and Democratic Governance and a former law professor. He was the founding Intel Chair in Social Justice and Racial Equity at North Carolina Central University School of Law and the founding director of the Campbell Law Innovation Institute. Holding advanced degrees in philosophy and religion, his work explores the intersection of AI, law, and theology, drawing deeply on the Christian Realism of Jean Bethke Elshtain to defend the “sacred interiority” of the person against technological and bureaucratic totalizing forces. He previously held the inaugural chair of the North Carolina Bar Association’s Future of Law Committee and was recognized as a FastCase 50 leading legal innovator. He is currently a contributor at North Carolina State University’s CASE Center within the College of Humanities and Social Sciences, and he is finishing a book titled *Our Unfinished Work: Reclaiming Democracy in the Age of AI*, forthcoming from Johns Hopkins University Press.

1 This vocational stance of “exile” draws upon the rich Christian tradition of peregrination, the understanding of the human person as a pilgrim or resident alien (*peregrinus*) who travels through the earthly city without becoming fully native to it. Central to this anthropology is St. Augustine’s distinction between *uti* (use) and *frui* (enjoyment). See ST. AUGUSTINE, *DE DOCTRINA CHRISTIANA* bk. I, ch. 4 (R.P.H. Green ed. & trans., 1995) (arguing that earthly goods and institutions are merely vehicles (*admiracula*) to be “used” (*uti*) to sustain us on our journey toward God, who alone is to be “enjoyed” (*frui*) as an ultimate end). The spiritual crisis of the legal academy arises when the institution demands to be loved for its own sake rather than functioning as a tool for the formation of justice. Gabriel Marcel recovered this Augustinian insight for modernity in his phenomenology of *homo viator*. He argues that the human soul is defined by its “itinerancy;” to become “installed” in a system or bureaucracy is to succumb to despair. See also GABRIEL MARCEL, *HOMO VIATOR: INTRODUCTION TO A METAPHYSIC OF HOPE* 18-24 (Emma Craufurd trans., 1951) (contrasting the “stable” man, who is enclosed by his possessions and status, with the “itinerant” man, who remains open to the mystery of being). Similarly, Edward Said characterizes the public intellectual as a metaphysical exile. As an outsider whose refusal to be “installed” or co-opted by the status quo allows for the double perspective that is necessary to speak truth to power. EDWARD W. SAID, *REPRESENTATIONS OF THE INTELLECTUAL* 49-62 (1996) (arguing that the intellectual must reject “accommodation” in favor of a critical, marginal detachment).

ministrative pottage.² It has transformed itself into a bureaucratic apparatus governed by the logic of the marketplace and the idolatry of technique. In this new dispensation, the student is no longer viewed as *homo viator*, a pilgrim soul seeking justice in a fallen world, but as a fungible unit of economic throughput, to be processed, credentialed, and ejected into the market with maximum efficiency.

This transformation is not merely a pedagogical failure; it is a condition of ontological violence. It represents the triumph of a specific kind of modern heresy: the belief that the messy, frictional, and deeply human work of moral judgment can be replaced by the frictionless certainties of systems, metrics, and algorithms. The symptoms of a growing malaise are everywhere, yet we misdiagnose them as mere political squabbles. We fight over the “Idolatry of Order” (the conservative desire for a calcified status quo) or the “Idolatry of Identity” (the progressive desire for a sanitized utopia). But while these factions clash, the true sovereign of the modern academy reigns unchallenged.

It is precisely what Jacques Ellul warned against, what he called the “Idolatry of Technique.”³ He predicted the coming of a soft totalitarianism where no one is in charge because everyone is just obeying the demands of efficiency. This is the logic that meets the crisis of democratic legitimacy with “AI Literacy” initiatives instead of moral formation for civic engagement. It is the logic that seeks to automate the faculties of civic judgment that makes democratic practice possible.

Drawing on the Christian Realism of thinkers like Jean Bethke Elshtain, who warned us that the collapse of private conscience inevitably leads to public tyranny,⁴ and the theological anthropology of David Bentley Hart, who reminds us that the human person is an infinite mystery that can never be fully captured by mechanistic descriptions,⁵ this Article argues that the current trajectory of legal education is a path toward a tragic end to the Rule of Law.

If we are to recover the soul of the law, we must first recognize that the crisis is not technical, but theological. We have forgotten what a human being is. We have forgotten that education is an act of “pedagogical love” that requires

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- 2 The concept of *paideia*, the formation of the whole person, was once central to the classical conception of the university. See JOHN HENRY NEWMAN, *THE IDEA OF A UNIVERSITY* 101-23 (Frank M. Turner ed., 1996) (1873). Newman warned that when education is severed from its teleological end (the cultivation of the mind), it becomes mere “instruction” or technical training. The modern law school’s obsession with “practice-ready” metrics often masks a profound abandonment of this formative mission. Legal scholars have forcefully echoed this critique, arguing that the academy has traded character formation for technocratic competence. See, e.g., ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 1-17, 109-62 (1993) (lamenting the decline of the “lawyer-statesman” ideal and arguing that legal education has abandoned the cultivation of “practical wisdom” and moral character in favor of narrow doctrinal expertise). This deficiency was also central to the findings of the Carnegie Foundation. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 22, 126-32 (2007) (criticizing law schools for prioritizing the “cognitive apprenticeship” of analytical thinking while neglecting the “apprenticeship of identity and purpose” essential for ethical professional formation).
 - 3 “Technique” here refers not merely to machines, but to the autonomous logic of efficiency that dominates modern institutions. See JACQUES ELLUL, *THE TECHNOLOGICAL SOCIETY* 79-133 (John Wilkinson trans., 1964) (1954). Ellul argues that Technique (*La Technique*) is a force that transforms all human activities into efficient means, regardless of their ends. When the law school adopts Technique as its sovereign, the “goodness” of an attorney is measured solely by their utility in the legal marketplace, not by their adherence to justice.
 - 4 JEAN BETHKE ELSHTAIN, *AUGUSTINE AND THE LIMITS OF POLITICS* 91-112 (1995). Elshtain argues that the distinctively Christian contribution to politics is the recognition of a “sacred interiority,” a conscience that stands apart from the state. When institutions attempt to colonize this interiority with bureaucratic mandates, they pave the way for a “soft totalitarianism.” See also DIETRICH BONHOEFFER, *ETHICS* 231-45 (Nevell Horton Smith trans., 1955) (discussing the “structure of responsible life” against the tyranny of the “norm”).
 - 5 The reduction of the student to a “data point” or “risk score” is a direct assault on the *imago Dei*. See DAVID BENTLEY HART, *THE EXPERIENCE OF GOD: BEING, CONSCIOUSNESS, BLISS* 152-200 (2013). Hart contends that the modern materialist view of the mind logically leads to a view of the person as a manipulable object. A legal education that accepts this materialist anthropology cannot sustain a belief in human rights or dignity; it can only speak of interests and utilities.

us to defend the sanctuary of the student's mind against the encroaching demands of the state, the market, and the network.⁶

The Disease of the Managerial Academy

The modern university is dying from a surfeit of management. It was once a Guild, which is a community of masters and apprentices bound together by a shared love of the subject. But it has been aggressively re-engineered into a system of production bound together by the external goods of prestige, revenue, and rankings. This shift is not merely structural; it is moral. It represents the colonization of the "lifeworld" of the mind by the instrumental logic of the market.⁷ In legal education it has meant, since the economic collapse of 2008, the advance of "skills" courses and clinical education, often at the cost of scholarship in legal theory and professional moral formation.⁸

To understand this collapse, we must bring the Christian realism of Jean Bethke Elshtain into conversation with the secular humanism of Edward Said. Though their theological starting points differ, their diagnosis of the modern institution is remarkably convergent: both identify the Professional as a dangerous

figure who has severed the link between intellect and conscience. For Elshtain, the danger lies in the collapse of the distinction between the public and the private. The Legal Factory acts as a totalizing force, a soft totalitarianism that refuses to recognize any aspect of the student's life as sacred or off-limits.⁹ In the Guild model, the teacher was concerned with the formation of the student's judgment (a private, interior faculty). In the Legal Factory Model, the administrator is concerned with the measurement of the student's outcomes (a public, exterior metric). The administrative mind operationalizes this shift by misapplying Bloom's Taxonomy: the ineffable quality of wisdom is discarded because it cannot be measured, while the curriculum is reoriented around the lower taxonomic rungs of "Remembering" and "Applying," which are discrete skills that produce clean data for accreditation reports. By focusing on "Remembering" and "Applying" (skills a robot can do), the professor is encouraged to abandon stewardship of the image of God (*imago Dei*) borne by the student, who is designed for "Wisdom" and "Creation." The student is thus flayed open; their interior struggles are converted into data points for "wellness

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- 6 Cf. BRUNO LATOUR, *REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK-THEORY* (2005). Latour's work suggests that "the network" is not merely a backdrop for human action but a complex web where technical objects (like AI) become mediators that transform the very meaning of the practices they inhabit. In the Legal Factory, the algorithm becomes a primary actor that translates the student's soul into a quantifiable metric.
 - 7 The term "lifeworld" (*Lebenswelt*) is used here in the sense of the pre-theoretical, relational sphere of human existence. The invasion of the system (bureaucracy/market) into the lifeworld is the defining pathology of late modernity. See JÜRGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION, VOL. 2: LIFEWORLD AND SYSTEM: A CRITIQUE OF FUNCTIONALIST REASON* 303-31 (Thomas McCarthy trans., 1987).
 - 8 See AM. BAR ASS'N, *ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS*, stand. 303(b) (3) (2022-2023), <https://law.wm.edu/currentstudents/2022-2023-aba-standards-and-rules-of-procedure-for-approval-of-law-schools-chapter-3.pdf>, which mandates that law schools provide substantial opportunities for the "development of a professional identity." From the perspective of Actor-Network Theory (ANT), this mandate functions as a "mediator" that translates the messy, internal process of moral growth into a formal institutional "assemblage." By codifying identity, the ABA transforms the student's soul into a non-human actor. Identity becomes just another competency that can be tracked, measured, and audited within the Legal Factory. This represents the "Idolatry of Technique" in its most invasive form: the attempt to operationalize the "lifeworld" of the mind. As the Article notes, when the administrator misapplies Bloom's Taxonomy to measure identity, the ineffable quality of wisdom is discarded in favor of "verifiable competency checkboxes" that produce clean data for accreditation reports. By reducing professional identity in this way, the academy risks fostering a banality of exploitation. See *infra* Part II. The student becomes an Excellent Sheep who possesses a merit badge of identity but lacks the trained sentiments necessary to resist the thoughtlessness of the algorithmic age. Ultimately, these mandates fail to recognize the student as *imago Dei*—an infinite mystery that cannot be captured by mechanistic descriptions. A true recovery of the person requires not a mandate, but "Pedagogical Love," which protects the student's interiority from being "flayed open" and converted into data points for "wellness retention."
 - 9 See JEAN BETHKE ELSHTAIN, *DEMOCRACY ON TRIAL* 16-25 (1995). Elshtain critiques the "politics of displacement," where private anxieties are projected onto the public stage, demanding institutional solutions for spiritual problems. This results in an institution that claims total jurisdiction over the person, leaving no room for the private conscience to mature.

retention,” and their intellectual growth is reduced to these verifiable competency check-boxes. This “social engineering” is the hubris of believing that the human soul can be managed by bureaucratic fiat.

Said describes the result of this management as the rise of the professional intellectual. He refers to the academic who works to placate the master (the donor, the dean, the state) rather than to disturb the peace.¹⁰ The professional is defined here by “specialization” (narrowing one’s vision to avoid seeing the whole) and “certification” (relying on institutional authority rather than moral truth). Against this, Said champions the amateur (not the dabbler, but the one who engages in ideas for the sheer love [*amator*] of them). The amateur is the one who refuses to be at home in the institution, because to be at home is to accept the furniture of the place, its prejudices, its silences, its idols, as natural laws. The tragedy of the modern law school is that it has systematically purged the amateur in favor of the professional. We do not hire faculty to be “intellectuals” in the classic sense (people who ask the dangerous, unanswerable questions about justice and the Good). We hire them to be specialists who can produce measurable deliverables. We have replaced the vocation of the teacher with the function of a factory robot.

This shift can be understood through Alasdair MacIntyre’s crucial distinction between practices and institutions. A practice (like the law or teaching) has internal goods, which are goods that can only be achieved by participating in the practice itself (e.g., the cultivation of justice, the spark of understanding). An institution (the law school, the university) exists to sustain the practice, but its focus is on external goods (money, power, status).¹¹ MacIntyre warns that institutions are necessary but dangerous. Without the institution, the practice cannot survive; but the institution is always tempted to devour the practice. In the Legal Factory, the institution has won. The internal goods of legal education

(the slow, inefficient formation of the student’s conscience) generate no revenue and improve no rankings. Therefore, they are discarded. In their place, the institution elevates external goods like bar passage rates, starting salaries, and meaningless certificates.

The result is a profound alienation. The professor, once a master of the craft of *paideia*, becomes a human resource managed by a dean who is no longer a “first among equals” but a branch manager of a corporate franchise. The student, once an apprentice to a tradition, becomes a consumer of credentials. The relational bond of *pedagogical love* that is the heartbeat of civil society has been severed.

In this environment, the Christian scholar finds themselves in a position of inevitable dissonance. To serve the student (the practice), one must often disobey the manager (the institution). To teach the law as a moral vocation, one must resist the curriculum of the factory. This resistance is what makes the condition of exile a necessity for the Christian soul. As Said might remind us, the only way to speak the truth to the Legal Factory is to refuse to be a cog in its machinery.

The Banality of Exploitation

The transition from the “Legal Factory” to the “Digital Law School” is not a deviation from the logic of management; it is its perfection. As the university retreats from its teleological role as a cultivator of conscience, it creates a spiritual vacuum. Into this vacuum steps the promise of the Techno-Futurists, who evangelize that Artificial Intelligence will repair what religion, politics, and education have ostensibly broken. A legal singularity is on the horizon in which the City of God will arrive in the silver arms of a robot Jesus.

To understand the moral peril of this transition, we must return to Hannah Arendt’s diagnosis of the bureaucratic mind. In her study of Adolf Eichmann, Arendt was not struck by the monstrosity of the man, but by his sheer

10 See SAID, *supra* note 1, at 73-83 (1994). Said contrasts the “Amateur,” moved by affection and interest, with the “Professional,” moved by the “four pressure” of specialization, certification, power, and fear. For Said, “the only meaningful intellectual work is to speak the truth to power,” a task that the Professional is structurally incapable of performing.

11 See ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 187-96 (2007). MacIntyre argues that institutions are characteristically concerned with external goods (money, power, status). When the institution’s pursuit of external goods overrides the practice’s pursuit of internal goods, the practice (e.g., teaching, law) becomes corrupted. The role of the virtuous practitioner is to resist this corruption, often at great personal cost.

banality.¹² Eichmann was not a fanatic; he was a functionary. His defining characteristic was “thoughtlessness,” by which Arendt meant an inability to think from the standpoint of another, coupled with a total reliance on rules of procedure and administrative language to shield himself from recognizing the reality of his actions.

Artificial Intelligence is the ultimate engine of thoughtlessness. It offers society a seductive promise: the ability to make decisions without the burden of moral responsibility. When a judge relies on a risk-assessment algorithm to deny bail, or when a law professor relies on a Large Language Model to draft a peer review, they are participating in a structure of plausible deniability. The system made the call. The data suggested the outcome. The human agent is absolved. This is the banality of exploitation repackaged for the digital age. It is a system that allows for the scaling of injustice while simultaneously dispersing accountability into the ether of the “Black Box.”¹³ The danger is not merely that these systems are biased (a technical problem); the danger is that they are “loveless” (an ontological problem). They operate without the capacity for mercy, for exception, or for the agony of decision that characterizes true justice.

At the heart of the AI movement in law is the idol of *prediction*. The modern legal academy, enamored with the science of data, seeks to transform the law from a normative practice

(what ought we to do?) into a predictive science (what *will* the court do?).¹⁴ This shift is catastrophic for the Christian ministry to the student. It is a bureaucratic Gnosticism, a desire to escape the weight of our embodied humanity and ascend to a realm of pure, quantifiable abstraction.¹⁵ To treat the human subject as a collection of data points to be predicted is to deny their dignity as bearers of the image of God. It is anti-incarnational; it seeks to lock the person into the prison of their past, denying the possibility of conversion, redemption, or the radical newness that is the promise of the gospel.

When we train students to view the law as a game of predictive analytics, we are training them to view their neighbors as risk scores to be managed, not as transcendent mysteries that reflect the divine. This is the beginning of what C. S. Lewis called “The Abolition of Man.”¹⁶ By removing the “Chest,” which is the seat of trained sentiment and moral habit, we are producing “men without chests:” attorneys who can navigate the technical machinery of the state but who lack the capacity to feel the weight of their own power. The AI-Literate attorney of the future may be efficient, practice-ready, and highly credentialed. But if they have outsourced the labor of judgment to the machine, they have ceased to be a judge with mercy in the Christian sense. They have become merely a high-functioning component in a loveless machine.

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- 12 See HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* 26-32, 287-88 (rev. ed. 1964). Arendt writes of Eichmann: “He was not stupid. It was sheer thoughtlessness—something by no means identical with stupidity—that predisposed him to become one of the greatest criminals of that period.” *Id.* at 288. The contemporary administrative state mirrors this structure, where “systemic” outcomes are divorced from individual intent.
 - 13 See FRANK PASQUALE, *THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION* 1-18 (2015). Pasquale details how the “black box” of proprietary algorithms creates a one-way mirror: the system sees everything about the citizen, but the citizen sees nothing of the system. This asymmetry of knowledge fundamentally undermines the rule of law, which demands transparency and contestability.
 - 14 This shifts the law from a domain of Practical Reason (*Phronesis*) to a domain of Technique (*Techne*). See SHANNON VALLOR, *TECHNOLOGY AND THE VIRTUES: A PHILOSOPHICAL GUIDE TO A FUTURE WORTH WANTING* 1-13 (2016). Vallor argues that “technomoral wisdom” is being eroded by our reliance on optimization technologies. We are becoming acute in our means but vague in our ends.
 - 15 This gnostic tendency is the desire to transcend the limitations of the body and the messiness of human relations through technical systems. It is the central critique of modern administrative governance. See ERIC VOEGELIN, *THE NEW SCIENCE OF POLITICS* 107-32 (1952) (identifying modern political mass movements as gnostic attempts to immanentize the eschaton). In the context of the legal academy, this manifests as a belief that “justice” can be achieved through the correct calibration of administrative rules and algorithmic inputs, bypassing the need for virtuous agents.
 - 16 C. S. LEWIS, *THE ABOLITION OF MAN* 23-36 (HarperCollins 2001) (1943). Lewis famously argued that the debunking of “objective value” (the Tao) combined with the rise of technical power would lead to the destruction of the human person. “We make men without chests and expect of them virtue and enterprise. We laugh at honor and are shocked to find traitors in our midst.”

The Eclipse of Liberal Learning and the Recovery of the Person

The Legal Factory provides the structure of legal education, and AI provides the newest set of tools. The product is not a virtuous attorney but an “Excellent Sheep.” The ultimate victim of the legal academy’s surrender to technique is the student soul. By abandoning liberal learning, which is the education of a free person (*artes liberales*), in favor of technical competency, we are failing to equip students with their only defenses capable of resisting the machinery of the age: Pedagogical Love and Double Consciousness.

The modern law student is a paradox: hyper-credentialed yet spiritually fragile; ambitious yet paralyzed by anxiety. William Deresiewicz famously termed this demographic “Excellent Sheep” to refer to students who are meticulously trained to navigate systems but entirely unequipped to question them.¹⁷ In the law school, this manifests as a student body that views legal education as a transaction of compliance, not an apprenticeship in moral integrity. They collect merit badges, terrified that a single misstep will eject them from the meritocratic escalator. They gleefully snub those they can hold at the margin. This pathetic anxiety is the direct result of the gnosticism of the Idolatry of Technique that Ellul warned against. When professional merit is reduced to metrics (GPA, rank, placement), the student’s value is externalized. The student ceases to possess an interior ballast of conviction. This makes them the perfect subjects for the Legal Factory: compliant, efficient, and fundamentally fearful. They are platform-compliant technicians who will execute the law but who lack the moral imagination to reform it.

The antidote to this hollowing out is not better metrics or “more wellness seminars.” It is a recovery of Pedagogical Love. In the Christian tradition, teaching is an act of *agape*, a willing descent into the confusion of another to help them find the light. It is a form of attention (in the Simone Weil sense) that grants the student the dignity of being truly seen, not as a data point, but as an infinite mystery.¹⁸ This love is inherently inefficient. It requires the waste of time: the lingering conversation after class, the handwritten note on a paper, the seminar that deviates from the syllabus to address a moment of crisis. The Legal Factory views this intimacy as a liability, a risk to be managed or an inefficiency to be eliminated. It prefers the scalable solution of the online module. But for the Christian professor, the classroom must be a sanctuary (a “Dead Poets Society” in a world of bureaucrats). It is a space where the logic of the market is suspended, and the logic of the Gift takes over. When I stood before my students, I viewed my primary task not as the transmission of information, but as the defense of their humanity against a profession that wished to turn them into widgets. This defense is the core of the academic vocation.

Finally, the recovery of the person requires the cultivation of Double Consciousness. W. E. B. Du Bois described this as the peculiar sensation of looking at one’s self through the eyes of others. It is a burden, yes, but also a source of “second sight.”¹⁹ In the context of the law, Double Consciousness is the ability to see the legal system as more than a set of neutral rules (the view from the Center), but as a mechanism of power that often crushes the vulnerable (the view from the Margin). Artificial Intelligence, which relies on historical data, is structurally incapable of this sight. It possesses only Single Vision

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- 17 WILLIAM DERESIEWICZ, *EXCELLENT SHEEP: THE MISEDUCATION OF THE AMERICAN ELITE AND THE WAY TO A MEANINGFUL LIFE* 10-25 (2014). Deresiewicz notes that the modern “meritocratic” education system produces students who are “smart, talented, and driven, yes, but also anxious, timid, and lost, with little intellectual curiosity and a stunted sense of purpose.” *Id.* at 22.
- 18 See SIMONE WEIL, *WAITING FOR GOD* 105-16 (1951). Weil argues that “attention” is the rarest and purest form of generosity. To attend to another, to empty oneself of self-interest and truly receive the other, is the basis of both prayer and study. The Factory Model, which maximizes distraction and throughput, makes this form of attention structurally impossible.
- 19 W. E. B. DU BOIS, *THE SOULS OF BLACK FOLK* 3 (1903). This “second sight” is essential for the attorney, whose task is often to bridge the gap between the law as written (the ideal) and the law as experienced (the reality).

(to use Blake’s term); it sees the world as it *has been*, reinforcing the biases of the past.²⁰ Only the human soul, formed by liberal learning and Pedagogical Love, can hold the tension of Double Consciousness. Only the human judge can look at the risk score and see the person hidden behind it. By abandoning the formation of this consciousness in favor of AI Literacy, the law school (and the university) is stripping the future students of the very faculty required to liberate them to do justice. We are training students to see like a state rather than to see like a person capable of loving God.

A Theology of Exile

Where, then, does this leave the Christian legal professor? If the academy has become a Factory that demands the worship of Technique, and if the classroom is no longer a sanctuary but a site of surveillance, what is the faithful response?

The answer lies in the title of this Article: Exile. We must reject the false binary of capitulation (staying and assimilating) or withdrawal (leaving and disappearing). Instead, we must embrace the Vocation of Exile. In the biblical tradition, Exile is not merely a punishment; it is a location of revelation. It was in Babylon that the Israelites learned to seek the welfare of the city without worshipping its gods. To accept the condition of exile is to accept that we have no permanent city here.²¹ It is to refuse the “Idolatry of Belonging,” the desperate need to be affirmed by the *New York Times*, the *Harvard Law Review*, or the AALS. It is to recognize that the integrity

of the educator is not found in institutional prestige, but in fidelity to the Truth.

This exile is not solitary. It is the foundation for a new kind of community. Living under a regime of lies requires the creation of small communities that exist alongside the official structures but refuse to play by their rules. Václav Benda called these “structures of truth.”²² For the legal scholar, this means building new institutions, new journals, and new networks of formation that are immune to the logic of the Legal Factory. It means writing *The Minority Opinion*, not as a dissent destined to be ignored, but as a constitutive document for a community yet to come. It means practicing the Prophetic Imagination, which Walter Brueggemann defines as the capacity to “evoke a consciousness and perception alternative to the consciousness and perception of the dominant culture.”²³

Conclusion

“Exile is strangely compelling to think about but terrible to experience,” Edward Said wrote.²⁴ The loss of the institutional home is a wound that does not heal. But it is also the condition that makes criticism possible.

The modern legal academy has made its choice. It has chosen the safety of the Legal Factory, the certainty of the Algorithm, and the comfort of the Sheep. But it has lost its soul. For those of us who refuse to forget what the law is for, who refuse to forget that the student is the bearer of the image of God and that justice is a labor of love, the path forward is clear. We must

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- 20 See WILLIAM BLAKE, *Letter to Thomas Butts*, in *THE COMPLETE POETRY AND PROSE OF WILLIAM BLAKE* (David Erdman ed., 1988) (“May God us keep / From Single vision & Newtons sleep”). Single Vision is the purely materialist, scientific view of the world (a view that sees atoms and void but misses the spirit.) AI, as a statistical engine, is the ultimate machine of Single Vision.
- 21 See *Hebrews* 13:14. This eschatological orientation is the ultimate check on institutional idolatry. If we have no permanent city here, we cannot be seduced into believing that any earthly institution—be it the Supreme Court, the University, or the State—is final or ultimate.
- 22 See Václav Benda, *The Parallel Polis*, in *CIVIC FREEDOM IN CENTRAL EUROPE: VOICES FROM CZECHOSLOVAKIA* 35, 36-38 (H. Gordon Skilling & Paul Wilson eds., 1991) (1978) (articulating the strategy of the “parallel polis” and independent social structures); see also Václav Havel, *The Power of the Powerless*, in *THE POWER OF THE POWERLESS: CITIZENS AGAINST THE STATE IN CENTRAL-EASTERN EUROPE* 23, 36-42 (John Keane ed., 1985) (1978) (arguing that “living in truth” requires rejecting the regime’s rituals).
- 23 WALTER BRUEGGEMANN, *THE PROPHETIC IMAGINATION* 13 (2d ed. 2001). Brueggemann argues that the task of the prophet is to “nurture, nourish, and evoke a consciousness and perception alternative to the consciousness and perception of the dominant culture around us.” This requires both criticism (naming the death of the old order) and energizing (imagining the new).
- 24 EDWARD SAID, *REFLECTIONS ON EXILE: AND OTHER ESSAYS* 173 (2000).

step out of the mechanism of the Legal Factory and into the wilderness of the canon.

The Christian legal scholar remains physically in the law school (or doing the work of educating attorneys in another forum) while remaining outside it spiritually and institutionally.²⁵ It is cold out here, and the way is unsure. But the air is clear. And for the first time in a long while, we are free to talk about it.

25 It is crucial to distinguish this “Vocation of Exile” from a call to monastic withdrawal or a retreat into sectarian enclaves (a common misreading of MacIntyre’s famous suggestion that we await “another—doubtless very different—St. Benedict.”). See MACINTYRE, *supra* note 11, at 263. The exile proposed here is not a withdrawal from the world but a distinct way of inhabiting it. We remain within the secular academy not because it is hospitable, but rather because it is the mission field. To abandon the university is to abandon the students within it to the machinery of the age; and fundamentally, one cannot evangelize what one does not love.

NATURAL LAW AND CHRISTIAN EDUCATION

by Bryan T. McGraw*

I'm a political theorist at a Christian liberal arts college. Because of what I teach, I get more than my share of students headed to law school. When we take up Aquinas in my introductory course, I almost inevitably offer some joke that unless they attend one of a handful of religiously affiliated law schools, this might be their only chance to learn about natural law. But the joke could really be turned back on me.

I teach at Wheaton College, an institution firmly within the evangelical Christian tradition. It's a great place. My students are earnest and committed, and I get to think, teach, and write about the deep ways my faith speaks to issues of justice, freedom, politics, and the like. But the fact that I ask my students to study the natural law tradition, and that I (along with Jesse Covington and Micah Watson) have written a book arguing for a distinctively *evangelical* natural law politics, makes me in fact something of an historical anomaly.¹ For the truth is that evangelicalism—and Protestantism more broadly—has long had an aversion to the idea of natural law. Carl F. H. Henry, one of the early giants of post-war evangelicalism, even once argued that it was Aquinas who was largely to blame for the social ills of modern America.²

The last three decades, however, have seen a resurgence of interest in natural law among Protestant scholars, starting with theologians like Stephen Grabill, David VanDrunen, and Daryl Charles.³ The resurgence reflects both a new appreciation for the tradition's place in the history of Christian political reflection (especially among the magisterial reformers) and the clear

need for something with which Protestants can engage politically in ways more fruitful than we see today. My co-authors and I wrote *Hopeful Realism* as part of that resurgence, hoping both to develop a natural law theory reflective of our evangelical theological commitments and to offer a useable framework that can help our fellow evangelicals apply it within the context of a pluralist democratic order.

It seems obvious to us (and many others) that our community needs something like this. It is also something we think our students really need as well. Indeed, I might go so far as to say that any Christian education worth the name needs to include some engagement with, reflection on, and understanding of natural law. To neglect—or worse, reject—this tradition is to cut those students off from the riches of Scripture and from our deepest sets of moral resources, leaving them less prepared to live well in the world around them and vulnerable to capture by the ideologies of the age. Needless to say, that's a pretty strong claim, so let me sketch out what I mean.

Whatever else it might be, Christian education is about cultivating in students a deepened and extended capacity to love God and neighbor. It is an exercise in academic and intellectual discipleship that takes seriously the notion that living the Christian life demands, so far as we can, knowing what is *true* about God and His Creation, to include especially how we are to relate to Him and to one another. And natural law is just *true*.

* Dean of natural and social sciences, director of Aequitas Fellows Program, and professor of politics at Wheaton College.

1 See JESSE COVINGTON ET AL., *HOPEFUL REALISM: EVANGELICAL NATURAL LAW AND DEMOCRATIC POLITICS* (2025).

2 See CARL F. H. HENRY, *Natural Law and a Nihilistic Culture*, *FIRST THINGS* (Jan. 1, 1995), <https://firstthings.com/natural-law-and-a-nihilistic-culture/>.

3 See, e.g., J. DARYL CHARLES, *RETRIEVING THE NATURAL LAW: A RETURN TO MORAL FIRST THINGS* (2008); STEPHEN J. GRABILL, *REDISCOVERING THE NATURAL LAW IN REFORMED THEOLOGICAL ETHICS* (2006); DAVID VANDRUNEN, *NATURAL LAW AND THE TWO KINGDOMS: A STUDY IN THE DEVELOPMENT OF REFORMED SOCIAL THOUGHT* (2010); DAVID VANDRUNEN, *A BIBLICAL CASE FOR NATURAL LAW* (2006).

No one can plausibly read the first chapters of Romans without recognizing that there is a moral order to which we are obliged just on account of being human beings created in God's image. So, too, with lessons embedded throughout the Old Testament.⁴ So, too, with the world around us.

For all the chatter for my whole adult life about relativism, subjectivism, postmodernism, and the like, the true nihilist is extraordinarily hard to find. You can find, of course, many who go to great lengths to deny that there are things that humans just ought not to do (or just ought to do) on account of their humanity or that those things reflect a kind of common human nature. But no one can really say with a straight face that we live in an age of moral agnosticism or indifference to moral questions. We might disagree—and disagree passionately—about the content and grounds of our moral judgments, but we are awash in them. It is to the point that any number of social commentators have remarked that the true marker of the U.S., at least, being truly post-Christian, is that we have fully embraced judgment and fully dispensed with forgiveness. Some may on occasion parrot the language of relativism or what-not, but almost no one really believes it and certainly almost no one lives it. It is probably a bit of an overstatement, but I think that in practice pretty much everyone is a natural lawyer; it just sometimes takes some work to unearth it.

Still, though, many theologians, philosophers, and the like have expressed sincere doubts about both the existence and utility of natural law. After all, if these are things that we should just know on the basis of our nature, taking but a brief glance at the world around us or picking up any history book will quickly suggest that many seem not in practice to know what they are obliged to do. Or at least they certainly do not act like they know. What's more, and this is rather embarrassing for the tradition, we can find any number of natural lawyers, their writings replete

with earnest attempts to describe those human moral obligations, endorse practices we rightly find abhorrent: slavery, colonial exploitation, and the like. Understanding natural law does not seemingly come very naturally.

But that does not mean there is no such thing as natural law. Rather, that embarrassment itself reflects our sense that some things are not just wrong for us or for our time, but that they are wrong as such. They are the sorts of things that human beings ought not to do to one another (or to themselves). This disjunction—that we know that certain things are just wrong as such, but that the world around us (never mind our own behavior) does not reflect that sort of moral knowledge—actually strengthens the case for insisting on the importance of natural law as part of a Christian education. For we can only really make sense of that feeling of disjunction and learn to act rightly in the world so long as we have something of a grasp on natural law.

Here is what I mean. The more sophisticated theological and philosophical critiques of natural law offer two sets of claims, namely that there is no such thing as human nature (and thus the moral obligations that follow) or that it is so buried beneath the accretion of our own sin, culture, and history that we really do not have clear access to it. I've noted already why Christians should reject the first, but the second has some real purchase. We certainly do not always see things clearly, and we obviously do not consistently do what we even profess that we are supposed to do. Too often, when we think we are saying something about human beings as such, we are actually just saying something about the human beings that we see around us.

But what's on offer from Christians as an alternative is often a kind of moral *sola* (or even *nuda*) *Scriptura*, a claim that *only* in Scripture can we find what is true for us.⁵ The trouble with that is three-fold. First, as I have noted above, Scripture itself speaks to the reality of natural law, so declining to affirm it on the basis of Scrip-

4 See VANDRUNEN, A BIBLICAL CASE FOR NATURAL LAW, *supra* note 3.

5 You see elements of this, alternatively, in both O'Donovan and Hauerwas. See OLIVER O'DONOVAN, RESURRECTION AND MORAL ORDER: AN OUTLINE FOR EVANGELICAL ETHICS (1986); STANLEY HAUERWAS, WITH THE GRAIN OF THE UNIVERSE: THE CHURCH'S WITNESS AND NATURAL THEOLOGY (2001). Both arguments are downstream of Karl Barth's contribution to Emil Brunner & Karl Barth, *Natural Theology, Comprising "Nature and Grace" by Professor Emil Brunner and the Reply "No!" by Dr. Karl Barth* (2002). For why I find that view unpersuasive, see my contribution to *NATURAL LAW AND EVANGELICAL POLITICAL THOUGHT* (Jesse Covington et al. eds., 2012).

ture seems inconsistent, to say the least. Second, there are a whole host of things to which Scripture does not speak or at least does not speak especially directly. If you're asking whether we should genetically modify human beings to prevent disease or disability or to improve their physical and mental capacities, it is difficult to see where Scripture might speak to that.⁶ Finally, it leaves us vulnerable to clever interpretations of Scripture that can actually mislead us as much as most anything else. Christians did as much interpretive violence to Scripture in defending slavery on its basis as anyone has done to natural law.⁷ Without denying the difficulty of seeing clearly what natural law actually is, we would be foolish to deny it as a resource just because our sense of it is inevitably always mixed up with the sensibilities and assumptions of our age.

The point is that Christians need *both* Scripture and natural law, and we especially need both in a world where too often both natural law and Scripture have a much diminished public purchase. Relying solely on Scripture to the exclusion of natural law leaves us unprepared to meet a whole host of challenges and makes us vulnerable to a host of misjudgments. But we should not imagine that we can or should do natural law *simpliciter*.

There is a robust debate among natural lawyers about the place of God in natural law, something I certainly cannot adjudicate in this short Essay. But in thinking about the place of natural law in a distinctively *Christian* education, it makes little sense to try and force what seems to me a rather unnatural wedge between the “natural” and “theological,” or “natural” and “biblical.” This is especially true in a world where “nature” has in practice and thought had its teleological elements so thoroughly stripped out. To be able to see nature as imbued with meaning and purpose, able to help ground our moral deliberations, Christians will need to understand nature as *Creation*—and that, of course, is an inherently theological idea.

This sense of things—that a Christian education needs to help students understand natural law as part of their distinctively Christian vision of the world—is not just some pedantic academic point. It has, I think, real and important consequences for how those students come to live in the world around them, especially how they come to live in the world politically. To this point, though, students are sometimes dubious. They might accept that Scripture teaches about the reality of natural law and even that it could be an important and useful resource for Christian moral and political deliberation. But they often have some serious doubts about its utility for them, especially in thinking about themselves speaking and acting within a pluralist democratic political order.

For some, these doubts flow out of a concern that natural law arguments are simply ineffective or even irrelevant in the modern world. I adverted to this issue just a few paragraphs above. Consider American debates over same-sex marriage. Any number of Christians brought sophisticated and thoughtful natural law arguments to bear in our public deliberations over whether the government should recognize same-sex relationships as marriage.⁸ All for naught, as ordinary citizens were simply not persuaded, even to the degree that they could be bothered to pay attention. The same seems increasingly true of efforts to permit doctors to help their patients commit suicide. Whatever the reason—and no doubt they are multiple—public moral and political arguments making recourse to some distinct conception of human nature or human flourishing too often even fail to gain much of a hearing, never mind persuade. So why make them in the first place? It's a fool's errand.

What's more, even if natural law arguments were to be more successful, some students worry they might still be morally and politically suspect, even if true. For in a political community deeply divided about what it means for human beings to flourish, may we legitimately advance political proposals that depend on and encour-

6 There are probably arguments along these lines, but the general point stands, I think.

7 Cf. MARK A. NOLL, *THE CIVIL WAR AS A THEOLOGICAL CRISIS* (2006). Contemporary mistakes about sexuality tread the same hermeneutical path, I think.

8 See SHERIF GIRGIS, ROBERT P. GEORGE, & RYAN T. ANDERSON, *WHAT IS MARRIAGE? MAN AND WOMAN: A DEFENSE* (2012).

age a particular conception of that flourishing? Doesn't that, they ask, violate some moral norm inherent to a liberal democratic political order? Does embracing natural law mean abandoning any number of central democratic commitments?

It is around this pair of doubts that any number of natural law proponents have constructed a set of postliberal legal and political theories that essentially affirm these doubts and say, yes, and so much the worse for liberal democracy. In other words, if natural law is in some fashion at odds with the essentials of a liberal democratic political order, then that political order needs to be replaced by something more obviously and straightforwardly in tune with human flourishing and natural law.⁹

While there are any number of quite compelling theological and philosophical critiques of the postliberal project,¹⁰ it seems to me that the project has the advantage of simplicity: natural law helps us see what is required of social, political, and economic institutions to advance human flourishing via the common good. And because liberal democracy largely declaims a direct role for politics in that regard, it ought to be replaced by something that does. The fact that postliberalism has a vanishingly small chance of actually succeeding is a practical problem for the theory. But for thinking about the role of natural law in Christian education, it might seem to matter a great deal. For if the postliberals are correct, then teaching natural law will present students with a dilemma: they will either embrace natural law and reject liberal democracy or embrace liberal democracy and reject natural law.

They are not correct, and in particular, they are not correct that natural law tells against liberal democracy, or at least it need not do so. This short Essay is not the place to explain fully why postliberalism is mistaken on this count, but two points seem especially salient. The postlib-

erals tend to make a lot of the idea that liberalism falsely claims to be neutral with respect to different ways of life. So far as it goes, that critique of liberalism is right: no set of social and political institutions can genuinely be neutral, and liberal thinkers who hang their theories on that hook are being either foolish or disingenuous. But that critique goes hand-in-hand with a more substantive critique, namely that liberal democracy is at odds with the common good because it does not encourage (or coerce) individuals into what is ultimately good for them, namely the Christian faith.¹¹ There are certainly softer and harder versions of this claim, but the basics are the same: in protecting the religious freedom of individuals, the liberal democratic polity in effect (even if not always in intent) leads people away from their true end.

Again, there may be something right about this. A regime of religious freedom like the one we enjoy in the U.S. could plausibly have the effect of fewer people publicly affirming and practicing the faith than would be the case in a postliberal regime. Now, there is plenty of evidence to suggest that confessional states, whether of the harder or softer variety, are not especially effective in promoting popular adherence to the Christian faith, but the postliberal logic is understandable. But the question is not really whether a confessional state is practically effective, but rather whether the state is authorized by natural law and Scripture to be confessional in nature. The postliberals will point to Aquinas (among many others) who answers this affirmatively, largely because they understand it as being in the nature of political authority that it should encourage us in our natural and supernatural ends. The reason that liberal orders cannot be neutral is not because they are led by especially duplicitous men and women, it is because shaping citizens' confessional beliefs and practices is just part of what political orders *do* by nature.

9 See Adrian Vermeule, *Integration from Within*, AM. AFFAIRS J. (Feb. 20, 2018), <https://americanaffairsjournal.org/2018/02/integration-from-within/>; PATRICK J. DENEEN, REGIME CHANGE: TOWARD A POSTLIBERAL FUTURE (2023).

10 See KEVIN VALLIER, ALL THE KINGDOMS OF THE WORLD: ON RADICAL RELIGIOUS ALTERNATIVES TO LIBERALISM (2023).

11 Yoram Hazony's nationalist postliberalism thinks that different nations will promote whatever religious tradition informs their particular culture. See YORAM HAZONY, THE VIRTUE OF NATIONALISM (2025). But in any case, this would require a significant diminishment of religious freedom.

So far as it goes, this has the ring of truth. Political orders probably inevitably go some distance toward shaping their citizens' religious beliefs, whether they explicitly mean to or not.¹² And natural lawyers have historically endorsed the idea of the confessional state as not just a regrettable feature of political authority—like, say, the use of coercive violence—but as something that is to be positively welcomed, maybe even celebrated. As I noted above, though, there are a good many things the tradition's advocates have endorsed that we quite rightly now think deeply mistaken, and I think coercing religious confession falls into that category.

The confessional state, a state that distributes burdens and benefits based on a person's willingness to participate in religious activities or confess a particular creed, unjustly imposes itself on the person's religious conscience and thus severely threatens his or her well-being.¹³ In particular, it destructively disregards the respect we owe to a person's agency, the capacity that under normal circumstances we each have to act on our own accord.¹⁴ I cannot here provide a full defense of this claim, but the sense of it is intuitive enough. In ways that seem quite distinct from other creatures, human beings have the capacity to think and act in some fashion independently from our circumstances or our instincts. This does not mean we are ordered to the sort of eccentric individuality of, say, a John Stuart Mill. There is a difference between *agency* and *autonomy*, the latter being an implausible and ultimately unattractive model of human flourishing. But we have been given a degree of freedom, a capacity for agency, that demands respect. A confessional state that coerces us into a creed or practice we find objectionable or even abominable in no sense respects that freedom or agency.¹⁵

Suppose something like that is true. Note *how* it is true. Religious freedom ought to be protected not on account of skepticism of some sort or even on account of the likely bad political consequences of systematically violating it.

It ought to be protected because it fits within an understanding of what is good for human beings, that to flourish as a person is to have your agency or your freedom respected. It ought to be protected, then, because it reflects natural law.

Still, the student might wonder, it seems as though we are caught in a bit of a conundrum. Natural law says that the social and political order ought to be organized to promote human flourishing. The Christian should say that *full* human flourishing includes following Christ. And yet, it also seems to be the case that natural law says that the social and political order ought to respect and even protect human freedom, including the freedom to live according to beliefs that the Christian says are not true. Is the natural law at odds with itself?

It is not, and it is here we can see why studying natural law is crucial for Christian students' moral development and political engagement. The postliberals tell a seductively straightforward story that we should reject the conundrum by rejecting the claim in favor of religious freedom. That is mistaken. We should affirm religious freedom but affirm it while recognizing that it indeed means that some people will use that agency to live less than fully flourishing lives. Indeed, we should say that a society that respects freedom in any respect will necessarily accept that some people will use that freedom to live less than flourishing lives. And we should also say that a society that tries to avoid this conundrum by having social and political institutions foreclose human freedom itself undermines human flourishing, especially because any persons responsible for those social and political institutions are themselves finite and sinful.

It turns out that thinking through how it is that social and political institutions might be arranged so as to promote human flourishing—how they should look in light of natural law—brings us very quickly to the recognition that all the goods that make up our flourishing in this world do not always fit together as neatly as we might hope. There is, of course, nothing new

12 NATHAN O. HATCH, *THE DEMOCRATIZATION OF AMERICAN CHRISTIANITY* (1989).

13 This is essentially the argument in *Dignitatis Humanae*, which postliberals implausibly argue doesn't *actually* argue for religious freedom, never mind what every subsequent Pope has said.

14 See CHRISTIAN SMITH, *MORAL, BELIEVING ANIMALS: HUMAN PERSONHOOD AND CULTURE* (2003).

15 This short paragraph hardly does the question justice, but I think the claim clear enough.

about this. Natural lawyers have always recognized that even good societies will imperfectly reflect the natural law; to think otherwise is to dabble in utopian foolishness. This is precisely why a Christian education should include a serious engagement with natural law, asking what is necessary for us to flourish and how this could plausibly work in the world around us. Ignoring or quickly hand-waving at the tradition leaves students vulnerable to either capitulating to the straightforwardness of the postliberals or, if that seems unattractive, denying natural law or even Christian moral teaching more broadly.

Natural law is a crucial piece for what a Christian education ought to do, forming students so that they better understand both how their own lives ought to reflect God's moral law and how their society's social and political institutions might be reformed properly to make the same true for others. This latter part is especially challenging and requires real wisdom to think through what should be done. But that's the point of a proper education, the development of wisdom, and perhaps if we were to do this more intentionally, more fully, we might find ourselves and our communities altogether better off.

RICHARD HOOKER'S NATURAL LAW

by Josiah Wolfe*

Introduction

Natural law discourse has grown a third head. Often, natural law theory is divided between two epistemic veins: one based in Roman Catholic theology (and rooted largely in the works of Thomas Aquinas) and one based in the theology of the Protestant Reformation (often represented by John Calvin). The divide between these schools of thought is significant.

On one hand, Roman Catholic polemics on natural law are fundamentally rooted in man's participation in spiritual truth through reason. Aquinas demonstrates this structure in his *Summa Theologica*, where he weaves secular philosophy, largely from the works of Aristotle, into his theological arguments. In contrast, reformed expositions on natural law, like those in Calvin's *Institutes of the Christian Religion*, typically reject secular philosophy as devoid of spiritual truth, instead focusing their attention solely on scriptural texts.¹ Yet, other perspectives on natural law are more nuanced. One such perspective, promulgated by Richard Hooker, stands between Rome and Geneva and offers Protestant thinkers a unique access to natural law theory.

Richard Hooker (c. 1554-1600) was the most prolific theologian of the English Reformation, and his eight-book *Laws of Ecclesiastical Polity* has influenced English political theorists and theologians since its publication. John Locke quoted Hooker extensively in his *Two Treatises of Government*, especially in his articulation of natural law.² Similarly, Edmund Burke was influenced by Hooker in his philosophy of prescription.³ Former Supreme Court Justice James Wilson lauded Hooker as "judicious and excellent."⁴ Nearly 200 years later, C. S. Lewis praised Hooker's prose saying that "for its purpose, perhaps the most perfect in English."⁵

Hooker's scholarly treatment, however, hasn't always been positive. While Hooker is generally considered a figure of the Protestant Reformation, the fiercest criticism of his work has come from Protestants. During his life, Hooker received a scathing letter from Protestant English citizens, who claimed that he was "scatter[ing] the prophane graines of poperie," likening his views to Roman Catholicism.⁶ Despite Hooker's continuing influence on Protestant scholars, this critique endures. Hooker's theology, especially relating to his conception

* Josiah Wolfe received his B.A. in business administration from Charter Oak State College in 2019. He is currently pursuing a J.D. at Campbell University School of Law and is expected to graduate in 2026.

1 See C. Scott Pryor, *God's Bridle: John Calvin's Application of Natural Law*, 22 J.L. & RELIGION 225, 235 (2006/2007). Following Renaissance trends, Calvin rejected the Aristotelian philosophy that underlies both metaphysical and epistemic participation in favor of a simpler biblical form of analysis that avoided most philosophical speculation.

2 See Alice M. Justice, Richard Hooker and John Locke: Political Theory in Perspective (Jan. 14, 1969) (B.A. honors thesis, Univ. of Rich.), <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1544&context=honors-theses>.

3 Brad Littlejohn, *Richard Hooker: A Forgotten Father of National Conservatism*, THE AM. CONSERVATIVE (Sept. 23, 2020), <https://www.theamericanconservative.com/richard-hooker-a-forgotten-father-of-national-conservatism/>.

4 *Id.*

5 C. S. LEWIS, ENGLISH LITERATURE IN THE SIXTEENTH CENTURY EXCLUDING DRAMA 462 (1954).

6 *A Christian letter of certaine English protestants, vnfained fauourers of the present state of religion, authorised and professed in England: vnto that reverend and learned man, Mr R. Hoo requiring resolution in certaine matters of doctrine (which seeme to ouerthrow the foundation of Christian religion, and of the church among vs) expreslie contained in his five books of ecclesiasticall pollicie*, UNIV. OF MICH. LIBRARY DIGITAL COLLECTIONS: EARLY ENGLISH BOOKS ONLINE, <https://name.umdl.umich.edu/A68210.0001.001> (last visited Feb. 12, 2026); see A COMPANION TO RICHARD HOOKER 116 (Torrance Kirby ed., 2008).

of natural law, has been rejected by Protestant theologians as Neo-Thomistic rather than as reformed.⁷

Nevertheless, those who align with Hooker's theological propositions have established a formidable presence in modern natural law scholarship.⁸ The defense of Hooker, especially in the past few decades, has been just as vocal as the opposition. However, entry points into the discussion are few: Hooker's laws are extensive and archaic,⁹ and both criticisms and commendations of Hooker are knots of historical, philosophical, and theological conversation.

Yet Hooker cannot be ignored. His natural law theory serves as a useful counterpoint to those theories posed by Calvin and Aquinas, particularly to Protestants interested in natural law. Hooker utilizes some of the schema employed by Aquinas and broader philosophical thought—the idea of natural inclinations, the utilization of human reason, the existence of an eternal law—and yet Hooker, helpfully to the Protestant, emphasizes the supremacy of Scripture over reason, particularly in his soteriology. This Article will summarize Hooker's approach to natural law, the debate surrounding his inclusion among the Reformers, and his usefulness to the Protestant natural law theorist.

An Overview of Hooker's Natural Law

Hooker, like Aquinas, begins his explanation of natural law by describing the idea of eternal law: "that order which God before all ages hath set down with himself, for himself to do all things by."¹⁰ Here, Hooker rejects voluntarism, the idea that the only law to which God adheres is His own will. Hooker explains that while God is the origin of eternal law, he is also bound by it: "God

therefore is a law both to himself, and to all other things besides."¹¹ The eternal law in Hooker's theology is the *summa genera*, or the highest genus, of law. Every other law in his taxonomy is a reflection of the eternal. Thus, when Hooker uses the term "eternal law," he means the very structure and order of the universe that God has ordained.

But eternal law is not static, it is operative. To Hooker, eternal law has an ultimate end (or a *telos* to use philosophical terms), which is "the exercise of [God's] most glorious and most abundant virtue."¹² The activity of eternal law leads into the idea of natural law.

Natural law is the operation of eternal law on natural creatures, including the created world, angels, and mankind. Hooker describes natural law as "the law of Reason, that which bindeth creatures reasonable in this world, and with which by reason they may most plainly perceive themselves bound[.]"¹³ The function of natural law is twofold: first, it takes eternal law which "God has set down for himself" and extends its application to creation; and second, it serves as a mechanism by which a creature can perceive natural law's governance over the created world. Like Aquinas before him, Hooker equates perception of natural law with the exercise of reason, a practice that is engrained in human nature since we are "creatures reasonable."

However, man's ability to reason is impeded by multiple contrary forces. First, the effect of the Fall and the presence of original sin, which Hooker calls "original weakness," prevents man from clearly apprehending true reason.¹⁴ Hooker notes that creatures are susceptible to temptation—that "subtilty of Satan inveigling us as it did Eve"—and "hastiness," a failure to diligently search out reason.¹⁵ According to Hooker, the

7 See W. J. Torrance Kirby, *Richard Hooker's Theory of Natural Law in the Context of Reformation Theology*, 30 *SIXTEENTH CENTURY J.* 681, 687 (1999).

8 Modern scholars advocating for Richard Hooker include W. J. Torrance Kirby, Nigel Atkinson, W. Bradford Littlejohn, and Paul Dominiak.

9 Recent efforts by the Davenant Institute have produced portions of the *Laws* in modern English. To date, the Davenant Institute has published modernized versions of the first four books (out of eight) of Hooker's *Laws*.

10 RICHARD HOOKER, *LAWS OF ECCLESIASTICAL POLITY IN MODERN ENGLISH*, Book I.2.6 (Brad Littlejohn et al. eds., 2019) (1553).

11 *Id.* at I.2.3.

12 *Id.* at I.2.4.

13 *Id.* at I.3.1.

14 *Id.* at I.7.7.

15 *Id.*

remedy to these impediments is a contrary action of the will: “the search of knowledge.”¹⁶ In other words, the effects of sin may be overcome by purposefully searching for truth.

And yet this “pursuit of truth” is not easily accomplished. Hooker notes that this process “is a thing painful . . . which maketh the Will so hardly inclinable thereunto.”¹⁷ Here lies the reason why men choose lesser goods over greater ones, which to Hooker is the essence of evil. When man has not exercised his will, he only perceives the superficial good of evil deeds (i.e., whatever good feeling or result is obtained by the evil action) and fails to recognize the greater good of acting in accordance with natural law. It is not, therefore, the fault of reason that man does evil, “[a]s Reason therefore may rightly discern the thing which is good,” but man’s failure to exercise his will toward Reason.¹⁸

Even so, Hooker places limits on man’s ability to reach accurate conclusions by reason alone. While Hooker provides broad latitude for reason’s general efficacy, he excludes the faculty of reason from his soteriology. He says, “There resteth therefore either no way unto salvation, or if any, then surely a way which is supernatural, a way which could never have entered into the heart of man as much as once to conceive or imagine, if God himself had not revealed it extraordinarily.”¹⁹ Thus, to Hooker (in a distinctly Protestant fashion), salvific knowledge is only obtained through extraordinary, supernatural revelation, which Hooker later names “divine law.”²⁰

Finally, Hooker describes how human law is derived from natural law. Like many political theorists to come, Hooker begins with the maxim: “All men desire to lead in this world a happy life.”²¹ The pursuit of this happy life may be undertaken improperly, for example, by pursuing

riches.²² Or, it can be pursued correctly by living a “wise, virtuous, and religious” life.²³ Hooker argues that man’s faculty of reason is sufficient to show him the preeminence of the virtuous life, and that the pursuit of such a life is the only method of obtaining true happiness. Thus, human law, when properly posited, is directly rooted in moral living and ascertainable by the law-maker through natural law.

The Discourse Surrounding Hooker’s Natural Law

Historically, Hooker’s articulation of natural law, and his entire theology for that matter, has been seen as a *via media* (or middle-way) between Reformed and Roman Catholic doctrine.²⁴ Many of his supporters dislike this characterization, arguing instead that Hooker’s is better characterized within the parameters of Reformed doctrine, resembling Calvin more than Aquinas. But Hooker may be properly categorized as a “middle way,” while maintaining his Reformed sensibilities. Here, the middle way may be viewed as between Calvin and Aquinas, not necessarily between reformed and Roman Catholic doctrine.

Hooker expressly praises Calvin’s doctrinal works in his introduction to the *Laws*. He says,

I think [Calvin] incomparably the wisest man that ever the French Church did enjoy. . . . Two things of principal moment there are which have deservedly procured him honour throughout the world: the one his exceeding pains in composing the Institutions of Christian religion; the other his no less industrious travails for exposition of holy Scripture according unto the same Institutions.²⁵

16 RICHARD HOOKER, *LAWS OF ECCLESIASTICAL POLITY IN MODERN ENGLISH*, Book I.7.7 (Brad Littlejohn et al. eds., 2019) (1553).

17 *Id.*

18 *Id.* at I.7.6.

19 *Id.* at I.11.5.

20 *See id.* at I.3.1.

21 *Id.* at I.10.2.

22 RICHARD HOOKER, *LAWS OF ECCLESIASTICAL POLITY IN MODERN ENGLISH*, Book I.10.2 (Brad Littlejohn et al. eds., 2019) (1553).

23 *Id.*

24 Kirby, *supra* note 7, at 682.

25 HOOKER, *supra* note 10, at Introduction 2.1, 2.8.

On the other hand, Hooker criticizes Calvin's *political implementations* of his doctrine with as much fervor:

The present inhabitants of Geneva, I hope, will not take it in evil part, that the faultiness of their people heretofore is by us so far forth laid open. . . . But what argument are ye able to shew, whereby it was ever proved by Calvin, that any one sentence of Scripture doth necessarily enforce these things [the doctrines of the Institutes], or the rest wherein your opinion concurrerth with his against the orders of your own church?²⁶

Moreover, in Calvin's effort to distinguish himself from the Church of Rome, Hooker writes that Calvin bred "marvellous great dissimilitudes, and by reason thereof, jealousies, heart-burnings, jars and discords amongst them."²⁷

While the *Laws* seem to represent that Hooker merely had a political difference with Calvin, Hooker's critics purport several doctrinal inconsistencies between the two theologians. Some have even compared Hooker's emphasis on the will to Pelagianism—the idea that humans can achieve perfection by an exercise of the will apart from God's grace, an idea that the Reformers denounced.²⁸ Other critics claim that Hooker contradicted *sola scriptura*, one of the five tenants of Protestant Reformation.²⁹ These critics point to a section in Hooker's *Laws* where he states that some wisdom is perceived "by the sacred bookes of Scripture" and some "by the

glorious works of nature[.]"³⁰ Hooker expounds on this idea, writing, "with some things she [Wisdom] inspireth them [man] from above by spirituall influence, in some thinges she leadeth and trayneth them onely by worldly experience and practise."³¹ Hooker's critics claimed that this statement violated the regulative principle—which (in Hooker's own words) means that "by Scripture we must of necessity be directed in every light and common thing which is incident into any part of man's life."³²

Hooker's supporters have many retorts to these criticisms. First, Hooker's *Laws* contain several passages that thoroughly reject Pelagianism in any form.³³ The key, Hooker's supporters argue, is in Hooker's definition of the will.³⁴ Hooker repeatedly claims that the will of man has been injured by sin, to different degrees in different people, but universally injured nonetheless.³⁵ In this state, it is only by God's grace that the weakened will can do good works. Yet Hooker still refers to this action toward good works as an act of the will, saying, "Butt must the will cease to be itselfe because the grace of God helpeth it?"³⁶ Thus, to Hooker, good works are not accomplished strictly by human will (like in Pelagianism) but by God's grace animating the human will towards goodness.

Second, related to *sola scriptura*, Hooker's supporters emphasize that, to Hooker, divine revelation is the only avenue to salvation. In affirming this, Hooker is aligning himself with the "essence of *sola scriptura*."³⁷ As an adherent, Hooker "fits broadly within the mainstream of Reformed orthodoxy."³⁸ While Hooker wrote extensively about the importance of reason and

26 *Id.* at Introduction 2.7.

27 *Id.* at Introduction 1.2.

28 See Kirby, *supra* note 7, at 683.

29 *Id.* at 685-86.

30 HOOKER, *supra* note 10, at II.1.4.

31 *Id.*

32 *Id.* at II.3.1.

33 John K. Stafford, *Richard Hooker "The Pelagian": Is There A Case? Notes On The Christian Letter*, 11 PERICHORESIS, 149, 152 (2013).

34 *Id.* at 153.

35 *Id.*

36 *Id.*

37 See James A. Altana, *Richard Hooker on the Limits of Scripture and the Extent of Natural Reason*, 11 UNIO CUM CHRISTO 69, 78 (2025).

38 *Id.*

tradition, Scripture maintained supremacy over other methods of ascertaining truth in his schema.³⁹ As previously discussed, Hooker viewed natural law as limited in its application, even as it served as the basis for his political theory and the source of human law.

Other Reformers, and especially Luther, may have agreed with this limited application of reason and natural law. Luther often stressed the irenic efficacy of natural law—or its ability to promote societal peace.⁴⁰ Moreover, Luther’s doctrine of two kingdoms argued that there was a “temporal kingdom,” distinct from the spiritual kingdom, which God had instituted to promote peace within society. Peace was accomplished in society through human law, the study of which is considered distinct from spiritual knowledge and thus not dependent upon divine revelation. This idea that civic institutions are able to promote societal peace apart from divine revelation is present, even if not prominent, in the Reformers works.

Hooker Distinguished From Calvin

If Hooker can be reconciled within the framework of “Reformed Orthodoxy,” which many claim that he can, he cannot be entirely reconciled with Calvin. Here is where discourse on Hooker can be misleading: while Hooker may be broadly reformed, he is not a Calvinist. True, Hooker praises Calvin and his doctrinal works. True, several portions of Hooker’s *Laws* were influenced by Calvin’s *Institutes*. Nevertheless, differences between Hooker and Calvin remain.

First, and fundamentally, Hooker’s articulation of participating in eternal law through the faculty of reason is absent from Calvin’s theology.⁴¹ Calvin, like Hooker, rejected voluntarism,

but Calvin argued that God is bound by His own nature, not by an external law.⁴² Hooker’s description of eternal law is broadly Thomistic and a product of Aristotelian philosophy—which Calvin rarely utilized.⁴³ Instead, Calvin’s understanding of natural law was purely based on the order of God’s own nature.⁴⁴ This is a conceptual dissimilarity between Hooker and Calvin, which does not necessarily require their ultimate conclusions to be in opposition to one another.⁴⁵ Yet, as Hooker’s explanation of natural law develops, so do his dissimilarities with Calvin.

Hooker’s reference to “original weakness” stands in contrast to Calvin’s doctrine of total depravity. Calvin writes,

[Man’s] discernment was not such as to direct [him] to the truth, far less to enable them to attain it, but resembled that of the bewildered traveller, who sees the flash of lightning glance far and wide for a moment, and then vanish into the darkness of the night, before he can advance a single step.⁴⁶

In contrast, Hooker speaks of depravity “in a far less drastic manner that leaves considerable room for fallen human reason to apprehend” natural law.⁴⁷ But to Calvin, the effect of sin is “utter bewilderment,” disabling man from advancing even a step towards truth.

Finally, Hooker’s remedy to original weakness, the positive action of the will, is inoperable in Calvin’s theology. Calvin writes, “Because of the bondage of sin by which the will is held bound, it cannot move toward good, much less apply itself thereto; for a movement of this sort

39 Even here, scholars disagree, with some explicitly stating that Hooker viewed reason and tradition as co-equal with Scripture. *Id.* at 78-79.

40 Kirby, *supra* note 7, at 692-93.

41 Pryor, *supra* note 1, at 235.

42 *Id.* at 238 (“Consistency with God’s being—not simply logical consistency—is the range of God’s power.”).

43 *Id.* at 235.

44 *Id.* at 240.

45 See *id.* at 235 (“Notwithstanding differences in their modes of analysis, Calvin and Thomas reached substantially similar conclusions with respect to the dependence of natural law on God.”).

46 JOHN CALVIN, *INSTITUTES* II.2.18 (1559).

47 Altna, *supra* note 37, at 86. Like many of Hooker’s doctrinal stances, Hooker’s exact views on total depravity are still a subject of debate. *Id.* at 83 (“whether Hooker upholds a Reformed account of the depravity of nature remains a contested issue.”).

is the beginning of conversion to God, which in Scripture is ascribed entirely to God's grace."⁴⁸ In the *Institutes*, Calvin uses a term coined by Augustine, that human will is merely a "hand-made of grace." Here, Hooker's supporters may exclaim that Hooker's definition of "will" is founded in grace. But the dissimilarity between Hooker and Calvin is notable: Hooker sees man in various levels of weakness, reliant on God's grace to revive his will, while Calvin sees man totally disabled by sin and awaiting God's grace to act on him.

Hooker Distinguished From Aquinas

While in many ways Hooker's natural law schema resembles Aquinas's, Hooker has several significant deviations from a purely Thomistic natural theology. A primary difference is in the nature of man. Aquinas purports that man has natural inclinations toward good action. These inclinations are described as natural habits, or *synderesis* to use the Aristotelian term, which "incite good" and "murmur at evil."⁴⁹ And, when reason works through a person's natural inclinations toward good, a person is enabled to discover truth.⁵⁰ To Aquinas, the natural inclinations can be viewed as the starting point by which reason clarifies our understanding of morality.

In contrast, while Hooker affirms that man does have some natural inclination toward good (have offspring, exact order, and a desire to know truth), those inclinations are insufficient principles to develop a full understanding of morality. Hooker speaks of a "full and complete knowledge," which God and the angels possess, but which man has "[no] understanding or knowledge at all," even with his natural inclinations. To Hooker, man does not begin his life with an embedded yet unclarified understanding of morality, but no understanding of morality, in a state of "utter vacuity." From that point, man must incrementally progress, through the exercise of reason, toward an understanding of good and evil.

Hooker, despite all his contemporary critics, is not a Roman Catholic: he rejected the papacy and Roman control over the Church of England. But neither is Hooker a continuation of Calvin's theology—he emphasized reason and tradition in a way that Calvin rejected.

The Advantage of Hooker's Natural Law Theory

Historically, Roman Catholicism has produced a much more robust discourse on natural law. It can therefore be difficult for a Protestant to utilize the premises of natural theory—natural inclinations, reason, human will—without wondering if such terms contradict his basic theological convictions. This especially is a problem for political theorists because so many of the foundations of political theory and law are rooted in conceptions of natural law. A Protestant cannot accept modern and atheistic theories of natural law. Neither can they comfortably affirm a purely Roman Catholic theology of natural law. They may look to Calvin or Luther for some treatment of natural law, but it is far from comprehensive. That is where Hooker may be useful.

Hooker affirms that human beings are naturally inclined toward *certain* goods—an inclination that is strong enough to support the democratic ideal posed by political theorists and adopted by the American Founders. Without such a basis, it becomes more difficult to claim that natural law serves as the basis for democracy. For, if humans are not inclined toward any good, why would we support their right to create human laws? But Hooker serves as a precursor to democratic political theory: "therefore that strifes and troubles would be endless, except they gave their common consent all to be ordered by some whom they should agree upon: without which consent there were no reason that one man should take upon him to be lord or judge over another[.]"⁵¹ Hooker reaches this conclusion after a consideration of how man might achieve his natural inclination toward prosperous living.

48 CALVIN, *supra* note 46, at II.3.5.

49 THOMAS AQUINAS, *SUMMA THEOLOGICA* I.II.Q79.a12.

50 *Id.*

51 HOOKER, *supra* note 10, at I.10.4.

Locke mirrors Hooker's reasoning in his second treatise. He writes,

[W]e consider natural reason, which tells us, that men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence.... God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience.... The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the state of nature.⁵²

The similarities between this discourse and Hooker's articulation of natural law are striking.

First, Locke begins by stating that reason shows that man must take "the best advantage of life" and "convenience." Hooker articulates this as a natural inclination instead of a "right" (a post-Enlightenment term), yet the crux is the same: all men deserve a happy life. Second, both authors describe society and the political structure as the means of obtaining the happy life. Hooker recognizes, with Locke, that a monarchical structure is the antithesis of such life and that a democracy, or a community of lawmakers, is the best avenue of achieving it.

These political devices were instrumental to the Founding Fathers in forming the American ideal. The Declaration of Independence's allusions to the "laws of nature" and "life, liberty, and the pursuit of happiness" are reverberations of Locke's political theory and distant reverberations of Hooker's theological conclusions.⁵³ It is true that the basic structure of Locke's argu-

ment—man's inclination toward self-preservation when coupled with reason produces good society—can be found in Aquinas's writings and much of Roman Catholic natural law theory. However, Hooker acts as the Protestant's basis to affirming the political theories posited above, a thing not previously provided by other Reformation theologians.

Conclusion

Regardless of whether Hooker is viewed as a *via media* between Roman Catholic and Protestant theology or a subset of reformed doctrine, Hooker should be seen as a distinct articulation of natural law theory. Clearly, Hooker wished to distinguish himself from the Church of Rome and attempts to categorize him as a Roman Catholic are sophistry. Similarly, an attempt to entirely reconcile Hooker with Calvin ignores several significant differences between the two—differences that cannot be reconciled, even in light of Hooker's obvious admiration of Calvin's rhetorical abilities. Hooker's articulation of natural law is unique.

Moreover, Hooker's distinctiveness lends itself toward a formulation of natural law and political theory. Hooker provides a Protestant argument for a democratic society based on natural inclinations toward good living and the proper exercise of human reason. For these reasons, Hooker emerges as the third head of natural law discourse: distinct and meritorious.

52 JOHN LOCKE, SECOND TREATISE OF GOVERNMENT V.25, V.26, VIII.95 (1689).

53 See THE DECLARATION OF INDEPENDENCE para. 1-2 (U.S. 1776).

ETHICS, POLITICS, AND NATURAL LAW

A Conversation with Melissa Moschella on Principles of Human Flourishing*

Interviewer: Anton Sorkin

Q. Melissa, thank you so much for talking to me about your seminal new book, *Ethics, Politics, and Natural Law* (Notre Dame Press 2025). Russ Hittinger in his Forward puts you in the third generation of “new natural law theorists.” For those uninitiated, can you provide a short primer on what the main difference is between *new* natural law (NNL) and *old* natural law (ONL) theory?

A. Thanks for your interest in the book!

There are several differences between NNL and ONL, but perhaps the main point of dispute is about how natural law relates to human nature, which I discuss in Chapter 1 of the book.¹ ONL theorists tend to hold that we can derive ethical principles (principles of natural law) directly from theoretical knowledge of human nature (e.g., knowledge of human biology or philosophical anthropology). An example of this would be the attempt to derive (i.e., syllogistically deduce) moral norms about sex directly from biological or psychological facts, such as the biological fact that our sexual organs are ordered toward reproduction. Although NNL theorists recognize that such facts are relevant to moral reasoning, we think that it is fallacious to derive ethically normative conclusions from merely descriptive/theoretical premises.

Further, NNL holds that we can only determine the ends or perfections of our faculties in

the ethically relevant sense by identifying the basic human goods, which are known through practical reason. The first principles of practical reason—which are the first principles of natural law—identify and direct us toward basic goods, such as life/health, knowledge, and friendship, goods which perfect various dimensions of our complex nature.

Returning to the example of sexual ethics, NNL claims that the ethically normative end of our sexual capacities is not reproduction but the basic human good of marriage (understood as a conjugal union, which includes an intrinsic orientation to procreation). Thus, while NNL affirms that natural law is metaphysically rooted in human nature, epistemologically the order is reversed: knowledge of natural law’s first principles—which identify and direct us toward basic human goods—reveals the ends/perfections of the various dimensions of our nature in the morally relevant sense. On this point, NNL is following Aquinas’s basic methodology, according to which natures are known by their capacities, capacities by their acts, and acts by their objects or ends.² Thus, the “new” and “old” labels are themselves problematic, because NNL sees itself as being more faithful in this respect to Aquinas’s approach than its ONL counterparts. But I leave that dispute aside because NNL’s primary focus has been to develop a sound moral theory and defend it on the merits, rather than to present an interpretation of Aquinas’s view.

* Melissa Moschella, Ph.D., is a professor of the practice (philosophy) at University of Notre Dame (McGrath Institute for Church Life). She is a philosopher whose work spans the fields of ethics, political philosophy, and law. Her areas of special expertise include natural law theory, biomedical ethics, and the family (especially parental rights).

1 For a more in-depth look at this dispute, see the debate between me and Rob Koons. A version of this debate is expected in the *Journal of Natural Law* (forthcoming 2026). The Chapter of Pusey House, *How Does Natural Law Relate to Human Nature? A Debate Between Robert Koons and Melissa Moschella*, YouTube (Feb. 4, 2025), <https://www.youtube.com/watch?v=j0e-7T6Vmql>.

2 THOMAS AQUINAS, A COMMENTARY ON ARISTOTLE’S “DE ANIMA” bk. 2, lect. 6, no. 308 (Robert C. Pasnau trans., 1999).

Q. At the heart of your project is the connection between (1) basic human goods, (2) moral norms, and (3) virtue/moral character, along with the overarching claim that ethics is primarily about respecting and promoting human flourishing. Importantly, you write that “acting morally” is acting in a way that is compatible with *integral human fulfillment*. Can you unpack these components?

A. Unpacking these components is the task of the first half of the book, but I’ll try to flesh them out very briefly here. As already mentioned, basic human goods constitute the flourishing or perfection of the various dimensions of human nature, e.g., health (including life itself) perfects us as bodily beings, knowledge and appreciation of beauty perfect us as intellectual beings, friendship perfects us as social beings. Basic goods are also the basic reasons for which we act; this is what it means to say that the first principles of practical reason—the principles that get all genuine human action off the ground—identify and direct us toward basic goods. Yet these first principles by themselves are insufficient to guide action, because there are many different goods that we can pursue and people that we can benefit. Acting to protect or promote any basic good for oneself or another is rational, but not necessarily morally right (fully reasonable). A medical researcher might, for instance, seek knowledge through harmful experimentation on human beings.

How, then, do we determine what is morally right? On the NNL view, morally right action is *fully reasonable* action—action that is in line with the guidance offered by all of the first principles of practical reason considered holistically. Thus, morally right action is action that respects and, to the extent possible, promotes all the basic goods for all people. In more technical terms, the overarching moral requirement of natural law is to act only in ways that are compatible with a will toward integral human fulfillment (the fulfillment of all human beings with respect to all basic goods). This general moral requirement can be broken down into more specific moral principles that follow from it, such as

a prohibition on intentional damage to basic goods, the Golden Rule (preventing arbitrary prioritization of one person’s good over another’s), and what I call the “Vocation Principle” (requiring that we establish a reasonable order of priority among competing goods in line with a harmonious set of vocational commitments, discerned with moral seriousness). These moral principles are embodied in moral virtues, which are the lasting effect of a person’s morally upright actions on that person’s character.

On the other hand, a lack of moral virtue can impede a person from making and acting upon sound moral judgments. For one of the main obstacles to acting morally is the distorting influence that inclinations unintegrated with reason can have on a person’s moral deliberation and decision-making. Accordingly, there is a moral imperative to cultivate moral virtues such as self-mastery, diligence, courage, generosity, justice, and so on. But we can only know what these virtues require by applying moral principles. Moral principles and moral virtues are thus deeply interrelated in both theory and practice.

Q. How have natural law theorists arrived at a set of basic human goods³ and what does it mean for their goodness to be *intrinsic*? How does a person come to discern these basic goods, e.g., experience, education, revelation?

A. Because the principles identifying and directing us toward basic goods are the first principles of practical reason, they cannot be logically deduced from any prior knowledge. Like first principles in other domains—such as the principle of non-contradiction (a first principle of theoretical reason)—they are self-evident (to those who know the meaning of their terms), and they are often known implicitly without being articulated. Just as a child who has reached the age of reason will implicitly recognize that two contradictory claims cannot both be true and judge accordingly—even though the child may not be able to articulate the principle that underlies these judgments—a child at the age of reason will similarly grasp the practical truth that, for example, knowledge is good (inherently choice-

3 They are (1) life and health, (2) knowledge and appreciation of beauty, (3) skillful work and play, (4) friendship, (5) marriage, (6) integrity and authenticity, and (7) religion.

worthy, to be pursued) and its opposite bad (to be avoided), having first grasped through experience (and theoretical reflection on that experience) both what knowledge is and that attaining knowledge is possible. Because knowledge of basic goods is a matter of first principles, it is presumed that anyone capable of genuine human action already (at least inchoately and implicitly) knows these principles and is being guided by them in their practical deliberations and judgments.

Natural law theorists seeking to articulate a list of basic goods are therefore trying to clarify and make explicit this knowledge of first principles that we already implicitly possess (presuming that our experience has provided us with sufficient data to have at least fairly accurate knowledge regarding what the goods are and that they are possible to attain). Accordingly, the method for doing this is to reflect on our own and others' practical judgments, trying to identify the basic reasons for which we act. In other words, we ask the question "Why did you/I do that?" until we arrive at an answer that is sufficient to make the action intelligible. For example, if you asked why I am participating in this interview, and I answered that I am seeking to promote knowledge of natural law theory, such an answer would be sufficient because of its clear connection to a basic good. Indeed, the activity I am currently engaged in has such an obvious connection to the basic good of knowledge that you would not even need to ask. However, if you asked me what I did yesterday evening, and I told you that I sat and stared at my living room wall, you would be puzzled—or concerned about my mental health—unless I gave some further explanation (e.g., that I was practicing a form of mindfulness meditation aimed at reducing stress) that provided a plausible connection between my action and some basic good.

Through such questioning (real or hypothetical), we can arrive at a list of goods (or, more precisely, categories of goods because each basic good can be instantiated in potentially infinite

ways) that seems to be plausible candidates for basic goods, insofar as they seem to provide an answer to the question of what you are doing and why that is sufficient to make the action intelligible. That list can then be checked, refined, or defended dialectically, by, for instance, examining whether the goods meet the criteria for being "basic." To be basic, a good must be both (1) intrinsic, meaning that it is valuable in itself, inherently constitutive of our fulfillment, independent of any external factor; and (2) final, meaning that its value is not merely instrumental. Such examination indicates that, for instance, pleasure is not a basic good despite being commonly cited as a motivation for action, because (as I argue in greater detail in the book) its goodness is extrinsic, dependent on the goodness of the action that gives rise to it. Similarly, the goodness of things like money, food, or medicine is not basic because it is merely instrumental.

Q. Taking one of these basic human goods, you write that *religion* is the "only good that can reasonably govern, and be at stake in, every choice we make . . . without treating the goods we pursue in those choices as merely instrumental." Can you explain this?

A. The basic good of religion is knowledge of and harmony with God, understood as the ultimate and transcendent source of existence and meaning.⁴ Even without revelation, I believe that it is possible to come to know the existence of an intelligent, personal, benevolent God who is the uncaused cause of all that exists, as well as the source of the various forms of order that are intelligible to us as rational creatures.⁵ God is also the ultimate source of the goodness of all the goods and of our capacity to know and freely pursue them. If, then, we recognize God as the source of the moral order and of our capacity to grasp that order and act in accordance with it, we can understand the principles of the moral order as guidance provided by God for our flourishing. Any morally upright action in pursuit of basic goods can therefore be undertaken not only for

4 I defend the distinctiveness and distinctive importance of this good—along with the corresponding reasonableness of giving religion special treatment in law—in Melissa Moschella, *Beyond Equal Liberty: Religion as a Distinct Human Good and Its Implications for Religious Freedom*, 32 J.L. & RELIGION 123 (2017).

5 For an argument in defense of this claim, see JOHN FINNIS, *AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY* ch. 10 (1998).

the sake of the goods being pursued, but also, at the same time, as a way of cooperating with God in the promotion of integral human fulfillment and thus as a participation in the good of religion. As a result, the good of religion (understood as I have just described it) is uniquely suitable to serve as an ultimate end, an overarching commitment that governs and unifies all of one's actions and commitments.

Q. Another foundational topic to your book relates to the difference between NNL and liberalism. Can you explain how the two are different?

A. The natural law account of politics I present in Chapter 4 may seem similar to a liberal account insofar as it includes a defense of the rule of law; respect for civil liberties such as freedom of speech, association, and religion; and other aspects of limited government commonly associated with liberalism. However, my argument for limited government rests on premises very different from those of liberalism.

One key difference is that, while liberalism typically holds that government ought not to favor any particular conception of the good life, NNL holds that such neutrality is both practically impossible and undesirable, insofar as all laws at least implicitly rest on beliefs about what is and is not conducive to individual and social well-being, and insofar as the purpose of government is to facilitate the pursuit of flourishing by the political community's members. For instance, government ought to protect freedom of religion not out of religious indifference, but out of respect for religion as a basic human good that we can only participate in if we freely choose to do so for the right reasons.

Another key difference between NNL and liberalism is that liberalism tends to presume that political authority can only be justified by some form of consent, actual or hypothetical. NNL, however, views political authority as justified by its necessity to resolve coordination problems for the common good, which practical reason directs us to protect and promote. We generally *should* consent to a government that does fulfill this function at least for the most part, but consent is not needed to justify government or generate a moral obligation to obey just laws.

Finally, a third fundamental difference between NNL and liberalism that I discuss in the book is that liberalism tends to view the individual as the basic unit of society, whereas natural law views the family as the basic unit of society and as a pre-political community with pre-political authority to govern its own internal affairs (especially the education of children) relatively free from government intrusion (except as required for the common good). This last point is explained in much greater detail in my previous book, *To Whom Do Children Belong? Parental Rights, Civic Education, and Children's Autonomy*, and further developed in several recent law review articles.

Q. You mentioned earlier the Vocation Principle. This was one of those areas that naturally overlap with my work in legal ministry as it relates to helping students think about their faith and calling. What is it and how does it enable us to reasonably resolve conflicts among competing basic goods?

A. To understand what the Vocation Principle is and why it is important, I first need to explain another characteristic of basic goods. Basic goods are incommensurable in basic value, i.e., each offers a distinct, irreducible, *type* of benefit. What this means is that when I choose, for instance, to pursue the good of knowledge by writing about natural law rather than pursuing the good of performative excellence by taking dance lessons, I really am losing out on the distinct benefit I might have received from the dance lessons. (Note that the same would be true even if I were choosing between two different instantiations of the same basic good, e.g., knowledge of natural law vs. knowledge of art history.) Given our limited time and resources, such choices are unavoidable. How, then, can we choose among competing goods while still maintaining a will that is open and adequately responsive to the goodness of all the basic goods, as natural law's overarching moral principle requires us to do?

This is where the Vocation Principle comes in. All else being equal, deeper participations in basic goods are more valuable than superficial ones. Yet making a deep and serious contribution to human flourishing in any of its dimensions requires focus and commitment; it is therefore reasonable to forgo a more superficial

pursuit of one good to be able to pursue another good more deeply, and doing so need not imply any devaluation or closing of one's will to the goods not chosen. Decisions about which goods to focus on and commit ourselves to promoting should be based on serious deliberation and discernment, for they substantially affect our contribution to integral human fulfillment. Such deliberation should take into consideration factors such as our talents, inclinations, opportunities, and responsibilities, as well as the needs of our communities. The Vocation Principle requires us to make vocational commitments on the basis of such serious discernment, to harmonize our commitments, and to prioritize competing goods in line with those commitments.

Returning to the example mentioned above can illustrate how following this principle enables us to reasonably resolve conflicts among basic goods. Because I am a philosopher whose work focuses on natural law ethics and its applications, it is reasonable for me to prioritize activities directly related to this vocational commitment over others that are unrelated to it. And while it would not necessarily be unreasonable for me to take dance lessons as a recreational activity, as long as it did not undermine my ability to fulfill my professional and familial commitments, it turns out that I have no talent for dancing, and I have other opportunities for recreation that make more sense for me. For instance, I sing in a church choir, which is a recreational activity that enables me not only to develop my musical talents, but to do so in a way that contributes to divine worship (thus dovetailing with my religious commitments) and to engage in a common activity with my husband, who is also in the choir (thus dovetailing with my marital commitment).

This is, of course, just one possible illustration of how the Vocation Principle can guide decision-making. In many (perhaps most) cases, applying this principle is likely to leave us with many morally permissible options, both in terms of what we commit ourselves to and in terms of precisely how to prioritize competing goods in line with those commitments. The point of this principle (much like the Golden Rule) is not to yield a single right answer, but rather to ensure that we are approaching such decisions with the right attitude—that is, with a will that remains

open and adequately responsive to the goodness of all basic goods for all people.

Q. You just mentioned a concept all Christians are intimately familiar with: the Golden Rule. In one section of your book, you link the application of the Golden Rule to moral imagination and the need to be “more *inclined* to act fairly.” Can you unpack the connection between the Golden Rule, the “influence of inclination,” and moral imagination?

A. The Golden Rule applies when we are deliberating about possible actions in which the benefits and harms (or failures to benefit) will fall on different people. Following the Golden Rule is essentially a method for rectifying our will to ensure that we act fairly, i.e., that we do not willfully and arbitrarily discount or deprioritize another's good when deliberating, choosing, and acting. One of the main obstacles to acting fairly is the influence of emotional attachments that incline us to discount the good of those to whom we have no positive emotional connection, and the Golden Rule is an exercise of moral imagination that helps to mitigate this emotional bias.

For example, in the 2024 film *Juror #2*, the main character Justin unknowingly committed vehicular manslaughter while driving across a bridge at night in a blinding rainstorm on a dark, narrow country road (he thought he must have hit a deer with the corner of his bumper). Several months later, he was called to serve on a jury for a murder trial, and realized to his horror that he had actually hit and killed a woman who was walking home along the road after fighting with her boyfriend at a nearby bar. The boyfriend was charged with the murder. Justin did not want to let an innocent man go to jail, but knew that because of his own history of drunk driving, he would almost certainly go to jail himself if he confessed—and his wife was about to give birth to their first child. Predictably, Justin found himself strongly inclined not to confess. His emotional attachment to his own good and that of his wife and child inclined him to discount, or at least radically deprioritize, the good of the defendant, who was likely to be wrongly convicted of murder and be imprisoned for life if Justin failed to confess.

Applying the Golden Rule in this situation would require Justin to imagine himself in the defendant's place and consider how he would feel about the situation if the tables were turned. Through this exercise of moral imagination, Justin would not only realize that he was obligated to confess—for clearly if Justin were in the defendant's position, he would think it was unfair to remain silent and let him spend the rest of his life in prison for a crime he didn't commit—but would also shape his own inclinations, increasing his empathy for the defendant, and thus making it easier (though not easy!) for him to do the right thing. Further, his ability to sincerely apply and follow the Golden Rule in such an extremely difficult situation would depend in large part on the extent to which he had already disposed himself to give due regard to others' good by consistently applying and following the Golden Rule in easier, more ordinary situations in the past.

Q. Your book pulls many fascinating threads, which makes my job here difficult given my inclination to linger on one topic. But for the sake of broadening our conversation, I want to ask you about the role of the political community and government. There is an important delineation you make between the political and the sub-political communities, noting that government is tasked to play a *subsidiary* role, i.e., facilitating members' pursuit of the good without becoming a substitute for their own exercise of agency. Can you unpack this important system?

A. Political community exists to facilitate the flourishing of its members, but the nature of human flourishing is such that it can only be fully achieved through the exercise of our own agency. Many human goods, such as friendship, marriage, virtue, and religion, can only be fully participated in by freely choosing them for the right reasons. If, for instance, I treat someone amicably merely to gain some professional advantage, I have not performed an act of genuine friendship. Similarly, attending a religious worship service purely to comply with the law and avoid punishment is not actually a participation in the good of religion, but only its outward simulacrum. Further, as explained in answer to a previous question, our flourishing requires making vocational commitments on the basis of serious discernment, harmonizing those commit-

ments, and prioritizing goods in line with those commitments. This too requires the exercise of agency.

Government would therefore hinder our flourishing if it undermined our agency by, for example, dictating which career we must pursue. This is not only because government lacks the intimate knowledge of us necessary to make suitable vocational choices for us, but more deeply because our flourishing isn't only or primarily about achieving some external state of affairs, but instead is primarily a matter of *being a certain sort of person*. In other words, flourishing requires that we shape ourselves through our own choices into people who love the human good in all of its dimensions. As a result, government cannot directly secure our flourishing for us.

However, government can help create the conditions that *facilitate* the morally upright exercise of agency that leads to our flourishing. Many of the conditions that we need to flourish—including not only material goods like clean water, but also non-material goods like a healthy moral environment and an impartial justice system—are things that individuals, families, and other subpolitical communities cannot justly and reliably attain on their own without an overarching coordinating authority. This overarching coordinating authority is what government provides. The need for such an overarching coordinating authority to secure the conditions for our flourishing is what justifies government, and this justification is also what sets the scope and limits of government authority.

To see more concretely what the purpose of government is—and therefore what its scope and limits are—the book specifies five broad sets of needs that subpolitical communities cannot justly and reliably attain on their own. These needs are (1) *Public Order*: establishing rules and regulations to enable people to live together harmoniously; (2) *Restorative Justice and Dispute Resolution*: providing a fair and impartial forum to resolve disputes, assess guilt, and punish offenders; (3) *Security*: defending the community against internal and external threats (e.g., crime and foreign attack) through the establishment and maintenance of police and military forces; (4) *Public Goods*: providing and fairly distributing public goods, such as infrastructure and pub-

lic utilities; and (5) *Social Welfare*: facilitating the fair and adequate provision of care for needy and dependent members of the community.

Taken together, these five needs make up the specifically political common good, which can more generally be defined as the conditions that facilitate the pursuit of flourishing by the community's members. The specifically political common good is that aspect of the community's all-inclusive common good (the all-around flourishing of the community and its members) for which government is responsible, and thus for which government is justified in exercising its coercive authority. Other aspects of the all-inclusive common good are the responsibility of individuals, families, churches, and other groups, according to their proper spheres of competence.

Q. With government comes people and with people comes agency and with agency comes interesting tensions with duties and obligations. You write that “any law that directly attacks a basic element of human flourishing is clearly contrary to the common good.” How do we come to discern the role of civil disobedience in light of our responsibility to both government and neighbor?

A. What justifies government—whose authority ought to be exercised through the rule of law—is its necessity for the common good. The ultimate source of our moral obligation to obey the law is, in short, that (1) we have an obligation to promote the common good; (2) political authority is necessary for the common good (for the reasons mentioned above); and (3) political authority is most justly exercised through the rule of law (which respects the rational agency of the ruled; engenders reciprocity, fairness, and respect between ruler and ruled; and introduces clarity, predictability, and stability into human affairs). If a positive law is directly contrary to natural law (and therefore contrary to the common good), there is no moral obligation to obey that law just as such.

However, it may be the case that you nonetheless ought to obey it, not out of respect for that particular law, but to avoid undermining respect for otherwise legitimate political authority and law in general. Apart from cases in which the

law commands you to violate an absolute moral prohibition (e.g., to participate in genocide)—cases in which there is a clear obligation not to obey—determining whether to disobey an unjust law depends on many contingent factors. For instance: How clear and grave is the law's injustice? Is public refusal to obey the unjust law likely to be an effective catalyst for reform, or are there other less-disruptive means that may be equally or more effective in remedying the injustice? Further, even when acts of civil disobedience are justified—as in the case of Martin Luther King, Jr.'s disobedience of the Jim Crow laws—not everyone is necessarily obligated to participate, as this will depend on one's personal vocation.

Q. I had an interesting podcast conversation with Joshua Neoh (Episode #197) on Kierkegaard and the rule of law. One of the questions I asked was whether we would need government if all men were angels. His response was something you already noted in your discussion on subsidiarity, i.e., the need for “coordination.” Can you talk more about this concept?

A. In a society of angels or saints, government would not need to use coercion to enforce compliance with just laws, but government would still be necessary as an overarching coordinating authority. Coordination is necessary to secure all of the five elements of the political common good that I outlined above.

Consider, for instance, the provision and maintenance of public goods such as roads, clean water, parks, sanitation services, etc. In each case, there are countless decisions that need to be made. Where should the roads be built? How should they be constructed and with what materials? What is the best plan for their maintenance? How should funds be collected to pay for these projects? And for each decision, there are many reasonable options. Intelligent, virtuous, public-minded citizens are therefore likely to have different views about which options are best. Indeed, the more intelligent and public-minded they are, the more likely they will be to interest themselves in these common projects and propose a wide variety of creative approaches.

To get anything done, however, they must settle upon a unified course of action. As Yves Simon

argued in his *General Theory of Authority*, such unity of action can be achieved in only two ways: through unanimity or through authority. For the reasons already mentioned, unanimity is highly unlikely—and even if it were possible, it could not be achieved reliably or efficiently. Only through authority therefore can the community reliably and efficiently resolve coordination problems so as to secure unity of action for the common good. This authority need not reside in any particular person but could reside in a decision-making procedure or set of procedures, in the decision of an elected body, for example.

Of course, the problem of determining which person, group, and/or decision-making procedures will be authoritative is itself a problem that can only be solved through unanimity or through authority. The initial establishment of political authority is therefore a difficult and monumental achievement that, in the real world, typically requires the use of force. Given the importance of political authority for the common good, this implies that whenever possible, the location and transmission of political authority should itself be settled by authority, and even when trying to reform or replace unjust governments, great care should be taken to avoid a descent into anarchy.

Q. You talk a lot about free choice. In the first chapter, you note that while we are responsible for intentional or direct acts, we are also responsible for the consequences and habits we develop as a result of free choices made upstream. In our social media age, a lot of our brains have been “biohacked” by algorithms that develop a distorted ethical life. What are your thoughts on how to overcome this trend and help us restore human flourishing?

A. The book emphasizes the importance of free choices precisely because free choices are self-determining; they shape our character in lasting ways, making us people who (do or do not) adequately love all goods and all people. Social media creates special challenges for the formation of a virtuous, morally upright character. One of these challenges is that interactions on social media are disembodied, making it easier to dehumanize one’s interlocutors and reduce them to political/ideological abstractions (e.g., “woke progressives,” “MAGA extremists”) that must be discredited and defeated at all costs rather than

recognizing them as fellow human beings with whom we disagree on certain controversial issues. As a result, it is much easier to violate the Golden Rule (or not even attempt to apply it) when interacting with people on social media.

Another challenge is that social media tempts us to pursue non-basic goods like notoriety and influence (attracting “followers”), often at the expense of basic goods like truth, integrity, and friendship. It also favors immediate, superficial, over-simplified responses over reflection, depth, and nuance and thus undermines our capacity for sustained attention. Exacerbating matters, algorithms create echo chambers in which we only hear voices with which we agree, confirming all of our biases and making it increasingly unusual to be exposed to competing perspectives unless we make an explicit effort to seek them out. It’s unsurprising, then, that we can probably all think of examples of academics or public intellectuals whom we once respected and admired as careful thinkers and people of integrity, but whose social media engagement seems to have altered their character for the worse. On the other hand, we can also probably all think of people who have managed to engage constructively on social media without compromising their intellectual or moral integrity.

I don’t think there are easy or merely technical ways to solve the challenges posed by social media. Some technical changes, e.g., abolishing the half-swipe and the like button, reforming the algorithms, might help. But ultimately, the challenge is a moral one and needs to be addressed at that level. Various natural law principles can be helpful in this regard. I already hinted at the relevance of the Golden Rule: given the special difficulties of following this principle in the social media world, anyone who does engage with others on social media should make an extra effort to apply the Golden Rule in their social media activity.

The Vocation Principle is also relevant here. At the most basic level, this principle requires that we prioritize basic goods over merely instrumental or extrinsic goods, and so invites us to assess whether our social media usage aligns with this requirement. The Vocation Principle is also relevant insofar as it asks us to make decisions about social media engagement in light of our voca-

tional commitments. In other words, determining whether, how, or to what extent we use social media requires vocational discernment, e.g., Am I called to use my time (or some of my time) spreading the truth to a larger audience through social media (accepting that this will leave less time and mental capacity for deep scholarship), or am I called to focus more (or exclusively) on traditional academic work (which has greater depth but rarely reaches a wide audience)? Such discernment will also require honest examination of one's own strengths and weaknesses to assess how vulnerable one is to the moral and intellectual dangers of social media use.

Q. The question of social media raises another important aspect of your book regarding the importance of family and community on moral education. How crucial is the link between a good community and ethical decision-making?

A. On the link between good community and the capacity for sound moral decision-making, I have been deeply influenced by the work of Alasdair MacIntyre, which I believe is largely compatible with and complementary to NNL. My discussion in Chapter 3 about the importance of family and other communities for moral education is partly inspired by MacIntyre and is an attempt to integrate some of MacIntyre's insights on this topic into the NNL account.

We need community to fully develop all of our rational capacities, including our practical/moral reasoning capacities. A crucial aspect of human moral development is learning to distinguish between what is intelligibly good and what we happen to desire on the sub-rational level and developing the self-discipline needed to seek intelligible goods even when sub-rational desires pull us toward some conflicting sensible good (e.g., pleasure). To facilitate children's development of these capacities, the family, along with other communities that support the family in its educational task, therefore need to both expose children to the full range of human goods and, even before they reach the age of reason, to begin channeling their emotional motivations toward genuine goods so as to prepare the ground for their development of full-fledged moral virtues. Parents and others who assist them in raising children also need to provide good examples of virtuous conduct—for human beings, especially

children, are neurobiologically inclined to imitate others' behavior—and, in age-appropriate ways, to explain to children the reasons for their decisions and actions, thereby showing them how to engage in sound moral deliberation.

Relatedly, at an even more basic level, we need human community to learn language, which is a prerequisite for the exercise of our rationality. Without language, we cannot have conceptual knowledge, and without conceptual knowledge, we cannot grasp intelligible goods, e.g., we have to know what friendship *is*, and that it is possible, before we can have the practical insight that friendship is good and to be pursued (one of the first principles of practical reason). And language, along with an at least implicit grasp of basic goods, is also a prerequisite for engaging in genuine moral deliberation.

Parents have a unique and primary role to play in children's education due (1) to their special responsibility for their children's well-being and (2) to the fact that the deep psychological bonds between children and their parents, and the intimate knowledge that parents have of their children, ordinarily make parents uniquely suited to the task of moral education. Nonetheless, parents also need the support of the larger community, for the family on its own is insufficient to meet all of the needs of its members, even in the realm of moral education. On its own, for instance, the family is not likely to be able to expose children to the full range of human goods. Further, parents' moral education efforts will be undermined if children are regularly exposed to contrary examples and messages from peers, media, or other authority figures such as teachers. In addition, protecting children from certain dangers to their moral and intellectual development, e.g., the dangers of social media or exposure to internet pornography, will be very difficult (perhaps impossible) without a collective effort on the part of the broader community, perhaps including government regulation.

Although Chapter 3's discussion focuses primarily on the importance of the family and other associations for the education of children, good community is also important for developing and maintaining sound practical reasoning capacities in adulthood. For we all have our weaknesses and moral blindspots, and life inevitably involves many trials and temptations that can

test our integrity and commitment to promoting the good in line with our vocations. We therefore need the help of trusted friends, spouses, relatives, colleagues, neighbors—along with institutions like churches—to encourage us, support us, inspire us, challenge us, and hold us to account.

Q. One last question: my understanding is that John Finnis’s articulation of his natural law theory is separate from questions of God’s existence and nature. Alex Deagon has recently written a book saying that despite this approach, Finnis’s project is still deeply theological. You provide a convincing invocation of God as linked to moral obligation and motivation. Can you talk to me about the role of God in NNL theory?

A. Although in one sense it is true that, as you put it, “John Finnis’s articulation of his natural law is separate from questions of God’s existence and nature,” in another sense it is not. Your understanding is true insofar as Finnis, along with other NNL theorists, holds that it is possible to know the principles of natural law without knowing that God exists. But it is not true insofar as all NNL theorists (including Finnis) recognize that a *full* account of natural law will include an account of its ultimate metaphysical foundations, and such an account cannot be given without recognizing the existence of an intelligent and benevolent God who is the ultimate source of the moral order and all of its principles, as well as of our capacity to know it. Analogously, we can discover the laws of physics without knowing that God exists, but we can’t provide a full explanation of the order and intelligibility of nature that those laws reflect without positing an intelligent God as the ultimate metaphysical cause of that order. Thus, any natural law theory—any theory that holds that an objective moral order exists and that we can know its principles and norms through rational reflection—must be deeply theological at the metaphysical level. (I should clarify, though, that the theological knowledge that provides the ultimate metaphysical explanation of natural law is, at least in principle, knowledge accessible to human reason unaided by divine revelation.)

But the NNL account is theological in other ways as well. For instance, as I mentioned in response to an earlier question, NNL holds that

the good of religion—harmony with God—should play an architectonic role in our lives, governing, ordering, and integrating all of our other commitments and pursuits. And in Chapter 5 of the book, I dwell at length on how explicit recognition of God as author of the natural moral law helps us to have a deeper sense of moral obligation by, for instance, increasing our trust in the reliability of moral norms and by making all of our moral obligations *personal*, i.e., building and maintaining right relationship with God becomes an overarching reason to act morally. For similar reasons, recognizing that God—who knows and wants what is good for us and how to achieve it even more than we do—as the source of moral law can bolster our moral motivation, especially when acting morally requires significant sacrifice, when there is uncertainty about whether our actions will achieve their desired good effects, and when it seems that doing evil will yield great benefits.

While the above arguments are in principle accessible to human reason unaided by supernatural faith, I believe that the fullest response to these problems of moral motivation can be provided only through Christian revelation. In particular, Christianity’s promise of the Kingdom of God—where we will enjoy all of the good fruits of our morally upright actions, perfected and elevated by God’s grace—assures us that our labor is not in vain (1 Corinthians 15:58), even when it may appear so on this earth. As the inspiring examples of many great saints have shown us, this promise can provide the hope and encouragement we need to overcome temptations and to persevere in doing good despite the difficulties we may encounter, knowing that it is ultimately God’s responsibility—not ours—to make our actions bear fruit in accordance with His divine plan.

NATURAL LAW IN HISTORY AND PRACTICE

J. Budziszewski, *Natural Law for Lawyers* (ACW Press, 2006). 143pp.

R.H. Helmholz, *Natural Law in Court: A History of Legal Theory in Practice* (Harvard University Press, 2015). 288pp.

Stuart Banner, *The Decline of Natural Law: How American Lawyers Once Used Natural Law and Why They Stopped* (Oxford University Press, 2021). 264pp.

*Book Review by Anton Sorkin**

Introduction

Many law students in their first-year study the infamous case of *Pierson v. Post*.¹ A short, digestible introduction into property law and an opportunity for students to argue over the rightful claims of two parties in a dispute over a “cunning and ruthless” *ferae naturae*. What makes this case wonderful is not only its simple premise, but also its brevity and legal effect, which for building student confidence is a must, especially given the case’s ambiguity and invitation for discussion. So, when the Court describes the case as “novel and nice,”² I tend to agree!

The case is simple: we find one party (Lodowick Post) pursuing a wild fox “through waste and unoccupied lands,” with the intention of catching the beast and rendering it in possession.³ The fox manages to evade the pursuit of the first hunter and his hounds, just at the *point of seizure*, only to find itself in a fatal collision with another (Jesse Pierson) in a transparent attempt to invoke a legal dispute.⁴ The first party brought a claim for trespass under the theory that the fox was his possession given the nearness of the capture. And while the dissent claimed that property in the ani-

mal “may be acquired without bodily touch . . . provided the pursuer be within reach, or have a reasonable prospect . . . of taking,”⁵ the majority disagreed, arguing that, to borrow a popular legalese, possession is nine-tenths of the law.⁶

And while lovers of foxes might find the case’s disparagement of said animal upsetting (“noxious beast”), what is perhaps more upsetting is that law schools today regularly avoid discussing the most interesting portion of this case. In fact, even in researching this, I stumbled upon the text through *Justia*, which included this section as homage to the standard pedagogical practice of omission:

[After discussing the scant case law on point and reviewing philosophical contributions of Justinian, Fleta, Bracton, Puffendorf, Locke, Barbeyrac, and Blackstone relevant to the question, Tompkins, J. continued as follows.]

What did students miss? A lot. For the majority came out of those brackets saying this: “We are the more readily inclined to confine possession or occupancy of beasts *ferae naturae*,

* Anton Sorkin is the director of Law Student Ministries and the Institute for Christian Legal Studies at Christian Legal Society. He is also an affiliate professor at Trinity Law School.

1 3 Cai. R. 175 (N.Y. 1805).

2 *Id.* at 177.

3 *Id.* at 182.

4 *See id.* at 178.

5 *Id.* at 182.

6 *Id.* at 178.

within the limits prescribed by the learned authors above cited, for the sake of certainty, and preserving peace and order in society.”⁷

In tracking down the full citations to these learned authors, we find the missing piece of the modern-day legal education: an appeal to natural law as a valid instrument for legal analysis. Why did the Court need this ornate authority? As Stuart Banner notes, New York lacked a positive law on the matter, forcing attorneys on both sides to base their arguments on natural law.⁸ The judges did the same. And so, the verdict—in favor of the “uncourteous and unkind”⁹ Pierson—fell in line with the wisdom of the ancient writers, who tapped into a law of nature to form the basis of the Court’s legal analysis from want of more “definite” authority.

While this all sounds strange to modern ears, this has been in development for well over a century. As R.H. Helmholz writes, “Few law students today make the connection between the famous case and the law of nature. Their counterparts in the early 19th century would not have missed it.”¹⁰ Recovering that lost history will serve as the basis for my Review below. While the language will appear descriptive, my underlying goal is to invite students to think more deeply about the role of natural law in their studies and practice.

My Intellectual Development

Natural law has had a resurgence in the last decade thanks in no small measure to the work of Catholic theorists like Robert P. George, John Finnis, Hadley Arkes, and Melissa Moschella. On the Protestant side, less have come forth to

lay an infrastructure for consideration, although that is slowly being rectified by those like Alex Deagon, Adam MacLeod, David VanDrunen, and perhaps the youngster in this very volume, Josiah Wolfe. I’ve even heard rumblings that the Federalist Society at Harvard Law School may be requiring its leadership to adopt natural law thinking.¹¹ This all supports the argument for natural law’s renewed importance—what Joel Alicea in 2024 noted as a natural law moment in constitutional theory: “Never before have so many legal scholars sought to ground constitutional theory in the natural law tradition.”¹²

I remember my first introduction to the topic at Regent University School of Law under the guidance of Professor Craig Stern, who assigned *Natural Law: An Introduction to Legal Philosophy* by Alessandro d’Entrèves, which remains one of my favorite and formative books to date. In revisiting it for this Review, I found my mind already stimulated by the topic as all good nerds tend to be, writing in the margins “law = art + science,” and wrestling with what the eradication of natural law in modern jurisprudence does to our conception of the role of law in society.¹³ In the last two years, my alma mater has focused on this topic throughout various classes, such as Foundations of Law (fall 2024), Classical Legal Theory and Natural Law (fall 2025), and a Jurisprudence Seminar (spring 2026).¹⁴ Law schools less devout—not so much!

And so, the story here begs a few important questions: What did natural law look like in legal analysis when its presence was felt? Why did natural law fall out of favor in legal education and legal practice? Why are attorneys so reluctant to

7 *Post*, 3 Cai. R. at 179 (emphasis added).

8 STUART BANNER, *THE DECLINE OF NATURAL LAW: HOW AMERICAN LAWYERS ONCE USED NATURAL LAW AND WHY THEY STOPPED* 29 (2021).

9 *Post*, 3 Cai. R. at 179.

10 R.H. HELMHOLZ, *NATURAL LAW IN COURT: A HISTORY OF LEGAL THEORY IN PRACTICE* 136 (2015).

11 See Sarah Isgur (@whignewtons), X, (Mar. 11, 2025, 4:43 P.M.), <https://x.com/whignewtons/status/1899561916965511676?s=20>.

12 ‘We Are Living Through a Natural Law Moment in Constitutional Theory’, HARVARD L. TODAY (Apr. 16, 2024), <https://hls.harvard.edu/today/we-are-living-through-a-natural-law-moment-in-constitutional-theory-says-scholar-in-vaughan-lecture/>.

13 ALESSANDRO PASSERIN D’ENTRÈVES, *NATURAL LAW: AN INTRODUCTION TO LEGAL PHILOSOPHY* x (1951).

14 Assigned texts may be of interest to some, which includes Brian M. McCall’s *The Architecture of Law: Rebuilding Law in the Classical Tradition* (2023), Adrian Vermeule’s *Common Good Constitutionalism* (2022), and Jeffrey Brauch’s *A Higher Law: The Influence of Christianity on the Development of Anglo-American Law* (3d ed. 2019). Special thanks to Brad Jacob for supplying me with the course material.

invoke its authority? And why are law students rarely exposed to its universality? Two books lay the foundation for these answers. Each in their own way complimentary and overlapping in relevant sections as it relates to the legal system in America.

An Education in History

The first book starts us on a journey to understanding the education and usage of natural law. In R.H. Helmholz's *Natural Law in Court: A History of Legal Theory in Practice*, we find an exploration of two dimensions of legal history traced through the developments in Continental Europe, England, and America ("regions"). At the very start, Helmholz addresses the underlying assumption embedded in natural law theory: (1) that there exists a congruence between law and basic features of man's nature thought to exist from the beginning of time; (2) that God himself was the source of natural law; and (3) that in making man, God instilled him with the knowledge of basic principles known by revelation, natural reason, and instinct (RH, 2). Taken together, these aspects of natural law would serve to advance the "rule of justice in human life"—admonishing lawmakers and judges to construct a legal system consistent with these universal principles (RH, 3).

Once the reader gets past the introduction, the rest of the book follows a predictable pattern, which makes it particularly useful as a resource. The pattern is this: two chapters for each of the regions mentioned above. The first chapter per region looks at legal education and what the role of natural law was in the training of students. Here we find the introduction of various systems of authority (e.g., Roman law, canon law, common law, constitutional law) meant to provide the intellectual foundation for developing legal reasoning. Each system plays a different role of prominence depending on the region.

In the chapters covering Continental Europe, it was the confluence of Roman law and canon law that found its way into the informal legal education of students, with the law of nature playing a supervisory role in an attempt to align the positive law with the universal structures God created. In the chapters covering England, it was the common law that helped educate students in what at that point developed into a

more formal legal education. Aspiring common lawyers would most commonly pursue their training by joining specialized Inns of Court, where they took part in moots, lectures, observations of trials, and various forms of private reading (RH, 82-85). Finally, in America, we find the introduction of constitutional law, with a heavy reliance on William Blackstone and natural law as a governing principle in areas where no authority is discernible. As Helmholz points out, Blackstone's *Commentaries on the Laws of England* was a point of entry to the common law for "virtually every American law student" (RH, 133). Because no formal legal institution existed at the time of the American Revolution, most aspiring attorneys pursued one of three options: enter into the practice of a successful attorney as a clerk or apprentice, attend the Inns of Court in London, or take part in private reading. Eventually, professional law schools did emerge in two forms: proprietary and the university law school. While most are familiar with the latter, it was the former, organized and taught by a single attorney, which proved to be a natural outgrowth of the clerkship model in 18th-century America.

In all three geographical contexts, Helmholz finds the teaching of natural law to be present but not decisive. From Europe to England to America, natural law was accepted as a viable approach, but its presence in education and practice was very much in complement to other modes of analysis. And while a vast number of jurists in Europe and America upheld the existence and value of natural law, it nevertheless remained a complimentary feature of legal education. "In what they studied at universities or what they learned from private study, most lawyers came to the world of practice having read and heard its basic tenets set out before them" (RH, 174).

Which brings us to the second chapter for each region: the prevalence of natural law reasoning in court records. Here, the chapters follow the same pattern, looking at the use of natural law in these general areas: (1) procedural law, (2) law of the family and succession, (3) law of slavery, (4) economic and commercial regulation, (5) interpretation of statutes, (6) restraints on the exercise of power, and (7) ecclesiastical and admiralty courts (England only). In different ways, Helmholz walks through various uses of natural law to paint a picture about its utility

and influence in legal development. In the end, while attorneys did use natural law in their argumentation—and for Helmholz, remarkably, in similar ways—it did not possess the airs of supremacy that some may have hoped for. Where natural law did play an important function is in stilling the values of the rule of law and natural justice in watch over the enactments of positive law. “It was not a cure-all,” writes Helmholz, but it did help cement “principles of right and wrong in the minds of lawyers and consequently in the decisions made in courts of law” (RH, 177).

The second book focuses our attention on the American conversation of natural law from something commonly used to something rarely mentioned. This book does an excellent job picking up where Helmholz left off, offering not only a deeper analysis of the use of natural law in the early American Republic, but also answering the call of Helmholz when he invoked the transitional period of 1870s and the need for further study on the reasons why natural law faded from immediate view (RH, 138).

Stuart Banner’s *The Decline of Natural Law: How American Lawyers Once Used Natural Law and Why They Stopped* is a deeply researched and, at the same time, readable installment in the use and influence of the natural law tradition in legal history. What Banner does best is set expectations early by providing the intellectual parallels he intends to cross. First, he dispels modern notions that natural law is connected to the Christian faith and thus left exclusive for the use of those on the Right. In the 18th and 19th centuries, he writes, it “was just one more source of law, like statutes or court decisions. . . . To employ natural law did not brand a lawyer as conservative; it merely branded him as a lawyer” (SB, 3). Another important caveat is that many modern theorists of natural law hold the view that what the law is depends at least in part on what it ought to be. While this was an aspect of early understanding, it “lacks several of the other features that lawyers would have recognized as essential to natural law” (SB, 4). A third important clarification was that the transition away from natural law did not suggest that attorneys stopped believing in it. Instead, they simply saw its application wanting. In that sense, Banner’s project intends to be an “internalist” one, focused primarily on techniques in legal practice

instead of a study about political discourse or the convictions of attorneys (SB, 6). And finally, the book is not an argument for why natural law is good or bad or about whether it should be reintroduced into the working legal system. It is simply a work of legal history.

The book has a well-defined tripartite structure. Its first section looks at the early American understanding of natural law and its application to legal analysis, introducing students to key jurists advancing the importance of this source of law and its connection to God. Banner cites several legal thinkers on the connection between natural law, human instinct, natural justice, and the good of society.

He also draws out interesting tensions between the importance of a learned tradition in discerning natural law versus a subject capacity for doing the same through instincts. “Natural law could be understood to encompass a wide range of doctrines. Some (like the prohibition on murder) were universally accepted and thus amenable to discovery through intuition, but others were more contestable and thus had to be supported by logical argument from a premise about human nature” (SB, 18). Other tensions emerged in the application of natural and positive law. In some instances, natural law would prevail, but not always. This tension often began with the assumption that positive law was intended to be an extension of natural law, which led to a generous statutory construction given the assumption that what the words were intending to do was adopt preexisting natural rights. What was often clear was that in instances where positive law left things unclear, natural law would step up and provide guidance. As Banner writes, “[n]atural law painted with a broad brush, while positive law filled in the details” (SB, 25).

Banner further talks about the important transition in the thinking of attorneys as to the role of judges. As Helmholz recounted the development of common law in England, Banner borrows this history in helping lay the foundation of the theory that judges *discover* the law. In this chapter, he dives into the process of legal reasoning and how common law was built on the evidence of customary thinking and adopted by American attorneys after independence. This reliance on custom naturally fell in tension with the democratic system established in Amer-

ica and, thus overtime, English customs, at least those enshrined in common law records, fell victim to reinvention.

After laying the foundation for early America, Banner moves into a second section where he discusses the reasons why jurists began to transition away from using natural law as a basis for legal analysis. Here we have the entrance of those like James Iredell in the development of what appears to be the first substantial expression of doubt from an American judge concerning the role of natural law in the legal system. In his infamous *Minge v. Gilmour* opinion of 1798 dealing with the constitutionality of a North Carolina statute, he expressed what would become the dominant approach: “The words ‘against natural justice’ are very loose terms, upon which very wise and upright members of the legislature and judge might differ in opinions,” he remarked.¹⁵ “If they did, whose opinion is properly to be regarded—those to whom the authority of passing such an act is given, or a court to whom no authority, in this respect, naturally results?”¹⁶ This argument concerning the ambiguity of natural law would become the primary critique in the pivotal decade of transition in the late 19th century.

After chronicling this debate and discussing the role of Christianity in the development of the common law and late 19th-century America, Banner moves into an interesting chapter on the explosion of law publishing as an important process for solidifying legal practice. Where natural law was ambiguous, the surge in legal publishing created an important impetus for reliance on available legal authority. “As this strategy proved successful in persuading judges,” writes Banner, “the culture of lawyers began to change” (SB, 119). With the legal publication boom, we find a slow drip of resources after 1870 denying not only the existence of natural law, but also appraising it as nothing more than “an empty abstraction or even hallucination” (SB, 171).

The final section of Banner’s book deals with the development of new theories to take the place of natural law. While many attempted to retain a model of legal reasoning based on custom and natural principles, a new theory

emerged that solidified one of the major intellectual shifts in legal history. In one of the most interesting chapters, Banner traces the various substitutes for natural law, ending on a section that introduces readers to a pivotal moment in judicial decision-making. This moment not only portended the future of legal analysis, but also argued for a wholesale revision of the common law. Alas, the decline of natural law, explains Banner, led to a reconceptualization of judging: “After decades of controversy in which lawyers proposed various replacements for natural law as sources of principles for judges to find, the profession eventually rejected all of them in favor of rethinking the judge’s role. Thereafter, the judge would be a maker of law, not a finder of law” (SB, 221).

An Education in Practice

In his last chapter, Stuart Banner offers a tantalizing conclusion to this Review. There, he traces the development of a new understanding of natural law as a link between what the law is to what the law ought to be. Interestingly, he discusses the development of a new natural law thinking in cases like *Obergefell v. Hodges*,¹⁷ noting that the language employed by Justice Kennedy “felt less like an attempt to communicate with non-lawyers than like an attempt to imitate the great judges of the past, judges for whom natural law reasoning was part of the job” (SB, 236).

As Banner’s last section makes clear, judges at times have arrived at similar ends by different methods in certain instances where positive law offers little guidance. In his discussion of a 1990 decision by the California Supreme Court, he notes that while the judges do not invoke the use of natural law, they use similar instruments of reasoning to arrive at a conclusion that judges of old would have used natural law to decide. New instruments such as interpreting the intentions of the legislature in an indirect fashion, appealing to community norms, and considering various policy concerns all sounded a lot like an earlier appeal to customary law and the common good. But while the 19th-century judge thought himself as finding the law, the 21st-century judge thinks she is

15 *Minge v. Gilmour*, 17 F. Cas. 440, 444 (C.C.D.N.C. 1798).

16 *Id.*

17 *Obergefell v. Hodges*, 576 U.S. 644 (2015).

making it. And thus, while the outcomes might be the same, the method of reaching those conclusions has changed. And so has society.

The question that naturally (no pun intended) remains is how a new natural law tradition might be used by attorneys today. This inquiry sends me to a book that has flown largely under the radar among Christian attorneys. Written by the famed natural law scholar J. Budziszewski, the aptly titled *Natural Law for Lawyers* offers students a foundation for understanding natural law and its role in legal reasoning.¹⁸

The book begins by laying out the argument that natural law provides not only the basis and importance for pluralistic communities, but also the foundation for meaningful disagreement and toleration. The chapters that follow draw on the meaning, source, and purpose of natural law, arguing against the idea of neutrality in public policy; explain the process for sifting through just and unjust laws; and clear up misconceptions about natural law and its utility in public life. The book also talks about the breakdown of classical natural law theories in legal practice, explains the basic link between natural law and legislation, and helps readers understand the connection between moral judgment and judicial restraints. In a fitting end to the book, Budziszewski writes this:

[N]atural law apologetics is like dredging the sunken conscience. It digs up suppressed moral knowledge and brings it to the surface, where it can do some good. The better you know what is down there, the better you are at digging it up (JB, 140).

And to help with the dig, the last section of the book provides suggested reading for those who want to explore further.

Conclusion

Thomas Shaffer once wrote that “[i]f it is possible for serious conversation, between a lawyer and a client, in a law office, to be without moral content, I cannot think of an example.”¹⁹ Natural law provides a potent tool for the role of moral

judgment in the life of an attorney, which opens up a wealth of material for not only the application of law to facts, but also for the consideration of how the law can help uplift the spiritual wealth of local communities.

By understanding the history, application, and use of natural law in courts and in public life, a Christian attorney is better equipped for the work of moral advocacy and advancing the common good. These three books are excellent guides for that journey.

18 J. BUDZISZEWSKI, *NATURAL LAW FOR LAWYERS* (Jeffery J. Ventrella ed., 2019). The first article in this Volume, written by Jeffery Ventrella, offers a capable introduction to the question of natural law in practice.

19 THOMAS L. SHAFFER, ON BEING A CHRISTIAN LAWYER: LAW FOR THE INNOCENT 10 (1981).

ALEX DEAGON, CHRISTIAN NATURAL LAW AND RELIGIOUS
FREEDOM: A FOUNDATION BASED ON LOVE, THE
TRUE, AND THE GOOD (ROUTLEDGE, 2026). 164PP.

TO LIVE OUTSIDE THE LAW, YOU MUST BE HONEST:
RELIGIOUS FREEDOM AND NATURAL LAW

Book Review by Francis J. Beckwith*

The idea that there exists a set of moral norms whose status as law does not depend on the sanction of a human government may seem out of step with the most dominant trends in academic jurisprudence.¹ Nevertheless, those who advocate for the existence of this natural law often claim that we become conspicuously aware of it—even when we cannot precisely give it a name—when we are forced, because of circumstance or the movement of conscience, to reflect on our nature as rational animals and what that means to understanding and putting into practice what we owe ourselves, our friends, our neighbors, our compatriots, and humankind as such. Imagine, for example,² that our criminal

courts issue verdicts of guilt or innocence by flipping a coin, that the statutory punishment for someone convicted of first-degree murder is a gift of one million dollars, that your state's department of education accredits vocational charter schools for training pick pockets,³ that the President of the United States (with the assistance of AI) issues contrary executive orders every 10 minutes, and that natural parents may abandon their toddler children without fear of legal retribution.

St. Thomas Aquinas, the most influential expositor of natural law, would say that your visceral judgment of the wrongness of these acts arises in your mind because of your prior

* Professor of philosophy and church-state studies and associate director of the Graduate Program in Philosophy, Baylor University. Appointed May 2025 to the Board of Legal Advisors, Presidential Religious Liberty Commission, United States Department of Justice. Ph.D., M.A. (philosophy), Fordham University; M.J.S., Washington University School of Law, St. Louis. The author is writing in his personal capacity and does not represent in this Article the views of the Religious Liberty Commission.

1 There are, of course, many defenders of natural law, though they are far from being in the majority among academic legal theorists. See, e.g., LON L. FULLER, *THE MORALITY OF LAW* (rev. ed. 1969); JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980); HADLEY ARKES, *BEYOND THE CONSTITUTION* (1990); ROBERT P. GEORGE, *IN DEFENSE OF NATURAL LAW* (1999); MARK C. MURPHY, *NATURAL LAW IN JURISPRUDENCE AND POLITICS* (2006); BRIAN M. MCCALL, *THE ARCHITECTURE OF LAW: REBUILDING LAW IN THE CLASSICAL TRADITION* (2018); MELISSA MOSCHELLA, *ETHICS, POLITICS, AND NATURAL LAW: PRINCIPLES FOR HUMAN FLOURISHING* (2025).

2 I have offered similar illustrations in several other publications. See Francis J. Beckwith, *God and the Natural Law*, in *MORAL ARGUMENTS FOR GOD: NAVIGATING THE TERRAIN* (David Baggett & John E. Hare eds., forthcoming 2026); Francis J. Beckwith, *Moral Relativism: Arguments For and Against*, in *THE NEW APOLOGETICS* 25-30 (Matthew Nelson ed., 2022); Francis J. Beckwith, *Catholicism and the Natural Law: A Response to Four Misunderstandings*, 12 *RELIGIONS* 379 (2021). The original inspiration for articulating natural law by way of such examples comes from Fuller's *The Morality of Law*, 33-44.

3 I borrowed this one from the inestimable Hadley Arkes:

But nothing in his opinion would have obliged the state to hold back if the parents sought to enroll their children in Mr. Fagin's School of Pickpocketry or in a vocational academy cultivating the trade of prostitution. The state would not be obliged to grant accreditation or even legitimate standing to "schools" of this kind, and it might remove children from the custody of parents who were converting their families into schools for vice.

HADLEY ARKES, *FIRST THINGS: AN INQUIRY INTO THE FIRST PRINCIPLES OF MORALS AND JUSTICE* 346 (1986). Arkes is referring to the majority opinion of Justice James Clark McReynolds in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), a landmark case vindicating parental rights.

acquaintance with moral norms that you can't not know.⁴ Because the law must be a deliverance of reason,⁵ coin-flipping and an executive's caprice—because they bypass rational deliberation—are lawless. Because we know that we are ordered toward the good of life, to live at peace with our neighbors, and to properly guide our children's educational development,⁶ we almost instantaneously grasp the moral wrongness of financially rewarding murder, equipping children for a life of crime, and abdicating the responsibility of caring for one's offspring.

And yet, even those who are the most vigorous skeptics about natural law can't help themselves from implicitly appealing to it. Take, for example, the great defender of Legal Positivism, H. L. A. Hart. In his magisterial work, *The Concept of Law*,⁷ Hart argues that "[t]he doctrine of Natural Law is part of an older conception of nature" that is teleological,⁸ one that is "antithetic to the general conception of nature which constitutes the framework of modern secular thought."⁹ The latter sees nature as exhibiting certain regularities from which scientists infer scientific laws and propose theories, but such an account of nature,

reasons Hart, cannot provide prescriptive laws of human conduct that ought to inform positive law.¹⁰ Hart nevertheless concedes that "[r]eflection on some very obvious generalizations—indeed truisms—concerning human nature and the world in which men live, show that as long as these hold good, there are certain rules of conduct which any social organization must contain if it is to be viable."¹¹ In other words, systems of positive law arise in the formation of human civilization as a consequence of certain universal natural facts about human beings, their survival, and their flourishing. It would seem, then, that one can compare legal systems and judge whether one rather than another does a better job of securing the goods to which these natural facts point. This, ironically, seems to confirm Aquinas's claim "that all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance."¹²

With the fragmentation of Western Christianity after the Reformation, combined with the rise of the modern liberal state, advocacy

4 I take the phrase "you can't not know" from the title of the book by J. Budziszewski, *What We Can't Not Know: A Guide* (2d ed. 2011).

5 Aquinas writes, "[Law] is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated." ST. THOMAS AQUINAS, *SUMMA THEOLOGICA I.II.Q90.a4.respondeo* (Fathers of the English Dominican Province 1920) (1274), <https://www.newadvent.org/summa/>.

6 Aquinas writes:

Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, *whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law.* Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to the natural law, "which nature has taught to all animals"... such as *sexual intercourse, education of offspring and so forth.* Thirdly, *there is in man an inclination to good, according to the nature of his reason, which nature is proper to him:* thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.

Id. at I.II.Q94.a2.respondeo (emphasis added).

7 H. L. A. HART, *THE CONCEPT OF LAW* 185-200 (2d ed. 1994).

8 *Id.* at 189.

9 *Id.* at 186.

10 *Id.* at 185-93.

11 *Id.* at 192-93.

12 AQUINAS, *supra* note 5, at I.II.Q94.a2.respondeo.

for natural law has often been associated with Catholicism,¹³ and, until recently,¹⁴ skepticism about religious freedom.¹⁵ In his new book, *Christian Natural Law and Religious Freedom: A Foundation Based on Love, the True, and the Good*, the Australian legal scholar Alex Deagon offers an account of natural law that convincingly rejects those two associations. After a foreword by the great John Witte, Jr., Deagon explains in the introduction the problem he is addressing in this book: How does one make sense of and justify religious freedom as a fundamental right in an increasingly secular culture whose project seems inadequate in providing a compelling account of religious freedom? Deagon's answer is, paradoxically, theological. What he argues is that the best account of religious freedom is, well, religious. But not only that, it relies on the insights of Christian natural law, inherited from Aquinas and developed over time by a variety of interpreters across different Christian (and sometimes, secular) traditions.

In the book's first part (Articulating Christian Natural Law), Deagon covers the differing natural law traditions within Christianity (Chapter 2), argues that so-called secular accounts of natural law are implicitly theological

(Chapter 3), and explains why Radical Orthodoxy (a movement associated with the Anglican theologian, John Milbank) best reconciles the apparently disparate, though significantly overlapping, Christian natural law traditions (Chapter 4). What I took from these chapters—especially Chapters 2 and 4—is that Christians often talk past each other when discussing or debating the merits of natural law. This is often the result of our not reading each other carefully, or at least not recognizing that over time Christian traditions that arose after the Reformation developed their own vocabularies, which often obscure rather than illuminate our commonalities and make our differences, however minor, seem incommensurable.

Take, for example, the comment by the late Evangelical Reformed theologian Carl F. H. Henry: “The three contentions of the Thomist doctrine of natural law that evoke evangelical criticism are: (1) that independently of divine revelation, (2) there exists a universally shared body or system of moral beliefs, (3) that human reasoning articulates despite the noetic consequences of the Adamic fall.”¹⁶ As Deagon establishes in his book, each of Henry's points are deeply misleading (if not outright false).¹⁷ Because, according to Aquinas, natural law partici-

13 See, e.g., JAMES K. A. SMITH, *AWAITING THE KING: REFORMING PUBLIC THEOLOGY* (2017); Carl F. H. Henry, *Natural Law and a Nihilistic Culture*, 49 *FIRST THINGS* 54 (1995).

14 See Francis J. Beckwith, *Dignitatis Humanae at 60 and the New Challenges to Religious Liberty*, 56 *LOYOLA UNIV. CHICAGO L.J.* 297 (2025).

15 For example, Pope Leo XIII (1810-1903) writes:

And if it be asked which of the many conflicting religions it is necessary to adopt, *reason and the natural law unhesitatingly tell us to practice that one which God enjoins*, and which men can easily recognize by certain exterior notes, whereby Divine Providence has willed that it should be distinguished, because, in a matter of such moment, the most terrible loss would be the consequence of error. Wherefore, when a liberty such as We have described is offered to man, the power is given him to pervert or abandon with impunity the most sacred of duties, and to exchange the unchangeable good for evil; which, as We have said, is no liberty, but its degradation, and the abject submission of the soul to sin.

Libertas: Encyclical of Pope Leo XIII on the Nature of Human Liberty, THE HOLY SEE (June 20, 1888), https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_20061888_libertas.html (emphasis added).

16 Henry, *supra* note 13, at 56. I have critiqued Henry's essay in greater detail elsewhere. See Francis J. Beckwith, *Natural Law, Catholicism, and the Protestant Critique: Why We Are Really Not That Far Apart*, 22 *CHRISTIAN BIOETHICS: NON-ECUMENICAL STUDIES IN MEDICAL MORALITY* 154 (2019); FRANCIS J. BECKWITH, *NEVER DOUBT THOMAS: THE CATHOLIC AQUINAS AS EVANGELICAL AND PROTESTANT* 20-23 (2019); Beckwith, *Catholicism and the Natural Law*, *supra* note 2; Beckwith, *God and the Natural Law*, *supra* note 2.

17 In addition to what Deagon says in the Introduction (Chapter 1), Chapters 2 and 4 are quite good in smoothing out the misunderstandings about natural law that often arise between Christians from different traditions. I should note that Deagon does not specifically mention Carl F. H. Henry, though he does bring up writers that traffic in ideas similar to Henry's.

pates in eternal law¹⁸—the order and plan of the universe in God’s mind¹⁹—and Scripture (the divine law) is necessary to lead us to salvation and reveal the fullness of our moral obligations that natural law cannot tell us,²⁰ Henry’s first point is not true.

His second point gives one the impression that advocates of natural law believe that each human being is born with a complete set of identical innate ideas about morality. Although Aquinas acknowledges that natural law cannot be fully blotted out, he recognizes that the vicissitudes of culture, sin, and the passions can result in different and sometimes contrary understandings of one’s moral obligations.²¹ This is why Aquinas maintains that the human being’s discernment of natural law is the way by which he “partakes of a share of providence, by being provident both for itself and for others.”²² In other words, our rudimentary awareness of certain basic goods and our inclinations to pursue them are not the end of the story. We need practical reason and the virtue of prudence to make determinations and conclusions about what we owe ourselves and others. But even then, as I have already noted, without divine law (Scripture), the way of salvation and much of the moral life cannot be known. As should be evident, Henry’s third point understates the role that the noetic

effects of sin play in Aquinas’s account of natural law.²³ It seems, then, that if Henry’s flawed account of Thomistic (or Catholic) natural law is indicative of how the advocates of particular Christian traditions understand (or misunderstand) each other, then Deagon is indeed correct that the distance between what appear to be contrary Christian theories of natural law is next to negligible.

Although Deagon maintains that Radical Orthodoxy’s interpretation of natural law has the best explanatory power in accounting for and synthesizing the various strains of Christian thought that have engaged natural law since the Reformation, my own sense is that what Deagon calls Radical Orthodoxy is just old-fashioned Medieval Thomism, shorn of the edicts of the Catholic magisterium, adapted for a post-Reformation modern world.

What I found particularly refreshing about the Introduction and Chapters 2 through 4 is Deagon’s talent to find common ground between differing schools of natural law without diminishing their differences. Chapter 3, which addresses so-called “secular” natural law theories, will likely draw the most critics. This is because Deagon suggests that advocates of these theories imply theological claims when they appeal to their conceptions of the good. According

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- 18 “Now it is evident, granted that the world is ruled by Divine Providence, . . . that the whole community of the universe is governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of the universe, has the nature of a law. And since the Divine Reason’s conception of things is not subject to time but is eternal, according to Proverbs 8:23, therefore it is that this kind of law must be called eternal.” AQUINAS, *supra* note 5, at I.II.Q91.a1.*respondeo*.
- 19 “Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law.” *Id.* at I.II.Q91.a2.*respondeo*.
- 20 *Id.* at I.II.Q91.a4.*respondeo*.
- 21 “As to those general principles, the natural law, in the abstract, can nowise be blotted out from men’s hearts. But it is blotted out in the case of a particular action, in so far as reason is hindered from applying the general principle to a particular point of practice, on account of concupiscence or some other passion, as stated above. . . . But as to the other, i.e. the secondary precepts, the natural law can be blotted out from the human heart, either by evil persuasions, just as in speculative matters errors occur in respect of necessary conclusions; or by vicious customs and corrupt habits, as among some men, theft, and even unnatural vices, as the Apostle states (Romans 1), were not esteemed sinful.” *Id.* at I.II.Q94.a6.*respondeo*.
- 22 *Id.* at I.II.Q91.a2.*respondeo*.
- 23 Aquinas’s account of the Fall clearly includes the noetic effects of sin: “original justice . . . was a gift of grace, conferred by God on all human nature in our first parent. This gift the first man lost by his first sin. Wherefore as that original justice together with the nature was to have been transmitted to his posterity, so also was its disorder. Other actual sins, however, whether of the first parent or of others, do not corrupt the nature as nature, but only as the nature of that person, i.e. in respect of the proneness to sin: and consequently other sins are not transmitted.” *Id.* at I.II.Q81.a2.*respondeo*.

to Deagon, so-called secular theories of natural law seem to find a place for religion as a basic good or for God as a metaphysical ground for the moral law, or their vision of the good implies a transcendent source of the good that taps into intuitions that align with classical theism. Although critics will likely conclude, as I did, that Deagon's arguments are more suggestive than definitive, he ought to be commended for drawing our attention to a habit of mind that is more widespread than one may think among non-positivist legal theorists who make a case for a "moral reading" of the law. They seem to smuggle into their arguments what were once called the transcendentals²⁴—the good, the true, and the beautiful—which the typical medieval theologian would have instantly recognized as the reflection of God in His Creation, because they exceed any genus or specific category.²⁵

In Part II (Christian Natural Law as a Foundation of Religious Freedom), which contains Chapters 5-7, Deagon explains how Christian natural law's account of the basic goods and the common good (*Bona*), divine revelation (*Altheia*), and the law of love (*Agape*)—Goodness, Truth, and Love—provides a foundation for religious freedom that should seem intuitively appealing to Christians (and even non-Christians). If, for example, religion is a basic good—that is, human beings are ordered toward right relationship with the transcendent source of being—then a just state should allow for its citizens to pursue that good, just as it allows its citizens

to pursue the basic goods of life, play, aesthetic beauty, and so forth. But natural law—at least as presented by its most notable and influential expositors—presupposes eternal law and divine law. In what is the most consequential section of the book (pp. 123-138), Deagon provides several specific examples of individuals, schools of thoughts, and churches—within the Christian world—that have offered defenses of religious freedom that rely on the same textual and conceptual resources that Deagon employs in his case: Tertullian, Augustine, Calvin and Reformed Theology, John Locke, and the Catholic Church's *Dignitatis Humanae*.²⁶

To be sure, Christian nations historically have had a spotty record—to say the least—in securing religious freedom for those citizens who dissent from the majority faith. But Deagon's point is that Christianity has always had within it the philosophical and theological resources that can provide an intellectually satisfying framework to justify religious freedom, which secular accounts lack. What's more, even if one does not share the Christian's belief in the symbiotic relationship between natural law, eternal law, and divine law, or even believe in their existence, the rise of religious freedom in the West seems nearly incomprehensible without them. In fact, among the most prominent American Founders, Thomas Jefferson and James Madison, their idea of religious freedom—which is often depicted as merely secular or godless²⁷—assumed that each and every

24 The late atheist philosopher of law, Ronald Dworkin, does this in his posthumously published book, *Religion Without God*. In approvingly citing Albert Einstein, Dworkin writes,

But Einstein meant much more than that the universe is organized around fundamental physical laws; indeed, his view I quoted is, in one important sense, an endorsement of the supernatural. The beauty and sublimity he said we could reach only as a feeble reflection are not part of nature; they are something beyond nature that cannot be grasped even by finally understanding the most fundamental of physical laws. It was Einstein's faith that some transcendental and objective value permeates the universe, value that is neither a natural phenomenon nor a subjective reaction to natural phenomena.

RONALD DWORKIN, *RELIGION WITHOUT GOD* 6 (2013).

25 "Hence every creature represents Him, and is like Him so far as it possesses some perfection; yet it represents Him not as something of the same species or genus, but as the excelling principle of whose form the effects fall short, although they derive some kind of likeness thereto, even as the forms of inferior bodies represent the power of the sun." AQUINAS, *supra* note 5, at I.Q13.a2; see also Brian T. Carl, *The Transcendentals and the Divine Names in Thomas Aquinas*, 92 AM. CATHOLIC PHILOSOPHICAL QUARTERLY 225 (2018).

26 For more on *Dignitatis Humanae* and contemporary challenges to religious freedom, see Beckwith, *Dignitatis Humanae at 60 and the New Challenges to Religious Liberty*, *supra* note 14.

27 See, e.g., ISAAC KRAMNICK & R. LAURENCE MOORE, *THE GODLESS CONSTITUTION: A MORAL DEFENSE OF THE SECULAR STATE* (updated ed. 2005). For a counter to Kramnick and Moore's narrative, but see STEVEN D. SMITH, *THE GODLESS CONSTITUTION AND THE PROVIDENTIAL REPUBLIC* (2025).

one of us has a natural duty to God (the Source of eternal law and natural law),²⁸ and that state religious persecutions throughout history, out of which religious freedom developed as the antidote, almost always arose as a result of disputes about how to properly interpret, or to determine what counts as, revealed truth (divine law).²⁹

But, ironically, divine law teaches us, through the person and teachings of Christ, the law of love. Exemplified in the Parable of the Good Samaritan, we are obligated to meet our neighbor where he is at, to be hospitable, caring, and attending to his good as a bearer of God's image, without requiring that he first assent to our creed. Religious coercion of those who do not share our faith is contrary to how Christ Himself, and His first disciples, invited outsiders to join and follow. As Deagon notes, "The law of love indicates that just as we would not want to be coerced into belief, so the beliefs of others should not be coerced . . . Christianity requires religious liberty because love does not compel belief" (152).

Christian Natural Law and Religious Freedom is an important contribution to the growing body of literature on religious freedom and natural law. Given the increasing public profile of post-liberal movements such as Christian Nationalism and Catholic Integralism,³⁰ and the draw that they have on young people who have become disillusioned by secular liberal-

ism,³¹ Deagon's book is a welcomed corrective. For it reminds us that religious freedom is, paradoxically, best grounded in a conceptual framework that is tightly tethered to its Christian roots.

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- 28 James Madison said, "It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him." *Memorial and Remonstrance Against Religious Assessments*, [ca. 20 June] 1785, NAT'L ARCHIVES: FOUNDERS ONLINE, <https://founders.archives.gov/documents/Madison/01-08-02-0163> (last visited Mar. 2, 2026). Jefferson said, "Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship." *V. Thomas Jefferson to the Danbury Baptist Association, 1 January 1802*, NAT'L ARCHIVES: FOUNDERS ONLINE, <https://founders.archives.gov/documents/Jefferson/01-36-02-0152-0006> (last visited Mar. 2, 2026). For a book-length treatment, see VINCENT PHILLIP MUÑOZ, *RELIGIOUS LIBERTY AND THE AMERICAN FOUNDING: NATURAL RIGHTS AND THE ORIGINAL MEANINGS OF THE FIRST AMENDMENT RELIGION CLAUSES* (2022).
- 29 "Because [Patrick Henry's] Bill [to create a tax to fund Christian ministers] implies either that the Civil Magistrate is a competent Judge of Religious Truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world." *Memorial and Remonstrance Against Religious Assessments*, *supra* note 28. "[T]he impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time." 82. *A Bill for Establishing Religious Freedom, 18 June 1779*, NAT'L ARCHIVES: FOUNDERS ONLINE, <https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082> (last visited Mar. 2, 2026).
- 30 See KEVIN VALLIER, *ALL THE KINGDOMS OF THE WORLD: ON RADICAL RELIGIOUS ALTERNATIVES TO LIBERALISM* (2023).
- 31 See Francis J. Beckwith, *One and a Half Cheers for Integralism: Liberalism's Broken Promises and the New Draw of the Confessional State*, J. RELIGION, CULTURE, & DEMOCRACY (forthcoming 2026).

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