Christianity and Natural Law

AN INTRODUCTION

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Natural Law and Philosophical Presuppositions

Owen Anderson

This chapter studies the role of general revelation in natural law theory. General revelation, what all persons can know about God and the good, provides the foundation of natural law thinking. However, special revelation (revealed religion) is often invoked before basic questions about the reality of God and the good have been answered. This chapter studies the claim that all persons ought to know God and that knowing God is the highest good.

One way to understand natural law is as the study of the moral law from general revelation. By way of contrast, Christianity relies on special revelation to make claims about the need for redemption through the atoning work of Christ. Nevertheless, they share important presuppositions about knowledge, reality and what is good. The following chapter will look at the philosophical foundation presupposed by natural law and by Christianity and the ways that these reinforce each other. One way this will be achieved is by considering the influential contemporary work of John Finnis and how he has explained natural law. The chapter will explain the argument that there must be a clear natural moral law to make sense of the Christian claims about the reality of sin and the need for redemption. It will become clear that it is impossible to avoid philosophical foundations about God and the good and this means the case must be made that humans ought to know God. This law is presupposed by special revelation although the Scriptures affirm that there is a clear general revelation of God's nature and the moral law.

Before considering specific thinkers like Finnis or Aristotle it is worth considering a few important presuppositions of Christianity. Specifically, special revelation (revealed religion related through testimony) as redemptive revelation presupposes that there is a clear general revelation of God's nature and the moral law (Romans 1). It is the failure to know God and keep this law that puts humans in the condition of needing redemption. Special revelation affirms both God and the moral law but cannot be a proof for either without becoming circular (I believe the Bible because it is God's word, and I know God exists because the Bible says so).

Scripture uses the terms 'life' and 'death' to refer not simply to physical life but to spiritual life and humanity's highest goal (John 17:3). Natural law has used the

general revelation term 'the good' to refer to the end in itself, that at which all things aim. The good, as opposed to a good, refers to the highest goal or chief end. Presupposed by both natural law and Christianity is that the good is knowable by all persons. Redemption is a restoration to the good, or eternal life, which was lost due to sin. Therefore, any study of both Christianity and natural law must begin with the good, how it is known and how it relates to human nature.

Since *the good* is a general revelation concept it is not surprising that thinkers like Plato and Aristotle made contributions to its articulation. This means that *the* good as the highest goal is an idea that all persons, even those without access to special revelation, can think about. Aristotle is especially linked to the history of natural law due to the influence of Aquinas. One of the observations to be made is in how a thinker's beliefs about what is real (sometimes called metaphysics) shapes how that thinker understands the good. Consequently, Plato and Aristotle, although having differences, were metaphysical dualists who denied that there was a creation. Aquinas, as a theist, believed in creation *ex nihilo*. So while all three might use the term *God* in their respective languages, and even claim that the knowledge of God is the highest good, the difference in how *God* is defined means that there is also significant difference in the content of the good. If there is no God, or all is God, or God is the former but not creator (demiurge/unmoved mover), a very different conception of the good comes out in contrast to God as the Creator.

Natural law has often been dismissed by modern thinkers because of its association with Aquinas and Aristotelian teleology. As a consequence contemporary thinkers who want to revive natural law thinking have often looked for ways to do so without reference to metaphysics or teleology. Yet because natural law is the study of the nature of things and what is good for the nature of a thing, it is impossible, in an important sense, to avoid making claims about what is real in order to justify beliefs about what is good. In order to see how contemporary natural law theorists attempt to avoid metaphysics we will look at John Finnis.

Does natural law theory require a philosophical foundation? John Finnis and others working on the New Natural Law Theory have argued that there are goods which are self-evident as the objects of practical rationality. This has been called 'new natural law' to distinguish it from 'old natural law' which often relied heavily on Aristotelian and Thomistic metaphysical theory. Knowing these as goods does not require a foundation of speculative, or theoretical, rationality about the nature of being. Finnis and Grisez reject the idea attributed to the classical natural law theory that nature is normative.[1] 'One cannot derive the moral "ought", according to Grisez and Finnis, from the "is" of human nature.'[2] Instead, we can know about human flourishing by understanding how practical rationality aims at goods that are ends in themselves. Practical rationality assumes a goal and is a matter of figuring out how best to achieve that goal.

[1] Robert George, ed., *In Defense of Natural Law* (Oxford: Clarendon Press, 1999), 60. [2] Ibid., 60.

And yet Ralph McInerny tells us that the theoretical use of the mind is primary, presupposed by the practical use.[3] Indeed, he states that the practical and speculative uses of reason are not separate faculties but different uses of the same faculty. To judge that something is good presupposes some knowledge of the thing judged to be good and the being for which it is good.[4] McInerny tells us this is all but true by definition. 'It is difficult to imagine Finnis and friends dissenting from this. It is because, at the least, they seem to dissent from it, that they have been the object of so much criticism.'[5] Do Finnis and friends dissent from what McInerny argues is true by definition or is something else going on?

The is/ought problem is a standard feature of modern ethical thought. Have Grisez and Finnis found a way around it or is McInerny correct that the problem is itself a mistake? In the following I will present the view of Finnis about human goods and some of the best known objections to his view. Then I will argue that any form of natural law requires philosophical foundations that begin with understanding the role of God the Creator and the knowledge of God as the highest good for humans. Just as the Decalogue begins with affirming God, so too does the natural law and any consistent thought about the highest good. Robert George tells us that 'the whole of creation is, for Aquinas, suffused with meaning and value by divine intelligence and free choice'.[6] Should humans know this meaning and what it reveals about the Creator? If so this seems to indicate that some truths about being and human nature in relation to the nature of God are clear and should be known by all persons.

EPISTEMOLOGY AND SELF-EVIDENCE

John Finnis tells us that it is simply not true that any form of natural law requires deriving propositions about man's duties and obligations from propositions about human nature or the nature of things.[7] 'On the contrary, Aquinas asserts as plainly as possible that the first principles of natural law, which specify the basic forms of good and evil and which can be adequately grasped by anyone of the age of reason (and not just by metaphysicians), are *per se nota* (self-evident) and indemonstrable'.[8] In order to avoid deriving the moral 'ought' from the factual 'is', John Finnis argues that there are first principles of practical rationality that are self-evident.[9] These are foundational to moral arguments. Since they are self-evident they are not argued to as one might argue towards a conclusion. They can be illustrated or defended by dialectical arguments that refute arguments against them but since they are self-evident they cannot be argued for directly.[10]

[3] Ralph McInerny, *Aquinas on Human Action: A Theory of Practice* (Washington, DC: Catholic University of America Press, 1992), 191.
[4] Ibid., 192. [5] Ibid., 193. [6] George, 41.
[7] John Finnis, *Natural Law and Natural Rights*, 2nd edn (Oxford: Clarendon Press, 2011), 33.
[8] Ibid., 33. [9] Ibid., 63, and George, 44. [10] George, 45.

Finnis does tell us that Aquinas would concede that if man's nature were different so too would be man's duties.[11] But the way to understand these duties, according to how Finnis reads Aquinas, is not by an external study of psychology, anthropology or metaphysics, but by experiencing one's nature 'from the inside'.[12] McInerny considers this a movement from our experienced abilities to the ends or goals of these abilities and puts it in contrast to the Aristotelian move from our nature to the goal and hence our abilities.[13] Christopher Tollefsen phrases it as a matter of grasping reason directed at action through which we understand self-evidently desirable goods.[14] These goods are incommensurable and are the basis for making moral laws although the grasping of them as self-evident is not itself moral.[15]

These foundational principles are about what Grisez-Finnis call 'basic human goods'. Their self-evidence can be illustrated by reflecting on the nature of choice and action. When we make a choice we are acting towards some end. Many of these ends are themselves steps towards further ends. The goal of ordering lunch is to eat. And the goal of eating is health. We can use this idea of an end in itself to see that not every goal of choice is an end in itself. But it is, according to Finnis, self-evident that some things are ends in themselves. The basic goods of life, knowledge, friendship, play, aesthetic experience, practical reasonableness and religion are understood to be self-evidently ends in themselves. If a person gives as an explanation that he is acting to achieve knowledge this is a comprehensible goal and no further explanation is needed.

The first principles of practical reasoning are not themselves moral laws. Instead they state the condition of any coherent practical thinking about means/ends.[16] In this sense the first principles are weak and require only coherence and not actual moral correctness.[17] A morally evil choice is intelligible precisely because it is aimed at an intelligible goal. The goal of treating another person unfairly is intelligible even if morally wrong.

CRITICISMS AND RESPONSES

One criticism about these self-evident goods is that Finnis is relying not so much on self-evidence as on his own intuition. Russell Hittinger makes this argument in *A Critique of the New Natural Law Theory*.[18] He argues that the Grisez-Finnis approach is a kind of intuitionism that leaves their basic human goods open to doubt.[19] As proof of this Hittinger points out that Finnis often relies on arguments to support his claims about these goods as self-evident. However, George responds

[11] Finnis, 34. [12] Ibid., 34. [13] McInerny, 185.
[14] Christopher Tollefsen, 'Reasons for Action and Reasons for Belief', *Social Epistemology* 20 (2006): 56.
[15] Ibid., 57. [16] George, 37. [17] Ibid., 37.
[18] Russell Hittinger, *A Critique of the New Natural Law Theory* (Notre Dame, IN: University of Notre Dame Press, 1987).
[19] George, 61.

by arguing that 'dialectical argumentation focusses on the relationships between propositions (including putatively self-evident propositions) to be defended and other knowledge'.[20] The goal of this kind of argument is to show that if what is self-evident is denied it leads to other unacceptable problems such as self-referential absurdity.

Notice that this kind of argument presupposes the law of non-contradiction. It illustrates that by denying supposedly self-evident goods one runs into unacceptable contradictions. In this sense it is the law of non-contradiction that is self-evident and this is an application, perhaps a foundational application, of that law to human choice and action. This law is presupposed by any knowledge claim and is therefore presupposed by any moral assertion.

This means that these goods of human action are self-evidently grasped not immediately but upon understanding the concepts involved. This begins to suggest that some knowledge of the nature of being is required. McInerny tells us that 'under pressure from Henry Veatch,[21] Finnis now agrees that first principles are derived from experience which includes "not only the stirrings of desire and aversion, but also an awareness of possibilities, likelihoods, *ut in pluribus* outcomes, and so forth"'.[22] We can add to this some knowledge of human nature since these are called basic *human* goods.

Does this mean that Finnis and others are wrong about the self-evidence of these basic human goods? There are two ways to consider this. One is that as explanations of human action they might be acceptable 'conversation stoppers' but it does not follow that they are ends in themselves. For instance, it might be true that it is intelligible to say that I work to get money to buy medicine for my health. Not much more explanation is needed in an ordinary discussion. However, people stay healthy, or want health, in order to be better able to achieve other goals. What a person considers to be an acceptable level of health will depend on how that person understands their goals in life. A marathon runner might think of this differently than a philosophy instructor.

Second, McInerny considers the direction proposed by Finnis for arriving at moral knowledge. 'Finnis has often said that we do not have to know metaphysics and anthropology before doing ethics, but a similar, obviously true point is made by saying that we do not have to have studied moral philosophy in order to engage in moral activity.'[23] Finnis says that our grasp of the self-evident human goods is independent of our knowledge of other speculative truths. However, McInerny points out that the speculative and practical intellects are not two distinct faculties but are instead two different ways of using the same faculty, 'and since being is the first

[20] Ibid., 62.
[21] Henry Veatch, *Swimming Against the Current in Contemporary Philosophy: Occasional Essays and Papers*, Vol. 20 (Washington, DC: Catholic University of American Press, 1990).
[22] McInerny, 189. [23] Ibid., 190.

thing the mind grasps, knowledge of being is presupposed by all human knowledge, whether speculative or practical."[24]

Exactly how an individual person arrives at some belief about human goods is a distinct matter from what is logically presupposed by judgments about the good. An individual might not reason from the nature of things to a belief about what is good. However, the belief about what is good presupposes claims about being and about the nature of the being for which it is good. These in turn presuppose claims about the nature of reality and God.

How these goods are understood, or interpreted, will depend on the larger world view in which they are nested including metaphysical and epistemological presuppositions. This makes their 'self-evidence' unhelpful since how to interpret them is not self-evident.

This leads some scholars of Thomas Aquinas to argue that the Grisez-Finnis formulation of Aquinas is not accurate. Edward Feser, in his book *Aquinas*, makes the case that the is/ought problem is a modern formulation that Aquinas did not accept.[25] He says that the Grisez-Finnis approach to natural law begins with the fact/value distinction and that this is a disastrous assumption of modern ethical theory. Feser understands the point of new natural law 'from its inception has been to provide an alternative philosophical foundation for Catholic moral teaching'.[26] He argues that 'the attempt of the "new natural lawyers" to square this circle – to smuggle in a bit of disguised Aristotelianism after all, under the Humean radar – results in obscurantism and incoherence'.[27]

Since this is not a chapter about the true reading of Aquinas that aspect of Feser's criticism may not be fully answered here. Earlier Finnis was quoted as arguing that Aquinas would indeed say that if human nature were different so too would be human duty. At other times new natural law theory sounds like Grotius in asserting that the law would be what it is even if there were no God. For our present interest it is true that Finnis and others in the new natural law school accept the is/ought distinction as a real problem for any moral theory.

I believe we can make some progress in untangling these disagreements by considering how the different theorists are arriving at their conclusions. Perhaps there is not so much a conflict between them as a difference in perspective. It might indeed be true that there are self-evident ends of action or choice that I can grasp by reflecting on choice. These are grasped without also reflecting on human nature and are therefore not derived from nature.

However, it is also true that human choice and human goods presuppose truths about human nature and God as the creator of human nature. So if Grotius meant that humans can agree on laws without first agreeing on theology then this appears to be true (at least in the short run). But if he meant that if God, as a necessary being,

[24] Ibid., 190. [25] Edward Feser, *Aquinas* (London: OneWorld Publications, 2009). [26] Ibid.
[27] Ibid.

might not exist and that this has no influence on any other truths then this cannot be true by definition of 'necessary being'. At best Grotius was making a rhetorical point but he could not have been making a modal or ontological point.

In a similar way Finnis can be understood as arguing with those who reject God's role in law. Finnis can still point out to such persons that there are ends which are sought in practical rationality. These can largely be agreed upon by persons who disagree about theology and metaphysics. And yet it is also true that these goods presuppose God and human nature when understood correctly. In fact, I believe Finnis relies upon a proof for God's existence that uses this kind of thinking and which I will detail later in this chapter. First, I want to look at what it means for truth claims to have presuppositions about the nature of things. To do this I turn to Aristotle.

ARISTOTLE AND PRESUPPOSITIONS

Aristotle begins the study of metaphysics by noting that all humans desire to know. His statement seems to affirm that it is self-evident that humans desire to know; knowledge is a self-evident human good. We find delight in knowing. This is directly related to the good or meaningful life.

When Anaxagoras was asked 'What is the meaning of life? Why would somebody choose to come into the world and live?' he is said to have answered, 'to observe the heavens, and the stars and moon and sun in them,' everything else being unimportant. A successful life is either a life of understanding, or a life of pleasure, or a life of moral virtue; whichever it is, the most important contribution we can make to it is to take up the study of philosophy.[28]

Finnis also uses 'knowledge' as the example of a human good in Chapter 3 of *Natural Law and Natural Rights*. This provides us with common ground in thinking about what it means for knowledge to be a good. There is an important sense in which we do not want to know in order to achieve some other end but simply for its own sake. We can distinguish between what is sought as a means to something else, what is sought for its own sake and what is an effect of possessing that which is sought for its own sake. Sometimes these are described as virtue, the good and happiness. Knowledge is something that can be sought for its own sake. Indeed, of the basic goods that Finnis lists, it seems that knowledge is inherent and essential to each such that what we enjoy in them is the knowing and understanding. 'This state of knowing is a virtue in itself and brings its own rewards, since we naturally enjoy understanding things.'[29]

In order to identify the human good Aristotle explains that we must identify human nature. It is here that modern thinkers begin to get nervous that metaphysics is making

[28] D.S. Hutchinson, 'Ethics', in Jonathan Barnes, ed., *The Cambridge Companion to Aristotle* (Cambridge: Cambridge University Press, 1995), 197.

[29] Ibid.

an unnecessary infusion into law. However, all legal theories presuppose beliefs about human nature. This is not unique to Aristotle. What Aristotle helps us do is realise that we have such presuppositions. There is a direct relationship between our beliefs about human nature and our beliefs about what is a good life because in realty there is a direct relationship between human nature and the good life.

> What then is the most successful way for us to live? Like every other creature in the world, man has a particular nature, and the best way for a man to live is to live up to his nature, which is to be a creature directed by a rational soul. The proper function of rational human souls is to make men live well – in other words, in a rational way. Living a well-lived life is the best possible good for man, and this is what it is to succeed as a human being.[30]

The Grisez-Finnis system affirms this by beginning with the claim that humans have practical rationality that is aimed at ends. This is a claim about what it means to be a human and therefore it is, as Ralph McInerny reminded us, impossible to avoid making some comment on human nature when talking about the human good.

Aristotle's *Organon* is a study of knowledge and thinking. When we consider the modern rejection of Aristotle we will see how modern epistemology was responding to Aristotle's *Organon*, sometimes explicitly as in Francis Bacon's *Novum Organon*. Aristotle begins with ideas and the words we attach to them and from there provides a study of judgments and the logical relationship between judgments. Judgments are either true or false; any combination of words that is not either true or false has not yet attained the status of a judgment.

Much of his time is spent on the relationship between judgments and how judgments can be formed into syllogisms and deductive reasoning. But for our purposes we can notice that we have ideas and we form them into judgments about reality either by combining two ideas or denying their combination. Formally this is symbolised as 'S is P' or 'S is not P'. To say of S that it is P tells us something about the nature of S. This is obvious and is why McInerny said that it seems difficult to believe anyone would deny it. However, what Aristotle also shows us is that when we begin making judgments about the nature of a thing this involves further presuppositions about the nature of reality.[31] For instance, judgments about what is changing or potential involve presuppositions about what is unchanging and eternal.

Now, relating this to our considerations about metaphysics we can understand that we have beliefs about reality. Specifically, we have beliefs about eternal existence – about what has existed from eternity without a beginning. This is the most basic belief presupposed by any system of beliefs about what is real. Whatever has started to exist presupposes its beginning to exist from what has always existed. In Aristotle's case we are offered a form of dualism that explains change in the world through potentiality and actuality. There was no creation *ex nihilo* but instead all being has always existed. We want knowledge of what is eternal for its own sake:

[30] Ibid. [31] Arist. *Post An.* 1.2, 72, trans. G.R.G. Mure.

> And understanding and knowledge pursued for their own sake are found most in the knowledge of that which is most knowable (for he who chooses to know for the sake of knowing will choose most readily that which is most truly knowledge, and such is the knowledge of that which is most knowable); and the first principles and the causes are most knowable; for by reason of these, and from these, all other things come to be known. . . and the science which knows to what end each thing must be done is the most authoritative of the sciences, and more authoritative than any ancillary science; and this end is the good of that thing, and in general the supreme good in the whole of nature. . . this must be a science that investigates the first principles and causes; for the good, i.e. the end, is one of the causes.[32]

In this sense, Aristotle says, human nature can participate in divine nature. 'The only way for us to realize our human nature is to realize our divine nature, and the mind is the divine element in us; by virtue of possessing reason, we can approach the happy state of the gods.'[33] This can be very ambiguous. For Aristotle the divine nature is in eternal contemplation of what is perfect, itself. And so, too, the best human life is one spent in contemplation of the divine. 'But the highest possible way of life is that which expresses the highest element in us, the divine element of reason. This is the life devoted to the appreciation of truth, the activity that Aristotle calls intellectual contemplation.'[34] Aristotle denies that God is the Creator and is active in human history.

In Aristotelian dualism the divine or unmoved mover is co-eternal with the material world. Both have always existed. The role of the unmoved mover is as a cause in the sense of what is potential striving to become actual. So here we see (1) this is a rejection of the idea of God the Creator; (2) the Unmoved Mover has no interest in the rest of existence; and (3) the highest good, therefore, involves a similar kind of detachment and contemplative life. These are in stark contrast to Christian theism. Therefore, while it is formally true that all legal theories will presuppose beliefs about what is real (metaphysics), it is also true that we need not uncritically accept Aristotle's beliefs about reality.

It is this kind of knowledge that is sought for its own sake. This is knowledge about the world and what the world reveals about what is eternal. Aristotle describes the good in this way:

> If, then, there is some end of the things we do, which we desire for its own sake (everything else being desired for the sake of this), and if we do not choose everything for the sake of something else (for at that rate the process would go on to infinity, so that our desire would be empty and vain), clearly this must be the good and the chief good. Will not the knowledge of it, then, have a great influence on life?[35]

He distinguishes the good from the many things that are called goods and argues that the human good is happiness.

[32] Arist. *Met.* 1.2, 30, trans. W.D. Ross. [33] Hutchinson, 196. [34] Ibid., 205.
[35] Arist. *EN.* 1.2, trans. W.D. Ross.

> Now such a thing is happiness, above all else, is held to be; for this we choose always for itself and never for the sake of something else, but honor, pleasure, reason, and every virtue we choose indeed for themselves (for if nothing resulted from them we should still choose each of them), but we choose them also for the sake of happiness, judging that by means of them we shall be happy. Happiness, on the other hand, no one chooses for the sake of these, nor, in general, for anything other than itself.[36]

We can replace 'happiness' with 'flourishing' in the Grisez-Finnis system in order to make the point that the goods identified by the new natural law theory are only understood to be goods insofar as they produce human flourishing. This means that they are a means to a further end. Notice that Aristotle does concede that we choose other things besides happiness for their own sake while also choosing them for the sake of happiness. A problem arises here. In noting that we choose these for the sake of happiness, Aristotle is helping illustrate that happiness is not sought directly. Happiness is the effect of achieving some other goal. And this happiness can be lasting or not lasting depending on whether the other goal was actually good or only appeared to be good. In this sense happiness is not the good but is instead the effect of possessing what we think is good. We can see this when he says:

> If happiness is activity in accordance with virtue, it is reasonable that it should be in accordance with the highest virtue; and this will be that of the best thing in us. Whether it be reason or something else that is this element which is thought to be our natural ruler and guide and to take thought of things noble and divine, whether it be itself also divine or only the most divine element in us, the activity of this in accordance with its proper virtue will be perfect happiness. That this activity is contemplative we have already said.[37]

We can take from this consideration of Aristotle (1) formally, it is impossible to avoid beliefs about reality presupposed in law (metaphysics); (2) Aristotle's own beliefs are a kind of dualism in which matter and the Unmoved Mover have both existed from eternity; and (3) the highest good according to Aristotle is contemplation of the Unmoved Mover which is detached from the material world (coming down as the beatific vision). These insights contribute to the purpose of this chapter which is to highlight the impossibility of avoiding philosophical foundations in thinking about human goods and natural law. Now we can contrast Aristotle's view of the eternal with the argument given by Finnis in *Natural Law and Natural Rights* about God. We will then be able to make the case that not only is God foundational to thinking about human goods but that humans ought to know God.

Although modernity rejected the metaphysics of teleology, it did so on an epistemological basis. It replaced teleology with another kind of metaphysical speculation, but this also faced epistemological challenges. The problem facing natural law is both its metaphysical grounding and the epistemology needed to know that grounding. While it might be true that from a first person account an individual thinker

[36] Arist. *EN*. 1.7, trans. W.D. Ross. [37] Arist. *EN*. 10.7, trans. W.D. Ross.

arrives at conclusions about human goods without first studying metaphysical foundations, these truths nonetheless have metaphysical presuppositions.

Although Finnis presents us with many different and irreducible goods, he does suggest that perhaps these can be unified in a highest good. This comes out of the consideration about personal sacrifice. A person might need to sacrifice one irreducible good for another or might need to sacrifice for the larger community. Friendship with God is a good that all have access to and that is greater than any sacrifice or loss of other goods. But in order to explain this good, Finnis must explain why we should think there is a God.

A TRANSCENDENTAL ARGUMENT

Finnis approaches the existence of God in two ways. First, he suggests what we can call a transcendental argument: God is the prerequisite or necessary explanation of the existing state of affairs in the universe. Second, he says this argument is not sufficient and that for greater certainty and more information about the nature of God humans need special revelation. He states both of these:

> In short, direct speculative questions about the significance, implications, or source of the orderliness of things yield, by themselves, no clear or certain answers. But this is not the end of the matter. As well as the orderliness of the order(s) of things, there is their sheer existence – the fact that propositions picking out states of affairs are sometimes true. Philosophical analysis has gradually refined our undifferentiated wonder (Why?) about the origin of things, by differentiating the fact that entities and states of affairs are what they are from the fact that they are. There thus remains an alternative route for investigation, starting with the sort of which we start in the investigations by which we our knowledge of order, viz. the fact that this or that state of affairs exists (or existed, or will exist).[38]

There must be some such explanation of the state of affairs which itself does not need a similar explanation. To ask of God 'what are the prerequisites of God's existence?' is to misunderstand God.

> How D (or God) thus is the explanation of all this is not known; what is considered to be known is simply that D (or God) is whatever is required to explain them. Already, therefore, it should be clear that to ask for an explanation of D (or God) is to miss the sense and reference of claims made about D (or God).[39]

God is the necessary explanation of contingent states of affairs, but God is not contingent and so is not in need of a similar explanation. He explains it this way:

> The only available explanation of the whole causing state of affairs is that there is some state of affairs causing that whole causing set of prerequisites or conditions of the first-mentioned state of affairs, but which is not itself included in that causing set

[38] Finnis, 382. [39] Ibid., 404.

> of conditions precisely because, unlike all the members of that set, its existing does not require some prerequisite condition (not included in itself) to be satisfied. This newly postulated state of affairs can (and should, given the sense we are giving to 'cause') be called an uncaused causing.[40]

This leads him to ask: 'What conditions or prerequisites will have (had) to be fulfilled for that state of affairs to exist?... All these prerequisite states of affairs may or may not exist (might or might not have existed). And they in their turn exist only if further prerequisites not included in themselves are satisfied.'[41] God, or the explanation of these states of affairs (Finnis calls *D*), is presupposed by the existence of contingent beings.

In one way Finnis uses this observation as a response to the problem of evil. The problem of evil is often used to support the claim that there is no God. However, Finnis argues that as humans we are not in a position to make that kind of claim about the universe.

> The norms in terms of which we judge states of affairs to be evil, in any of the four orders, are not applicable to D as creator. Thus, we have no ground to judge that D's creative causality is defective. In short, if there is an Eternal Law, we do not know enough of it to be able to judge D's creative performance defective in terms of it.[42]

This can be phrased as saying that for all we know God is working out a greater good from what we perceive to be the evils of this world.

In another way Finnis also uses this observation to support his claim that we cannot ultimately know whether or not God exists apart from special revelation. Finnis notes that Plato and Aristotle did not acknowledge this distinction (general and special revelation).[43] Augustine tried to account for Plato's knowledge of God by suggesting that the latter had access to the prophets of Israel.[44] Plato certainly acknowledged the distinction between divine oracles, such as the one that said Socrates is the wisest, and what can be known by human inquiry. But Plato also rejected the idea of God the Creator; if he did have access to the prophets of Israel, he rejected the God they proclaimed.

Plato, and specifically Aristotle, could not affirm that humans can have friendship with God.[45] For Aristotle, God is involved in eternal self-contemplation and takes no notice of humanity. This is not the God of Judaism and Christianity. What we see is that Plato and Aristotle are not theists but instead propose a competing metaphysical foundation called dualism. Finnis says:

> Still, there is deep uncertainty in their knowledge of God's nature and relation to this world and this uncertainty could be illustrated in many ways. Suffice it here to take a representative instance. Aristotle quite often speaks of the friendship (*philia*) of God or the gods for and of men for God or the gods; but in his fundamental

[40] Ibid., 386. [41] Ibid., 383. [42] Ibid., 391. [43] Ibid., 393. [44] Ibid., 393. [45] Ibid., 397.

analysis of friendship he expresses his considered opinion: God is so remote from man that there can be no friendship between God and man.[46]

His conclusion from this is that:

> Without some revelation more revealing than any that Plato or Aristotle may have experienced, it is impossible to have sufficient assurance that the uncaused cause of all the good things of this world (including our ability to understand them) is itself a good that one could love, personal in a way that one might imitate, a guide that one should follow, or a guarantor of anyone's practical reasonableness.[47]

Thus, special revelation is needed to confirm that God is personal and that God provides the connection between our choices and their consequences.

Finally, this friendship with God cumulates in contemplation of the divine nature.[48] This is a direct, immediate, experience of God. There are problems in the idea of being able to directly experience God as opposed to attaining the knowledge of God mediated through the works of God in creation and providence. One can 'contemplate' these truths known by the works of God, but this is in a different sense than the one meant by advocates of the *beatific vision*. One important difference is that God is knowable now through his works not merely in the afterlife, that this knowledge is mediated through God's works and not immediate, and that there is a moral obligation to know God in this life because the works of God clearly reveal the divine nature and eternal power of God.

This is set in contrast to the claim that special revelation is needed to know God. The first problem is that special revelation is not self-attesting. Why believe the assertions of special revelation? And which supposed special revelation? Any answer must go beyond appealing to special revelation and is, therefore, an appeal to the human ability to understand through reason. That is to say, special revelation presupposes general revelation.

Secondly, special revelation itself (the Bible) asserts that God can be known through the works of creation. The eternal power and divine nature of God are clearly seen in the works of creation so that unbelief is without excuse.[49] This includes the unbelief of Plato and Aristotle who denied God the creator. Thus, according to Scripture, the problem for Plato and Aristotle was not that they did not have Scripture but that they denied what is clear from the creation around them.

It has been common for Christian thinkers to encounter non-theistic world views and look for the 'highest power' in that world view and then claim this is synonymous to 'God' in theism. However, in many cases these world views are monist or dualist and deny that there was a creation. The analogous relationship then between the 'highest power' in monism and dualism and God in theism is simply that in each world view they are appealed to as what is eternal. They are the metaphysical foundation. However, in both monism and dualism all being is eternal (has always

[46] Ibid., 397. [47] Ibid., 398. [48] George, *In Defense of Natural Law*. [49] Romans 1:20.

existed) because there was no creation – only forming what already was there. This conflict cannot be resolved by appealing to special revelation since theistic Scriptures presuppose God the creator and Plato and Aristotle will say 'why should we believe that?'

CONCLUSION

We began with the insight from Ralph McInerny that it is hard to imagine anyone denying that judgments about what is good for a human presuppose at least some beliefs about human nature. Natural law is well known for constructing arguments from the nature of things to what ought to be done. In an important way all ethical and legal theories do this. To overlook that reality is to miss the essential and dividing differences between ethical theories. McInerny doubted that Finnis and friends deny this but that their appearance of denying this has led to challenges about new natural law theory.

Therefore, the question facing anyone working on legal theory is not whether to accept metaphysics or not but rather which metaphysics to use as the logical foundation for ethical and legal assertions. Although it is true that a person's individual practical reasoning might not rely on conscious beliefs about human nature to reach conclusions about self-evident goods, these same conclusions nevertheless do have presuppositions. We have called these the philosophical foundation of law. The most basic of these have to do with our beliefs about the nature of God (what is eternal).

There are important ways that this understanding can affect positive law. This chapter has not addressed positive law in much detail. However, positive law is understood to be the application of natural law to a particular time and circumstance. Positive law is not relative in the absolute sense although it is a relative application of the natural law to specific circumstances. A 'good' positive law helps direct the society towards the good. Thus, positive law cannot contradict natural law. This has significant applications for what are called 'hot button topics' like abortion and marriage.

Finnis deals with the epistemological question by looking for self-evident goods. However, these goods do have presuppositions about human nature and this is seen in Finnis quoting Aquinas to say that if human nature were different so too would be human obligation. Since our beliefs about human nature presuppose truths about the nature of God we are forced to think about both God and how God is known. If humans are culpable for keeping a law that presupposes truths about God then these truths must be knowable and humans are also culpable for denying these truths about God.

We saw that Finnis offers a kind of transcendental argument for God's existence. We studied this not to offer criticisms of the argument but in order to highlight the need for this kind of work. More needs to be done in his formulation of a solution to

the problem of evil and his ultimate reliance on special revelation. The Thomistic idea that special revelation is needed because it is more clear, and most people do not have time to think about these things, removes human culpability for knowing God through his works of creation and providence.

The study of natural law quickly involves us in the study of the most basic and important questions that humans can ask. What is good, what is real and how do we know? Modern legal theory has denied that truths about human obligation are derivable from truths about human nature. One of the important insights that Finnis and others in the new natural law theory have provided is that there are goods or ends of practical rationality that persons can agree on without initially agreeing on a metaphysical foundation. Nevertheless, these truths do indeed make presuppositions about what is real – about the nature of God and humanity. Therefore, the initial agreement about the ends of practical rationality leads us into discussions about the nature and existence of God and the highest good.

Instead, the solution must reside in the use of reason to know what is clear about God and the good. If the eternal power and divine nature of God can be known from what has been created, then humans as rational beings are responsible to know this. This forms both the epistemological and metaphysical basis for any further claims about human nature and the human good. It is a necessary presupposition to the use of practical rationality to achieve the human good and lead a flourishing life.