

Introduction

The Concept of the Natural Moral Law as a Legal Theory *Law and the Good*

INTRODUCTION

It takes time for belief systems to be lived out and their inadequacy revealed for all to see. The intellectual energy released in the attempt to fuse Aristotle and Christianity characterized the intellectual life for a significant portion of the Medieval Age. The incompatibility of Aristotelianism and Christianity was officially noted in 1276, but the untangling and disengaging of Christian thought from Aristotle required more time in which skeptical attacks on Aristotle's epistemology and metaphysics made known the need for a foundation on which to build anew. Out of this skeptical backdrop the Modern age emerged with thinkers like Descartes and Hobbes seeking to provide a new basis for thinking about what is certain and how the world works. Religious conflicts that retained medieval characteristics were set aside in favor of a division between private beliefs about what cannot be agreed on and public goods required by all.

Nevertheless, Modernity also lived itself out in time for all to see. Like Aristotelianism, it claimed to have provided a foundation for knowledge and a description about the world. Its denouement came in the same way, through skeptical attacks concerning the sufficiency of this foundation. Like the medieval world, the modern world drew to a close in a series of costly and deadly wars. In the aftermath, there is general agreement that the postcolonial, globalized world is a postmodern world, but little agreement about what would constitute a new foundation for rebuilding. It is the skeptical time between the death of one age and the beginning of another.

This atmosphere of skepticism influences all areas of life, not least of which is the area of law. Even the use of that term will immediately raise questions about its manifold meanings and methodological uses. Is law a

description, or is it normative? Is law to be analyzed in terms of the authority from which it proceeds, or in relation to a standard of justice? What is the meaning of normative claims; how is *ought* to be understood? Are *ought* claims making cognitive statements about facts, or are they noncognitive expressions? The first question gets to the similarity or difference between science and legal theory. Scientific laws are said to be describing order in the world, regularity between cause and effect, laying bare the intelligibility and comprehensibility of the universe. Natural law has the benefit of claiming to give a similar description about human life both individual and social.

However, natural law is criticized as relying on metaphysical speculation and outmoded systems of thought about how the universe works. Furthermore, scientific laws are descriptive, whereas natural laws are prescriptive; the world of human choice is full of persons acting contrary to the natural law. In an attempt to arrive at the descriptive aspect of law, the realist traditions claimed to be merely describing law as it is. Law is separated from metaphysical speculation and is expected to follow as closely as possible the scientific method. Natural law seemed too mired in metaphysical assumptions to be of any use to a modern and scientific mind.

As Modernity progressed, scientific thinking increasingly limited all knowledge to the empirical and natural (material). Nevertheless, it rested on assumptions that could not be proven empirically. This empiricism and naturalism encouraged the embrace of nominalism. One implication was the rejection of the idea of a universal “human nature” and instead the study of only particularity and modest induction. Without the idea of a universal human nature, claims about the human good lost their meaning, and any law based on the good and human nature appeared unhelpful. The idea of the highest good was therefore challenged both by the rejection of final causes and by nominalism that denied universal natures in general and human nature more specifically.

In this book I argue that there is the highest good based on human nature and that it is readily knowable, so that the failure to know the good is a form of culpable ignorance. This involves showing how no legal theory can actually disconnect itself from the study of metaphysics (the study of what is real). The argument will be given that it is not possible to avoid resting law on metaphysics where metaphysics means a theory about what is real. Rather, the issue is to what extent given thinkers are aware of the metaphysical assumptions behind their theory of choice. Thus, the change to Modernity marks a shift not away from metaphysics, but from one set of metaphysical assumptions to another. Furthermore, because these

assumptions are used to support the new tools of science, the *novum organon*, science cannot be called on to defend them without creating a circular argument as a result. The following seeks to lay bare for investigation these metaphysical assumptions and in so doing help explain the current skeptical attitude and make progress in a new foundation for the moral law.

This means that we will need to learn how to think about metaphysics in order to make progress in coming to understand law and achieving unity between legal theories. It is the absence of this that marks the age of skepticism whose function is to call into question the assumptions of a system, but which does not offer anything in replacement. Studying the natural moral law after Modernity requires exposing uncritically held assumptions that give fuel to the fire of skeptics (those who claim we cannot know), but also making progress toward a replacement that answers the challenges of the age. The natural moral law after Modernity is not simply natural law fit into Postmodernity; it is natural moral law understanding the failures of Modernity and answering the challenges of Postmodernity.

The lawyer will regard this book as an essay in critical thinking about jurisprudence for it is concerned with thinking our way backward to presuppositions that mold and shape the general framework of legal thought.¹ This is not the same as a critical-theorist approach that seeks to expose power structures on the way to the goal of addressing alienation (critical legal theory will be one of the legal theories analyzed for presuppositions). Nor is it the same as a criticism of a specific law or legal policy. I rely on a historical method to consider how presuppositions change and how they are hidden from sight through a process of intellectual neglect and avoidance. However, my main purpose is philosophical in that I will critically examine presuppositions for meaning in the hope of making progress toward a growth in meaning. These presuppositions are mainly epistemological and metaphysical; they are the presuppositions that help us understand how one legal theorist can say: “The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law” and another can say: “An unjust law is no law at all.”

The historical sections of this book are not meant to duplicate what can already be found in other, more detailed history books. The purpose of the historical ordering of the book is to illustrate how ideas shift through a process of challenge and response. I want to capture the interplay between the challenges of an age, how the response to these shapes epistemology and is shaped by it, and how this forms the view of the good and what is

¹ Contrast this with H. L. A. Hart’s purpose in *The Concept of Law*.

valuable and in turn produces a lived piety. From these relationships we can infer patterns that illustrate why the good is misidentified and therefore not known.

The concept of the good will help provide a fixed point of reference for us as we consider law. Natural law is sometimes distinguished as the legal theory concerned about the good, but I argue that the concept of the good is inescapable. The issue is not whether a given theory posits the good; the issue is what any given theory asserts to be good. A realist who says, “I’m not interested in the good, I’m interested in knowing what counts as the correct procedure for producing law so that society can have stability,” is giving us a look at what he/she believes to be the good. Indeed, what any given legal theory believes to be the good is a central part of the foundation of that theory; it is a belief on which the entire theory rests. The extent to which a view of the good has been proven in contrast to its competitors will be the extent to which the foundation is solid. And so we can proceed with this question fixed before us: What is the good?

THE GOOD

This study begins with a clear assertion: Some things can be sought as ends in themselves, and some things cannot be sought as ends in themselves.² To say that a concept is clear is to say that it cannot be confused with its opposite. The idea of an end in itself, or the good, is one example of a clear concept. Similarly, it is clear that we make choices, that in making choices we seek to attain a goal or end, and that some goals are sought as a means to yet another goal, whereas there remains the idea of the good as an end in itself. There is a clear distinction between that which is a means, that which is an end, and that which is an effect of attaining the end. To build toward the conclusion that the good is easily knowable, I begin by highlighting views of the good in notable thinkers from the early medieval, late medieval, early modern, and late modern eras. I will use this study to make the case that beliefs about the good are relative to beliefs about human nature and the real. Legal theories are expressions of this relationship, and thus distinctions between notions such as natural law and positive law can mask rather than illuminate such beliefs.

The final goal of this study is to make the case that a global age requires a global law, and that a global law requires a clear statement of the good. There are implications that I draw from this, especially about the

² This is consciously different than the beginning of Aristotle’s *Nicomachean Ethics*.

responsibility for individuals to know the good and the inexcusability of failing to do so. The idea of coming to unity about answers to basic questions is rarely on the agenda. People appear content with disunity, and with approaching law as a compromise between incommensurable viewpoints. I believe we should work toward a basic unity concerning what is real and what is good, and that until there is a basic unity, there will be no end to our troubles.

The contradiction of “some things are ends in themselves” is “nothing is an end in itself.” If true, this makes choice empty and meaningless. If choices are made to attain an end, and this includes choices made for something that will be used as a means to another end, then choice can only be meaningful if there is an end in itself to choose.³ Otherwise, choice is confused with not choosing because in neither case can an end in itself be attained, and one may as well not choose as choose. Therefore, choice itself, or the faculty of the will, cannot be that which is good, but instead is that which aims to achieve the good.⁴ To claim that there is not end in itself and yet to make choices toward goals is a lack of integrity.

The idea of the good as an end in itself is distinct from happiness, as well as from duty, virtue, and excellence. The latter three are used as a means to an end. One is excellent to ensure one achieves a goal; a person does his/her duty to make sure society runs smoothly, or to have integrity, or some such goal; virtue is defined in relation to the goal it achieves, not the other way around. In each of these cases, the good must first be known, and then duty, virtue, and excellence are defined and understood in relation to the good.

Happiness is an effect of possessing what one believes to be good. Aristotle claimed that all men desire to be happy, but the classical world after him spent centuries debating the nature of happiness and how best to achieve it. How can all men desire it if they are not even sure what it is? Happiness has been understood as pleasure, joy/contentment, and a final blessed state, among others. Each of these is an effect of something else (rather than an end in itself) and is not sought directly as is the good. I argue that the real distinction should be between lasting and not lasting happiness. Our happiness is temporary when it is a result of our possessing something that we believe is the good but is not actually the good. This realization takes away our happiness. If we actually possess the good, we

³ Aristotle gives an argument in the *Nicomachean Ethics* to show why an infinite regress of goals is not possible.

⁴ This distinguishes between the will and that which the will is choosing. Therefore, the will itself cannot be the good, nor can it be the only thing that can be called good without qualification (Kant).

will be lastingly happy. The fact that happiness is an effect of understanding the good means that it is cognitive and mediate, not simply a perception and immediate (as in pleasure or the beatific vision).

Can we know the good at this stage in history? Specifically, can we know the good after the collapse of Modernity and in the age of global pluralism? I study this question by first giving a brief look at conceptions of the good in the early medieval, late medieval, and modern periods, and then looking more closely at views from the early twentieth century. This method likely will open me up to the criticism that I am only giving caricatures of these periods, but I believe this can be avoided if I have done two things: (1) accurately represented the given thinker's view of the good; and (2) showed that it is true either that the thinker shaped the period in a formative way, or that the presented view is an expression of the attitude of the period.

I want to capture the interplay between the challenges of an age, how responses to these challenges shape epistemology and are shaped by it, and how this forms the view of the good and in turn produces a lived piety. From these relationships we can infer patterns that illustrate why the good is not known. I consider a line in history that is described generally and then with greater precision in order to highlight patterns. This is a descriptive work that does not help us know which beliefs about the good are and are not justified. However, it does help us make progress in understanding what has been revealed in history as we contemplate the good.

Philosophically, I want to begin with the Socratic integration of reason and reject the bifurcation of theoretical and practical rationality made by later thinkers and assumed in much contemporary discussion. The Socratic view maintains that knowing is necessary and sufficient for choosing the good. A person does something not for the sake of doing it, but to attain some end. We do not pursue the good for the sake of that which is a means to the good, but rather we do intermediate things for that which is good. "So it's because we pursue what's good that we walk whenever we walk; we suppose that it's better to walk. And conversely, whenever we stand still, we stand still for the sake of the same thing, what's good."⁵ Feeling pleasure is not the same as doing well; what is pleasant is different from what is good, because a person could be in pain yet also feel enjoyment.⁶ All things are done for the sake of what is good; it is the end of all action

⁵ Plato, "Gorgias," in *Plato: Complete Works*, ed. John M. Cooper, trans. Donald J. Zeyl (Cambridge: Hackett, 1997), 468b.

⁶ *Ibid.*, 497a.

and pursued for its own sake.⁷ The lawful and the law are descriptions of states of organization and order, which lead people to the good.⁸

For Socrates, the goal of discussion and persuasion is knowledge. There are two types of persuasion: one providing conviction without knowledge, the other providing knowledge.⁹ Socrates proceeds with a method of attempting to make the subject clear through discovering meaning rather than attempting to win the argument through persuasion.¹⁰ To produce conviction with knowledge, the orator must know that about which he speaks – for instance, health, justice, or the good. In the matter of choices we are asking what can be pursued as an end, what is a means, and what, if anything, is an end in itself, which is sought for its own sake.

This also helps us understand what is meant by “law.” A law describes what must be done to achieve the good. It is therefore both an “is” and an “ought.” To achieve the good, a person must do this, and because the good is desired by all, a person ought to do this. The reality of false beliefs about the good helps explain why people act in competing ways (either different people or the same person at different times) – namely because of conflicting beliefs about what is good. Different societies enact different laws, and this is an expression of how they understand the good and the means to the good.

ATTEMPTS TO AVOID CONNECTING LAW AND THE GOOD

There are notable attempts to avoid connecting the law to what is good. These are also considered further in this study as we consider particular thinkers. However, it is worth thinking about some of them now in relation to the Socratic viewpoint.

Law Is the Command of an Authoritative Will

This view has been influential in a number of otherwise different legal theories. For instance, it is the definition of law used by divine command theorists like William of Ockham. It is also the theory of law used by Thomas Hobbes at the beginning of Modernity. Because of this, some scholars, like Brian Tierney, trace the origins of Modernity into the thirteenth and

⁷ Ibid., 500a.

⁸ Ibid., 504d.

⁹ Ibid., 454e.

¹⁰ Ibid., 457e.

fourteenth centuries. It is also the view shared by some contemporary legal positivists who seek to trace the origins of law to the correct procedure in a given society for enacting laws.

In an important way, this view of law promotes a division between the intellect and the will, which has been, and continues to be, influential in Western thought. It was not present in Socrates, as I discussed earlier, but it is seen in some aspects of Plato and in Aristotle. It is in Aquinas, and it is behind the debate about whether it is the intellect or the will that is the basis for law. The intellectualists and the voluntarists assume this division. It fueled the argument between Thomists and Ockham about the omnipotence of God, and it is related to the Euthyphro dilemma about God and the good.

Taking the Socratic approach, I argue that a law is not valid because it is commanded by the valid authority, but that a law has authority because it is an accurate description of how to attain the good. In the case of God, what is good for a being is based on the nature of that being, and so what is good for a human is based on the nature of a human. God, as creator of human nature, is the determiner of good and evil for humans. So the moral law commanded by God is given not apart from human nature as an imposition (heteronomy), but in unison with God creating human nature.

With relation to a human authority (monarch or legislator), what is willed as law is an expression of what the authority believes to be the good and how to achieve that good. Therefore, if the authority is incorrect about what is good, then its laws will describe inaccurate means to the good (although perhaps accurate means to what is falsely believed to be the good). This calls into question what it means for this lawgiver to be an authority.

If someone in authority is not ruling for the good, then this rule is either for evil or it is amoral. There are serious problems in saying that someone knowingly rules for evil. Or perhaps they rule for the evil of their citizens but for their own good. Nevertheless, evil will bring about the end of their citizens and leave them with nothing to rule and no way to rule for their own good. The claim that rule is amoral might be another form of skepticism about knowing the good, but it might also be a claim about the inapplicability of the good to most of the kinds of laws a government needs to enact. I consider this in the next session.

Law Is the Power to Change Behavior

This definition is related to the law while bearing some distinctions in focus. It moves even further from the intellect into the realm of pure force. It rests on the intuition that if there is not an ability to enforce a law, then

it is not really a law; or, if a law has no consequences, then it is not really a law. There is some truth in this. However, this particular view rests on the same division of the intellect and the will. Furthermore, this division of the intellect and the will rests on skepticism about our ability to know the good and the reality of the good. Because humans cannot know what is actually good, or because there is no good, only desires, laws are expressions of individual or group preference. To make the step from preference to actual law, there must be an ability to enforce the law. This, in turn, changes behavior. Therefore, authority most simply is that which has the power to enforce laws.

This viewpoint also rests on the claim that most laws have little or nothing to do with what is good. Laws about what color of light means “stop,” what side of the road to drive on, regulations on public water or electricity, kinds of zoning permits, and so forth seem like the real day-to-day business of government and also seem far removed from the discussion about what is good. This is another kind of skepticism: a skepticism about the applicability of the good to the ins and outs of life. It is indeed true that historically, much discussion about the good has promoted the viewpoint that the good cannot be known or attained until the afterlife. Thus, the challenge is about how the good applies in this life.

Initially, we can respond by pointing out that the kinds of “mundane” laws just considered collectively represent an attempt to have order and safety in society. Different societies can have different laws about what side of the road to drive on, but there must be some consensus about this, otherwise serious problems will occur. Therefore, even though these laws are not directly related to the good, they are indirectly related through the proximate goals of order and safety. Order and safety are themselves a means to humans having the ability to live their lives unmolested and unharmed in order to achieve other goals, including the good. So I do not believe we can claim there are laws that have nothing whatsoever to do with the good. However, it does remain a serious problem for the postmodern world to reject otherworldliness in relation to the good and to understand how the good can be achieved presently in this world.

Finally, this view and its skepticism about the possibility of knowledge reduce humans to appetites and actions. The phrase “brute force” describes this idea of law as the force used by brutes, not by creatures with intellects and knowledge. Because postmodern thinkers share this skepticism, their analysis of history often revolves around arbitrary power systems rooted in one group’s desires and achieved through the oppression of another group whose desires go unfulfilled. What I question is the

shared skepticism about our ability to know what is good, and the shared skepticism about there being a good (epistemological and metaphysical skepticism).

Positivism

These attempts to avoid relating the law with the good overlap. Positivism can be found in the previous two sections. However, it is worth considering it in more detail because of its importance. Most basically, positivism relies on empiricism. Empiricism claims that all knowledge is through sense data. This modern form of empiricism claims that a good researcher is one who describes events and seeks to find their meaning within what was experienced, not by imposing an external order from presupposed metaphysical assumptions. Because of the limits of empiricism, the adherent to this view claims that only the experienceable world (the material world, the natural world, the physical world) exists, or perhaps that only such a world can be known. Everything else is opinion and, more often than not, a hindrance to knowledge, and should therefore be jettisoned. Thus, for instance, H. L. A. Hart argues that nothing is gained by claiming that law and the natural law (or moral law) are necessarily connected, and so we should reject such an approach as unenlightening.

Once again we find that this rests on an epistemological skepticism. Has the positivist succeeded in avoiding all epistemological and metaphysical assumptions? Clearly not. Rather, what is happening is the positivist saying that only his/her assumptions can be permitted, whereas all others are dubious. Why should we accept this? An appeal to the marvels of science is not sufficient as these marvels are consistent with other presuppositions beside empiricism and naturalism (for instance, theism). Similarly, an appeal to the overextended use of superstition in the past, and all of the harms it produced, is insufficient as that only tells us to avoid superstition, not to become empiricists and reject all that is nonmaterial (supernatural). Empiricism has dogmas, and these are not provable by empirical methods.

Hart's criticism rests on the belief that there are some very general concepts, like justice, that inform law, but that natural law itself is unhelpful in giving particular laws. The idea of justice is sufficient to get us going, being a kind of intuition of sorts that is shared by all. Disagreements arise in relation to what justice looks like "on the ground," in a given circumstance.

In relation to what came before (in terms of natural law theorists), Hart has an important point. It has been difficult for natural law theorists to show

how the law is comprehensive, applying to all aspects of human life. Hart is also responding to skepticism about what we can know, and his solution is a kind of “minimal natural law” relying on ideas like justice. However, he does not really escape making assertions about the nature of things, particularly justice. Therefore, it is not at all the case that he avoids what he himself is warning against. His own analysis is a good example of the inescapable requirement to relate law back to the nature of things. Minimizing this to justice does not avoid the reality that it is really happening.

Furthermore, it is not the case that empiricism can make global claims about the nature of justice. Consistently held, empiricism leads to nominalism. This is an important part of the postmodern challenge, namely that such thinkers have, in many cases, taken empiricism to its more consistent conclusions. So, just like logical positivism, legal positivism rests on principles that cannot be proven by, and are contrary to, its definition of knowledge. That legal positivism has lingered on for so long is a testimony to there being nothing to take its place.

Prediction

The stature of Oliver Wendell Holmes is significant enough that attention must be given to the claim that law is best understood as trying to predict the outcome of court decisions. In his “The Path of Law,” he states: “[T]he object of our study, then, is prediction, the prediction of the incidence of the public force through the instrumentality of the courts.”¹¹ The contemporary law student will find much that seems intuitively correct in this viewpoint. The feeling is that all this talk about the good and moral laws is fine for philosophers, but at the end of the day what matters is winning one’s case. And it is a different kind of thinking that is needed for winning a case than is necessary for contemplation of the good.

Perhaps the common thread here is pragmatism. Oliver Wendell Holmes himself was part of the group that founded this viewpoint in America, which includes William James and C. S. Peirce. This philosophy says “truth is what works.” First, we can point out that it is a philosophy, it is rejecting other philosophies, and unless it is held dogmatically, it must be shown why we should be pragmatists. It is not that the lawyer or judge is just concerned with the case, but that the lawyer as a pragmatist (or whatever else) is interpreting the case in relation to this philosophy. There are presuppositions about epistemology and metaphysics present; it is not possible

¹¹ <http://www.gutenberg.org/files/2373/2373-h/2373-h.htm>

to say “I only care about the outcome” without exposing some of those presuppositions.

Pragmatism has been a very popular and attractive view, and indeed many of the postmodern thinkers are pragmatists. We need to consider what is meant by their dictum, “truth is what works.” It could be affirming the relationship between knowledge and reality, that as one comes to know the nature of things, one comes to know how they work or comes to know the means to a given goal. This is not what is meant by pragmatists. Rather, they are reducing truth to what can be measured in physical outcomes and saying “truth” simply means that which produces the desired outcome.

This is perhaps the origin of a phrase I have often heard from my students: “[T]his is what is true for me.” I believe they are expressing that this is what they are comfortable with, or what satisfies them. However, statements about what satisfies are statements about the state of one’s mind, not about what is mind-independent. Indeed, postmodern pragmatists have carried this viewpoint to its more consistent conclusion of non-realism.

We must hold the point that commonsense pragmatic realism is itself an epistemology and metaphysic. If it is held dogmatically, it is no different than the “superstitions” the Modern age has sought to replace. Why not go with commonsense pragmatic non-realism? Or why not say that the lawyer need not concern himself/herself with such considerations? In one sense this is true, if we reduce the lawyer to a function. But as a human, the lawyer necessarily has beliefs and is subject, like the rest of us, to the need to live the examined life and the consequences for not doing so. If Oliver Wendell Holmes is happy with his pragmatism, that is fine for him up to a point, but if he wants to argue that the rest of us should accept it, then he will need to establish the epistemological and metaphysical presuppositions on which it rests.

Noncognitivism, or Emotivism, or Anti-Intellectualism

This avoidance mechanism has been intertwined in the previous three sections but, like positivism, is worth making explicit in its own section. Like what has come before, it denies the ability for the human intellect to know what is good. Rather, it reverses the order and instead of saying that humans desire the good, it says that the good is what is desired.

This rests on an important problem, namely how there can be so many conflicting choices, laws, and societies if all humans desire the same good. Its solution is to say choices, laws, and societies are merely the expression of individual and group desire, and that is what we call “good.” So once

again, we are encountering skepticism. And yet this view has been formative in the Modern age, and we will encounter it again.

It is to a great extent connected to the modern world's rejection of otherworldliness and embrace of empiricism. In this life, what I know from experience is that I enjoy fulfilling my desires. I can do this in a brutish or an enlightened way, and the latter is preferred by thinkers like J. S. Mill. But really that is just a further expression of Mill's own desires and carries little weight for those who do not already share them. Stories about what will happen to me in the next life if I do not abstain from certain pleasures in this life carry no weight for a modern mind. And given that the good has been so often connected with that next world, the good becomes an irrelevant concept. Or, more accurately, the modern mind pursues pleasure in this life as the good.

I consider the last sentence to be an important observation. I am arguing that the idea of the good is inescapable where choices are being made. So it is not that the noncognitivism does not have a view of the good, but that the noncognitivist believes fulfilling desires is the good. Similarly, claims about the nature of things are unavoidable. This viewpoint, just like the positivist viewpoint, rests on numerous claims about the nature of knowledge and reality. To merely assert these is dogmatism. However, they are unprovable by empiricism. Therefore, Modernity is either as dogmatic as the medieval world it has sought to replace (a postmodern critique), or it must expand its definition of knowledge beyond empiricism.

Having considered these five attempts to define law apart from the good, I do not believe the attempt to avoid this relationship has been successful and we can proceed with the definition given by Socrates. Furthermore, we can apply ourselves to a descriptive work that brings to light beliefs about the good. As we come to understand what a given legal theorist says about the law, we will also be able to see what is presupposed about knowledge, reality, and the good in this theory. It is these presuppositions that I want to bring out and examine in the following pages.

KNOWING AND RESPONSIBILITY

Making the formal distinctions between what is a means to the good, the good itself, and the effect of possessing the good does not help us identify what actually is the good. We can quickly understand that many things commonly said to be goods, or the good, are not in fact ends in themselves: money is used as a means; developing talents and excellences within oneself is a means; the common good (referring to social stability, commodities,

peace, justice, etc.) is a means of avoiding destruction and promoting individual and social development; loving relationships are both a means to the good as we work together in mutual assistance and an effect of possessing the good together (otherwise they are unloving relationships in which harm is done by not mutually pursuing the good); intuitive enjoyment of beauty is an effect of what one understands to be good and beautiful; simply being alive is not an end in itself because one can be alive but in a vegetative state in which choices cannot be made – and many more such examples can be offered. The point here is that precisely because the distinction between an end and the means to an end is a clear distinction, we can readily understand that much of what is called good is not actually the good. The implication is that either the good is hard to know and people are doing their best to understand it, or the good is readily knowable and people are not seeking to know it.

If what a person is seeking as the good is clearly not the good, then that person's choices will be made incorrectly, and the person is in a state of culpable ignorance. While each choice might be practically rational given the end that is being pursued, the wrong end is being pursued. The end can be said to be wrong in that it is not an end in itself, nor is it a means to the end in itself (or at least the individual does not understand it to be such), and it is clear that this is the case.

If what a person is seeking as the good is clearly not the good, then this person bears responsibility for this mistake. This person has a belief about their goal (this goal is good, an end in itself), which is readily knowable as false. There is no excuse for this confusion of what is and is not an end in itself. Concretely, it is inexcusable to believe that money is the good. It is inexcusable to believe that friendship, intuition, or retirement are the good. It is inexcusable to believe that the unexamined life is the good.

Combining the last two paragraphs tells us that there is a kind of guilt where one is without excuse for a choice because the choice was made with an aim at an end that is not the good. There are two parts to this inexcusability: believing something to be the good that is not the good, and a failure to know what is actually the good. One is claiming to know, asserting that something is an end in itself, which is actually a means, and it is thus clear that one does not know. Furthermore, this error about knowing directly affects how choices are made and actions are carried out.

A person reveals what they believe to be the good in making choices. So, any given person may not be able to articulate to any significant degree what he/she believes to be good, and yet their choices can be seen to aim at some end. We can call this a lack of consciousness, lack of self-awareness,

or living the unexamined life. In a related way, a person may exhibit significant inconsistency in the ends at which various choices are aimed. This lack of consciousness and consistency should not surprise us, neither when we find it in others or in ourselves; nor is it limited to the working masses, but is just as regularly found among those who claim to be intellectual. It is part of not seeking to know, and thus it forms a compound with not knowing the good, which can be labeled culpable ignorance.

Claiming to know the good is to make a judgment about something as an end. In such judgments two concepts are connected to each other. A person can be questioned about their judgment, in which case supporting judgments will be given. The resulting argument can be evaluated for soundness (where soundness means the argument is valid and the premises are true). The judgments used as premises can be evaluated in terms of what each claims to be the case – for instance, by considering if something that is being sought as an end in itself is really a means to some other end.

This delineates what is meant by the term “know” and distinguishes it from common sense (culturally accepted beliefs and bits of “street smarts” about how to operate in daily life) and intuition (immediate or non-inferential beliefs, often resulting from a perception or sensory input). It may be common sense in Wall Street culture that money is the good, and a particular investor might have an intuition one morning about an investment. It may be common sense in a religious culture that God exists and direct perception of God is the good, and a particular adherent might have an intuition one morning of God’s presence. These examples are different from knowing what is the good because in knowing one can actually show what is an end in itself and what is not. When questioned, the investor or religious adherent is unable to give support for their belief or their reliance on intuition; and yet competing investors and religions also use intuition to arrive at opposite conclusions. This is a kind of fideism, and is contrary to the examined life.

The implication is that failure to know the good is inexcusable, and not only is confusion about what is good and what is not an apparently commonplace error, but so too is the confusion between knowing and other kinds of support such as common sense and intuition. This is often because of a confusion between knowing as discussed in the previous two paragraphs and knowing how, such as knowing how to ride a bike. In such a case, one can know how without being able to prove how. And so it could be claimed that a person knows how to be good but cannot prove what is good.

With respect to the good as the end in itself that is chosen for its own sake, one cannot choose to be good without knowing what is good. One cannot choose the good if one does not know what is being chosen. One cannot choose the good if there is no good, or if the good is unknowable. Knowledge of the good is distinguished from belief about the good because knowing the good guarantees that one is able to choose the good, whereas in mere belief or opinion one could be calling something good that is not good.

This level of knowledge of the good can be distinguished from other levels of knowledge by identifying the relationship of more basic and less basic beliefs through presuppositions. An assertion about the best way to achieve money as the good presupposes that money is the good. An assertion about the intuitive enjoyment of beauty in a poem or sunset presupposes that the poem or sunset is being understood correctly. In the study of choice, knowing the good is more basic than knowing the means to the good. I will call this thinking presuppositionally in that we will consider how a given theory of law presupposes a belief about the good, which in turn presupposes a belief about what is real. These beliefs about what is real are the most basic of a worldview and are supported by an epistemology that must also be exposed and examined. And so thinking presuppositionally is the method of this book. It is the tool that will help us understand that law cannot avoid metaphysics or epistemology.

At this most basic level, there is a direct connection between knowing, showing, and doing that is not necessarily present at less basic levels. If one does not know the good, one cannot deliberately choose the good, and in order to knowingly choose the good, one must be able to show (to oneself at least) that something is in fact the good, an end in itself. An essential part of leading the examined life – indeed the very beginning of this process – it to know oneself. This can be understood as interrogative processes asking: Do you know the good, or do you only think you know the good?

There has been much ink spilled about *akrasia* and our apparent ability to knowingly do evil. The general consensus is that Socrates must have been wrong when he demonstrated that no one knowingly does evil. However, even Aristotle, who tried to explain how we can knowingly do evil, conceded that Socrates was technically right and that *akratic* action is like a drunk reciting Empedocles (we can hardly say he *knows* Empedocles in such a case). Aquinas also wanted to find a way to explain it and dismissed the Socratic solution. However, he concludes that Socrates was correct except that in *akratic* action, the person is failing to make a link between

a universal knowledge claim (this is not good) and the particular instance (this is not good for me); this means, of course, that the person is not knowingly doing evil.

The modern solution is generally that our desires overwhelm our knowledge. We will need to consider the modern view of desire and intuition about the good. What we can note now is that the examples given are: (1) never examples of knowledge, but only belief, about the good; and (2) never get to basic examples of the good but favor examples of the nice or the practically good. It is going to be important for this study that we are careful in our use of the term “knowledge.” The examples given that supposedly prove we can knowingly do evil are really, at best, examples of a confused person with multiple beliefs about what is good. For instance, I know it is bad for me to overindulge in ice cream, but I do it anyway. I know I should brush my teeth before bed, but instead I go to sleep without doing it. I know I should save my money, but I really want the newest video game, so I go out and buy it. These and a plethora of similar examples drive the point home.

However, health and financial well-being are not the good. Even if we use an extreme example, such as a heroin addict who knows using drugs is wrong but cannot stop, we still have not gotten to knowledge or the basic level of the good. The heroin addict can stop but is not willing to suffer the pains involved. And this is true in all such examples. A person who is given two or more options in some sense believes one is good but is strongly inclined to another and chooses this one. Knowledge of the good is not present in these examples. However, there is an implied belief connected with the choice: It is better to do what I most strongly desire than to do what I claim to believe is good.

Knowledge differs from opinion in that knowledge cannot be incorrect and one can give justification to show why it cannot be incorrect. The logically most basic problem in philosophy is this problem of knowledge. When an age cannot explain how it knows, and instead adopts skepticism, the next age will blossom precisely by providing a solution to this problem. In the contemporary age, justification has been understood deontologically as if one is doing one’s epistemic duty. The shortcomings of this have led to externalism’s claims about warrant. However, neither this form of justification nor warrant gives certainty, and so both are really just another kind of skepticism about knowledge.

One reason this occurs is because questions of what we know are kept at the less basic and practical level. For instance, Edmund Gettier became famous with his 1963 essay, “Is Justified True Belief Knowledge,” in which

he considers whether a character knows how many coins are in his pocket, or if he will get a raise. In one case, the knowledge claim is based on memory and experience, and in the other on the testimony of another person. Neither of these kinds of justification provides certainty (my memory of experience can be mistaken, a boss's testimony can be mistaken), and so neither is a case of knowledge.

The typical response is: So you are saying that knowledge is very rare, because we are rarely certain. Yes, of course. Neither side debates this, but one side simply changes what the word "knowledge" means by conceding there is no certainty, which is obfuscation and simple skepticism. Furthermore, perhaps most people are not actually certain about anything, and most kinds of beliefs are not such that we can have certainty. If there is to be certainty, it must be at the most basic level. It must have to do with what is clear concerning the metaphysical and moral absolutes. If we cannot have certainty here, we cannot have knowledge at any other level that assumes these basics.

Furthermore, those who claim to have knowingly done evil can be called on their bluff: Prove that you know what is good and what is evil. In my experience, this claim to knowledge quickly melts away. The person has a strongly held belief but does not have knowledge and does not know what is the good. It is no surprise that such a person is often confused and is led about by their strongest feeling or opinion at the moment. In the following, I am interested in knowledge of the good in order to avoid this kind of situation.

THE ARGUMENT

I am somewhat wary of presenting a conclusion before having studied the premises on which it rests. Nevertheless, I am going to state the conclusion toward which I will argue in order to give the reader a structured sense of where I am going and what is being said. I hope the arguments in the book will provide the missing premises.

I am making the case that the good is the knowledge of the highest reality, that the highest reality is God, that God is readily knowable, and the failure to know God is based on a few simple confusions where eternity is attributed to being that cannot be eternal; the failure to know God reveals something about the human condition in self-deception and self-justification; God is revealed to us in the works of creation and providence and not directly or intuitively in the afterlife; that the division between nature and grace, or law and grace, has been made incorrectly

and instead redemptive revelation is needed to restore humans to knowing the good.

I believe I am in good company (although perhaps unpopular company) when I argue that the law begins with God and the good. It is in this way that the *Decalogue* begins, in focusing our attention on God the redeemer and that there is no higher good than knowing God. It is in this way that Christ summarizes the law in focusing our attention to love God with all of our being. Nevertheless, an important part of both Modernity and Postmodernity is the rejection of God and the claim that God either does not exist or cannot be known. The pragmatism of both eras is violently opposed to beginning with the *summum bonum*, which at first appears very impractical and irrelevant to law. Even so, we can rely on the example of Socrates from the *Apology* to be reminded that all pretensions to law or benefiting the youth rest on assumptions about what is good. Like Melitus, many in our day will resist having their assumptions about what is good challenged, and use whatever means they can to avoid talking about the good, but the human need for the good will persist.

Although I am not going to give a proof for God's existence here, I am going to argue against most of the positions that have been called on to give nontheistic accounts of what is real. I am arguing that the following is formally true: The highest good for humans is knowledge of the highest reality. As different philosophers or theologians plug in their view of the highest reality, we will begin to see how they understand the good and human nature. Furthermore, I am going to argue that attempts to avoid this formula generally represent some species of skepticism (rejecting knowledge and so locating the good in desire/appetite), and we will be considering many forms of skepticism in what follows. Thus, the goal of my argument is to clear the way for us to consider the implications of the conclusion: it must be clear what is good, the good is knowledge of the highest reality, and therefore the highest reality must be clear (readily knowable). This, coupled with widespread skepticism (or fideism) and consequent lack of knowledge about the highest reality, gives us a picture of the human condition with respect to the good.

DEWEY AND RAWLS: BASIC BELIEFS AND KNOWING THE GOOD

By way of contrast, I am introducing a thinker who made a significant contribution to the move from Modernity to Postmodernity. John Dewey was very explicit in his rejection of the good as knowledge of the highest

reality.¹² Dewey recognized that at the most basic level, philosophical conflicts are epistemological. He presented his view, pragmatism, as having come of age and understood the mistakes of all past thinking – mistakes that involve making a distinction between the knower and what is known. This creates philosophical puzzles about appearance and reality, what counts as justification and the nature of being, neither of which is, in fact, either relevant or helpful.¹³ Although modern thinkers like Descartes wanted to correct the errors of past philosophy, they nevertheless retained this mistake.

Dewey argues that we can put all of this behind us. This is because the biological sciences, with the foundation in evolutionary thinking, have shown us that we are simply one organism on a continuum with all other organisms. Consciously or not, Dewey is applying insights from Hume and arguing that there is no self, only experience. His solution to the problems of philosophy is to accept as a given the naturalism of evolution and the epistemology articulated by Hume, and to argue that what we have left is practical rationality toward the end of satisfying desires (especially relieving physical suffering). All truth claims can be understood as being about the utility of a given belief to bringing about the desired end.

Dewey rejects the claim that the good is knowledge of the highest reality, and that this reality is indeed God: “The theological problem of attaining knowledge of God as ultimate reality was transformed in effect into the philosophical problem of the possibility of attaining knowledge of reality. For how is one to get beyond the limits of the subject and subjective occurrences?”¹⁴ Like other modern philosophers, he lumps all “religious” thinking into the category of “otherworldly”:

When dominating religious ideas were built up about the idea that the self is a stranger and pilgrim in this world; when morals, falling in line, found true good only in inner states of a self inaccessible to anything but its own private

¹² John Dewey (1859–1952) was an American philosopher and educator who was a leader in forming the American pragmatist school of philosophy. As a pragmatist, he believed that truth can be reduced to what works, and most of what philosophy has studied is meaningless because it cannot be applied to practical purposes. In contrast, a democracy requires citizens who are educated to solve the problems of the day.

John Rawls (1921–2002) was an American political and ethical philosopher. He offered a defense of political liberalism based on the ideas of justice and equality. He attempted to revive the idea of a social contract by arguing that a just and fair society would be one that people would agree to beforehand, without knowing where they would be placed within the society with respect to social and economic status.

¹³ John Dewey, *Creative Intelligence: Essays in the Pragmatic Attitude* (New York: Octagon Books, 1970), 467.

¹⁴ *Ibid.*, 31.

introspection; when political theory assumed the finality of disconnected and mutually exclusive personalities, the notion that the bearer of experience is antithetical to the world instead of being in and of it was congenial. It at least had the warrant of other beliefs and aspirations. But the doctrine of biological continuity or organic evolution has destroyed the scientific basis of the conception. Morally, men are now concerned with the amelioration of the conditions of the common lot in this world. Social sciences recognize that associated life is not a matter of physical juxtaposition, but of genuine intercourse – of community of experience in a non-metaphorical sense of community.¹⁵

This is a turn away from otherworldliness to mere this-worldliness. I do not believe we can simply allow this viewpoint to claim it has science on its side, or biological proof, or is riding the wave of the greatest insights in human history. It is making claims about reality that are the same in kind as those it rejects, meaning that they also must be argued for, initially, in a non-question begging. To simply argue that this viewpoint is true because it works is to beg the question (which is what his appeals to “progress” amount to, and “what works” is a relative claim).

Dewey has built on Hume, and prefigures postmodern thinkers, in deconstructing the “self.” There is no self as traditionally understood. We are an organism that has experiences, and these experiences are partially thrust on us and partially shaped by us (as an organism, not a self). So Dewey can say, “knowledge is always a matter of the use that is made of experienced natural events,”¹⁶ because he denies that there is anything else. Of course, this is a claim about what is, about being, and he must step out of his assertion about knowledge to justify that assertion. Logical Positivism was famously shown to contain this same error (defining knowledge in a way that cannot be justified by its own definition). As Alvin Plantinga has recently argued, why think our beliefs are accurate if they are the outcome of evolution or are merely neurons in our brain? For Dewey to assert as he did that science has demonstrated these things is a kind of fideism and table pounding.

Importantly, Dewey affirmed the formal relationship between the real and the good that I use throughout this book:

The Greeks were wholly right in the feeling that questions of good and ill, as far as they fall within human control, are bound up with discrimination of

¹⁵ John Dewey, *The Essential Dewey: Pragmatism, Education, and Democracy*. ed. Larry Hickman and Thomas M. Alexander (Bloomington: Indiana University Press, 1998), 57.

¹⁶ Dewey, 1970, 47.

the genuine from the spurious, of 'being' from what only pretends to be. ... We have only to refer to the way in which medieval life wrought the philosophy of an ultimate and supreme reality into the context of practical life to realize that for centuries political and moral interests were bound up with the distinction between the absolutely real and the relatively real.¹⁷

The good for humans depends on what it is to be a human. Yet Dewey argues that attempts to know the real are baseless because, in some sense, everything is real. He argues that the philosophical puzzles created around searching for the real are based on the belief that this would affect one's afterlife. Modernity, he believes, has moved past this. "It is enough for our purposes to note that none of the modern philosophies of a superior reality, or *the* real object, idealistic or realistic, holds that its insight makes a difference like that between sin and holiness, eternal condemnation and eternal bliss."¹⁸ By way of contrast, he defines pragmatism in the following manner:

It is often said that pragmatism, unless it is content to be a contribution to mere methodology, must develop a theory of Reality. But the chief characteristic trait of the pragmatic notion of reality is precisely that no theory of Reality in general, *uberhaupt*, is possible or needed. It occupies the position of an emancipated empiricism or thoroughgoing naïve realism. It finds that "reality" is a *denotative* term, a word used to designate indifferently everything that happens. Lies, dreams, insanities, deceptions, myths, theories are all of them just the events which they specifically are. Pragmatism is content to take its stand with science; for science finds all such events to be subject-matter of description and inquiry – just like stars, fossils, mosquitoes and malaria, circulation and vision. It also takes its stand with daily life, which finds that such things really have to be reckoned with as they occur interwoven in the texture of events.¹⁹

Dewey affirms Bergson as identifying the ultimate with absolute flux. All is change. "[I]ntelligence means that the function of mind is to project new and more complex ends – to free experience from routine and from caprice ... intelligence develops within the sphere of action for the sake of possibilities not yet given."²⁰ In this he explicitly rejects what he takes to be the Christian worldview. He notices that the Christian worldview is an attempt at a system, but argues it has had the wrong starting point:

¹⁷ Dewey, 1970, 57.

¹⁸ Dewey, 1998, 65.

¹⁹ *Ibid.*, 64.

²⁰ *Ibid.*, 67.

They centered about a Fall which was not an event in nature, but an aboriginal catastrophe that corrupted Nature; about a redemption made possible by supernatural means; about a life in another world – essentially, not merely spatial, Other. The supreme drama of destiny took place in a soul or spirit which, under the circumstances, could not be conceived other than as non-natural – extra-natural, if not, strictly speaking, supernatural.²¹

What both sides recognize is at stake is a system of belief, a worldview, which relies on basic beliefs about knowledge and reality to inform beliefs about morality and law. Dewey maintains that what is real is change; all is change. This is just as much a claim about the real as arguing that all is permanence, or that only God is eternal. To support his claim by appealing to natural science is to beg the question in that science has been used by all three of these basic beliefs.

I am sympathetic to Dewey's turn away from otherworldliness. I understand his description of the otherworldliness in much of Christianity to be true as a description of what people believe(d) but not true of Christianity as it becomes more conscious and consistent. In relation to knowing God as the good is the claim that God is known through the works of creation and providence, not apart from these in heaven. Furthermore, this is not merely a matter of soteriology, being saved to go to heaven, but of attaining the *summum bonum*, which is available in this life. In rejecting otherworldliness we need not join Dewey in mere this-worldliness.

And yet a feature of Modernity is to notice that, as John Rawls says:

A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of the doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens. Political liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime.²²

This instantiates the solution of Modernity to the Wars of Religion: We cannot know and we must set aside those matters and learn to address practical problems alone. Rawls is also instantiating the formal relationship between what can be known, what is real, and what is good.

²¹ Ibid., 56.

²² John Rawls, *Political Liberalism*, Columbia University Press, New York, 2005, xvi.

I am questioning this claim that we cannot know. I agree that these systems of belief are incompatible, but I disagree that they are all reasonable. Perhaps in some minimal way they are internally consistent. However, I am going to call into question the basic beliefs on which they rest. Most basically, the two competing beliefs are the claims that “all is eternal” or “only God is eternal.” The former can be expressed as “all is permanence” or “all is change”; it is also found to say “all is one” or “two beings exist (matter and spirit) both of which are eternal.” Yet, all of these share in the essential claim that eternity can be attributed to something besides God, and that in this sense God the Creator does not exist. If we can make progress to show that only God is eternal – and I believe we can – then we do not need to join Rawls in his pessimism about unity of belief. I am also questioning his view of human nature, that we cannot or will not come to agreement in the foreseeable future. I believe we can, and that ultimately the earth will be filled with knowledge of the good.

Dewey and Rawls are directing their focus to an aspect of the problem of evil, the problem of pain. All humans experience physical suffering, and they believe we can unite on this as our common ground. I am arguing that the problem of evil is larger, that it most fundamentally is a problem of meaning, and that if this problem is not solved, there may not be any reason to address the problem of pain insofar as it may be meaningless to do so. We do need common ground, and I believe it is found in our ability to use reason to find meaning, and that not all basic beliefs are meaningful. We can apply this to debates in law because we should not expect those debates to be resolved as long as opposing viewpoints rest on competing basic beliefs.

CHAPTER LAYOUT

Having introduced the good, and the human responsibility to know the good, I turn in [Chapter 1](#) to consider the postmodern challenge. To do this, I present a challenge-and-response approach to the history of thinking about the good and law. I will identify eras of time as those that worked to develop ideas about what is real and good into all areas of human life. These eras change as they are challenged in ways they cannot sufficiently answer. Modernity is one such change. These changes begin with the area of epistemology, as a worldview’s source of authority is questioned. I argue that Modernity began as a new source of authority was sought after the Wars of Religion. Postmodernity is also an epistemological challenge to the modern system, including beliefs about what is good.

In [Chapter 2](#), I make the case that all beliefs about the good presuppose beliefs about what is real and eternal. Therefore, differences about what

should be lawful can be traced back to these kinds of presuppositional differences. To make this case, I consider Aristotle and Aquinas. Although close in many respects, these two thinkers are importantly different in their theories about what is real, and this influences their thinking about the highest good. I argue that Aristotle's own metaphysical viewpoint (dualism) can be shown to be contrary to reason, but also that the otherworldliness of Aquinas is not an accurate explanation of the highest good. The insight from this specific case can then be applied to the many different legal theories we study in this book.

In [Chapter 3](#), I give an overview of thinking about the good from ancients like Cicero to the beginnings of Modernity in Hobbes. My point here is not to give an exhaustive history (for which there are already reference books), but to help interpret the history by considering representative thinkers and how they embodied beliefs about the good characteristic of their age. I will argue that, more often than not, a given thinker was concerned about a legal matter (what is just or right) but hardly noticed how this hinges on questions about what is good (and hardly worked to resolve competing visions of the good), and even less often noticed how views of the good are rooted in beliefs about what is real. My argument here is to show that Modernity began as an epistemological challenge to the previous age, and this resulted in changed beliefs about what can be known and what is real, and therefore the human good and law. I suggest there are patterns of development that we can use to understand how these kinds of changes in history unfold.

[Chapter 4](#) picks up with the end of the Wars of Religion and the beginning of Modernity as a turn away from religious authority to what can be known by all persons, what is universal and so a source of agreement. I consider numerous European thinkers in order to make the case that Modern Natural Law begins with the physical goods of this life (physical survival). Theories of the origin of the state all start with the need for survival or working together to ensure greater physical comforts. The good is most often identified with pleasure and evil with pain. Beliefs about what is not physical are considered mere opinion with no public way of adjudicating the truth. Therefore, these are asserted to be matters in which we should have great latitude and not allow opinions to disrupt public peace. I argue that Modernity is therefore a kind of naturalized practical rationality, and that for all of its praise of reason it is really just meant as practical thinking about how this physical world works.

It should not be surprising that, given Modernity's focus on the "natural" or physical world, the philosophy of materialism or "naturalism" became the most popular theory toward the end of the modern world.

In [Chapter 5](#), I consider how naturalism became prominent, particularly in the study of law (in the scientific and legal sense, given that I believe these are related). The scientific naturalism of the nineteenth century became the foundation for ethical naturalism that flourished then and throughout the twentieth century. As was the case in earlier parts of Modernity, Naturalism has argued that survival and physical goods are the basis for human society. However, this belief has taken it a step further in arguing that only the material world exists, and all knowledge is therefore limited to facts about the material world. This is the philosophical basis for positivism. I end by arguing that we can know that only God is eternal, and that God as the creator is the determiner of good and evil for humanity.

Given the background assumptions of Naturalism, the twentieth-century legal and ethical philosophers sought objectivity in some natural feature of the world. In [Chapter 6](#), I consider the development of this thinking, noting that it is largely noncognitive because knowledge is limited to facts about the physical world and moral statements are not facts of this kind. Furthermore, objectivity was generally sought for in the idealized self, which is a kind of concession to the need for God as the metaphysical absolute.

In [Chapter 7](#), I consider some examples of contemporary Natural Law thinking. Such thinkers present themselves as staying away from metaphysical considerations and instead offering a kind of practical rationality about human flourishing. Although I believe this kind of approach is superior to alternatives such as positivism, relativism, deontology, and consequentialism, I argue that we must know the *summum bonum* to make real progress in natural law thinking. In general, these thinkers either stay away from defining the highest good or concede that perhaps we achieve it in the next life. By way of contrast, I suggest that the knowledge of God as the highest good is made available through the works of creation and providence and should be our starting point in thinking about the natural moral law.

The challenge from Postmodernity undermines this kind of practical rationality and exposes the assumptions to all pretensions of neutrality or objectivity. [Chapter 8](#) considers postmodern thinkers and their various challenges to the modern world as well as the implications for continuing any kind of Modernist vision in natural law (limiting natural law to practical rationality about human flourishing). I argue that Postmoderns are helpful in reminding us about the role of presuppositions, and that no theory of the good, law, or the state is without presuppositions about what is

real. However, I also argue that Postmodernity takes a turn toward a kind of mysticism that is antirational and in doing so undermines any possibility for this form of Postmodernity to make a meaningful contribution to knowing what is eternal and what is good. Those postmodern thinkers who wish to limit themselves to pragmatism keep one foot in the modern world of practical rationality and one foot in the postmodern world of deconstructing hidden presuppositions.

In [Chapter 9](#), I present my own view of the natural law as the moral law. I argue that the good is knowledge of the highest reality, and that this means that the good is knowing God the Creator. All attempts to deny God are based on confusions of what is eternal and what is temporal (for instance, attributing eternality to the material world, or the individual self). Rather than beginning natural law with physical survival, I argue that humans do not live by bread alone and that finding the meaning in the world is more important to human survival (in two senses) than mere physical bread. Although this moral law is consistent with the approach of the *Decalogue* (beginning with God) and how Christ summarizes the law (love God with all your heart, mind, soul, and strength), I argue that it is knowable from general revelation and that the failure to know is inexcusable and is the basis for needing redemptive revelation in scripture.

I conclude the book with a study of how “hot button” legal debates of our day are based on presuppositions about the good and what is real. Such debates get all of the attention, and the suggestions that we should shift the discussion to the good will not register in many spheres. Nevertheless, I argue that these debates will not be resolved until the good is known and kept in the center of our thought.

CONCLUSION

Modernity began by searching for a certain foundation in contrast to the turmoil and chaos in which the medieval world ended (the Wars of Religion). Neither the *cogito* nor Locke’s empiricism were able to give this certainty. Descartes’s clear and distinct ideas were guaranteed by God, and he says we know God because we have a clear and distinct idea of him (a circular argument). Hume drew out the logical implications of Locke and these led to skepticism. Reid and Kant worked to reinvigorate the Enlightenment, but the following centuries have shown that these as well led to fideism (mere assertion about common sense, which is actually culturally relative) and skepticism (Postmodernism).

We will be asking the following questions: Is it clear what is good? Can we know the good, or are there only opinions about the good? What happens when a person or culture settles for an opinion about the good and does not know what is good? We will look at the unfolding of Modernity in order to answer this last question, and use this to energize our own pursuit of knowledge of the good.