

CHRISTIANITY AND NATURAL LAW

Historically, natural law has played a pivotal role in Christian approaches to the law and a contested role in legal philosophy generally. However, comparative study of natural law across global Christian traditions is largely neglected. This book provides not only the history of natural law ideas across mainstream Christian traditions worldwide but also an ecumenical comparison of the contemporary natural law positions of different traditions. Its focus is not solely theoretical: it tests the practical utility of natural law by exploring its use in the legal systems of the churches studied. Alongside analysis of the assumptions underlying the concept, it also proposes a jurisprudence of Christian law itself. With chapters written by distinguished lawyers and theologians across the world, this book is designed for those studying and teaching law or theology, those who practise and study ecumenism and those involved in the practice of church law.

Norman Doe is a professor and director of the LLM in Canon Law at Cardiff University Law School. He is also a visiting professor at Paris University and KU Leuven and Chancellor of the Diocese of Bangor. His books include *Fundamental Authority in Late Medieval English Law* (1990), *Canon Law in the Anglican Communion* (1998), *Law and Religion in Europe* (2011) and *Christian Law* (2013).

LAW AND CHRISTIANITY

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Christianity and Natural Law: An Introduction edited by Norman Doe

Christianity and Natural Law

AN INTRODUCTION

EDITED BY

NORMAN DOE

Cardiff University



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Contributors

Will Adam is the Archbishop of Canterbury's Ecumenical Adviser, the editor of the *Ecclesiastical Law Journal* (published by Cambridge University Press) and the author of *Legal Flexibility and the Mission of the Church: Dispensation and Economy in Ecclesiastical Law* (Ashgate, 2011), a book based on his doctoral research in canon law. He is a research fellow at the Centre for Law and Religion at Cardiff University, and a fellow of the Royal Historical Society.

Owen Anderson is an associate professor of philosophy and religious studies at Arizona State University's New College. In 2013–2014, he was the William E. Simon research fellow in the James Madison Program at Princeton University and a visiting scholar at Princeton Seminary. He has published seven books including *The Declaration of Independence and God* (2015) and *The Natural Moral Law* (2013) with Cambridge University Press. His areas of research include epistemology, the ethics of belief, intellectual history and religious pluralism. A central focus of his research has been the clarity of God's existence. He regularly teaches philosophy of religion, introduction to philosophy, applied ethics, world religions, western religious traditions and religion in America.

Paul Babie holds a chair of law in the Adelaide Law School of the University of Adelaide. He is currently Associate Dean of Law (Research) of the Adelaide Law School, Associate Dean (Research) of the Faculty of the Professions and Director of the Research Unit for the Study of Society, Law and Religion. His primary research interests are legal theory (especially the nature and concept of property and the relationship between law and theology), and law and religion (especially the relationship between constitutions and religious freedom). He has published widely in both fields. He teaches property law, property theory, law and religion and Roman law. He is also a member of the editorial board of the Routledge Research Series in Law and Religion.

Helen Costigane, a member of the Society of the Holy Child Jesus, is the former vice-principal (academic) of Heythrop College, in the University of London, where she taught canon law, Christian ethics and pastoral theology, and is now Programme

Director, MA Theology, at St. Mary's University, Twickenham. She is a member of the Canon Law Societies of Great Britain and Ireland, America and Australia, as well as the Ecclesiastical Law Society. Being also a chartered accountant, she has a particular interest in the civil and canonical aspects of ecclesiastical goods, and the interface between Catholic canon law and civil law generally.

Norman Doe is a professor and director of the Centre for Law and Religion at Cardiff University Law School. A barrister, he studied at Cardiff, Cambridge and Oxford universities. His books include studies on medieval law, Anglican canon law, law and religion in Europe and Christian law. A visiting professor at Paris University and KU Leuven, he has acted as a consultant on canon law to the Anglican Communion, served on the Lambeth Commission (2003–2004), was a visiting scholar at Trinity College Oxford (2011) and Corpus Christi College Oxford (2015) and is Chancellor of the Diocese of Bangor in the Church in Wales.

Paul Goodliff is a Baptist minister, currently serving as the minister of Abingdon Baptist Church, Oxfordshire, and a theologian. He is a visiting lecturer at the University of Roehampton, Regent's Park College, in the University of Oxford and Bristol Baptist College, and he is also an associate research fellow at Spurgeon's College, London. He has published in the areas of pastoral theology and ecclesiology, and has served as both general superintendent of the Baptist Union of Great Britain's Central Area and as head of ministry for the same union.

John A. Harrod graduated from London University in sociology before reading theology at Cambridge University while preparing for the ministry of the Methodist church at Wesley House. He later gained a doctorate from Manchester University in moral philosophy. After some fifteen years in pastoral ministry he spent the rest of his working life in theological education, latterly as principal of Hartley Victoria College, the Methodist foundation within the ecumenical Partnership for Theological Education in Manchester. His principal publication is *Weaving the Tapestry of Moral Judgement: Christian Ethics in a Plural World* (Epworth, 2007). Now retired and living in Cornwall he is married with a grown-up son and daughter and five grandchildren.

Richard H. Helmholz is Ruth Wyatt Rosenson Distinguished Professor of Law at the University of Chicago, a fellow of the American Academy of Arts and Sciences and a corresponding fellow of the British Academy. His publications include *Roman Canon Law in Reformation England* (Cambridge University Press, 1990) and *The Canon and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford University Press, 2004). He is a member of the editorial board of the *Ecclesiastical Law Journal* (Cambridge University Press).

Dr Leo J. Koffeman (1948) serves as an extraordinary professor in the Department of Church History and Church Polity of the University of Pretoria (South Africa). He is

a minister of the Protestant Church in the Netherlands. In September 2015, he retired as professor of church polity and ecumenism at the Protestant Theological University (Amsterdam, The Netherlands). From 2007 to 2014, he was a member of the Faith and Order Commission of the World Council of Churches. His main publication so far is *In Order to Serve: An Ecumenical Introduction to Church Polity* (Zürich: LIT Verlag, 2014).

Antti Raunio is a professor of systematic theology at the School of Theology in the Philosophical Faculty at the University of Eastern Finland at Joensuu, Finland. He has published widely in the fields of Reformation theology and its Patristic and medieval background; Luther's theology and its interpretations; social ethics; the theology of spirituality; and ecumenical theology. He also has an interest in theological hermeneutics, and relations between theology and natural science. His hobbies include literature, music and European classic cars.

Russell Sandberg is Head of Law and Reader in Law in the School of Law and Politics at Cardiff University where he researches at the Centre for Law and Religion. He is the author of *Law and Religion* (Cambridge University Press, 2011) and *Religion, Law and Society* (Cambridge University Press, 2014). He is a co-author of *Religion and Law in the United Kingdom* (Kluwer Law International, 2nd edn, 2014) and editor of *Religion and Legal Pluralism* (Ashgate, 2015). He is also the managing editor of the International Consortium for Law and Religion Studies (ICLARS) Series on Law and Religion, published by Routledge.

Mary Anne Platjies Van Huffel is a professor who teaches ecclesiology and church polity at the University of Stellenbosch in South Africa. Her major publications deal with the empowerment of women in post-apartheid South Africa, a post-structural approach; the control, secession and vesting of rights with regard to ecclesiastical property; the institutionalization of Christian women's organizations, from docile recipients to agents of change; the Belhar Confession, a Christian statement of belief originally written in Afrikaans in 1982, during the struggle against apartheid, and adopted (after a slight adjustment) by the Dutch Reformed Mission Church in South Africa in 1986; a theological reflection on patriarchy as empire; and the relevance of the principles of church polity in the Reformed tradition.

Preface

Natural law thinking provides a valuable but much-contested conceptual framework within which to address questions fundamental to human well-being: What is good? Why is good important? How do we ascertain good? These questions have themselves stimulated diachronic and synchronic diversity within Christianity across its plurality of traditions. In point of fact, the return to first principles about the good in human and Christian life is increasingly important to the ecumenical movement today, as it seeks to achieve greater visible unity between the institutionally separated churches of the faith worldwide. The World Council of Churches, in a document which has taken twenty-five years to prepare, entitled *The Church: Towards a Common Vision* (2013), states: ‘Ecumenical dialogue at the multilateral and bilateral levels has begun to sketch out some of the parameters of the significance of moral doctrine and practice for Christian unity’; moreover: ‘If present and future ecumenical dialogue is to serve the mission and unity of the Church, it is important that this dialogue explicitly address the challenges to convergence represented by contemporary moral issues.’¹ However, natural law thinking has not traditionally been used by the ecumenical movement or in bilateral inter-church dialogues on moral issues. This book, therefore, is designed to explore the opportunities and challenges which natural law thinking presents for Christians, across the various denominational divides, in order for them to re-imagine together a conceptual framework for moral thought and practice. It seeks to add some colour to this ‘sketch’ in terms of denominational convergence and divergence in natural law thinking amongst selected Christian traditions across the world today, and so put natural law on the ecumenical agenda in the quest for unity around contemporary moral issues.

In January 2015, Professor John Witte, the distinguished editor-in-chief of the Cambridge University Press series *Christianity and Law*, invited me to serve as editor for the series of an introduction to Christianity and natural law. I have been

¹ World Council of Churches, *The Church: Towards a Common Vision*, Faith and Order Paper No. 214 (Geneva, 2013), paragraph 63.

honoured to do so. The series, with its international editorial board, is an ambitious one. No less so this volume, not least due to the fact that the concept of natural law, and natural law thinking in general, with its associated concepts such as divine law, justice and equity, have proved both an inspiration and a bone of contention in Christianity through the ages. This was the case in post-apostolic times and in the medieval period, persisted through and beyond the Reformation and the Enlightenment, and the concept of natural law continues to exercise contemporary Christianity in the modern world – as Christians, configured in their institutional churches across the great church traditions, face, reflect upon and grapple with so many fast-moving ethical, political and social issues today.

The term ‘natural law’ is used for a variety of doctrines which are often contested and differ in detail. In Christianity, natural law discourse concerns, at its core, the existence of God-given universal principles which God ‘revealed’ to humankind at creation. This original revelation has to do with what it means to be human and is related, therefore, to the social character of human nature and life. It may be contrasted with the ‘special’ revelation of God in Christ which is about our relation with God, the perfection of natural law and, ultimately, salvation. With natural law, a form of divine law, God implanted in the minds or hearts of every human the capacity to know right and wrong and thus to discern these universal principles, which are normative, which provide moral standards, or ethical constraints on human behaviour, and which determine what actions are right and wrong. These standards are applicable to all humans, discoverable through the use of reason and the exercise of conscience, and should be used as a source of and criterion to assess the legitimacy of action. Views of what natural law contains vary widely and often depend on prior ideas about ‘nature’, and perhaps the physical laws of cause and effect – natural law is its order or the sphere of rationality; and so natural law is rational law deducible from rational principles. As we shall see in this book, natural law theory is criticised for a host of reasons: that it proceeds from facts to normativity; how it may be seen as a species of divine law; and that its precepts of love for God and neighbour are too diffuse to be of practical value.

This volume consists of twelve chapters written by expert contributors with international reputations in the fields of law, theology and philosophy. The first chapter traces the concept of natural law in the development of canon law in the western church, focussing primarily on its use by the jurists in the medieval period, the pervasiveness of the concept and its deployment in technical juridical settings. Natural law was part of the staple diet of medieval jurists. Then follow seven chapters which are devoted to a study of natural law as it is and has been addressed in different Christian traditions or church families worldwide, namely: Catholic, Orthodox, Anglican, Lutheran, Methodist, Reformed and Baptist.² These traditions are

² The choice of these traditions does not imply any claim as to what is or is not ‘orthodox’ in Christianity. Nor does it seek to foreclose debate about natural law in other worldwide ecclesial families distinct from these particular denominational categories. This book is introductory; space does not allow an

selected for three reasons: they all have a global reach; they all have a strong tradition of theological reflection; and they all have a very distinctive juristic culture of positive ecclesial norms found in a multiplicity of juridical instruments the classification of which depends on the tradition in question – from canon law, through books of church order, to covenants of church polity, from the Episcopal model through to the Congregational model. This book, for the first time, offers a comparative approach to the incidence of natural law thinking in contemporary church legal instruments. Whilst there is much which these different Christian traditions share as between themselves, what also emerges is that there is at the same time diversity of opinion about natural law within each tradition – even within a tradition there are varieties of natural law thinking.

To prepare their studies for the volume, each contributor, from these church families, was encouraged to think freely about what or what not to include in their chapter. These scholars were also chosen as they represent a blend of disciplines, again, including theology and law. They all hold, or have held, academic positions. Yet at the same time several are directly familiar with the practice of institutional church life within their own tradition – particularly in ministry, and governance – and some have direct experience of ecumenical initiatives. A further consideration was to achieve as global a scholarly reach as possible: the contributors are drawn from Australia, England, Finland, Scotland, South Africa, The Netherlands, USA, and Wales.

Each contributor was asked to be guided by a number of core issues. First, there is the matter of how ‘natural law’ is defined within each tradition: what definitions exist, if any; where these definitions are to be found and who formulated them (for example, in church doctrine or law); and to what extent there is (dis)agreement or debate in the tradition about the definition of ‘natural law’. Secondly, the contributors were asked to explore what if any the relationship might be in their own tradition between ‘natural law’ and the categories of ‘divine law’, or the ‘law of God’, and the ‘moral law’: whether natural law and these other categories are understood as the same, similar, or different entities, and the reasons for this; what is understood to be the purpose of natural law (and these other categories), its form (whether it is treated as prescriptive, with values, precepts, prohibitions, and permissions), and its subjects (those to whom it applies). Third, there are questions about the discovery of natural law and its content: where natural law is to be found; how it is ascertained (such as through revelation, reason, instinct, and ethics); and who has authority in the tradition to expound it. Fourthly, the contributors were asked to explore the role of scholarship on natural law thinking within the tradition: who were, and are, the leading thinkers; what methodology is employed; and what role the Bible plays in their approaches to natural law. Fifthly, there is the question of natural law in actual

exhaustive study. Indeed, it is hoped the book will encourage exploration of natural law thinking in global church families beyond those studied here.

Christian practice: how, in each tradition, natural law (and the associated categories of divine law, the law of God, and the moral law) is deployed (explicitly or implicitly) in the regulatory instruments of each institutional church (their systems of church law, church order, and church polity); whether it is used, as a determinant, by church legislators (in the legislative process and text), adjudicators (such as in the decisions of tribunals), and administrators; and how it is related to humanly-created norms of conduct – for example, whether it is understood to have an authority superior to positive law found in the books of church law, order and polity, such as to vitiate laws which are contrary to it, or the positive law of the State, and the implications of this for the enforceability of and obedience to law. Throughout, each contributor was asked to illustrate with examples of the use of natural law ideas in areas such as church governance and ministry, doctrine, worship, and rites, the administration of property, and relations with the State (whether each tradition teaches about respect for natural law by the State in its own exercise of power).

By way of contrast, there are three chapters on the concept of natural law as it is used beyond the individual traditions, and their institutional churches. One seeks to describe, explain, and evaluate the role of natural law thought and practice in the global ecumenical movement, particularly in bilateral and multilateral ecumenical initiatives involving two or more institutional churches from different Christian traditions, and in the work of the World Council of Churches. Another explores the role of natural law in Judaism and Islam as compared with Christianity – and the potential of natural law in inter-faith dialogue. The third explores philosophical presuppositions which underpin natural law discourse, how the framework provided by natural law enables us to engage in the most basic of questions about human social life, and what part natural law may have to play in the development of the conceptual foundations of law. The book ends with a chapter of reflection; it is an overview: which discusses how the Christian approaches studied compare with the treatment of natural law as it appears in contemporary secular legal theory and jurisprudence; which draws together commonalities and divergences in the approaches of the traditions with regard to the themes explored in each chapter; and which proposes an agenda for further collaborative research in this field around Christian jurisprudence. Throughout the book, being an Introduction to Christianity and Natural Law, the chapters are lightly footnoted, sign-posted with sub-headings, and, it is hoped, in their style, accessible.

In September 2015, a roundtable was held at Trinity College, Oxford. It was attended by the contributors who presented their draft chapters, engaged in discussion of the themes, and explored avenues for the further development of their individual contributions. We were very privileged also to have welcomed to the roundtable Professor Mark Hill QC, a leading scholar and practitioner in law and religion, and the Reverend James Campbell SJ, Vice-Principal and Tutor in Canon Law at Champion Hall at the University of Oxford. Both provided invaluable insights to the discussions ensuring that due respect was paid to the need to earth what

otherwise might have proved an excessively abstract exercise, in the practical realities of daily life.

I am very grateful to John Witte for having arranged funding for this event. I am also deeply indebted to the President and Fellows of Trinity College, where I had the good fortune to be a visiting fellow in 2011, for hosting the meeting in such historical surroundings. Indeed, it was fitting that we should meet at Trinity. The college was founded in 1555 (during the time of the re-establishment of Roman Catholicism in England under Mary) and occupies the site of the medieval Durham College founded c. 1286 (and which at the Reformation was surrendered to the crown, in 1545) for Benedictine monks to whom the concept of natural law would have been so very familiar as they pursued their studies in theology and philosophy. John Henry (Cardinal) Newman (1801–1890) was also a student at Trinity; he too invoked the concept of natural law:

I say, then, that the Supreme Being is of a certain character, which, expressed in human language, we call ethical. He has the attributes of justice, truth, wisdom, sanctity, benevolence and mercy, as eternal characteristics in His nature, the very Law of His being, identical with Himself; and next, when He became Creator, He implanted this Law, which is Himself, in the intelligence of all His rational creatures. The Divine Law, then, is the rule of ethical truth, the standard of right and wrong, a sovereign, irreversible, absolute authority in the presence of men and Angels.

Moreover, and in turn (citing Aquinas):

The natural law . . . is an impression of the Divine Light in us, a participation of the eternal law in the rational creature. This law, as apprehended in the minds of individual men, is called ‘conscience’; and though it may suffer refraction in passing into the intellectual medium of each, it is not therefore so affected as to lose its character of being the Divine Law, but still has, as such, the prerogative of commanding obedience.³

A key question posed by this introduction to Christianity and natural law, is what relevance views such as this – and those of the many historical and contemporary theologians, lawyers, and other scholars across the ecclesiastical traditions treated in this volume – about the meaning and value of natural law, and the use of natural law thinking in the practical world of church polity, have for Christians and their laws today. I am most grateful to each of the contributors, the insights they bring, and the hard work they have done, in enabling us to reflect on this important subject. Any editorial errors in this collection of studies are solely my responsibility.

³ John Henry Cardinal Newman, ‘A Letter Addressed to the Duke of Norfolk on Occasion of Mr. Gladstone’s Recent Expostulation [1874]’, in *Certain Difficulties Felt by Anglicans in Catholic Teaching*, Vol. II (London: Longmans, Green, and Co., New Impression, 1900), 246–247.