

#### THE NATURAL MORAL LAW

The Natural Moral Law argues that the good can be known and that therefore the moral law, which serves as a basis for human choice, can be understood. Proceeding historically through ancient, modern, and postmodern thinkers, Owen Anderson studies beliefs about the good and how it is known, and how such beliefs shape claims about the moral law. The focal challenge is whether the skepticism of postmodern thinkers can be answered in a way that preserves knowledge claims about the good. Considering the failures of modern thinkers to correctly articulate reason and the good and how postmodern thinkers are responding to these failures, Anderson argues that there are identifiable patterns of thinking about what is good, some of which lead to false dichotomies. The book concludes with a consideration of how a moral law might look if the good is correctly identified.

Owen Anderson is an Assistant Professor of Philosophy and Religious Studies at Arizona State University. He is the author of three books: Benjamin B. Warfield and Right Reason: The Clarity of General Revelation and Function of Apologetics (2005); The Clarity of God's Existence: The Ethics of Belief after the Enlightenment (2008); and Reason and Worldviews: Warfield, Kuyper, Van Til and Plantinga on the Clarity of General Revelation and Function of Apologetics (2008). His articles have appeared in Sophia, The Heythrop Journal, New Blackfriars, and Zygon. He is a regular contributor to Reviews in Religion and Theology.





# The Natural Moral Law

### THE GOOD AFTER MODERNITY

Owen Anderson

Arizona State University





#### CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press 32 Avenue of the Americas, New York, NY 10013-2473, USA www.cambridge.org Information on this title: www.cambridge.org/9781107008427

#### © Owen Anderson 2012

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2012

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication data

Anderson, Owen, 1977–

The natural moral law: the good after modernity / Owen Anderson.
p. cm.

Includes bibliographical references and index.

ISBN 978-1-107-00842-7 (hardback)

I. Natural law. 2. Law and ethics. I. Title.

K460.A53 2012

340'.I12-dc23 2012001483

ISBN 978-1-107-00842-7 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.



To Sherry, Jack, Lilliann, Daniel, and Andrew





### Contents

| Preface   | <i>page</i> ix |
|---|----------------|
| Acknowledgments   | xiii           |
| Introduction: The Concept of the Natural Moral<br>Law as a Legal Theory: Law and the Good | Ι              |
| The Postmodern Challenge: From Modernity to     Postmodernity                             | 29             |
| 2. Traditional Natural Law: Differences in Aristotle and Aquinas                          | 46             |
| 3. Patterns in Historical Development   | 65             |
| 4. The Challenge of Modernity: Religious Wars and the Need for Universal Law              | 91             |
| 5. The Challenges of Naturalism: Legal Realism or Natural Law?                            | 134            |
| 6. Objectivity without a Metaphysical Foundation  | 171            |
| 7. Contemporary Natural Law: Practical Rationality and Legal Opinions                     | 196            |
| 8. Natural Law as a Theory with Metaphysical Baggag<br>Postmodern Law                     | re:<br>226     |
| 9. Natural Law as the Moral Law   | 263            |
| Conclusion: Natural Moral Law in a<br>Postmodern World                                    | 275            |
| Bibliography  | 289            |
| Index   | 295            |

vii





### Preface

As Aeneas, our great ancestor, Did from the flames of Troy upon his shoulder The old Anchises bear ...

I chose Carle van Loo's painting *Aeneas Carrying Anchises* for the cover because it depicts an apt metaphor for this book. In the *Aeneid*, Virgil tells us that before being carried by Aeneas from the flames of Troy, Anchises prays to Jupiter for help. Aeneas then tells Anchises to gather up the sacred objects and household idols and bring them along. While Troy is burning, Aeneas escapes carrying his father and leading his son, taking with them the best of what they could save. Although this is the end of one age, as Virgil tells the story, it is the beginning of another.

Similarly, this book is about the end of one age and the beginning of another. As with the destruction of Troy, the Modern age ended in costly and devastating wars. And just as Anchises brought his idols with him, so too the new age, the Postmodern age, relies on ideas taken from Modernity, which may be responsible for the latter's ending. Anchises does not stop to think, as he prays to Jupiter, that if Jupiter could help, Troy would not be burning. But Zeus (Jupiter), as Homer tells it, was distracted on many occasions by Hera. Why save such idols? Why not rethink the presuppositions on which such a worldview is based? And what should be most troubling for Virgil, why build another empire on such presuppositions? How could such an empire hold out the hope of being the *impirium sine fine* (empire without end)?

There is a desire in the human consciousness for such an empire (city). There is a desire to build a life together that reaches the heights of human excellence. This goal cannot be achieved by a single individual; rather, it must be the product of cooperation by all. This cooperation requires a



x Preface

shared goal and a shared understanding about the means to the goal. That is why this is a book about law, and specifically about the natural moral law. It is a book about the good (our shared goal) and the means to the good as known by reason (the natural moral law).

However, this idea of cooperation toward a goal brings to mind another story. This is the story of when all humanity united together to pursue something that was not the good. Together they built a city, a way of life, and together they worked to build a tower that would extend to heaven. This story, in Genesis 11, immediately follows the account of the Flood in which all humans except Noah and his family had gone into violence and corruption. In such a short time after the Great Deluge, humanity was once again uniting in a purpose apart from that given by God. Rather than filling the earth and understanding what the works of God reveal about the Creator, they turned to idolatry and building the city of man based on man's law. Consequently, at the Tower of Babel, God confused languages so that unity became division and humans dispersed.

It is only in the last few centuries that humans have begun to have contact with each other at a global level. This means that once again there is the question of how humans will unite, toward what goal they will work together, and how they understand the means to that goal. What law will humans live by as they come together in the Postmodern age, and will it be a law that leads to the good or away from it?

These two stories also provide a contrast of how beliefs about God work into human life. On the one hand, although Anchises calls Jupiter the "almighty," the gods of Greek polytheism are finite and limited, with various personalities and proclivities that do not always include pursuing the good. On the other hand, in the book of Genesis, God is portrayed as the absolute creator, who imposes natural evil on the creation as a call back from moral evil. It is because God is good that the problem of evil requires an answer by theists. The event of the Tower of Babel marks a transition in the history from God dealing with humans in general to the particular account of redemption beginning with Abraham and his descendants. Although Abraham lived in a city with laws, he is said to have been looking for a city whose maker and builder is God. This contrast between the city of man and the city of God involves a contrast between two views of the good and the law that is to govern human life. As such, we will see this theme in the following study of Modernity and Postmodernity as humans respond to challenges out of the presuppositions they carried with them.



Preface xi

This book relies on an interdisciplinary approach. I draw from philosophy, history, jurisprudence, religious studies, and literature. Consequently, it will engage different readers in various ways. However, the underlying argument is present throughout the book and is contributed to by several supporting arguments. Every reader can engage with these arguments to examine them for soundness. Because the arguments examine assumptions about the good and what is real, active readers will be engaged in self-examination of their own beliefs about these subjects. The extent to which readers do this will be the extent to which they profit from this book.





## Acknowledgments

There are many persons who need to be acknowledged as having contributed to this book. Family, friends, and students have all supported me in my thinking about, and research for, this book. I am thankful for comments and suggestions from Francis Beckwith and Stephen Grabill. Professors Michael White and Hoyt Tillman have encouraged and taught me in numerous ways and in the many subjects at which they both excel. John Berger's help as the law editor at Cambridge University Press was an indispensible support from the start. Finally, my thanks to my mentor, Surrendra Gangadean, who first asked me "What is the good?" and who has taught me to critically examine basic beliefs. As I wrote about subjects such as the good, and leading the examined life, I was aware of the special burden that these subjects present to an author. I have as much need as anyone else to live the examined life in pursuit of the good, and consequently any mistakes in these pages, or failures in application to life, are mine. I am thankful to acknowledge that there is a source of grace.