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.

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Christianity and Natural Law: An Introduction
edited by Norman Doe
Christianity and Natural Law

AN INTRODUCTION

EDITED BY

NORMAN DOE
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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.’ 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

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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. 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
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 Campion 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.  

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