

NATURAL LAW AND THE NATURE OF LAW

This book provides the first systematic, book-length defence of natural law ideas in ethics, politics and jurisprudence since John Finnis's influential *Natural Law and Natural Rights*. Incorporating insights from recent work in ethical, legal and social theory, it presents a robust and original account of the natural law tradition, challenging common perceptions of natural law as a set of timeless standards imposed on humans from above. Natural law, Jonathan Crowe argues, is objective and normative, but nonetheless historically extended, socially embodied and dependent on contingent facts about human nature. It reflects the ongoing human quest to work out how best to live flourishing lives, given the natures we have and the social environments we inhabit. The nature and purpose of law can be adequately understood only within this wider context of value. Timely, wide-ranging and clearly written, this volume will appeal to those working in law, philosophy and religious studies.

JONATHAN CROWE is Professor of Law at Bond University. He is the author or editor of several books, including *Legal Theory* (3rd edn, 2019) and *Research Handbook on Natural Law Theory* (2019). His work has appeared in leading international journals, including the *Modern Law Review*, the *Oxford Journal of Legal Studies*, *Jurisprudence*, *Ratio Juris* and *Law and Critique*.

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Jonathan Crowe
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JONATHAN CROWE
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Contents

<i>Preface</i>	<i>page</i> vii
Introduction	i
PART I NORMATIVE FOUNDATIONS	13
1 Normative Inclinations	15
2 Theorising Human Goods	35
3 Acting for Reasons	58
4 The Common Good	85
5 Rights and Freedoms	99
6 The Role of the State	116
PART II THE NATURE OF LAW	135
7 The Natural Law Thesis	137
8 Law as an Artifact Kind	156
9 The Function of Law	169
10 Law without Authority	182
11 Contextual Interpretation	196
12 The Value of Integrity	224
Conclusion	241
<i>Works Cited</i>	247
<i>Index</i>	259

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[More Information](#)

Preface

This book is about the nature of law. It is also, however, about the nature and conditions of human flourishing. I argue that these two topics are inextricably related. Law is best understood as a kind of artifact with the purpose of marking the boundaries of social conduct. However, the reasons for having law in the first place – as well as the ways in which it succeeds or fails in its function – can be understood only against the normative backdrop of human values and social institutions. Law, viewed from this perspective, becomes a set of communal guidelines for the pursuit of human fulfilment, rather than a collection of rules imposed from above. Any adequate descriptive theory of law must accommodate this wider viewpoint.

This picture of law is illustrated by the book's cover art. Jean-Frédéric Bazille's *Porte de la Reine at Aigues-Mortes* (oil on canvas, 1867) shows an assortment of people going about their everyday tasks in the shadow of a medieval wall. The wall, however, remains permeable, despite its formidable appearance, as illustrated by the opening with light spilling through. This permeability augments, rather than diminishes, the wall's function as a boundary marker. It enables the local residents to incorporate the boundary into their lives, rather than viewing it as an impediment to their individual and collective life plans. Furthermore, although the wall dominates the painting with its sheer size, it is the people in the foreground who draw the eye. The true law, we might say, is not over there, but among us.

Many people have helped me to write this book. I am grateful to my colleagues in the Faculty of Law at Bond University and the Law School and Philosophy Department at the University of Queensland for their support over many years of research, writing and refinement. Some early and late work on the book was undertaken during my time as a visiting scholar in the Philosophy Department at Georgetown University and the Government Department at the University of Texas at Austin. I thank my

colleagues there for their hospitality. Draft chapters were presented to audiences at the University of Auckland, Georgetown University, McMaster University, Monash University, the University of Melbourne, the University of New South Wales, the University of Queensland and the University of Sydney, as well as the meetings of the Australasian Society of Legal Philosophy and the Australasian Association of Philosophy. I thank the participants for their helpful feedback.

I am indebted to Sophie Grace Chappell and Gary Chartier for their detailed notes on a draft manuscript. I also recall valuable comments from Jim Allan, Niharika Ahuja, Nick Aroney, Kit Barker, Cicely Bonnin, Mikayla Brier-Mills, Tom Campbell, Peter Cane, Alice Dalziel, Margaret Davies, Maks Del Mar, Ken Ehrenberg, Patrick Emerton, Chris Essert, Rachael Field, Nick Gaskell, Eric Ghosh, Maurice Goldsmith, Jeff Goldsworthy, Ross Grantham, Matthew Harding, Heidi Hurd, Radha Ivory, Barbora Jedličková, Andrew Johnston, Matthew Kramer, Martin Krygier, Julian Lamont, Constance Youngwon Lee, Judy Lichtenberg, Denise Meyerson, Rob Mullins, Mark Murphy, Hillary Nye, Suri Ratnapala, Arie Rosen, Kristen Rundle, Tim Sellers, Dale Smith, Peta Stephenson, Michael Stokes, Kevin Toh, Lisa Toohey, Kevin Walton, Lulu Weis, Robin West and Kylie Weston-Scheuber. I am sure there are others whom I have forgotten. They have my apologies, as well as my gratitude.

A few other contributions deserve special acknowledgment. Cicely Bonnin remains, as always, my most trusted friend and advisor. I am constantly inspired by her passion, determination and commitment to intellectual enquiry. I thank my parents-in-law, Barbara and Geoffrey Bonnin, in whose home the opening chapters of this book were written, and my aunt- and uncle-in-law, Liz and David Bogard, in whose home I finalised the manuscript. Finally, I thank my parents, Marilyn and Andrew Crowe, who imparted to me the sense of moral integrity and love of wisdom that I hope are reflected in these pages. This book is dedicated to them.

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Preface

ix

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