

## 1 Historical Introduction

Natural law theory has a rich and variegated history, richer and more variegated, perhaps, than that of other ethical theories in the Western tradition. This is because of its longevity and its predominance, moreover, until the early modern period. The idea that ethical norms, and specifically ethical laws or binding injunctions – whether of a positive or a negative (viz. prohibitory) kind – are grounded, ultimately, in nature (or, more specifically, in natural forms or essences) stretches back at least to Plato. It is in the Platonic dialogues that we encounter the notion that human conduct, if it is to be rightly ordered, must be *kata phusin*, that is, ‘according to nature’, or at least not *para phusin*, ‘against nature’. The most explicit claims to this effect are put in the mouth of Callicles, who believes that ‘nature itself reveals that it’s a just thing for the better man and the more capable man to have a greater share than the worse and the less capable man’ (*Gorgias* 483d). More explicitly, he holds that great military commanders like Xerxes act ‘in accordance with the nature of what’s just – yes, by Zeus, in accordance with the law of nature, and presumably not with the one we institute’ (*Gorgias* 483e). Here we have the sophistic distinction between nature (*phusis*) and mere human law or convention (*nomos*),<sup>1</sup> but with the key innovation that human law is now properly subordinate and answerable to a law inscribed in nature. That is, we encounter, arguably for the first time, the idea that nature embodies not merely an array of systematically structured events and regularities, with no significance for human action, but also a definitive normative source, whose ends or purposes can be discovered and, indeed, must be discovered – and followed – in order that human life go well.<sup>2</sup>

Plato introduces the idea, then, that being ‘according to nature’ is not, primarily, what today would be called a purely factual or empirical or descriptive notion but something essentially normative and hence which bears intimately on practice.<sup>3</sup> This marks a break with the Sophists, for whom *nomos* and *phusis* were logically and metaphysically independent: ‘law’ pertaining exclusively to the human sphere, whereas ‘nature’ pertained to the whole world. The

<sup>1</sup> For the Sophists, viz. Socrates’ main antagonists, nature operated in the same way throughout the *kosmos*, or world order, whereas law – construed as human, positive law – varied with particular cultures and their conventions. For more on the Sophists and the *nomos/phusis* distinction, see Barney (2006).

<sup>2</sup> Ironically, Callicles has often been labelled an ‘immoralist’. Brian Leiter, for example, characterises Nietzsche as a devotee of ‘Callicleanism’, namely the doctrine that the strong or powerful should dominate the weak (see Leiter 2002, esp. 52–3, 145–6). The salient point here, however, is that, whatever the *content* of Calliclean norms, their *form* is that of natural law.

<sup>3</sup> NB Callicles: ‘crowd-pleasing vulgarities that are admirable only by [human] law and not by nature’ (*Gorgias* 482e); ‘While Polus meant that doing it is more shameful by [human] law, you pursued the argument as though he meant by nature’ (*Gorgias* 483a); ‘all our [human] laws that violate nature’ (*Gorgias* 484a).

trouble is that Plato offers no detailed, philosophical unpacking of *how* norms are grounded in nature. Worse, when it comes to the *Republic*, we are presented with a metaphysical theory that locates the ultimate source of all normativity in an entirely non-empirical, non-natural and transcendent realm, namely the realm of the Forms. In this way, Plato not only fails to elucidate the incipient idea of a natural law; he constructs a metaphysical framework which precludes ethical laws' having a natural foundation – as opposed to a natural embodiment – in the first place. As Hans Kelsen puts matters,

The model after which positive law is to be fashioned – whether in general or individual norms – are not some norms immanent in the nature of empirical reality, but the idea of justice which is contained in the [Form] of the good . . . In its application to positive law Plato's doctrine of [Forms] is the exact opposite of a doctrine of natural law founded on observable facts of empirical reality. (Kelsen 1960: 64)

As a consequence, although Plato could be said to have inspired the Western tradition of natural law theory, he cannot be said to have initiated it.<sup>4</sup> Indeed, his commitment to what could be called 'normative transcendentalism' (or simply 'Platonism') placed a significant obstacle in its path. It fell to his student, Aristotle, to remove this obstacle.

Aristotle's great achievement, for our purposes, is to have taken seriously Plato's gestures toward a natural law while, simultaneously, not only dismantling Plato's normative transcendentalism but also replacing it with a naturalistic metaethics of his own.<sup>5</sup> This dismantling can be seen most directly in book 1, chapter 6 of the *Nicomachean Ethics* (*NE*), where Aristotle targets Plato's Form of the Good. In a series of quick-fire arguments, he accuses Plato of hypostatizing a normative quality – namely, goodness – which does not belong properly in a transcendent realm, *qua* some absolutely superordinate entity, but functions rather as a relational property within the everyday, empirical world.<sup>6</sup> In short, goodness is, according to Aristotle, a normative quality immanent within things (or 'substances', *ousiai*) – to the degree, that is, they realise their specific form or essence. An acorn, for instance, has the form, essence or nature of an oak tree and is good – or 'perfect', 'complete', *teleios* – to the extent it realises or actualises that nature. An acorn that journeys toward maturity, therefore, but gets stunted in its development – owing (for example) to rocky ground or lack of

<sup>4</sup> Here I am in clear disagreement with John Wild's *Plato's Modern Enemies and the Theory of Natural Law* (Wild 1953), which argues that Plato propounds a genuine and systematic natural law ethics.

<sup>5</sup> Here I am in agreement with Edward Feser, who contrasts 'Platonic teleological realism' with 'Aristotelian teleological realism'. See Feser (2019b: 417). Cf. Oderberg (2007: 62–85).

<sup>6</sup> For a critique of the Platonic Form of the Good, along Aristotelian lines, see Williams (2003).

nourishment – is, *pro tanto*, defective or deficient or bad of its kind (albeit clearly through no ‘fault’ of its own). One that, by contrast, completes its journey to maturity, becoming a suitably tall, fruitful, adult oak tree, becomes as good as an oak tree can be. In this way, Aristotle’s immanent, naturalistic conception of normativity is embedded in a network of interlocking metaphysical notions: notions such as matter and form, potentiality and actuality, essence and accident, natural function and natural end.<sup>7</sup> While these have their origin in Plato, they are endowed with conceptual clarity, determinacy and systematicity owing to Aristotle.

What has all this to do with natural law? Although Aristotle rarely refers explicitly to a ‘natural law’ or ‘law of nature’ (*nomos phuseōs*), he puts in place an ethical-cum-metaphysical conceptual scheme which, as I will explore further in what follows, is central to most subsequent natural law theory. At the heart of that scheme is the notion that norms are integral to nature, where nature is articulated through a series of (hierarchically arranged) species and where to each species there corresponds a natural function or *ergon*. As Aristotle elucidates in *NE* 1.7, at the bottom of the natural hierarchy there exists plant life,<sup>8</sup> with its relatively rudimentary (though often complex) vegetative modes of functioning. Above this, there exists animal life, which, although it incorporates various vegetative functions, adds other, higher functions, which afford the capacity both to perceive and to locomote; and above this, there exists human life, a type of animal life but one which adds to vegetation, perception and locomotion what Aristotle considers a unique mode of functioning within the animal kingdom: viz. rational (*logistikē*) functioning.<sup>9</sup> The latter depends on the presence of mind (*nous*), which has both practical and purely intellectual functions. The reason this hierarchy of life forms is salient for normativity is that, to each species, there is indexed a peculiar set of goods. A horse, for example, is completed or fulfilled differently to an acorn, while humans find their good in activities which depart from those subtending the good of horses. One could say, accordingly, that – for the Aristotelian – goodness is an *objective*

<sup>7</sup> For an elaboration of Aristotelian metaphysics, by scholars practised in anglophone analytic philosophy, see Oderberg (2007) and Feser (2014). For the application of Aristotelian metaphysics specifically to normativity, and more particularly to ethics (viz. normativity within the human realm), see Oderberg (2020). Central here is the idea of ‘final’ or end-directed explanation, the most salient among Aristotle’s four ‘causes’ (*aitiai*).

<sup>8</sup> Aristotle speaks not of ‘life’ (*bios*) here but rather of ‘soul’ (*psuchē*). Owing, however, to the post-Cartesian conception of the soul as an immaterial, separate, mental substance, I think it less misleading to speak of ‘life’ in this context. (‘Plant soul’ verges on solecism, at least in modern English.)

<sup>9</sup> For Aristotle, human rationality is not unique *simpliciter*, since the divine is also rational (and supremely so). For the purposes of this Element, however, I will, as I explain in Section 2, bracket Aristotle’s theology.

yet also an inescapably *relative* feature of living things: relative, that is, to their species essence.<sup>10</sup>

Now that we have gained a foothold, as it were, in Aristotle's metaphysics of goodness, it is time to look (as we did with Plato) at those passages within his work which refer most explicitly (and seminally) to natural law. While Aristotle, like Plato, speaks liberally of dispositions, actions and practices being *kata* or *para phusin*, that is, according to or against nature, he refers to 'natural law' as such only in *Rhetoric*, book 1, chapter 13. The passage in question is worth quoting at length, since it not only summarises Aristotle's view of natural law *per se*; it will also form the starting point of my own, constructive reflections on natural law in Section 3. It runs as follows:

Particular law is that which each community lays down and applies to its own members: this is partly written and partly unwritten. Universal law is the law of nature. For there really is, as everyone to some extent divines, a justice and injustice that is naturally common [*phusei koinon*] to all, even to those who have no association or covenant with one another. It is this that Sophocles' Antigone clearly means when she says that the burial of Polyneices was a just act in spite of the prohibition: she means that it was just by nature. 'Not of today or yesterday it is, but lives eternal: none can date its birth'. And so Empedocles, when he bids us kill no living creature, says that doing this is not just for some people while unjust for others, 'Nay, but an all-embracing law, through the realms of the sky unbroken it stretcheth, and over the earth's immensity'. (*Rhetoric* 1.13, 1373b4–17)

Aristotle finishes with the claim that 'Alcidamas says the same in his Messeniatic Oration', a gesture toward a view preserved by the scholiast, viz. that 'nature has made none a slave'. What does this passage, as a whole, tell us about Aristotle's conception of natural law?

First, he understands natural law as distinct from all positive or statute ('particular') law, because it is universal in its application. It holds, that is, between all humans, independently of any particular, contingent 'association' they may join or agreement they may draw up (see 1368b7–9). This is highlighted by Empedocles, who emphasises the 'all-embracingness' of natural law,

<sup>10</sup> Implicit here is the assumption that goodness – and badness, or in the older idiom, evil – inhabits or is inherent in the whole (at least living) world, not merely the human world. For those who assume (in line with the canons of anglophone analytic philosophy) that there are no *bona fide* values or norms beyond the sphere of human choice and practice, this appears odd. That value or normativity extends beyond the human sphere, however, is a key tenet of natural law theory, one to which I shall return. For more on the notion of objective yet relative goodness, see Martin (2008). (It is worth pointing out, in addition, that the relativity at stake here does not preclude a wider and deeper absolutism. For species-goods can be compared and themselves constitute an absolute hierarchy: a plant's life, for instance, is freighted with less intrinsic value than a human life – whatever condition they are in.)

suggesting it applies even beyond inter-human relations. Secondly, natural law is eternal and unchanging (cf. 1375a31–b2). Thirdly, Aristotle implies that natural law overrides, at least morally, any particular state law – its being universal and eternal indicates, in other words, its higher authority. This is reflected, notably, in Antigone’s adherence to a natural justice that trumps the injustice (or, more specifically, impiety, viz. desecration of family duty) implicit in Creon’s decree against burying her brother, Polyneices; and it is implied by Empedocles’ metaphor of unimpeachable height, along with Alcidamas’ bracing challenge to the ubiquitous institution of slavery. Along at least three dimensions, then – space, time and authority – Aristotle presents the natural law as superior to human-made or human-instituted law. It demonstrates an irrefragably wide spatio-temporal reach, which renders positive or particular law parochial by comparison. Furthermore, it is, by definition, superordinate to such law. Precisely because it is *not* formulated by humans – even though humans can grasp it – and, moreover, remains indelible within the nature of things, it has a claim on our respect which outstrips that of positive law.<sup>11</sup>

If this were all Aristotle had to say about natural law, one might place him at the inception of the natural law tradition. As with Plato, though, there are countervailing elements within his overall view. One reason to doubt he is a genuine natural law thinker lies in his markedly ambiguous attitude to the universality of the natural law. On the one hand, Aristotle views justice and friendship as coextensive, friendship existing ‘by nature . . . for those of the same kind as each other, and most of all for human beings, whence we praise “lovers of humans” (*philanthrōpoi*). And anyone could see on their travels how familiar (*oikeios*) and dear (*philos*) every human is to human’ (*NE* 1155a16–22). He holds, moreover, that it is natural ‘not to hunt human beings for food or sacrifice’ (*Politics* 1324b22–41). On the other hand, Aristotle suggests that only (male) Greeks are fully human, and hence unfit for enslavement (*Politics* 1255a28–9); only Greek citizens are, for him, potential guest-friends, *xenoi* (*NE* 1161b11–16; cf. 1156a31). Furthermore, the mad and those he calls ‘savages’ (*thēriōdeis*) are excluded from ethical concern, and he tends to view many, if not all, barbarians (*barbaroi*, i.e. non-Greeks) as savages.<sup>12</sup> So, even if Aristotle maintains that the natural law is eternal and unchanging, real doubts surround his commitment to its universality; and if the normative content of positive or legal (or what in *NE* 5 he calls ‘particular’) justice not only happens but also ought to have force only within the borders of the Greek

<sup>11</sup> Not that positive law is somehow otiose for Aristotle. As he makes clear in *NE* 5, positive law is a valuable, necessary and central feature of a just state. It is rather that positive law is answerable, always and everywhere, to natural law, gaining its authority by conformity to the latter.

<sup>12</sup> See *NE* 1149a9–11, 1148b21–4; for *thēriōdēs* as a category, see 1145a17–33.

*polis* or city-state – and if, moreover, such justice not only has but also ought to have a highly restricted scope even within those borders – it seems that natural law’s universality has, in Aristotle’s work, little more than rhetorical force.<sup>13</sup>

I suggest, then, that there is a significant disparity between Aristotle’s metaphysics on the one hand, which is manifold in its detail and proved highly influential on subsequent natural law theory, and his explicit reflections on natural law on the other, which are both disappointingly sparse and struggle to overcome internal inconsistency. True, in *NE* 5.7, Aristotle claims that political justice has two parts or aspects: one natural, the other conventional. As he contends,

natural is what everywhere has the same power (*dunamis*), and not by being deemed so or not; conventional (*nomikos*) is what, to start with, makes no difference whether it is this way or that, but whenever they settle it, does make a difference. For example, to ransom at a mina, or to sacrifice a goat but not two sheep . . . i.e. matters of decrees. (1134b19–24)

There is no evidence, however, that this invocation of ‘natural’ justice is a recapitulation of Aristotle’s view in *Rhetoric* 1.13, to the effect that, as he puts it at *NE* 1134b24–5, ‘that which is by nature is unchangeable and has everywhere the same force (as fire burns both here and in Persia)’. Instead, natural justice appears in this context to be merely intra-political, within the political community or *koinōnia*, and not, as in *Rhetoric*, trans-political; and this is because Aristotle is simply marking a (relatively uncontroversial) contrast between laws that don’t need any (initially more or less arbitrary) practical specification and those that do.<sup>14</sup> This perfectly legitimate and intuitive contrast does not require a natural law that holds ‘everywhere’ – in the ambitious sense of ‘in and for *any* community’.

So, although Aristotle does affirm certain practices as of universal value, and others of universal disvalue,<sup>15</sup> overall his theory of natural law remains *in nuce*.

<sup>13</sup> Aristotle might argue that only Greek citizen males qualify as fully human, and thus that only they count as full or proper subjects of justice. Indeed, this argument surfaces in his treatment of slavery, where he characterises slaves ‘by nature’ as rationally deficient and, consequently, as in need of a master (see *Politics* 1). This is widely acknowledged as a form of rationalisation, however (Aristotle’s defence of ‘natural’ slavery is, it should be noted, in tension with *NE* 1161a32–b8, which distinguishes slave *qua* slave from slave *qua* human.) For Aristotle on slavery, see Deslauriers (2003), Heath (2008) and Leunissen (2017), esp. 53–7, 161–4.

<sup>14</sup> For example, refusing to support children when young or parents when old is ethically unacceptable for any Greek. By contrast, driving on the left or right is a matter of merely conventional justice (neither is intrinsically good and either is binding only when made a matter of law).

<sup>15</sup> An example of the former is Aristotle’s ‘polity’, or mixed regime, whose constitution he characterises as best everywhere by nature (see *Politics* 4.11; cf. *NE* 5.7, *Politics* 7). Examples of the latter are adultery and theft (see *NE* 1107a8–12). Clearly, Aristotle does affirm virtue (*aretē*) as of universal value. Yet not only can *barbaroi* not instantiate the virtues; Aristotle rarely articulates virtuous conduct in terms of laws or rules (NB *NE* 2.2, 1103b34–104a11).

It is only with the Stoics that we find an explicitly and consistently cosmopolitan theory of natural law, in the literal sense that natural law norms have force beyond the Greek *polis* and apply, indeed, to the entire *kosmos*. Thus we find the Stoic Chrysippus asserting that ‘There is no other or more appropriate way of approaching the theory of good and bad things or the virtues or happiness than from universal nature and from the administration of the world’;<sup>16</sup> and Diogenes Laërtius holds that “to live according to virtue” is equivalent to living according to the experience of events which occur by nature, as Chrysippus says in book 1 of his *On Goals* ... the goal becomes “to live consistently with nature”, i.e. according to one’s own nature and that of the universe’.<sup>17</sup> This un-Aristotelian emphasis on human nature as somehow enfolded within and answerable to cosmic nature goes along with another un-Aristotelian tendency, viz. a stress on moral law and, in particular, the ‘common law’ (*koinos nomos*). As Cicero reports the Stoic Laelius saying:

(1) True law is right reason, in agreement with nature, diffused over everyone, consistent, everlasting, whose nature is to advocate duty by prescription and to deter wrongdoing by prohibition ... (3) It is wrong to alter this law ... and it is impossible to abolish it entirely ... (4) There will not be a different law at Rome and at Athens, or a different law now and in the future, but one law, everlasting and immutable, will hold good for all peoples and at all times.<sup>18</sup>

With the Stoics, therefore, natural law theory comes into its own, entering a new and more dynamic phase. Gone is Aristotle’s parochial attachment to the Greek *polis*, with its limited horizons, and gone is his sidelining of law as a foundational ethical notion.<sup>19</sup> The Stoics affirm a natural law explicitly and often and hold that its norms apply universally (with no groups falling short of full humanity). Equally, however, these gains are accompanied by certain losses. At a textual level, these consist in the fragmentary and largely second-hand nature of our evidence for Stoic doctrine. More pertinently, the Stoics do not build on or elaborate but tend to bracket the fine-grained metaphysical scheme that Aristotle had inherited from Plato and then carefully systematised.

<sup>16</sup> From his *Physical Postulates*. See Long and Sedley (1987: 368–9, fragment 60 A).

<sup>17</sup> From his *Lives of the Eminent Philosophers*. See Inwood and Gerson (2008: 114, fragment 88).

<sup>18</sup> From his *Republic*. See Long and Sedley (1987: 432–3, fragment 67 S). This passage is continuous with Cicero’s frequent reference to a ‘law of nature’, or *lex naturalis*, most notably in *Concerning the Republic* (*De Re Publica*) and *Concerning the Laws* (*De Legibus*). See Cicero (1998).

<sup>19</sup> Aristotle spends much time in the *Politics* on positive law, and in *NE 5* he articulates the virtue of justice partly in terms of rules of ‘equality’ (*isonomia*). When it comes to his ethical theory, though, he places virtue front and centre, with laws, rules and norms of practice playing an inconspicuous and subordinate role.

Largely absent, in other words, are concepts like essence, potentiality, species and genus, prime matter and substantial form. It is as if the Stoics' theoretical reliance on a cosmic or common nature (*phusis koinē*), together with their foregrounding of a 'law' commensurate with that nature, serves more or less to displace Aristotle's focus on different orders of natural being, along with his detailed unpacking of their metaphysical infra- and superstructure. In this way, the Stoics' demonstrably more adequate recognition of the natural law's universality comes at the expense of Aristotle's hard-won metaphysical sophistication. Indeed, the Stoics forgo the latter only to replace it with a comparatively coarse-grained and implausible conceptual scheme. How so?

What I have in mind here, primarily, is the way the Stoics treat nature, (right) reason, God (or Zeus) and even virtue as substantially interchangeable concepts. Take, for instance, the continuation of the above-cited passage from Diogenes Laertius:

Thus Zeno first, in his book *On Human Nature*, said that the goal was to live in agreement with nature, which is to live according to virtue . . . doing nothing which is forbidden by the common law, which is right reason, penetrating all things, being the same as Zeus, who is the leader of the administration of things. And this itself is the virtue of the happy man and a smooth flow of life, whenever all things are done according to the harmony of the *daimōn* in each of us with the will of the administrator of the universe.<sup>20</sup>

Or take Cicero:

Law is the highest reason, implanted in Nature, which commands what ought to be done and forbids the opposite . . . the origin of Justice is to be found in Law, for Law is a natural force; it is the mind and reason of the intelligent man. (*De Legibus* 1.18–19)

Or as Plutarch quotes Chrysippus:

one can find no other starting point for justice except the one derived from Zeus and that derived from the common nature . . . there is no other, and certainly no more appropriate, way to approach the discussion of good and bad things or the virtues or happiness, [except] on the basis of common nature and the administration of the cosmos.<sup>21</sup>

Admittedly, this conceptual lability stems from Stoic doctrine, which holds that nature is identical to God, God is tantamount to his reason and virtue reduces to the practical exercise of reason. Yet it is precisely this series of elisions – or at

<sup>20</sup> From his *Lives of the Eminent Philosophers*. See Inwood and Gerson (2008: 114, fragment 88).

<sup>21</sup> From his *On Stoic Self-Contradictions*. See Inwood and Gerson (1997: 253, fragment II-113).



least what appear such, from a Platonic or Aristotelian perspective – which renders that doctrine insufficiently informative.<sup>22</sup>

It is only with Thomas Aquinas, in the thirteenth century, that the Platonic, Aristotelian and Stoic contributions to natural law theory are fully synthesised, and to vastly influential effect. The *locus classicus* of Aquinas' analysis of natural law is *Summa Theologiae* I–II, question 94. Like the Stoics, he avoids Aristotle's ambiguity over the universality of natural law. Indeed, in article 4, entitled 'Whether the Natural Law Is the Same in All Men?', he argues, in detail, that 'The natural law is common to all nations'. He qualifies this claim, however, by maintaining that, although 'the natural law, as to general principles, is the same for all, both as to rectitude and as to knowledge . . . as to certain matters of detail, which are conclusions, as it were, of those general principles . . . in some few cases it may fail'.<sup>23</sup> The reasons for this 'failure' are that, as to 'rectitude' (i.e. normative content), a practically rational principle may have exceptions in certain circumstances (e.g. one should return borrowed goods, but not if they will be used for purposes of sedition); while, as to knowledge, the natural law may be obscured by passions or evil habits. In article 5 – entitled 'Whether the Natural Law Can Be Changed?' – Aquinas affirms the eternity of the natural law, though here, too, he enters qualifications. One of these is that, through God's command, 'certain detailed proximate conclusions drawn from the first principles [of natural law]' may be changed in specific cases – for instance, taking (what appears) someone else's property ceases to be theft, if God designates it to be taken.<sup>24</sup> Further, in article 6 – entitled 'Whether the Law of Nature Can Be Abolished from the Heart of Man?' – Aquinas argues that the natural law is indelible as to its first and most general precepts but not as to its secondary and derived precepts, which can be rendered obscure (once again, by passion or habit).

From this brief outline, it is clear that, in at least one, foundational, respect, Aquinas' theory of natural law marks a radical departure from the Graeco-Roman theories we have looked at so far. This departure consists not in the fact that Aquinas' theory is embedded in a theistic framework: Plato, Aristotle and

<sup>22</sup> Hegel makes a similar criticism of Stoicism in his *Phenomenology of Spirit*: 'The True and the Good', he writes, 'wisdom and virtue, the general terms beyond which Stoicism cannot get, are . . . in a general way no doubt uplifting, but since they cannot in fact produce any expansion of the content, they soon become tedious' (Hegel 1977: 122, §200). (I thank Robert Stern for this reference.) For conspectuses of the Stoics on natural law, see Klein (2012) and Brillmann (2019).

<sup>23</sup> It is worth noting that, for Aquinas, the first and most basic principle of practical reason is 'the good is to be done and pursued, and evil to be avoided'. This foundational principle is absolute and unchangeable. For a seminal paper on the 'first principle of practical reason', see Grisez (1965).

<sup>24</sup> Cf. Simon (1965: 146–7) and Crowe (1977: 285).

the Stoics are, after all, theists (albeit of different stripes).<sup>25</sup> It consists, rather, in the fact that Aquinas is a monotheist and, more particularly, a Judaeo-Christian monotheist. He is writing, moreover, within a tradition of fine-grained philosophical theology, which, however rigorous in its philosophical method, presupposes strong theological axioms – hence his two most seminal works are entitled *Summa Theologiae* ('Treatise on Theology') and *Summa contra Gentiles* ('Treatise against the Gentiles'). What follows at the level of substantive theory is that Aquinas must not only deny the pantheism of the Stoics but also repudiate the vague, retiring theism of Plato and Aristotle, who refer (seemingly indifferently) to both 'god' (*theos*) and 'gods' (*theoi*). Aquinas' God is a God who, unlike the god of the Stoics, transcends the world and, unlike the divinity of Aristotle, is a personal God who issues commands and gets involved directly in human life (not by attracting people merely as an impersonal object of love).<sup>26</sup> While Aquinas' God is, like humans, rational, His rationality is of a transcendent – and hence, in significant ways, unknowable – order. Indeed, because of this, and because of God's omnipotence, Aquinas envisages Him as intervening in the human, moral, order in ways alien to and perhaps unintelligible for Greek or Roman philosophers.

When it comes to the *structure* of Aquinas' natural law theory, it is, by contrast, thoroughly indebted to the Greeks, and especially to Aristotle's hierarchical and essentialist conception of living species. Indeed Aquinas presents human nature, and the goods to which it is ordered, as a rational summation and completion of the natural functions – both vegetative and animal – found in lower species. Thus, as he explains in the pivotal *Summa Theologiae* I–II, question 94, article 2:

in man there is first of all an inclination (*inclinatio*) to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law. Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to the natural law, 'which nature has taught to all animals', such as sexual intercourse, education of offspring and so forth. Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination

<sup>25</sup> For an argument that Aristotle is closer to Aquinas in this respect than usually recognised, see Angier (2019).

<sup>26</sup> For more detail on Aristotle's theism, see Mirus (2004, 2012).