

THE METAPHYSICAL FOUNDATIONS OF NATURAL LAW

David S. Oderberg

Universal law is the law of nature. For there really is, as everyone to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other.¹

1. Introduction

One of the defining features of contemporary moral philosophy in nearly all its guises is the lack of serious concern for metaphysics – not as a discipline in itself, but as a necessary foundation for ethics. One should not mistake the fashionable project of ‘evolutionary ethics’ for an attempt to tie morals to metaphysics, rather than seeing it more accurately as a programme for burying ethics in the quicksand of current biological fancy. Nor should one, for instance, see in existentialism a serious concern for metaphysical underpinnings rather than what amounts to no more than a series of denials of the truths that used to undergird moral thinking.² Again, one sees in the various forms of liberal ethics that dominate the academy – consequentialism, contractualism, deontology – an almost exclusive concern with agency and practical reason, seemingly divorced from wider ontological considerations. So-called ‘virtue ethics’, of course, has a more metaphysical cast, but it cannot serve as an ethical theory in its own right; to do so deforms the very ontology that ethics requires.

Of all ethical theories, natural law theory has, both conceptually and historically, been the most explicit about its metaphysical foundations – and for good reason. One might think that the reason is simply this: it is

impossible to know how the world ought to go, more specifically how one ought to act (or what makes a state of affairs or action good, or worthwhile, praiseworthy, and so on) without a prior knowledge of how the world *is*. For how could one otherwise know whether the ethical standards the theorist posits are in any way relevant to, or meetable by, reality as it is? At the very least, knowledge of how the world is gives us knowledge, or at least some insight into, what the possibilities are, and ethics is concerned with possibilities for action, ways in which an agent may shape the world to fit the standards set. The point is not merely one regarding knowledge of particular circumstances in a given case, but knowledge of generalities about reality as a whole and humanity in particular.

This sort of understanding of the relevance of metaphysics to natural law theory is, however, radically mistaken. For it is to take on the notorious ‘fact-value distinction’ that has poisoned contemporary moral theory and against which the natural law theorist so firmly sets his face.³ Natural law theory does not advocate a kind of inventory-taking of the ‘bare facts’, including the bare truths of reality in general and of humanity in particular, from which the theorist can then read off the set of moral truths. Metaphysics is not enlisted by natural law theory to provide the descriptive premises from which normative conclusions are supposed to flow. On the contrary, natural law theory sees normativity as built into the very fabric of reality in the first place. There is no such thing as (to use a phrase with opportune recent resonance) a ‘value-free’ catalogue of the facts on which the system of morality rests. Rather, natural law theory

finds in the deliverances of metaphysics the very moral order the theory embraces.

There are very few other theories that take as seriously as does natural law theory the intimate connection between metaphysics and morality. A famous example is Kant's deontological system. One might be tempted also to cite Derek Parfit's heavily metaphysical version of extreme consequentialism,⁴ but in the latter case although the particular cast of his ethical theory is based on his metaphysics of personal identity, Parfit is a firm adherent of the fact-value distinction: consequentialism is by no means built into the fabric of his ontology, though he might like to think so. Natural law theory stands out as the pre-eminent system wedded to a firm view of the nature of reality and of the possibility of reality's yielding up discoveries into the moral order by which man must live.

Nevertheless, what has come to be known as the 'new' natural law theory, represented by Germain Grisez, John Finnis, Joseph Boyle and their followers, is remarkable for the scarcity of its explicit reliance on metaphysical enquiry. This is not to say that the new natural law theory is not based on at least a partially worked-out, implicit ontology; only that it displays what I have elsewhere called an 'agent-centred' approach to natural law theory, rather than a 'world-centred' approach.⁵ Typical of the Grisez-Finnis-Boyle approach, as I will sometimes call the new natural law theory, is this comment in their important 1997 overview: 'One way to argue for the first principles of practical knowledge is by considering actions and seeking their reasons. We identified this line of argument...as the proper method of locating the basic goods, to which the principles of

practical knowledge direct actions.’⁶ Whilst not denying the importance of metaphysics in general, and in particular the metaphysics of human nature, the particular cast of the Grisez-Finnis-Boyle approach is one in which the theorist begins with practical reasoning, seeking to uncover the ultimate ends that make action intelligible. Now this is of course reasonable in and of itself, but it is insufficient to give natural law theory a proper theoretical grounding. There is in this approach a hint of undiminished presupposition of the fact-value distinction, and it seems as though Grisez-Finnis-Boyle do indeed presuppose it: for in the same paper, the authors explicitly assert that their theory ‘departs from classical models...by taking full account of the fact that the moral *ought* cannot be derived from the *is* of theoretical truth – for example, of metaphysics and/or philosophical anthropology’. They go on to state what looks like nothing other than the fact-value distinction, concluding: ‘Therefore, the ultimate principles of morality cannot be theoretical truths of metaphysics and/or philosophical anthropology.’⁷

What is troubling about this position is the interpretation of theoretical and metaphysical truth implicit in it, one that derives directly from the Humean, positivistic approach to facts and values. By contrast, the proper approach to metaphysics from the natural law viewpoint is not one of seeking out an illusory inventory of value-free truths, nor merely one of systematizing the assembled data of philosophical anthropology – relevant though that is to the natural law project, as accepted by Grisez-Finnis-Boyle themselves. Nor is it only the task of seeking the deepest possible understanding of human nature, as vital as that task is, which

again the new theorists readily accept. Laying the metaphysical foundations of natural law theory requires as well, and as the starting point of enquiry, the addressing of basic ontological questions about the nature of reality, non-human as well as human. Without a foundation of this sort, natural law theory risks floating free of substantive moorings and acquiring an excessively subjective and first-personal methodology. It is to these primary questions that I now turn.

2. Cosmic law and order

The name ‘natural law theory’ does not have ‘law’ in it for nothing. In the words of Seneca, ‘the world is guided by providence’ and there is a ‘guiding hand’ behind the ‘great work’ of the universe which ‘proceeds from the command of eternal law’ (*aeternae legis imperio*).⁸ According to Cicero, quoting Cleanthes, just as someone entering a house would suppose, from the orderly arrangement of things, that a person superintended their arrangement and was obeyed (*qui praesit et cui pareatur*), a fortiori the vast movements and orderly succession of phenomena so numerous and mighty must be governed by some intelligence.⁹ One could multiply quotations, but the point here is not to make a claim about the overall attitude of the ancients toward the government of the universe or lack thereof, but that there is an idea of *law* in natural law theory, that the term ‘law’ is not a mere linguistic superfluity or rhetorical flourish.

St Thomas Aquinas famously defined law as ‘an ordinance of reason for the common good, made by one having charge of the community, and

promulgated.’¹⁰ The notions of ordinance and promulgation are central to the natural law conception of cosmic order. An ordinance is variously an act of commandment or a thing commanded; there is no risk of ambiguity as long as we are clear in a given context whether we are speaking of the object or the act, though it is often not necessary for the purpose of argument to make the distinction. Promulgation is an act of notification or publication of a law for the sake of its subjects. How do these concepts, with which we are familiar from positive law, and which natural law theory takes as central, apply to what might be called cosmic law, or natural law writ large?

Natural law theory is based on the idea of cosmic order. Part of this order is, of course, the order in human nature to which natural law theory characteristically appeals. But the order cannot stop there. The main reason for this yoking together of human and cosmic order is that morality precisely concerns man’s interaction with – reaction to, and behaviour towards – the world external to human nature. Morality is not only about man’s dealings with himself and with others, but his dealings with the extra-human world of objects, events, properties, states, and so on. (Here I include artefacts as part of the extra-human world, even though in a crucial sense artefacts are essentially linked to humans. At the same time every artefact has an aspect that is not essentially linked to humans, and so every artefact is, while human-centred in one respect, also not human-centred in another and so equally part of the extra-human world.) Actually this is not quite accurate: it is more exact to say that morality is only about man’s dealings with himself and others, but that it is impossible to isolate

those dealings from the extra-human world of objects, events, and the like. Again, we can say that man deals with himself and others *only through* the extra-human world. Every duty, every virtue, every right, every permission, is in some way directly or indirectly, partly or wholly, intrinsically or instrumentally, *about* things, events, states, processes, that are not human. For example, without an extra-human world how could one exercise temperance? Or honesty? How could one practise vices such as lust, or avarice? Consider every virtue, and you will see that the same applies, as it does to duties, rights, and other moral notions.

Now suppose that there were no cosmic order: that things in the extra-human world moved, behaved, and reacted in ways that could only be described as chaotic or random. Suppose, to take a toy example, that we lived in a world in which the only objects of actual or possible monetary or economic value were metals. Then suppose that gold randomly mutated into copper, silver into granite, iron into coal and coal into nickel, and so on. Suppose that gold nuggets randomly flew into the air, so that every time you tried to pick one up you could never know, even in principle, whether it would take flight and enter into orbit around Mars. Every time you tried to make a sheet of aluminium, you never knew, in principle, whether the necessary lump of bauxite would suddenly melt before your very eyes and slide down the nearest storm drain. And so on. In such a world, the actual and possible objects of monetary value behave utterly randomly or chaotically. What then for the virtues of thrift, generosity, honesty, prudence, and their corresponding vices? How on earth could one even go about learning them, let alone trying to practise them? Now

expand the objects of economic value to include paper, pork bellies, oil, and whatever economic object electrons are being used for at the moment, and you can see how exactly the same reasoning applies. If there were no ordered way in which electrons could be harnessed to give rise to derivatives, then there could be no derivatives fraud, and no such thing as a right to be compensated for such an act, or a duty to punish. In short, without order in the behaviour of objects in the extra-human world, there could be no practice of morality; and if there can be no practice of morality, there can be no morality.

So far, it might be thought that ethicists of all stripes can agree on this basic kind of order as a requirement of morality. In fact, though the kinds of random macroscopic occurrence described in the simple example above are obviously absent from our world, in a deeper sense much of contemporary moral theory is suffused with at least an implicit belief that the world is fundamentally random or chaotic in its behaviour. Think of existentialist ethics (and one does not have to be a card-carrying existentialist to have an existentialist ethic) and its commitment to the thought that the job of man is somehow to *make sense* of, or impose order upon, a deeply chaotic and inexplicable world. Any subjectivist morality is based on the same attitude:¹¹ think of Hume's claim that our beliefs about intrinsic order and regularity in the universe are at bottom irrational and can only be held by an act of faith. Hume of course recognized the existence of natural regularities – his whole theory of causation is based on it – but he did not regard them as intrinsic to, in the sense of a necessary feature of, the physical world.

But then it might be objected that natural law theory goes too far if it holds to *necessary* order in the world: for isn't it enough if there is order as a matter of brute fact? For natural law theory it is not enough, since mere brute order is an insufficient ontological support for *necessary* moral truth, the thought being that morality consists of necessary truths that obtain no matter what the state of the world. If those truths are objectively grounded in the nature of things – the fundamental tenet of natural law theory – then it is simply inconceivable that the nature of things, or to speak more neutrally the way things go, might be hostage to fortune in the sense of being open to chaotic development. Additionally, the very practice of morality requires necessary order, for otherwise how could an agent make rational plans concerning the fulfilment of his life? If there can be no rational certitude that the cosmos exhibits the stability and predictability inherent in necessary order, in what sense could an agent be rationally *guided* by it in his ethical decision-making? Looking at the matter in terms of theoretical economy, however, perhaps the natural law theorist does not need to appeal to necessary order, but simply to some sort of *extrinsic guarantee* that the cosmos will behave in a regular or ordered fashion, at least so long as there exist rational agents bound by moral law. Here I have in mind the theological principle that although God could annihilate immortal souls He is guaranteed not to do so. Maybe the same is true for the universe, that although it is not intrinsically necessarily ordered, it is ordered by a kind of *de facto* necessity, an extrinsic guarantee that it will not descend into chaos.¹²

The more probable opinion, I would argue, is that cosmic order is intrinsically necessary, and that the opponent of natural law theory would be mistaken to turn the argument on its head by asserting that the sort of ethical system mapped out by the theory is illusory because the world really *is* intrinsically disordered, random, or chaotic. I take this to be the default position of natural law theory's opponents: whereas in ancient days (two hundred years ago and for all recorded time before that) it was simply *obvious* that the cosmos was what its etymology said, namely ordered,¹³ we moderns simply cannot take the cosmos to have the order historically attributed to it. When the evolutionist George Gaylord Simpson famously stated the dogma that '[t]he meaning of evolution is that man is the result of a purposeless and natural process that did not have him in mind',¹⁴ he was thinking primarily of appeals to a divine source of purpose. But the thought is supposed to be reinforced by the idea that random genetic mutation gives rise, so biology currently holds, to organic development, and if this is true of life, which gives the appearance of some sort of order, how much more is it true of everything inorganic in the universe?

Yet there is no agreed definition of randomness among mathematicians or other scientists, whether within or across disciplines. Concepts such as equiprobability, inert uniformity, indeterminacy and more abound, some definitions are irreducibly epistemic and others are not. Yet without such agreement, how can we know whether we have found an instance of randomness? Even in quantum theory, where the 'gold standard' of randomness in nature is thought to be found, there is by no means a settled view as to whether, say, radioactive decay is genuinely

indeterministic, let alone random; and it must be remembered that indeterminism does not entail randomness. For instance, one of the standard ‘straw man’ attacks on free will consists in arguing that since the alternatives for human action are that it is either determined or random, and since free will would make it random, there cannot be free will – the assumption being that human action does not look like it displays characteristics of randomness. Yet the fallacy is in supposing that the lack of determinism given the existence of free will would mean that action was random rather than simply what it is, namely undetermined.

Everyone, of course, agrees on what randomness is not – it is an absence of order. Maybe a negative definition is all we can give, but that does not mean it corresponds to anything possible. We can, for instance, define a term ‘aspatiality’ as the putative property of being a material object and being unextended; but that does not mean anything could in fact *have* aspatiality, that it corresponds to a possible property of anything, though we have defined it as a kind of absence. Advocates of natural randomness, say in biology, should also beware of arguing circularly for the lack of order or regularity in the organic world from the existence of random genetic mutations, if the supposed randomness of such mutations is to be defined in terms of a lack of order or regularity. My own suspicion is that the concept of randomness is irreducibly epistemic, hence that mutations are called random only insofar as we have no theory of why and under what circumstances they occur. But that gives no succour to the advocate of real randomness, nor should biologists refrain from trying to

impose some sort of theoretical order on the apparent lack of regularity in genetic mutations.

If randomness is purely epistemic, then what really exists are only relative grades of order. The very fact that quantum theory is precisely a theory (whatever its truth value), captured in a complex set of equations, tells against the very idea that it encompasses real randomness (as opposed to indeterminacy). All of our best theories of the cosmos, from the microscopic to the macroscopic, involve systems of quantitative and qualitative propositions. The very possibility of such systems implies order and regularity. But the natural law theorist can admit that there are degrees of order, changes of degree being attributable to such things as diminishing complexity and the displacement of order at one level by order at another. In the former case, the second law of thermodynamics, according to which the universe will supposedly undergo a 'heat death', seems to involve a reduction of order to a very basic thermal equilibrium or uniformity. In the latter, consider a person who plays a game of marbles, versus one who throws a handful of marbles into the air. In the second case, the order and regularity of movement detectable in the first case has gone when considered from the point of view of human purpose, but there remain the underlying physical laws that govern the movement of the marbles in a way that is independent of human purpose.

The natural law theorist, then, should insist at the very least on a metaphysic of intrinsic cosmic order, and probably on its necessity as well. He might even say that the 'tóhu vavóhu' of Genesis 1:2 involves no real disorder, only (as the Septuagint and Vulgate imply¹⁵) emptiness and

invisibility, a relative lack of arrangement of things into anything remotely resembling the universe after the hexameron. If we now look at the macroscopic level (the primary concern of morality), though, we have overwhelming evidence of a remarkable adaptation of means to ends, parts to wholes, lower functions to higher functions, unity in multiplicity and multiplicity in unity, simplicity in complexity and vice versa, regularity, system, predictability, quantifiability, qualitative harmony and, of special importance, teleological order more than sufficient to give the lie to any notion that ours is a haphazard cosmos shot through with chaos.

What, though, does this have to do with the central natural law notions of ordinance and promulgation mentioned at the beginning of the discussion? There are three related arguments for the idea that natural law requires ordinance, and all have in common the thought that order requires an orderer, law a law-giver. In other words, there is a deep conceptual connection between something's being ordered adjectivally and its being ordered verbally. All the arguments, moreover, point to the great similarity between natural moral law and natural law broadly conceived. The first argument assumes that true chaos is possible. The question is then how order can have arisen. It is plausible to think that where there is order, there was once chaos, since the advent of order is at least in large part a temporal process involving the development of certain arrangements of things from prior disordered states. There is, though, an old but true metaphysical axiom still mirrored in the jargon of positive law: *nemo dat quod non habet* – a thing cannot give what it does not have. Now if order is supposed to have developed from chaos, it must somehow

have *emerged* from chaos or (what I take to amount to the same thing expressed differently) been self-imposed by a chaotic universe. But how can chaos give rise to order? For it to do so, it would have to contain an internal power or principle enabling it to impose order on itself. In what sense, then, would it truly be pure chaos? It is hard to see how pure chaos could contain any powers at all, let alone the power to impose order, not least on itself as a whole. Chaos cannot give order because chaos lacks the wherewithal to bestow it. The only alternative, then, is that order is imposed on chaos by an *extrinsic* principle, which is perfectly in line with our own universal experience that where order is imposed on (putative) disorder in the natural world, it is done by an extrinsic thing that has the power of bestowing that order, whether that extrinsic thing be ourselves, or animals, or ordered non-organic entities (such as when, to take a simple example, the presence of a magnet gives ordered location to randomly scattered iron filings).

An opponent might reply that cosmic order is *brute*: it has never emerged from chaos because chaos has never in fact obtained. But then the question is why there is order *rather* than chaos. Here I appeal to the principle of sufficient reason broadly construed, not to any application of probability theory or other notions specific to order and chaos per se. Put simply, the principle states that there is a sufficient reason or adequate necessary objective explanation for the being of whatever is and for all attributes of any being.¹⁶ Now order is a kind of being *additional*, or better *superadded*, to things that would otherwise be in a state of chaos. To put it in different terms, when considering the way things in the cosmos or the

cosmos itself is disposed, we have to say that their being disposed in an orderly fashion is a *further fact* to their being disposed simpliciter. But on the supposition that order is a brute fact, one that has not emerged from or been bestowed by chaos (nor *could* it be, if the previous part of the argument is correct), it requires an explanation that derives from a principle extrinsic to the cosmos (or any of the things within it). This means that order cannot be a brute fact in the sense of not having been imposed by something: it requires a sufficient reason, and if the reason is not internal to the cosmos it must be external to it, and so order could not be *wholly* brute, even if it has always existed. To put it in the words of natural law theory, order must have been ordained.¹⁷

The second argument assumes, as I have suggested earlier, that true chaos is impossible, that order is necessary to the cosmos. On this assumption we must ask why there is one kind of *relative* order rather than another. For even within order there is no mere difference of degree but difference of kind. There is inanimate matter, there is animate matter, there is sentient matter, and there is rational matter. But any one of the relatively lower kinds of matter, all of which are forms of order, could have existed without any of the relatively higher kinds.¹⁸ By reasoning parallel to that just given in respect of order and chaos, there needs to be a sufficient reason for there being a certain kind of relative order. And I cannot see how the demand for an extrinsic principle is any weaker here than in the previous case. Higher order cannot be given by lower order, and if there has always been higher order, we need to know why it exists rather than relatively lower order. It is, to put it mildly, somewhat

controversial to say so, but I do not think the answer to such a question even awaits further empirical or abstract scientific discovery. Rather, the problem is a purely logical and ontological one, based on the truth that something cannot bestow what it does not have. It is this which grounds the need for an extrinsic principle that imposes a given level of order, remembering always that what is at issue are *kinds* of order, not merely degrees (which would not give rise to the necessity for an extrinsic source).

The third argument concerns the necessity of order again, but this time not the necessity of order in respect of the cosmos as a whole, but the necessity of particular order within the cosmos, and here I am referring to the necessity of law itself. It is no accident that the term ‘natural law’ can be applied both to moral law and to non-moral law. Natural law theory is one part of a picture of cosmic law in general, and stresses (historically, if not so much among the new natural law theorists) the similarities as well as the differences between both kinds of law. Speaking now of contemporary ethical theory in general, there is no missing the interminable debate about normativity and how it finds a place in a world that is largely not governed by norms. Natural law theory, however, while concerned with the sources of normativity or value – to use the current jargon – is just as much concerned with what *unites* the moral and the non-moral. When it comes to law, the unifying element is the *compulsory* nature of both moral and non-moral law, i.e., their necessity.

When it comes to non-moral law, that is, scientific law in the narrow sense, the current debate is complicated by the fact that there is an important minority view, due largely to Brian Ellis, that the laws of nature

are metaphysically necessary.¹⁹ This view has a lot going for it, and if it were true the natural law theorist could happily accept it – indeed it would be further confirmation of his overall metaphysical picture – without any impairment of the two arguments just presented. Notwithstanding this fact, the third argument assumes the dominant current view that the laws of nature, whilst they bestow natural necessity, are themselves metaphysically contingent. The argument, as the by-now familiar reasoning goes, is that the necessity of natural law requires an adequate explanation. The possibilities are that necessity comes from contingency, that it has always been there, or that it has been imposed from outside by a law-giver; for to say that necessity requires an explanation just is to say that lawhood requires an explanation, necessity being of the essence of law.

It is very hard to see how necessity can come from contingency, for the usual reason that one cannot give what one does not have. It is difficult to begin to see how merely contingent relations can of themselves give rise to necessary ones. What power within contingency could bestow necessity? If it is something that already contains necessity, then necessity has not come from mere contingency. If it does not already contain necessity, then it can only contain more contingency since every actual being is either necessary or contingent. So suppose necessity has always been there, i.e. that the laws of nature have not emerged from anywhere; maybe there have been different laws in the past, but laws there have always been. Then we need to know why there is any necessity of natural law rather than mere natural contingency. For natural necessity is (*pace* the earlier

putting to one side of the important possibility that the laws are metaphysically necessary) a further fact over and above the mere distribution of things. There *could* have been a cosmos of mere regularities, though there is not. (Here I assume that the regularity theory of laws is false.²⁰) Again, the explanation for this could only come from outside the cosmos: for what could there be *within* the cosmos to explain the fact that natural necessity has always existed? Not mere contingent beings, since this response falls on the prior point that contingency cannot give rise to necessity. But not the laws themselves either, since mere natural necessity cannot explain itself. (One cannot appeal to the nature of things, or to logical considerations, since we have put to one side the position that the laws are metaphysically necessary, which is where such considerations are relevant.) The only alternative is that the explanation is extrinsic to the universe, i.e., that the laws of nature have been ordained.

Throughout the course of the discussion, I have not said anything about whether the law-giver is personal or impersonal. I believe it is not difficult to show that it must be personal, but that is a subject for another time. The main point is that natural law theory requires the extrinsic ordination of all the laws of nature, of which the natural moral laws are but a part. As to promulgation, I only want to make some brief remarks. When it comes to promulgation, the natural moral and non-moral laws are both similar and yet importantly different. The difference lies in the fact that the natural moral law is, as St Paul says, written on the hearts of men,²¹ whereas the non-moral laws are not.²² Why not? Well, perhaps they could have been, but the more important point is that the moral laws *are*

so written because the natural moral law cannot wait. It brings with it an urgency that the non-moral law does not. The scientific laws can await discovery, and by working to discover them man contributes to the fulfilment of the moral law by pursuing the fundamental goods, in particular the good of knowledge. If the scientific laws were written on men's hearts there would be precious little to work for, and yet no higher demands would be met thereby. On the other hand, although we do not know all the answers to moral questions, and fulfil our natures by pursuing such answers, still the fundamental precepts of the natural law, at the least, must be written on our hearts since the higher demands of justice require it: such precepts simply cannot await discovery before they can be obeyed. What the promulgation of the scientific laws amounts to, by contrast, is not that they are written on the heart, but that they are, at least in part, knowable by human beings. If we seek, we can find, since the laws are written in the cosmos.

3. Essentialism

Turning now to more specific features of the natural law, we see that natural law theory takes notions of nature, function, and flourishing to be core concepts, as much in the new natural law theory as in the more traditional variety that I defend. But there is more to the metaphysic of natural law theory than a commitment to these concepts. Rather, they form part of an overall essentialism that is central to the theory and explains why those core concepts have the place they do. Note that I do not assert here that essentialism is *entailed* by the existence of cosmic law

and order, or the converse. If, as ‘scientific essentialists’ such as Brian Ellis hold, all of the laws of nature supervene on the essences of things, one might begin to mount a case that cosmic order is in fact entailed by essentialism. But for present purposes all I claim is that essentialism is one crucial part of the overall metaphysic of natural law theory, even if it is logically independent of cosmic order.

In his famous book *The Closing of the American Mind*, Allan Bloom says, during the course of his analysis of the way in which contemporary notions of self and fulfilment have departed from the tradition:

The psychology of the self has succeeded so well that it is now the instinct of most of us to turn for a cure to our ills back within ourselves rather than to the nature of things. Socrates too thought that living according to the opinions of others was an illness. But he did not urge men to look for a source for producing their own unique opinions, or criticize them for being conformists. His measure of health was not sincerity, authenticity or any of the other necessarily vague criteria for distinguishing a healthy self. The truth is the one thing most needful; and conforming to nature is quite different from conforming to law [by which he means positive law], convention or opinion.²³

There is no obvious reason to think that the Grisez-Finnis-Boyle approach to natural law sets itself against this view (though I raise caveats later), but there is at the same time a stress on subjectivity in one’s choice-making which obscures a more objectivist understanding of the way in which fulfilment is achieved. This could be a legacy of the modern, post-Rousseauian ‘authenticity’ approach to meaning which has such a stranglehold on contemporary culture. Maybe it is this legacy’s as-yet unescaped contamination of our discourse that enables Grisez-Finnis-Boyle to assert that ‘being free to do as one pleases’, whilst not a basic good, is

nevertheless an intelligible instrumental good – an assertion that would itself have been unintelligible to adherents of the classical tradition.²⁴

In any case, natural law theory rests upon, and requires for its own intelligibility, a thoroughgoing essentialism. This is the doctrine that everything has its own essence, and is usually taken to be a variant of the substantive Principle of Identity,²⁵ as opposed to the truism that now passes for the principle, namely that everything is identical with itself.²⁶ The only reason natural law theory is justified in appealing to human nature as central to ethics is that, since *everything* has a nature, so must human beings. In important ways, human beings are on one side of an unbridgeable qualitative boundary separating them from the rest of the material universe. In other ways, though, they are very much part of a cosmic continuum uniting them as much to matter as to spirit.

The sort of essentialism that provides a secure foundation for natural law theory holds not simply that everything has an essence, but that these essences are real and knowable. To say that they are real is to say that they are not mere linguistic constructs or definitions of words, but that they define the things themselves, their quiddities or natures. For them to be knowable is for them not to lie in principle beyond possible experience, or some kind of veil of perception, or beyond human cognitive power, at least in general and in part. ‘In general’, because the real essentialist does not deny that some things might be in principle unknowable in their essence (the nature of matter or energy might be an example). ‘In part’, because the real essentialist is happy to concede that very few real essences are grasped in their completeness. How complete a

grasp is does not necessarily depend on where in the ontological hierarchy the object is located. It is as unlikely that we have a complete grasp of the essence of a fish as it is that we have a complete grasp of the essence of God. Yet in both cases we do have at least an incomplete grasp of essence: we know that a fish is a water-dwelling vertebrate with gills (to take a typical definition); and we know that God is pure act (to take one of many definitions). But in neither case does the definition, though real, capture everything there is to know about the natures of the things defined.

It should be clear why only real essentialism will suffice for natural law theory. If essences are anything less than real, then morality lacks the foundation of its objectivity. Natural law theory is about the natures of things, in particular human nature, and so things had better have natures. Yet it would be inexplicable at best, absurd at worst, to suppose that everything under the sun lacked a real nature except for human beings; why should that be so? One might try appealing to the fact that human beings, uniquely in the material universe, have also an immaterial element.²⁷ But this pushes the question over to why only beings with an immaterial element should have natures, and no obvious answer is forthcoming. Hence if human beings have a nature, then everything has a nature. If essences are unknowable, then morality is unknowable, and this is hardly something the natural law theorist will contemplate. Fortunately, for a great many things we do indeed know their essences, if only partially, though for some completely. For instance, we probably grasp – rather, the relevant experts in the cognitive community, as it were – the complete essences of a great many chemical elements and compounds, though we

do not know all of their possible kinds of behaviour. But for the real essentialist the natures of natural objects are ontologically distinct from the properties that emanate from them, so complete knowledge of the former does not exclude partial knowledge of the latter. It is the huge strides we have made in the knowledge of the chemical elements that has led recent 'scientific essentialists' such as Ellis to focus almost exclusively on them in constructing a theory of essences.

This sort of approach is anathema to the real essentialist, however, because of its reductionism. There is evidently no hope for natural law theory if the only essences we can know are the ones belonging to the realm of the very small.²⁸ The real essentialist is, therefore, an anti-reductionist who recognizes distinct ontological levels to which belong distinct essences. He is able at once to affirm that gold is a chemical element with the atomic number 79, that a fish is a water-dwelling vertebrate with gills, and that man is a rational animal. Each of these essences is as real as the others, and there can be no room for a general reductionism that explains all putative essences in terms of one level of real essences such as the chemical or the physical.

The rejection of natural teleology is probably the most important factor in the rejection of natural law theory. It is often seen as sufficient for its refutation to assert confidently that 'man is not designed for anything' and so there can be no metaphysical purchase for natural law. This sort of denial is important and must not be evaded by the natural law theorist, implicit as it is in virtually all of contemporary ethical thought. Nor do I think that one can, as it were, sneak up on the denial with a view

to shooting it down by means of an over-emphasis on the structure of practical reasoning. I say *over-emphasis* because reflection on practical reasoning is without doubt central to the natural law enterprise. But on its own it will never convince an opponent of natural teleology that he is wrong in his rejection of a certain metaphysical picture.

The first thing to note is the confusion between purpose and design common in anti-teleology. It may well be that one implies the other, but they are not the same. Natural law theory does not hold that the natural law is written only on the hearts of the theists, or theists and deists; it is written on every heart and so must be recognizable even by the person who denies any sort of transcendent source of *telos*. This is not to say that a person could *justifiably* recognize one without the other: just as the old saying goes that there are no atheists in foxholes, and as the Psalmist asserts, ‘the fool says in his heart, “There is no God”’,²⁹ it may be that no one who consults his conscience in a matter of natural law, recognizing for instance that it is wrong to steal or to commit adultery, could be anything other than culpably ignorant of the need for a law-giver. On the other hand, the specific logical connection between law and law-giver (rather than the general arguments for the existence of a divine being) plausibly requires greater philosophical reflection than many are capable of. Hence I incline to the thought that when it comes to this in particular, a person is not necessarily guilty of an epistemic vice by recognizing the former while failing to grasp the latter: we are not always culpable for failing to see the consequences of what we know. And as to the possibility of ethical behaviour, there is no need for such a recognition when a person acts

according to and in knowledge of the natural law. There is this exception, that if religion itself is a basic human good – as I and the vast majority of natural law theorists believe – then it would be incoherent to suppose that a rational agent could act according to and in knowledge of *that* good without ipso facto recognizing the need for a transcendent source of natural *telos*. The crucial point, however, is that one can, and people often do, recognize a natural purpose or function in things without giving the slightest attention to the distinct question of whether that purpose or function is bestowed by an extrinsic principle. Hence the mantra that man is not designed for anything does not undercut the core natural law proposition that human beings have a nature and function, and that the latter can be recognized without referring it to its external source.

The second point is that in the broad sense *everything* has a function as well as a nature or real essence, the former being given by the latter. For ‘function’ in its broadest sense just means the natural specific activity of some thing. In this sense we can ask what the function/purpose of condensation is in the water cycle, or what the function/purpose of the strong nuclear force is in radioactive decay. To describe such functions does not require making any reference to a designer, human agent, invention, conceived objective, and the like. Nor does it involve the use of biological or quasi-biological metaphor, as when we speak for instance of the life cycle of a star.³⁰ The description, devoid of metaphor, is simply of the natural specific activity of certain entities, events, or processes, usually in the context of larger entities, events, or processes. We are, however, fairly selective in our use of teleological language when describing the

natural world. The question ‘What is the function/purpose of a stone?’ is evidently strange and rarely asked, though one could imagine a geologist posing it in the context of an inquiry into the formation of some mineral, for instance. But stones, like everything else, are law-governed entities and so do in fact have a natural, specific activity; the use of an attenuated functional vocabulary seems inescapable in many cases, though whether we choose to use a broad range of teleological vocabulary (terms such as ‘purpose’, ‘objective’, ‘desire’, ‘try’) is less important.

It would be an important linguistic issue were one trying to hold something like panpsychism or animism at bay, in which case withholding a broad range of teleological language when describing inanimate objects would embody a substantive metaphysical point. But for those of us sane enough not to be tempted by such views, what is significant – and this is the third crucial point – is the qualitative difference between the animate and inanimate world. Withholding a wide teleological vocabulary from the latter does serve the heuristic purpose of marking the difference between immanent and transient causation, the former involving causes and effects within one and the same being, and the latter causes and effects belonging to different beings. In a previous age, when people knew what the crucial metaphysical distinctions were, broad teleological language was probably used with abandon in respect of everything. Now, however, the depredations of anti-teleology make more important, at least in philosophical contexts, the withholding of certain ways of talking about the inanimate, in order to serve the heuristic purpose just mentioned.

It is to agents capable of immanent causation that function and purpose in the strict or narrow sense belong. For it is only here that the concepts of *goodness* and *flourishing* in specific activity have application. Stones and electrons might have functions but they cannot flourish, or behave better or worse, rightly or wrongly, or be harmed, satisfied, or possess any of the fundamentally normative states belonging to subjects of immanent causation, viz. living things. There is no mere continuum here, but a point at which nature is carved at its joints. Yet the normative functions of living things are as real as their non-normative functions and the non-normative functions of everything else in the cosmos. Natural goodness is as real as natural viscosity, natural harm as natural radioactivity. The fact-value distinction of Humean fantasy fails precisely because there is no way of describing the world *accurately* that omits natural normative teleology.

It is, then, only a thoroughgoing essentialism that can undergird natural teleology; without the former, the latter is understandably going to seem mysterious, obscure, perhaps an illusion of man's devising. Natural teleology provides the framework within which the appeal to specifically normative teleology, of the kind exhibited by the organic world, is plausible. Further, the normative teleology of the organic world serves as the basis for a theory of specifically human teleology, and it is this latter that forms the particular subject matter – the material object, to use an older terminology – of natural law theory in ethics.

4. Human nature

There has been some debate over the role human nature plays in natural law theory. There are critics of the Grisez-Finnis-Boyle approach, such as Henry Veatch, Russell Hittinger, and Anthony Lisska, who charge the new natural law theory with refusing to base itself on a metaphysic of human nature.³¹ They have clearly been exercised by comments such as the following. Referring to the common criticism of Aquinas that he supposedly fails to show how specific moral rules are connected with self-evident principles about what is good for us, Finnis replies:

How can this objection have become so popular? [One reason] is that the very phrase 'natural law' can lead one to suppose that the norms referred to, in any theory of natural law, are based upon judgments about nature (human and/or otherwise).³²

And at the beginning of 'Practical Principles', Grisez-Finnis-Boyle state:

What we say here differs in various ways from the theories articulated by Aristotle, Thomas Aquinas, and others.³³

Unfortunately, Grisez-Finnis-Boyle do not go on to articulate in what exact ways their theory differs from the Thomistic-Aristotelian approach, and the matter is complicated by the fact that they also, jointly and severally, spend much time arguing that their critics have in fact *misinterpreted* St Thomas and that their theory is in conformity with the Thomistic approach properly understood.³⁴ This unclarity notwithstanding, the critics have focused on a central issue, namely the role of the ontology of human nature in the methodology of natural law theory.

My main concern in this paper is with metaphysics, not epistemology, but the former bears inescapably on the latter and so by clarifying metaphysical issues we can reach a proper understanding of the

epistemology of natural law theory. Now it is apparent (though as we shall see not evident) that advocates of natural law theory in both its traditional and new forms agree that there is such a thing as human nature. The question is what connection should be drawn between it and natural law theory as a system of practical reasoning. Jacques Maritain represents the tradition when he says:

What I am emphasizing is the first basic element to be recognized in natural law, namely, the *ontological* element; I mean the *normality of functioning* which is grounded on the essence of that being: man. Natural law in general...is the ideal formula of development of a given being; it might be compared with an algebraical equation according to which a curve develops in space, yet with man the curve has freely to conform to the equation. Let us say, then, that in its ontological aspect, natural law is an *ideal order* relating to human actions, a *divide* between the suitable and the unsuitable, the proper and the improper, which depends on human nature or essence and the unchangeable necessities rooted in it.³⁵

The question is what ‘depends on human nature or essence’ means in this context. Jude Chua Soo Meng, replying to Lisska who cites this passage from Maritain against Finnis (as well as a similar passage from Yves Simon), defends Finnis and the Grisez-Finnis-Boyle position in general by arguing that the phrase is ambiguous in the same way that Finnis’s phrase ‘based upon judgments about nature’ is ambiguous – as between *ontological* and *epistemological* dependence. He quotes Robert George to the effect that

in the epistemological mode of inquiry, our (practical) knowledge of human good(s) is methodologically prior to our (speculative) knowledge of human nature. The latter knowledge presupposes the former: It is not, as neo-scholastics suppose, the other way round.

By contrast,

in the ontological mode of inquiry, an account of the human goods will refer back to human nature: ‘Why are these the ends fulfilling of human beings?’ ‘Because human nature is constituted as it is.’ But this answer in no way entails that our knowledge of the ends *as*

human fulfilments is derived from prior speculative knowledge of human nature.³⁶

If George is interpreting the Grisez-Finnis-Boyle position correctly – and there is no reason to think he misunderstands it – the connection between the ontology of human nature and the epistemology of moral reasoning is itself ontological only, not epistemological. Human nature serves as a metaphysical foundation of natural law as a system of ethics, but without informing its methodology in any obvious way. There is, however, an even darker side to the Grisez-Finnis-Boyle position, since in a footnote in *Natural Law and Natural Rights* Finnis explicitly contradicts D.J. O'Connor who asserts that 'the theory of natural law turns...on the idea that human nature is constituted by a unique set of properties which can be understood and summed up in a definition.'³⁷

Were it not for an aside such as that, one could safely assert that new and traditional natural law theorists at least agreed that there *is* such a thing as human nature, which can be given a real definition – presumably the time-honoured one that man is a rational animal, with all that this deceptively simple formula entails. That Finnis should even consider the idea that natural law theory does *not* turn on the possibility of such a definition certainly gives pause for reflection on just what the Grisez-Finnis-Boyle version of natural law theory *is* after all committed to; but all I shall do here is refer the reader to the discussion of essentialism above. It is the epistemological/ontological question that needs further consideration, since it raises serious issues of methodology and highlights

the way in which the new natural law theory is expounded by its adherents.

So let us assume that all natural law theorists agree on the existence of human nature. What then? As George explains it, human nature is ontologically prior to the system of morality embodied by natural law theory, where that theory comprises our practical knowledge of the human goods and all that they entail; but it is not epistemologically prior. Strictly, this implies that we can have such practical knowledge *before* having any speculative knowledge of human nature. How then, according to the Grisez-Finnis-Boyle account, do we get such knowledge? Here Finnis invokes the authority of Aquinas to argue that

practical reasoning begins not by understanding this nature from the outside, as it were, by way of psychological, anthropological, or metaphysical observations and judgments defining human nature, but by experiencing one's nature, so to speak, from the inside, in the form of one's inclinations.³⁸

He is referring to the discussion in the *Summa Theologica*³⁹ where St Thomas says such things as:

[A]ll those things to which man has a natural inclination, are naturally apprehended by reason as good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law.⁴⁰

[T]o the natural law belongs everything to which a man is inclined according to his nature. Now each thing is inclined naturally to an operation that is suitable to it according to its form...Wherefore, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue... [But] not all virtuous acts are prescribed by the natural law: for many things are done virtuously, to which nature does not incline at first; but which, through the inquiry of reason, have been found by men to be conducive to well-living.⁴¹

In particular, Finnis quotes the following passage:

[W]hatever is contrary to the order of reason is, properly speaking, contrary to the nature of man, as man; while whatever is in accord with reason, is in accord with the nature of man, as man. Now *man's good is to be in accord with reason, and his evil is to be against reason*, as Dionysius states... Therefore human virtue, which makes a man good, and his work good, is in accord with man's nature, just in so far as it accords with his reason: while vice is contrary to man's nature, just in so far as it is contrary to the order of reason.⁴²

There is possibly some echo of the Grisez-Finnis-Boyle interpretation in Maritain, where, stressing the guidance of natural inclination in Aquinas's account of our knowledge of the natural law, he asserts:

When he [St Thomas] says that human reason discovers the regulations of the natural law through the guidance of the *inclinations* of human nature, he means that the very mode or manner in which human reason knows natural law is not rational knowledge, but knowledge *through inclination*.

This kind of knowledge, explains Maritain,

is not clear knowledge through concepts and conceptual judgments; it is obscure, unsystematic, vital knowledge by connaturality or congeniality, in which the intellect, in order to bear judgment, consults and listens to the inner melody that the vibrating strings of abiding tendencies make present in the subject.⁴³

Note the seemingly irreducible *subjective* or *first-personal* element in Maritain's statement: for it is hard to see how one person could have vital, connatural knowledge through listening to the inner melody of another person's vibrating strings. This subjective aspect is, as I read Grisez-Finnis-Boyle, essential to their interpretation as well, both of St Thomas and of natural law theory in general.

Yet it suffers from a serious misunderstanding of both. The general question one must ask, of a supposedly providential order in which natural law is written on the consciences of men, is this: if the ontology of human nature is not epistemically prior to the deliverances of that law, then what

exactly is the former's role? To say simply that there is an 'ontological connection' between human nature and morality, that the latter is impossible without the former, whilst true, does not answer the question of how the rational agent is supposed to have any knowledge of morality if that knowledge is mere knowledge through inclination. After all, Grisez explicitly disavows intuitionism,⁴⁴ so it is not as though knowledge through inclination amounts to irreducibly intuitive moral judgment. (Which is not to deny that there are moral intuitions and that these can form a reasonable *basis* for moral judgment, which I imagine most natural law theorists would accept.)

No natural law theorist should deny that knowledge through natural inclination is part of the necessary epistemological basis of the theory. But this knowledge cannot be *mere* knowledge through inclination. It must be knowledge *of nature* through inclination. This is, I submit, clear from a careful reading of the relevant passages in Aquinas. Where he says that what is contrary to reason is contrary to nature, and that what is in accord with reason is in accord with nature, so that virtue is in accord with nature just insofar as it accords with reason, and vice is contrary to nature just insofar as it is contrary to the order of reason – he means that virtue and vice are determined by whether actions are in accord with or contrary to the nature of man *as a rational being*. This is clear from the context of the passage, in which Aquinas's remarks immediately succeed the statement that 'the nature of a thing is chiefly the form from which that thing derives its species. Now man derives his species from his rational soul...'.⁴⁵ And so '*consequently*' (ideo) whatever is contrary to the order of reason, etc.

Similarly for the other passages just cited: what St Thomas means is *not* that ‘the way to discover what is morally right (virtue) and wrong (vice) is to ask, not what is in accordance with human nature, but what is reasonable.’ Nor does he imply that ‘the primary categories...are the “good” and the “reasonable”’, with the concept of the natural being but ‘a speculative appendage added by way of metaphysical reflection’,⁴⁶ a matter for ex post facto reconstruction by philosophers contemplating what Maritain calls ‘after-knowledge’.⁴⁷

On the contrary, the agent, by gaining knowledge of human nature as rational animality *through* inclination, grasps what does and does not fulfil that nature, hence what is good and bad and so a matter for pursuit or avoidance. Otherwise inclination floats free, methodologically, of any substantive information that provides the basis on which true and false inclination can be distinguished. By saying that vice is contrary to human nature just insofar as it is contrary to reasonableness, Aquinas should not be taken to affirm that we first must know what is reasonable, from which we can then conclude that something is contrary to human nature and so vicious. Rather, he means that to be contrary to human nature *just is*, definitionally, to be contrary to the order of reasonableness that specifically characterizes human nature as *rational* nature. This is the justification for asserting that error is contrary to nature, knowledge in accord with it; that genuinely aesthetic experience fulfils nature and ugliness perverts it; that religious belief and practice contribute to human flourishing and the absence thereof diminishes it.

Nor is this sort of inquiry an irreducibly first-personal affair. How could it be for the likes of Aristotle or St Thomas, who litter their writings with remarks such as that all men seek happiness, all men desire to know, man is a social and political animal, no man would want to live without friends, and so on ad nauseam? On what basis could such generalizations be made if there were no room in ethics for the kind of third-personal, objective, speculative knowledge about just what it is that fulfils the human species? An agent's experience of his own inclinations will not on its own yield knowledge of what is good for others unless combined with an understanding or appreciation, however attenuated, of the place of inclinations *of that kind* in human beings *as a kind*. This is by no means to assert that agents must or do engage in general in any sort of elaborate philosophical reflection when making moral judgments; nor is this the straw man target of the Grisez-Finnis-Boyle critique. The new theorists are making a methodological and theoretical point about the nature of moral justification. At least Maritain allows the philosophers 'after-knowledge' with which they can rationally reconstruct the derivations of natural law principles, presumably from speculative ontological premises (though maybe this is an over-interpretation of Maritain). It is not clear that Grisez-Finnis-Boyle would even allow that.

It is knowledge of the complexity of human nature that grounds our knowledge that the multiplicity of kinds of inclination actually corresponds to a diversity of goods. If it did not, how could we be sure that the diversity of kinds of inclination was not a mere logical distinction as opposed to a real one? Yet we know it is real because we know that the

goods that are objects of the inclinations are really distinct aspects of human nature. The same goes for our knowledge of the ways in which means are ordered to ends. Mere inclinational knowledge cannot give us certainty that, for example, the goods of property are instrumental to the goods of life and health. Nor will it enable us to form a coherent picture of the way in which goods are related to each other as parts to wholes – that, for instance, health is a part of the good of life or family part of the good of friendship.

To take another issue of great current importance, there are vast numbers of people who would affirm that the inclination to pursue life is subordinated to the inclination to pursue other goods that make life fulfilling, such that if those goods cannot be meaningfully pursued then the inclination to pursue life loses its own natural goodness. They embody this thought in the inference that since the pursuit of life is good only if the meaningful pursuit of other goods that make life fulfilling is possible, then if the latter pursuit is not possible the pursuit of life is itself not good. By this argument they seek to justify the euthanasia of those who are only ‘minimally alive’, say because they are comatose, in a persistent non-responsive state (known pejoratively and inaccurately as a ‘vegetative’ state), or suffering from senility or some other illness that renders the pursuit of most or all other goods impossible. How are we to gainsay this interpretation of natural inclinations? The correct response, I would argue, is that the initial thought involves a metaphysical confusion about the relationship between life and the other goods. The correct position is not that life is good only if the other goods can be meaningfully pursued, but

that the other goods can be meaningfully pursued only if life is itself good, i.e. worth pursuing. Moreover, this relationship does not make life an instrument to the pursuit of the other goods, from which one might then judge that if the instrument lacked anything to work on, it itself would lose value, like a corkscrew with no possible wine bottle to open. Rather, the goodness of life is a *necessary precondition* for the meaningful pursuit of the other goods: if it has no value, then neither do the other goods. But from *this* fact there is a logical block to the inference that if the other goods are not meaningfully pursuable then life itself lacks goodness; to say otherwise would be a simple fallacy. Yet no amount of first-personal reflection on our inclinations, unsupplemented by metaphysical speculation, can yield this resolution of the issue.⁴⁸

The heart of the problem inherent in treating metaphysics as a ‘speculative appendage’ to primary reflection on one’s inclinations as a source of moral knowledge is precisely that this attitude ignores the fundamental role of promulgation in the metaphysics of natural law. All natural law theorists agree that the natural law is promulgated to humanity. But the traditional view of this – and nothing will be found in Aquinas to say otherwise – is not that the law-giver directly promulgates certain inclinations to the heart of man, which man then happily finds to correspond to the order of things. Rather, the law-giver promulgates the natural law by making a world with a certain order and containing natures related in certain ways, including the nature of man with his connatural capacity rationally to respond to that order of things. When the agent contemplates his natural inclinations, he grasps intellectually the way in

which his heart and mind respond harmoniously – when things are working well, of course – to the antecedent order of things, where that order includes most importantly his own nature itself. It is the prior order that makes the inclinational knowledge rational. To the extent that natural inclinations put us in touch with goods, they give us access to the objective order in which those goods are embedded. It is the very directedness of these inclinations to an order not of our making that gives them any claim on our attention. That the law written in our hearts makes any demands on our rational natures is due wholly to the fact that the law written about is a law concerning something not of our own devising. As we are not makers of the natural law but *receivers* of it, we cannot abrogate it; nor, in the words of St Augustine, can iniquity itself efface it.⁴⁹

5. Conclusion

It is striking how so much of contemporary ethical theory has become divorced from metaphysical inquiry. Even in the applied field, where one would expect a greater focus on the analysis of human nature, applied ethics – dominated as it is by consequentialism – either fails to bring metaphysical considerations to bear on its arguments, or carries with it a host of unexamined presuppositions concerning both private good and the common good. Yet consequentialists are happy blithely to propose various desiderata for maximization without subjecting them to critical analysis. For example, classical utilitarians, without appreciating it, presuppose a teleology of human good that places pleasure and pain at the forefront without ever seriously examining whether such an order of

priority squares with what we know about the human species. When there is any analysis, it has tended to come from anti-consequentialists such as Bernard Williams, who argue persuasively that what we do know about human nature is in complete discord with a consequentialist approach to ethical decision-making.⁵⁰

Natural law theory, which is forcing its way onto the agenda of analytic ethics, brings with it an entire approach to the nature of things that adherents of the theory ignore at their peril. Not only must natural law theorists take metaphysics seriously, they should – with severe caution – take a substantial interest in scientific developments to see how they give the theory empirical support. For instance, they should pay attention to the efforts of some biologists and psychologists to reclaim human nature as a fit subject for empirical inquiry.⁵¹ Not that they should by any means uncritically accept whatever science happens to be saying at any particular time. Like all good metaphysicians, they must always cast a critical, if not sceptical, eye on scientific developments, ensuring that they separate the wheat from the chaff by testing all ideas at the tribunal of philosophical knowledge.

Natural law theorists should also be interested in what both cosmology and biology have to tell us about cosmic law and order at the macroscopic and microscopic scales. Whilst analysis of the nature of law does not, as my discussion implies, await direct support from empirical investigations such as these, it clearly dovetails with them and there is no doubt the latter can offer indirect support to the former, including

clarification of certain ideas such as the distinction between order and disorder and the way in which nature manifests itself in proper function.

The reconnection of metaphysics and ethics must be at the heart of the natural law project. Not only must natural law theory advance on the applied front, it must also deepen its conceptual foundations and locate itself within broader areas of philosophical concern. The discussion presented here, outlining as it does some of the core areas that need to be addressed, is but one small contribution to a much larger task.⁵²

¹ Aristotle, *Rhetoric* Book I.13, 1373b5: κοινὸν δὲ τὸν κατὰ φύσιν. ἔστι γάρ τι ὃ μαντεύονται πάντες, φύσει κοινὸν δίκαιον καὶ ἄδικοι, καὶ μηδεμία κοινωνία πρὸς ἀλλήλους ἢ μηδὲ συνθήκη. The translation (a good one) is by W. Rhys Roberts from W.D. Ross (ed.), *The Works of Aristotle*, vol. XI (Oxford: Clarendon Press, 1924).

² Here I am thinking not of any specific existentialist, only of the movement in general, a movement that may no longer have a clear identity or focus but that persists in its influence and remains one of the hallmarks of modern ethical thought.

³ For a trenchant recent critique of the supposed distinction, see Christopher Martin, 'The Fact/Value Distinction', in D.S. Oderberg and T. Chappell (eds), *Human Values: New Essays on Ethics and Natural Law* (Basingstoke/New York: Palgrave Macmillan, 2004): 52-69. See also my *Moral Theory* (Oxford: Blackwell, 2000): 9-15.

⁴ D. Parfit, *Reasons and Persons* (Oxford: OUP, 1984).

⁵ D. S. Oderberg, 'The Structure and Content of the Good', in *Human Values*: 127-65.

⁶ G. Grisez, J. Boyle, and J. Finnis, 'Practical Principles, Moral Truth, and Ultimate Ends', *American Journal of Jurisprudence* 32 (1987): 99-151, at 113.

⁷ 'Practical Principles': 101-2 for both quotations.

⁸ Seneca, *On Providence (De Providentia)*: chap.1.

⁹ 'multo magis in tantis motionibus tantisque vicissitudinibus, tam multarum rerum atque tantarum ordinibus, in quibus nihil umquam immensa et infinita vetustas mentita sit, statuat necesse est ab aliqua mente tantos naturae motus gubernari': Cicero, *On the Nature of the Gods (De Natura Deorum)* II.15. Aquinas mistakenatural lawy attributes Cicero's reference to Aristotle rather than Cleanthes (*Summa Theologica* (hereafter S.T.) I q.103 a.1).

¹⁰ 'quaedam rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata': S.T. I-II q.90 a.4.

¹¹ Consider this typical statement, from E.D. Klemke: 'We must say that the universe is valueless; it is we who evaluate, upon the basis of our subjective preferences...we "impose" such values upon the universe.' ('Living Without Appeal', in Klemke (ed.), *The Meaning of Life* (New York: OUP, 1981): 169.

¹² The difference being that the soul is immortal by metaphysical necessity, even though it could be annihilated. (This supports the view that there is a difference between logical and metaphysical necessity.) On the supposition being made here, there is no

metaphysical necessity of order, only a similar extrinsic guarantee that it will be preserved.

¹³ ὁ κόσμος = order.

¹⁴ G. G. Simpson, *The Meaning of Evolution* (New Haven: Yale University Press, 1967): 345.

¹⁵ Latin: 'inanis et vacua'; Greek: 'ἀόρατος καὶ ἀκατασκεύαστος', lit. 'unseen and unfurnished'. The Greek word 'chaos' (τὸ χάος) itself means 'infinite darkness', 'infinite space', 'emptiness', 'the void', and so on – not randomness or pure disorder.

¹⁶ I use the standard formulation taken from B. Wuellner, S.J., *Summary of Scholastic Principles* (Chicago: Loyola 1956), principle #35A.

¹⁷ Note that the opponent cannot simply reverse the question to one of why, if there were chaos, it would exist rather than order, in the attempt to reduce the argument to absurdity. For chaos is not a further fact about the disposition of matter; rather, it is – at least this seems the most plausible understanding – a mere *absence* of order, not even a true privation (as though matter were naturally disposed to order, which there would be no reason to think if both chaos and order were equally possible). And a mere absence requires no explanation. Still, even if it did, perhaps this would just be grist to the natural law theorist's mill, for whether there were chaos or order there would be a need for its bestowal from an extrinsic source. The exception would be if there were chaos subsequent to order, in which case an adequate explanation could, I would argue, be found intrinsically in the mere dissipation of order, not requiring an external principle.

¹⁸ More precisely, each kind could have existed without a higher kind *except*, were there a higher kind that was not *immediately* higher, if it existed along with its non-immediate lower kind, then the intermediate kinds would have to exist. For instance, there could have been inanimate matter without animate, animate without sentient, and sentient without rational, but if there were inanimate and sentient there would have also to be animate, if there were animate and rational there would have to be sentient, and so on. Leaving aside the possibility of a world containing only animals and rational robots, etc., I take this to be a metaphysical truth.

¹⁹ B. Ellis, *Scientific Essentialism* (Cambridge: CUP, 2001).

²⁰ For a trenchant critique of the regularity theory, see D.M. Armstrong, *What is Law of Nature?* (Cambridge: CUP, 1983).

²¹ *Romans* 2.14-15.

²² Descartes does, though, say the following in the *Discourse on Method*, Part V: 'I noticed certain laws that God has so established in nature, and whose notions he has so imprinted in our souls, that after having sufficiently reflected on them we could not doubt that they are observed precisely in all that is or happens in the world.' ('[J]'ai remarqué certaines lois que Dieu a tellement établies en la nature, et dont il a imprimé de telles notions en nos âmes, qu'après y avoir fait assez de réflexion nous ne saurions douter qu'elles ne soient exactement observées en tout ce qui est ou qui se fait dans le monde.' See Adam and Tannery's *Oeuvres de Descartes* VI:41; J. Cottingham, R. Stoothoff, and D. Murdoch (eds), *The Philosophical Writings of Descartes*, vol. II (Cambridge: CUP, 1984): 131, whose translation differs little from my own.) I agree with John Cottingham – whom I thank for reminding me of this passage – that Descartes should not be interpreted as meaning that we have innate knowledge of the laws of physics, only an innate capacity for grasping the concepts of mathematical and logical order according to which the cosmos is structured. And this is highly plausible.

²³ A. Bloom, *The Closing of the American Mind* (New York: Simon and Schuster, 1987): 179.

²⁴ 'Practical Principles': 111.

²⁵ Wuellner, *Summary*, principle #32A.

²⁶ To be fair, Saul Kripke has tried to give it some substance: *Naming and Necessity* (Oxford: Blackwell, 1980).

²⁷ I have defended the immateriality of the human soul in 'Hylemorphic Dualism', in E. Paul, F. Miller, and J. Paul (eds), *Personal Identity* (Cambridge: C.U.P., 2005): 70-99, originally in *Social Philosophy and Policy* 22 (2005): 70-99.

²⁸ The idea of scientific essentialists such as Ellis is that the reason we cannot know macroscopic essences is not that they lie behind some veil of perception (are Lockean 'somethings-we-know-not-what'), but that there is no theoretical need to postulate them at all; in other words, our best scientific theories do not require them.

²⁹ *Psalms* 13/14:1.

³⁰ Thanks to John Cottingham for prompting me to make this distinction.

³¹ H.B. Veatch, 'Natural Law and the "Is"-"Ought" Question: Queries to Finnis and Grisez', in his *Swimming Against the Current in Contemporary Philosophy* (Washington: Catholic Univ. of America Press, 1990); R. Hittinger, *A Critique of the New Natural Law Theory* (South Bend: Univ. of Notre Dame Press, 1987); A.J. Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction* (New York: OUP, 1996).

³² J. Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980): 35.

³³ 'Practical Principles': 99.

³⁴ See references in the bibliography to 'Practical Principles': 148-51, and also the discussion with citations in Jude Chua Soo Meng, 'To Close a Generation Gap: Thomists and the New Natural Law Theory', *Quodlibet: Online Journal of Christian Theology and Philosophy* 3:2 (Spring 2001), at www.quodlibet.net. See also Finnis, *Natural Law*: 35-6 and elsewhere in that book. For evidence of Grisez's outright hostility to traditional Thomistic natural law theory, see Hittinger, *Critique*: 14ff. Grisez considers it as, int. al., 'rationalistic', 'voluntaristic', 'legalistic', 'otherworldly', and 'minimalist'. At least some of these epithets should not strike the traditional theorist as especially shameful, but there is no doubt about how Grisez regards them.

³⁵ J. Maritain, *Man and the State* (Chicago: Univ. of Chicago Press, 1951), extracted in J.W. Evans and L.R. Ward (eds), *The Social and Political Philosophy of Jacques Maritain* (London: Geoffrey Bles, 1956): 50.

³⁶ R.P. George, 'Recent Criticism of Natural Law Theory', *University of Chicago Law Review* 55 (1988): 1371-1429, at 1416-7 for both quotations (quoted in Soo Meng, 'To Close a Generation Gap').

³⁷ *Natural Law and Natural Rights*: 34, note 37, quoting O'Connor, *Aquinas and Natural Law* (London: Macmillan, 1967): 15.

³⁸ *Natural Law*: 34.

³⁹ I-II q.94 aa.2-4.

⁴⁰ I-II q.94 a.2: 'omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda. Secundum igitur ordinem inclinationum naturalium, est ordo praeceptorum legis naturae.'

⁴¹ I-II q.94 a.3: 'ad legem naturae pertinet omne illud ad quod homo inclinatur secundum suam naturam. Inclinatur autem unumquodque naturaliter ad operationem sibi convenientem secundum suam formam... Unde cum anima rationalis sit propria forma hominis, naturalis inclinatio inest cuilibet homini ad hoc quod agat secundum rationem. Et hoc est agere secundum virtutem... non omnes actus virtuosus sunt de lege naturae. Multa enim secundum virtutem fiunt, ad quae natura non primo inclinatur; sed per rationis inquisitionem ea homines adinvenerunt, quasi utilia ad bene vivendum.'

⁴² I-II q.71 a.2: 'id quod est contra ordinem rationis, proprie est contra naturam hominis inquantum est homo; quod autem est secundum rationem, est secundum

naturam hominis inquantum est homo. Bonum autem hominis est secundum rationem esse, et malum hominis est praeter rationem esse, ut Dionysius dicit... Unde virtus humana, quae hominem facit bonum, et opus ipsius bonum reddit [Arist., *Ethics* 2.6], intantum est secundum naturam hominis, inquantum convenit rationi, vitium autem intantum est contra naturam hominis, inquantum est contra ordinem rationis.' (I have slightly altered the usually excellent Dominican translation since it does not render the full force of 'intantum...inquantum', which I have followed Finnis in translating as 'just in so far as'. Finnis, however, offers a translation that in other ways is less faithful to the Latin than the Dominican one without, however, being incorrect in substance.)

⁴³ Maritain, *Man and State*, extracted in *The Social and Political Philosophy*: 53.

⁴⁴ Grisez, 'A Contemporary Natural Law Ethics', in George F. McLean (ed.), *Normative Ethics and Objective Reason* (Washington, D.C.: Council for Research in Values and Philosophy, 1996): ch. XI. Hittinger, *Critique*: 164ff., argues persuasively that Grisez is in fact committed to a form of intuitionism.

⁴⁵ I-II q.71 a.2: 'Sed considerandum est quod natura uniuscuiusque rei potissime est forma secundum quam res speciem sortitur. Homo autem in specie constituitur per animam rationalem.'

⁴⁶ Finnis, *Natural Law*: 36 for both quotations.

⁴⁷ *Man and State*, in *The Social and Political Philosophy*: 53, n.1. In fact Maritain uses this term in respect of the derivation of particular principles [Aquinas – 'propria principia'] of natural law from the general principles, which derivations Aquinas calls at S.T. I-II q.94 a.4 'quasi conclusiones'. But the tenor of Maritain's discussion strongly suggests he has the same attitude to the justification of the general principles themselves. Aquinas's use of the term 'quasi' does not in my view licence the claim that the derivations are not rational inferences, albeit of the practical rather than the speculative intellect.

⁴⁸ I expose this logical fallacy more briefly in my *Moral Theory* (Oxford: Blackwell, 2000): 140-1.

⁴⁹ St Augustine, *Confessions* ii.4: lex scripta in cordibus hominum, quam ne ipsa quidem delet iniquitas. This is quoted by St Thomas in I-II q.94 a.6, *sed contra*.

⁵⁰ See, e.g., J.J.C. Smart and B. Williams, *Utilitarianism: For and Against* (Cambridge: C.U.P. 1973).

⁵¹ For instance, the work of Steven Pinker contains useful insights; see *The Blank Slate: The Modern Denial of Human Nature* (New York: Viking Penguin, 2002). Nevertheless, a strong health warning must be issued, not only because his genetic determinism goes way beyond anything a natural law theorist could countenance, but because, like much modern science, empirical results are mired in tendentious philosophical interpretation. The natural law theorist needs in particular to separate biological fact from Darwinian propaganda, rejecting any possibility of 'Darwinian natural law' or some other quasi-scientific proposal.

⁵² I am grateful to John Cottingham and Edward Feser for helpful comments on a draft of this paper, and to audiences at the Catholic University of America, the University of Oxford and the University of Navarra.