

# General Introduction

The purpose of the present volume is to collect together a representative and wide-ranging series of readings that demonstrates the intellectual wealth of natural law thinking in the Western world. The tradition has animated Western ethical, political, and jurisprudential development since the time of ancient Greece. In *Antigone*, Sophocles refers to that immutable unwritten law which, like justice, was neither born today nor yesterday and springs from the creator of all things.<sup>1</sup> In the *Apology*, a dialogue concerning the death of his beloved teacher, Socrates, Plato tells us that Socrates was expected by the corrupt leaders of his time, the Thirty Tyrants, to collaborate in the arrest and wrongful execution of the innocent Leon of Salamis. Socrates regards this as not merely unjust but as a threat to his own soul. “The difficulty, my friends,” he says, “is not in avoiding death, but in avoiding unrighteousness; for that runs faster than death.... I depart hence condemned by you to suffer the penalty of death, and [my accusers], too, go their ways condemned by the truth to suffer the penalty of villainy and wrong; and I must abide by my award – let them abide by theirs.”<sup>2</sup>

For Socrates it is better to suffer than to do evil. Because the body is transient and truth is eternal, it is literally ill-judged to live for transient verities and short-lived satisfactions. This is one of the foundations on which the central tradition of natural law thinking in ethics is based. At the core of that tradition lies a vision of human nature, both as individual and social, which irreducibly manifests the material and immaterial aspects of the human being, giving due proportion to each. The ancients and the medievals see the natural law as both objective and universal owing to the fact that it partakes in a timeless, eternal law that finds expression in the very structure of the knowable universe. To regard the cosmos thus, as having a moral as well as a physical order that can be put out of balance by wrongdoing, is not,

<sup>1</sup> Sophocles, *Antigone*, tr. F. Storr (London: William Heinemann, 1912).

<sup>2</sup> Plato, *Apology*, in *The Dialogues of Plato*, Volume 2, tr. Benjamin Jowett, 3rd edition (Oxford: Oxford University Press, 1892).

of course, a new idea. It has echoes throughout the many traditional religious and cosmological systems of the world. The claims of the central tradition have the potential to resonate, therefore, far more broadly than the selections brought together in the present reader might, at first sight, suggest. Indeed, if space permitted, and its central claims were vindicated, the vision it embodies would naturally provide us with a way into the metaphysics, ethics, politics, and jurisprudence of many of the great sacred traditions of the world. As all selections must by their very nature have a focus, however, ours is limited in scope to presenting some of the more important mainstays of the tradition as it originally, and explicitly, unfolded in Western thought, along with instances of its continued survival among more recent and contemporary thinkers.

Although the natural law tradition has been at the heart of Western philosophical thinking, it has not been without its detractors. Utilitarians, like Jeremy Bentham, distrust it and liberals revile it. Empiricists, like David Hume, reject it outright, regarding it an illicit attempt to derive an 'ought' from an 'is', while many, though by no means all,<sup>3</sup> Marxist or Marxist-inspired thinkers regard it as much an opiate and instrument of oppression as any religion. Thus it is sometimes complained that the natural law tradition appears to afford a moral justification for existing social and economic structures and their legal systems.<sup>4</sup> This need not be so. The tale of the death of Socrates and many of the readings contained herein suggest that the tradition involves a critical approach to the conduct of philosophy, law, ethics, and politics. This is precisely because it is rooted in metaphysics. Its general insistence that there are objective, universal, timeless, and eternal verities stands in stark contrast to the schools of thought that doubt that this could ever be so. Amongst the common characteristics of the central tradition, then, are at least four commitments within ethical and jurisprudential discourse, those to: intelligibility, immutability, universality, and objectivity. Our readings in the classical, early Christian, medieval, early modern, and modern sections of the present volume serve to draw out the continued emphasis of the tradition upon these features.

For later thinkers, like Thomas Hobbes and John Locke, the term 'natural law', in contrast, is principally allied to the idea of the social contract and so, for us, their versions mark a move away from the core tradition. Accordingly, our selection of texts contains little of the social contractarian understanding of ethics, politics, and law. Although certain aspects of human law do derive from a social contract or may be thought to be essentially conventional, contracts and constructs by no means exhaust the natural law. Indeed, the social contractarian account leaves us at a loss as to how to explain and reject some of the injustices into which we have been given insight throughout history and perhaps most starkly in the twentieth century. Because the paradigmatic tradition has a discrete integrity all of its own and because there has been a revival of interest in it since World War II, we are concerned to look at contemporary and historical explorations within this tradition. We do not deny that there is a series of fundamentally different philosophical formulations in Western legal thought often falling under the title of "natural law." It is not, however, our purpose in the current volume to cover each of these conflicting versions. Instead, we concentrate on

<sup>3</sup> See, for example, E. Bloch, *Natural Law and Human Dignity* (Cambridge, MA: MIT Press, 1986). More recently, see also T. Burns, *Aristotle and Natural Law* (London: Continuum, 2011).

<sup>4</sup> K. Marx and F. Engels, *The German Ideology* ed. C. J. Arthur, (NY: International Publishers 1947 2005 ed.) p. 65 (Part I B) "The ideas of the ruling class are in every epoch the ruling ideas" often presented by the elite as an "eternal law".

what we regard as the most enduring of these traditions, those that can make claim to falling within what we call the paradigmatic or central natural law tradition. As such, we postulate a departure in the history of the use of the term 'natural law' and only touch upon these alternative traditions of usage insofar as they help to explain movement away from the central tradition.

In characterizing the focus of the present reader as the central natural law tradition, then, we mean to refer to that body of thinking which takes as its standard of reference the moral, legal, and political theorizing of Thomas Aquinas. In part this is because of the truism, baldly stated by Mark Murphy, that "if any moral theory is a theory of natural law it is Aquinas,"<sup>5</sup> but it is also because of the coherence such a focus gives to a selection that, even under present limitations, threatened constantly to expand to unmanageable proportions. Yet neither conventional usage nor editorial expediency exhausts the deeper rationale of our chosen agenda. For that, it is necessary to come to an appreciation of the uniquely summative nature of Aquinas' mind. Owing as much to fortuity as to undoubted native genius, Aquinas represents a confluence of the three great currents of antiquity, flowing respectively through Athens, Rome, and Jerusalem, whose animating spirit it was his peculiar achievement to express in a synthesis of astonishing scope, complexity, and rigor. We have confined our selection almost exclusively to thinkers who have either anticipated that synthesis or who continue, more or less, to accept the theoretical and metaphysical foundations upon which it is based.

Ours is not, then, a neutral selection. Rather, it is one situated within, and guided by a broader understanding of, the tradition we find useful and persuasive. That understanding finds expression in a growing body of work making with renewed vigor the argument, always present but previously somewhat marginalized, that it is only as a series of challenges (more or less stable) to the bases of the medieval synthesis, embodied in Aquinas, that the subsequent development of Western intellectual history can be accurately understood.<sup>6</sup> Although it would be wrong to suggest that all the authors of the selections we include here would agree with the wider perspective we adopt, it would be equally disingenuous not to acknowledge that they have, at least in part, been selected

<sup>5</sup> M. Murphy, "The Natural Law Tradition in Ethics," *Stanford Encyclopedia of Philosophy* (Winter 2011 Edition), ed. Edward N. Zalta, <http://plato.stanford.edu/archives/win2011/entries/natural-law-ethics/>, accessed March 13, 2013.

<sup>6</sup> The most recent work to make such an argument is M.A. Gillespie, *The Theological Origins of Modernity* (Chicago: Chicago University Press, 2008). Amongst other works, see L. Dupre, *The Passage to Modernity* (Yale: Yale University Press, 1993); K. Lowith, *Meaning in History: The Theological Presuppositions of the Philosophy of History* (Chicago: University of Chicago Press, 1949); E. Voeglin, *The New Science of Politics* (Chicago: University of Chicago Press, 1952); E. Voeglin, *From Enlightenment to Revolution* (Durham, NC: Duke University Press, 1975); E. Tiryankian, "The Metacultures of Modernity: Christian, Gnostic, Chthonic," *Theory, Culture and Society* 13, 1 (1996), pp. 99–118; H. De Lubac, *The Drama of Atheist Humanism* (San Francisco: Ignatius Press, 1995); M. Buckley, *At the Origins of Modern Atheism* (Yale: Yale University Press, 1987); W. Cavanaugh, *Theopolitical Imagination* (Edinburgh: T&T Clark, 2003); M. Hanby, *Augustine and Modernity* (London: Routledge, 2003); J. Milbank, *Theology and Social Theory: Beyond Secular Reason* (Oxford: Wiley-Blackwell, 2006); and O. O'Donovan, *The Desire of Nations: Rediscovering the Roots of Political Theology* (Cambridge: Cambridge University Press, 1996). In a related vein, see also E. Gilson, *The Unity of Philosophical Experience* (London: Charles Scribner's Sons, 1937). See also Y. Simon, *The Great Dialogue of Nature and Space* (Carthage Reprint) (South Bend, IN: St. Augustine's Press, 2001); J. Pieper, *The End of Time: A Meditation on the Philosophy of History* (South Bend, IN: St. Augustine's Press, 1998). Less theoretically, see M. Burleigh, *Earthly Powers: The Conflict between Religion and Politics from the French Revolution to the Great War* (London: Harper Perennial, 2006).

on that basis. At the same time, we have sought to ensure that the inclusion of each selection can be justified on less ambitious grounds as in some way or other simply illuminating or contributing to the central tradition.

With respect especially to the contemporary selections, it is now far less difficult to find suitable material than it once was. Indeed, although the central tradition was viewed, until relatively recently, as something of a Cinderella figure in ethical and jurisprudential circles, over the past thirty years it has undergone a significant revival of interest, mirroring, and drawing upon, a similar revival of interest in the tradition of virtue ethics. It now grounds renewed critical reflection on a wide number of specific policy issues as well as being the subject of intense internal debate on issues of a more profound and abstract nature. It is, in part, in this upsurge of interest that the present volume finds its justification: as the record of a rich vein of enquiry even its most hardened critics can no longer dismiss as a mere historical irrelevance.

In order to emphasize all of this as well as to draw out both the historical significance and the contemporary relevance of the central natural law tradition, we have chosen to organize the following sets of extracts into three broad sections. The first section comprises readings that show the historical continuity and endurance of the central natural law tradition. The second section comprises selections from contemporary or near contemporary debates that seek to re-establish and/or vindicate the central tradition's relevance to current ethical, political, and jurisprudential discourse. Finally, the third section comprises selections that address specific areas of public policy.