

2018

The nature of nature: Concerning the efficacy of natural law reasoning

Thomas V. Gourlay

The University of Notre Dame Australia, tom.gourlay@nd.edu.au

Follow this and additional works at: https://researchonline.nd.edu.au/phil_article



This article was originally published as:

Gourlay, T. V. (2018). The nature of nature: Concerning the efficacy of natural law reasoning. *New Blackfriars*, *Early View Online First*.

Original article available here:

<http://dx.doi.org/10.1111/nbfr.12354>

This article is posted on ResearchOnline@ND at
https://researchonline.nd.edu.au/phil_article/50. For more
information, please contact researchonline@nd.edu.au.



This is the author's version of the following article:

Gourlay, Thomas V. (2018). The nature of nature: Concerning the efficacy of natural law reasoning. *New Blackfriars*, Early View (Online First). doi: 10.1111/nbfr.12354

This article has been published in final form at: -

<http://dx.doi.org/10.1111/nbfr.12354>

This article may be used for non-commercial purposes in accordance with Wiley Terms and Conditions for self-archiving.

The Nature of Nature: Concerning the Efficacy of Natural Law

Reasoning.

Abstract

Recourse to natural law reasoning has long been a part of how Catholics and Christians engage in debates about issues of public and private morality with people and communities of people who do not share the Catholic/Christian faith. But with the rise of modernity, the scientific revolution, and the relative success of Charles Darwin's theory of evolution, many Catholics have begun to question traditional natural law reasoning. Some, including theorists like Germain Grisez, and John Finnis have sought to modify traditional natural law reasoning and continue to employ it within debates concerning public and private ethics, while others, acknowledging the radically altered conception of nature that followed the scientific revolution have thought to look for alternative modes of engagement. The following paper will seek to develop an argument against proponents of this altered version of natural law theory, what has come to be called New Natural Law theory, on the basis of the altered understanding of nature in the contemporary West, and the New Natural Law propensity to sideline the question of nature itself. The paper will then go on to advocate for an alternative and more confessional mode of engagement in public debate.

Keywords

Natural Law, Public Ethics, Nature, Nature and Grace, Ratzinger

Introduction

In a book of collected essays published originally in German in 2005, then-Cardinal Joseph Ratzinger (later Pope Benedict XVI) wrote:

Natural law has remained – especially in the Catholic Church – one element in the arsenal of arguments in conversations with secular society and with other communities of faith, appealing to shared reason in the attempt to discern the basis of a consensus about ethical principles of law in a pluralistic, secular society. Unfortunately, this instrument has become blunt, and that is why I do not wish to employ it to support my arguments in this discussion [concerning the moral basis of a free society]. The idea of

the natural law presupposed a concept of “nature” in which nature and reason interlock: nature itself is rational. The victory of the theory of evolution has meant the end of this view of nature.¹

In the above quotation, Ratzinger does not comment on the claim of the objective reality of nature and consequently natural law in the Catholic and more broadly Christian understanding. One can assume from a wide variety of his other essays and addresses, not to mention his later elevation to the See of the Bishop of Rome, which he held and continues to hold an orthodox Catholic opinion on the nature of the created order/nature. Instead, in his work here and elsewhere, he is advocating for a reassessment of the use of natural law reasoning by Catholics and Christians who engage in debates about issues of public and private morality with people and communities of people who do not share the Catholic/Christian faith.

In this, Ratzinger demonstrates an acute awareness of the fundamentally altered understanding of the concept of nature in the modern (and post-modern) West, including Australia, which accompanies the philosophical impact of the scientific revolution including the theory of evolution posited by Charles Darwin (1809-1882). With the common acceptance of Darwin’s theory came an altered conception of nature in the social imaginary of the Western world. Nature, including human nature, was no longer the bearer of an immutable and ahistorical rationality that is freely accessible to reason rightly ordered. With these developments in mind, Ratzinger questions the efficacy of natural law reasoning in discussions on both public and private morality with persons who do not share the Catholic/Christian worldview.

This essay will seek to build upon Ratzinger’s assessment, and develop an argument against proponents of what has come to be called New Natural Law theory on the basis of

¹ Joseph Ratzinger, *Values in a Time of Upheaval: Meeting the Challenges of the Future*, trans. Brian McNeil (San Francisco: Ignatius Press, 2006), 38.

his assessment concerning the altered understanding of nature in the contemporary West, and the New Natural Law propensity to sideline the question of nature itself.

The Nature of Nature: Changing Conceptions

For Catholic Christians and other adherents to natural law reasoning, natural law arises as a result of a metaphysical conception of nature as a created order. While natural law reasoning is not explicitly theistic,² its claim to universal application is dependent upon particular understandings of the concept of nature that for the most part requires, or at least coincides with, the affirmation of a god who creates and who orders. The ancient pagan adherents of what can be termed natural law reasoning including the stoics fall into this category as, while not recognising the Trinitarian God of the Christians, they still adhere to a view of nature as created, and fundamentally teleological. As Ratzinger has pointed out in the above quotation, natural law reasoning has lost much of its potency in a world where people's common sense of order in nature has been eviscerated due to the rise of the rise of modern science including the theory of evolution.

Prior to the scientific revolution, which included the breakthrough achieved by Darwin and his theory of evolution, the common conception in Western societies, under the influence of Aristotle's *Metaphysics*, understood all of nature or the created order to follow the four causes. With the rise of the modern scientific method, formal and final causality have been expelled from the modern imaginary resulting in a radically altered understanding of nature, which is no longer considered to be inherently rational.³

² The natural law would be binding on all "even if there were no God (*etsi Deus non daretur*)" "This expression finds its origin in Hugo Grotius, *De jure belli et pacis*, Prolegomena: "*Haec quidem quae iam diximus locum aliquem haberent, etsi daremus, quod sine summo scelere dari nequit, non esse Deum*".' See, the 2009 document of the International Theological Commission 'In Search of a Universal Ethic: A New Look at the Natural Law', in J. Berkman and W.C. Mattison, eds., *Searching for a Universal Ethic: Multidisciplinary, Ecumenical, and Interfaith Responses to the Catholic Natural Law Tradition* (Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company, 2014), 25-92, at 48.

³ Cf. Etienne Gilson, *From Aristotle to Darwin and Back Again: A Journey in Final Causality, Species, and Evolution*, trans. John Lyon (San Francisco: Ignatius Press, 2009).

In noting the end of the view which would see nature as inherently rational, Ratzinger is acknowledging that for many, perhaps even the majority of people in Western societies at least, the world (i.e. nature) has become disenchanted. Max Weber developed the notion of “disenchantment” in his essay, *Science as a Vocation*. For Weber, the increase in the rationalisation and intellectualisation has ‘disenchanted’ nature, and this is a positive development. He describes disenchanted world as one where, ‘principally there are no mysterious incalculable forces that come into play, but rather that one can, in principle, master all things by calculation... One need no longer have recourse to magical means in order to master or implore the spirits, as did the savage, for whom such mysterious powers existed. Technical means and calculations perform the service.’⁴

This disenchanting of nature is something that Weber celebrates in the name of progress. Science will give one an understanding of the composition, structure, and function of a thing, but will leave unanswered any question pertaining to the value of a thing or its *telos*/end.⁵ This separation of fact from value, in addition to voluntarising and privatising religious faith entirely – a notion which will be discussed at a later point in this essay, evacuates any intrinsic rationality from nature itself, reducing things to merely dumb stuff.

It is important to note that this disenchanted view of nature is not shared by Ratzinger, nor is it a development that he would see as good. It is however, a significant transformation in the commonly held understanding of nature that drastically alters the efficaciousness of natural law reasoning such that he (Ratzinger) deems it to be for the most part unusable in a post-Darwin era. Again, one must stress that this does not mean that Ratzinger has abandoned his faith in a universe created by a loving God who bestows an order upon His creation. All it means is that the common understanding of nature in the secular West (and elsewhere) has

⁴ Max Weber, "Science as a Vocation," in *From Max Weber: Essays in Sociology*, ed. H.H. Gerth and C.W. Mills (New York: Oxford University Press, 1946).

⁵ By way of corroboration, this view of reality is echoed in the writing of American pragmatist and educationalist John Dewey, who wrote that things should be understood as merely ‘what they can do and what can be done with them.’ See John Dewey, *Reconstruction in Philosophy* (New York: Henry Holt and Company, 1920), 115.

changed so significantly as to render natural law reasoning a 'blunt instrument', no longer useful, as it is – that being without further elaboration of one's conception of nature, in discussions around public ethics and morality.

This judgement of Ratzinger sits in stark contrast to other influential Catholic thinkers who have advocated for a return to a robust invocation of natural law in public ethics. These thinkers, including Germain Grisez, John Finnis, Joseph Boyle, and Robert P. George, and, more recently, Ryan T. Anderson, and Sherif Girgis, argue that natural law reasoning remains both a potent and essential weapon in engaging with secular society and with other communities of faith. For them, moral theory must emphasise the priority of practical knowledge, as opposed to a supposed speculative or confessional knowledge of nature, including a teleological conception of nature. It is in appealing to what they see as shared practical reason, and not a shared conception of nature, that they hope to discern the basis of a consensus about ethical principles of law in a pluralistic, secular society. We now turn to a brief examination of the specific theory of natural law reasoning to which these thinkers hold.

[What Nature? Whose Rationality?: The Fundamental Misunderstanding of NNL](#)

The theorists mentioned above who advocate for this revival of natural law reasoning in fact offer something different or new in relation to the natural law theory offered by Aquinas. This is perhaps why what they offer is often labelled 'New Natural Law Theory'. What distinguishes their approach from more traditional natural law projects is that they present an ethical framework which is not founded on a thick account of nature as understood and developed by Thomas or his predecessors. Instead, it is based upon an account of human action that takes as its foundation seven self-evident goods of human life.

Rather than the thick account of nature and of human nature that one finds in Aquinas,⁶ the New Natural Law view essentially abandons the concept of nature altogether, holding that 'practical reason, that is, is reason oriented towards action, grasps as self-evidently desirable a number of basic goods.'⁷ The supposed self-evident goods are said to be constitutive features of genuine human flourishing. These include, 'life and health; knowledge and aesthetic experience; skilled work and play; friendship; marriage; harmony with God, and harmony among a person's judgments, choices, feelings, and behaviour.'⁸

These thinkers mentioned above, perhaps acknowledging at least on some tacit level the changed conception of nature which has accompanied modernity, tend to adopt something akin to the Humean principle that one cannot determine an "ought" from an "is".⁹ This step is presumed to avoid making the naturalistic fallacy by side-stepping the issue of what is perhaps a more fundamental disagreement on the nature of nature itself, between a modern (and post-modern) disenchanted or mechanised conception of nature and a conception of nature more common to traditional theistic traditions, including Christianity. Again, for Ratzinger, the concept of nature that has emerged as a result of the scientific revolution and both the formulation and wide acceptance of the theory of evolution is radically different from the conception of nature that was held by the ancients and synthesised and formulated by Aquinas. Consequently, natural law reasoning has for Ratzinger (and others), lost its potency as a convincing argumentative tool. For others though, including Finnis, Grisez, and others, natural law simply needed to shed its appeal to nature, i.e. its appeal to 'is-ness' in seeking to discern 'ought-ness'.

⁶ Aquinas provides the most comprehensive treatment of human nature in the first part of the *Summa theologiae*, commonly referred to as his treatise on human nature, *Summa Theologiae* 1a 75-89.

⁷ Christopher Tollefsen, "The New Natural Law Theory," *LYCEUM X*, no. 1 (2008), 2.

⁸ *Ibid.*

⁹ This point is somewhat contentious. More traditional Thomistic thinkers argue that these theorists have adopted this modern Kantian and Humean position that one cannot determine an 'ought' from an 'is', although Finnis argues that this error is not found in his writings, see John Finnis, "Natural Law and the "Is" - "Ought" Question: An Invitation to Professor Veatch," *Catholic Lawyer* 26, no. 4 (1981).

In a discussion concerning the variance between the New Natural Law of Finnis and Grisez and the theorist Alisdair MacIntyre, Tracey Rowland points out that MacIntyre, following a more traditionally Thomist reasoning, does allow for the possibility of determining an 'ought' from an 'is', specifically in the case of the nature of the human person.¹⁰ Importantly though, in a mode that supplements nicely the thinking outlined by Ratzinger, MacIntyre is able to argue to an 'ought' from the 'is' of a human nature as it defined within the narrative tradition that he articulates.

For Rowland, and other commentators, the emphasis on a narrative tradition in MacIntyre's reasoning allows him to appeal to nature, as conceived of from within the (Aristotelian-Thomistic) tradition within which he situates himself. The weakness of the New Natural Law position on the contrary, according to Rowland, is that in the interests of positing their theory as an ethical lingua franca, it does not concern itself with narrative traditions or the competing conceptions of nature that coincides with these narrative traditions. Instead, they abandon nature altogether, and argue from the supposed self-evident goods of human flourishing.¹¹

The discussion of narrative traditions leads to a further discussion on the role of religion (and of g/God) in New Natural Law reasoning. On one hand, New Natural Law theories have suffered much criticism by non-Christian and secular interlocutors who claim that the theory operates as something akin to a Catholic/Christian ethical code in disguise, with the questions of g/God(s) and specific religion comfortably bracketed out of the discussion.¹² On the other hand, the treatment of religion by New Natural Law theorists, namely the relegation

¹⁰ Tracey Rowland, *Culture and the Thomist Tradition: After Vatican II*, Radical Orthodoxy (London: Routledge, 2003), 137; citing Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, Ind: University of Notre Dame Press, 2007), 57.

¹¹ Again, this is a contested point, see note 9 above. Also, Robert George asserts that nature has not been abandoned in the reasoning of new natural law theorists. See, Robert P. George, *In Defense of Natural Law* (Oxford;New York;: Clarendon Press, 1999), 85.

¹² See Rufus Black, "Is the New Natural Law Theory Christian?," in *The Revival of Natural Law: Philosophical, Theological and Ethical Responses to the Finnis-Grisez School*, ed. Nigel Biggar and Rufus Black (Burlington, VT: Ashgate, 2000).

of religion to one of the seven 'self-evident' goods of human flourishing has attracted significant criticism from Catholic and other Christian thinkers.¹³

In the introduction to his book *Natural Law and Natural Rights*, for example, John Finnis writes that,

Thomas Aquinas... considers that the first principles of natural law are self-evident, but that (i) the existence of God is *not* self-evident to the human mind, (ii) a knowledge that friendship with God is our last end is *not* available by "natural" reasoning but only by revelation, (iii) attainment of that end is not possible by natural means but only by supernatural grace, and (iv) the will of God, insofar as it concerns creatures (such as mankind), cannot be discovered by reasoning.

He later writes that 'Part II of this book offers a rather elaborate sketch of a theory of natural law without needing to advert to the question of God's existence or nature or will.'¹⁴

This bracketing the question of god(s), or relegating religion and relation to g/God to one of the basic, self-evident goods of human nature is idiosyncratic of the New Natural Law theorists. This is seemingly the result of a particular reading of the *Summa Theologiae* of St Thomas in such a way as to separate the moral part (part II, both *Prima Secundae*, and *Secunda Secundae*) as separate from the *Prima Pars*, thereby avoiding the question of God in their discussion of morality.

According to Catholic critics of the New Natural Law project such as Rowland, in reading the *Summa* in such a way, and thereby bracketing religion and God out of a conversation on morality, Finnis and the theorists who follow him make a critical and self-secularising error.

¹³ See Fulvio Di Blasi, "The Role of God in the New Natural Law Theory," *The National Bioethics Quarterly* 2013, no. Spring (2003)., and also Rowland., see chapter 7.

¹⁴ John Finnis, *Natural Law and Natural Rights (Second Edition)* (New York: Oxford University Press, 2011), 48-49.

By capitulating to their secular interlocutors, they cede the whole concept of nature (as created by and directed toward/fulfilled in God) in favour of supposed self-evident goods.¹⁵

As for their non-Christian and particularly non-religious interlocutors, this bracketing of religious faith is seen as a duplicitous attempt to force Christian ethics onto a Kantian realm of so-called pure rationality. The supposedly self-evident goods which they base their ethical reasoning upon are, quite simply, not as self-evident as they would hope. In construing natural law as such, their reasoning becomes what Ratzinger refers to as a blunt object, and often times does not engage or promote debate, but fuels misunderstanding in moral disputes where it is engaged.

The operation of this strategy is perhaps exemplified best in the slim volume composed by Girgis, Anderson, and George, *What is Marriage? Man and Woman: A Defense*.¹⁶ While this volume does not explicitly present natural law theory as understood by its authors, but instead it is an example of the theory in practice. Within, the trio of authors offer a defence of what they term a 'comprehensive' view of marriage, as opposed to a 'revisionist' or an 'emotivist' view which is being proposed by those seeking to redefine marriage to include features or non-permanence (i.e. divorce), gender uniformity (as opposed to diversity), and polyamorous unions.

For Girgis, Anderson, and George marriage as they understand it is a self-evident good and as such, their argumentation is constructed in such a way that it hangs on to language which belies their commitment to a particularly Aristotelian (and subsequently) teleological metaphysics. Marriage is a self-evident good, the end (*telos*) of which is a union that can

¹⁵ See particularly Rowland., chapter 7. See also "The Role of Natural Law and Natural Right in the Search for a Universal Ethic," in *Searching for a Universal Ethic: Multidisciplinary, Ecumenical, and Interfaith Responses to the Catholic Natural Law Tradition*, ed. J. Berkman and W.C. Mattison (Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company, 2014). See also Di Blasi. Finnis himself freely admits that an account of nature is decidedly absent from his own presentation of natural law theory. He thinks that 'natural law' itself is an "unhappy term". See Finnis, *Natural Law and Natural Rights (Second Edition)*, 374.

¹⁶ Sherif Girgis, Ryan T. Anderson, and Robert P. George, *What Is Marriage? Man and Woman: A Defense* (New York: Encounter Books, 2012).

formally result in the procreation of children. This language is quite evidently lost on contemporary interlocutors, who due to the scientific revolution and the theory of evolution, no longer hold a view of nature that includes teleology.¹⁷

The assertion that marriage, as understood by Girgis, Anderson, and George in this book, as well as the defences offered by other adherents of new natural law reasoning operate in such a way as to valorise those who already hold to 'traditional' conceptions of marriage, and agitate those who do not. Little is gained by way of furthering constructive argument or deepening debate.

Conclusion: Where to from here?

What then is left for Ratzinger and for others who would seek to avoid swinging the truth club of natural law reasoning in contemporary Western culture? Ratzinger is not advocating the abandonment of the natural law tradition, but is instead interested in pursuing a different angle when it comes to engaging in intractable moral disputes in a secularised and pluralistic society. There are a plurality of modes of engaging the natural law tradition, and it seems that his caution applies specifically to the application of said reasoning in a milieu that no longer holds to a conception of nature which is teleological.

It seems that Ratzinger's concern, and the concern of others, including MacIntyre and Rowland and members of the International Theological Commission, is to avoid the presentation of natural law reasoning in such a way as to 'avoid presenting it in the rigid form that it assumed, particularly in modern rationalism.'¹⁸ This might be done in a number of

¹⁷ For evidence of the failure of this line of argumentation, a simple glance at the twitter feed of one Ryan T. Anderson, one of the authors suffices. Instead of thoughtful engagement with his argument, Anderson is subjected to unfair ad hominem attacks, made to be the subject of ridicule, and branded a bigot and a homophobe. His use of new natural law reasoning, implying that his view of marriage is 'self-evident' to those who are able to employ a little bit of their reasoning skills is received as arrogant by those who would think otherwise.

¹⁸ International Theological Commission 'In Search of a Universal Ethic: A New Look at the Natural Law', in Berkman and Mattison, 25-92, n. 33.

ways. Rowland suggests, leaning on MacIntyre, that by accounting for one's own narrative tradition, as well as the narrative traditions of one's interlocutors, that moral disputes might be able to be engaged in a more fruitful manner.

For Rowland, this would essentially mean removing 'religion' from the list of seven 'self-evident' goods, and having it operate openly as the master narrative for Catholics and Christians who are attempting to engage with a secularised and pluralistic society.¹⁹ It would mean that Catholics and Christians more broadly engage in a more honest way in the public square, owning up to the fact that their conception of nature is fundamentally the result of what they understand as Revelation, prior to it being available to reason. It would see them using such opportunities of public reasoning and debate to deepen awareness of their own conception of nature as a created order. While Rowland acknowledges that '[d]irect appeals to the notion of sacrality of human life may not persuade the liberal intellectuals any more than the reference to rights, [and self-evident goods]', she argues that such appeals 'may have the effect of changing the ground on which the battles are fought in such a way that the liberals and the relativist postmoderns are forced to concede the materialistic foundations of their own anthropology.'²⁰

The quote by Ratzinger which began this essay references the radically altered conception of nature which has coincided with the rise of modern science and the widespread acceptance of the theory of evolution. As a result of this phenomenon Ratzinger expressed his preference not to rely on natural law reasoning in engaging in public discourse about the just ordering of society. This concern of Ratzinger does not discourage the New Natural Law theorists who rather avoid any recourse to a theory of nature at all. For them, the self-evident goods discernible through the practical reason itself become the basis from which they enter public discourse, brandishing the blunt object which Ratzinger shies away from. This contrasts with the approach outlined by Tracey Rowland who, in accounting Ratzinger's

¹⁹ See chapter 7 of Rowland, *Culture and the Thomist Tradition: After Vatican II*.

²⁰ "The Role of Natural Law and Natural Right in the Search for a Universal Ethic.", 161.

cautioned approach, demonstrates a preference for a language which is more obviously of a Catholic/Christian provenance. This is not a recourse to fideism, but instead as a tactic aimed at altering the landscape of moral debate, providing opportunities that push discussion into more metaphysical territory, perhaps even providing opportunities for faith sharing.