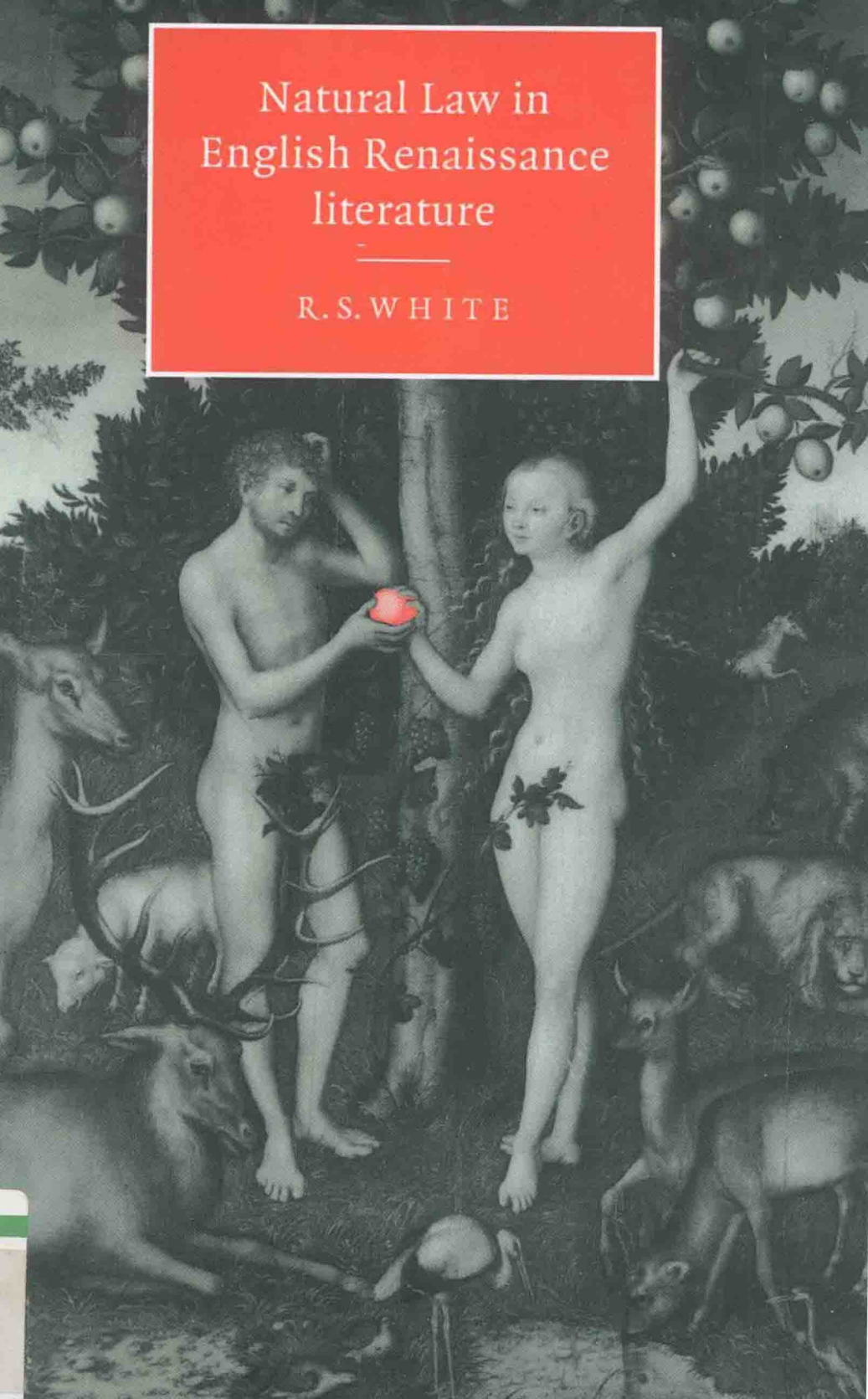


Natural Law in
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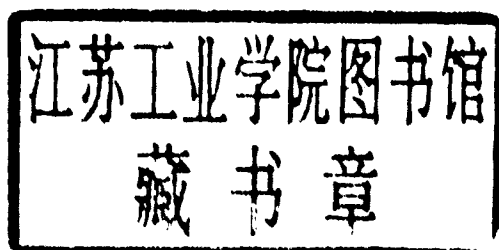
R. S. WHITE



Natural Law in English Renaissance literature

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**For John Colmer
In memoriam**

Preface

Law rational therefore, which men commonly use to call the Law of Nature, meaning thereby the Law which human Nature knoweth itself in reason universally bound unto, which also for that cause may be termed most fitly the Law of Reason; this Law, say I, comprehendeth all those things which men by the light of their natural understanding evidently know, or at leastwise may know, to be beseeming or unbeseeming, virtuous or vicious, good or evil for them to do.¹

Natural Law is law which 'authorises' all positive, human laws. According to its classical exponents it is located in the purity of human reason, and, to its Christian theorists, in reason and conscience, motivated by an instinctive need to guarantee human survival. It is a form of knowledge which spurs us to follow virtue and shun vice. The concept dominated Renaissance thought and, through its literary equivalent, later to be called poetic justice, it influenced all English writers of the period in fundamental ways. There was a sceptical and resistant tradition dating from Calvin and summated by Hobbes, suggesting that after the Fall Natural Law existed, not, as Aquinas held, in the human mind and heart, but in God's will and the sovereign's fiat, but even this line of argument necessarily worked within the terms laid down by Aquinas.

Natural Law may be regarded simply as an intellectual 'model', since in the realm of observation it has 'never really existed'.² No actual society has ever been built upon its premises. It may be no more than a rational hypothesis, or a useful, even necessary, construction, suggesting what 'ought to be' rather than what 'is'. Other ways of saying the same thing might be, first, that Natural Law has the status of 'reality' only as an 'imaginative projection',³ or that it is not a finished product but a process, that process being reason itself as it contemplates good and evil. Postmodern theory has, if nothing else, made us wary of anything that smacks of universalism, and there is absolutely nothing to refute the argument that Natural Law is no more and no less than a constructed fiction. 'There is nothing either good or bad, but thinking makes it so', says Hamlet, in richly ambiguous fashion. Even when constructions are

elevated into values for living, it is utility rather than truth that guides such priorities. All I claim to do in this book is to prove the existence and importance of the ideas in the English Renaissance, and to demonstrate that these ideas had creative outcomes throughout the literature of the period. Indeed, it could be claimed that the proximity of poetic justice and Natural Law in the English literary Renaissance centrally defines the continuing intellectual and emotional power and vitality of the period's output.

The primary contribution this book is intended to make is to literary history, as a selection of important texts are interpreted in the context of pervasive debates in the English Renaissance on Natural Law. However, given the sheer scope of Natural Law itself, which was an ancient concept going back to pre-Socratic Greek writers and which was given magisterial expression in the writing of the medieval St Thomas Aquinas, and since its implications reach into law, religion, politics, and moral philosophy, a part of the book is devoted to setting up intellectual contexts before moving primarily on to texts. I hope literary readers will find this preparatory attention justified, and, more than this, I hope it will make the book of some interest to students of the history of ideas and to legal historians, as well as to that figure who, however elusive, inspires most writers, 'the general reader', who may start from an interest in the current revival of Natural Law thinking.

It is important to stress that the writers and the particular works I choose to analyse are by no means the only ones showing Natural Law influence. They are exemplary of a pervasive and profound tendency in English Renaissance literature to address the subject in terms established by Aquinas and challenged but not denied by the Reformation. Almost any major work written during the period could have been analysed fruitfully, but, in terms of the texts chosen, I have tried to make my book complementary to those by John S. Wilks (who writes mainly on *Richard III*, *Hamlet*, Marlowe, Webster, Tourneur, and Ford),⁴ and George C. Herndl (who concentrates entirely on Jacobean drama),⁵ and to cover a range of different literary forms, in prose, poetry, and drama; comedy, tragedy, romance, and polemic. The only real regret I have is omitting *Hamlet*, which is covered especially thoroughly by Wilks from the point of view of conscience. *Hamlet* could be regarded as the Natural Law hero *par excellence*, the philosophy student from Faustus' university at Wittenberg which was also Luther's place of confrontation, and spending his play brooding on the fundamentals of reason and conscience in action.

My analysis is also incomplete in the sense of not covering all aspects of Natural Law in each work, and not consistently following through the

same preoccupations through each work. I try to deal with each text as *sui generis*, raising its own problems, and standing at a unique place along the spectrum from idealism to scepticism. Although I argue that Natural Law provided a constructed model whose basic reference points of 'right reason' and conscience had virtually normative status in the Renaissance, yet I do not pretend that it was universally accepted as an agreed, singular or straightforward concept. It was, on the contrary, a site for considerable argument because of its inherent generality and the undoubted ambiguity of applying it to actual circumstances. Because of its antiquity and ubiquitousness, Natural Law was ripe for appropriation by thinkers of virtually all persuasions, leading to a plethora of descriptions, hazy lines drawn between reason and 'natural' passion, dispute over its jurisdiction and applications, and even to scepticism about whether it can ever operate in a fallen world. For example, Renaissance Natural Law could be, and was, used to justify the freedom of the rich at the expense of the poor, or freedom for the poor at the cost of abolishing private wealth. I hope my analysis of texts reflects the fact that such controversies are inscribed in literature. Such apparently simple dicta as 'trust reason and conscience; follow virtue, shun vice' become surprisingly complex and contentious in particular fictional circumstances, and the fundamental argument over whether Natural Law lies in the human heart, as Aquinas argued, or is almost irretrievable by fallen human beings without the extension of God's grace and the strong political actions of a monarch, is also reflected in the writings. Every writer takes an individual stand on such matters, making each work different, sometimes radically different, from the others. But the simple, overarching idea that the model of Natural Law is a central analogy for notions of 'poetic justice' invariably applies to the anticipated reception by readers and audience, in the fullest, educative function of 'poesy'.

As Herbert Butterfield memorably argued, victors rewrite history. There is a problem of historical retrieval for modern scholars, since between us and the sixteenth century stands the bulky *Leviathan* of Thomas Hobbes. After this book took root in England, the name Aquinas was barely heard again, and Natural Law became a justification for what Aquinas would have regarded as very dubious positions which emphasised individual freedoms often at the expense of community and fellow-beings. I should make it clear from the outset that my highlighting of Hobbes is not done with any suggestion that he was the first to voice a sceptical view of Aquinian Natural Law: far from it, since, as I make clear, his ideas synthesise and extend many others available since the Reformation. But it is, rather, to identify and clear away the 'victor's perspective' which has made it possible, to my mind, to overstress the

influence in the Renaissance of Calvinist scepticism, and to minimise the normativeness, sheer flux, and diversity of Natural Law thinking before 1660, which operated, I argue, within a generally Aquinian orthodoxy even while it faced sceptical challenges.

This statement of intention allows me to 'position' myself in relation to books which deal with similar terrain. The few scholars who have written systematically on Natural Law in Renaissance literature, (for example, George C. Herndl, John S. Wilks, and Richard A. McCabe, all cited in the Bibliography), have tended to focus fairly exclusively on drama in the Jacobean period, and to emphasise the Calvinist approach which centralises the fatal corruptions rendered by the Fall, clouding man's access to Natural Law and casting deep suspicion on the view that reason and conscience are innate gifts. This view was certainly powerful and important in a time of rapid political change in England, and in some ways it was the ultimate victor in the argument. As I have mentioned, the sceptical position was to be rationalised so eloquently and powerfully by Hobbes in 1651 (although even he significantly does not question the existence of Natural Law, but relocates its operation) that it was to become the new norm of the 'Enlightenment'. But, as I try to stress, this should not make us read the sceptical tradition into everything in hindsight. Spenser and Sidney were generally more Calvinist than, for example, Shakespeare, More, and Milton, but even they accepted some kind of Natural Law model, accessible to the reader's understanding as a basis for morally judging characters' actions. The evidence points rather to the anti-Calvinist, Hooker, contemporary of Shakespeare, Webster, and Ford, as the spokesman for the 'establishment' view, and for the dominant one before Hobbes, in the quotation at the beginning of this Preface. The English Revolution brought back Natural Law thinking as a basis for argument, and after the Restoration it lived and thrived in the American colonies under the term 'fundamental law'. Rather than agreeing with Herndl that Aquinian concepts of Natural Law were dislodged at the beginning of the seventeenth century, my research confirms Robert Hoopes' argument that the supremacy of 'Right Reason' was not to be undermined until after the Restoration, although obviously the roots of the dislodging forces were evident very much earlier.⁶ If anything, it gained fresh force in the English Revolution of the seventeenth century. I try to guide attention back to the seminal work of the gentle, corpulent Saint Thomas Aquinas, and to the classical formulations of Natural Law itself which provided imaginative writers with such a comprehensive and fertile analogy for the kind of justice operating in their own works.

At the same time, it is undoubtedly true that the tensions entered in the

Reformation, and I have tried to build into my argument the very important influence of the sceptical tradition, and to incorporate the findings of Herndl and Wilks. This tradition is especially important for Spenser, Sidney, and a reading of Edmund in *King Lear*. But it is significant that none of these writers actually challenges Natural Law itself. Like Calvin, Luther, and Hobbes, they simply express problems about man's exact relationship to the Natural Law. Rather than engage in direct dialogue with Herndl's and Wilks' accounts, however, or go over the territory of the Jacobean drama, both of which would risk overbalancing my own argument, I hope that the breadth of my chosen period, reaching from More to Milton, will be seen to establish a rather different focus, which allows for the existence of dominant and dissenting views, amalgamated in complex fashion in works of the imagination. At the same time, I readily acknowledge my pervasive debt to these scholars who are among the few to have ploughed the same vast field.

A few caveats need to be entered to define our own, twentieth-century, intellectual distance from earlier Natural Law assumptions. First, Renaissance Natural Law has only a tangential relationship with one phenomenon which seems to be sweeping at least the English-speaking world in the 1990s under the name of Natural Law. The creation of 'New Age' thinkers, this movement has its roots almost entirely in eastern traditions of mysticism rather than Greek philosophy and Roman Law, although it is clear that the two traditions sprang from similar community and personal, human needs. It may be generally characteristic of the two ancient cultures that where the eastern is mystical and amorally sense-based, the western is rooted in reason and morality. I am dealing with the western line, and do not address other versions of Natural Law.

Secondly, and perhaps more worrying, I am acutely aware that the tradition of Natural Law with which I am dealing was fairly implacably patriarchal, and all the commentators in both their language and their narratives tacitly assume its operation to be an exclusively male domain. 'What a piece of work is man', says Hamlet, and, given his treatment of Ophelia, there is no reason to believe that he means the phrase to be interpreted in any way but literally. Constance Jordan, even while arguing for the existence of 'Renaissance feminism', sharply observes 'that there were very few ways to interpret contemporary concepts of natural law that were not prejudicial to women'.⁷ This is not to say that the underlying and basic theory cannot for all time be applied in egalitarian and enlightened ways. After all, the abolition of slavery was effected largely with the rhetoric of Natural Law, and the gradual emancipation of women has undoubtedly been influenced by its tradition and logic. On the other hand, the assumption that supremacy of male

over female, white over black, are 'natural' is clearly at the heart of profound inequalities. In the interests of pursuing my main theme of the influence of the general theory of Natural Law on literature, I do not pursue these uncomfortable facts beyond occasional statements, since I regard them as lying in the realm of 'positive' applications of the model, and, as such, intrinsically contentious and not a necessary part of the structure of ideas or the Natural Law model itself.

Although the task of the book is historical retrieval, there is also a contemporary dimension. The literary and philosophical material with which I deal may appear to belong to an age which is alien to our own and long gone, but the fundamental questions about good and evil which led to the construction of Natural Law will, to any reader in the late twentieth century, evoke haunting associations. The Nazi extermination of millions of Jews, the destruction of 200,000 innocent civilians in the moment it took to explode an atomic bomb over Hiroshima, the system of *apartheid*, and the policy of 'mutually assured destruction' (MAD) upon which the policy of proliferating nuclear weapons was based, have been our most recent witnesses to the fundamental injustice of consciously not allowing human beings to die as human beings, in the order of nature. Such actions and policies have shown, I believe, not only disregard for the sanctity of human life, but a violation of human reason. As Natural Law gives pre-eminence to reason, to conscience, and to human survival, open debate with its terms in mind might have made such actions unthinkable. What is truly appalling is that none of these policies was the isolated whim of a single madman or criminal. All were the result of policies collectively endorsed, sanctioned in some form of positive law, and carried out by whole populations through elected representatives, as part of their national aspirations.

The contemporary issues are not anachronistic in a book on sixteenth- and seventeenth-century English literature. My version of the Renaissance is not one of antiquarian or safely conservative enclaves of hooded scholars and meretricious poets and playwrights, destined to be swept into oblivion by the sophistications of postmodernism and cultural studies. The thinkers and writers dealt with in this book had the lucidity and courage to raise questions of a fundamental order, which, one could be forgiven for thinking, have been neglected in our own 'progressive' century. May we bequeath our children a sense of urgency in returning to these questions, for now, with the invention of ever more destructive technology and the rapid development of something wrongly called 'communications', and with the growth of an ever greater group of consumers, the stakes are as high as the survival of the human race itself. If the underlying logic of the model of Natural Law was to guarantee

such survival, sometimes at the cost of challenging the morality behind positive laws, then it may still have something to teach us.

A few explanations and justifications are necessary. I consistently privilege by capital letters the terms Natural Law and Law of Nature (by which I intend the same thing, in line with most Renaissance theorists), because in certain contexts I wish to distinguish it from natural law or natural philosophy, intended to mean laws governing the physical universe and the animal world, without moral content. Secondly, I must continually assert that, by and large, the central subject of the book is the basic model of Natural Law, not its specific, contested, and confusing application to particular situations. I am looking at 'the thing itself', and such a distinction can easily be justified, given the abstraction and intended universality of the model. As an example, I do not address the objection anticipated above, which feminists will immediately make, that the way Natural Law was used in the Renaissance was systematically in the service of a patriarchal society and against the 'rights of women'. My argument is that this would properly belong in a different book dealing with a particular application. The problem is not *inherent* in the Natural Law model itself, because its terms could easily and obviously be used to argue for women's rights.

There are some other initial qualifications I should make, 'that future strife may be avoided now' as fellow scholars and readers move through the book. A work that addresses legal, historical, theological, and literary issues from pre-Socratic times to the end of the seventeenth century, may be destined to please no specialist in any one of these disciplines, but I would plead for some interdisciplinary tolerance from my readers, and a focusing on the broad ideas in their literary manifestations. More positively, I must thank the many hundreds of scholars in all fields who, in their books, have made my task less impossible by clearing some of the dark spaces. I modernise all quotations, since the emphasis is on ideas rather than linguistic niceties, and I do not wish to distract or alienate readers who are not scholars of the English Renaissance by 'old spelling'. Only in the case of Spenser's poetry is old spelling adopted, since it is customary, and sometimes necessary for metrical scanning. Finally, I have tried to keep footnotes to a necessary minimum, leaving the Bibliography as an indication of the quarry from which the argument, which I hope stands alone as a piece, was made. If I had followed up every qualification and modification that should be made to many of my over-confident generalisations, the footnotes alone would have made another book, or instead, like an academic *Tristram Shandy*, the book would never have advanced further than the first few footnotes.

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Like most books, this one has taken many years to write, and has incurred many scholarly debts. In carrying out research for this book I have been helped by many institutions and people, and it is a pleasure to thank them.

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No book of this kind can be written without help from individuals, which was always given generously, whether it came in the form of research assistance, information, reading my confused manuscript in embryonic form, scholarly and moral support, encouragement, or the inspiration of human warmth and hospitality at crucial stages. I offer particular thanks for comprehensive help to Desmond Graham, David

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1 Natural Law in history and Renaissance literature

I am tempted to think that only a saint could properly write this book, but only a fool would make the attempt. It explores the literary traces of an idea which, in some form or another, has struck every human society from antiquity onwards as fundamental, an idea which is breathtakingly simple and said to be innate to human beings, but at the same time is considered to be ambiguous, variable, and situational in the ways in which it is applied. A modern dictionary of terms used in English Law defines Natural Law as 'rules derived from God, reason or nature, as distinct from man-made law', and Law of Nature as 'certain rules of conduct supposed to be so just that they are binding upon all mankind'.¹ Behind these bland words lies a world of doubt, centuries of dispute, the English Civil War of the seventeenth century and the American Civil War of the eighteenth, the abolition of slavery, the Nuremberg Trials, and other great upheavals of history. At the heart of the concept lies a belief that survival of the species is a fundamental instinct to human beings. The theory has been around for at least 2,500 years, at its zenith in England in the Renaissance, and now, at the end of the twentieth century, it is rising again into ascendancy, generally in a related but significantly different guise of 'natural rights' or 'human rights' (*ius naturale*) rather than 'Natural Law' (*lex naturae*), or appearing in borrowed robes of eastern mysticism (which is another story altogether). We are dealing with the justice of justice, and with something indeed awesome.

Saint Augustine said 'There is no law unless it be just', and Saint Thomas Aquinas glossed 'And if a human law is at variance in any particular with the Natural Law, it is no longer legal, but rather a corruption of law.'² Natural Law is essential justice, justice itself, the origin and test of all positive laws, and 'the ultimate measure of right and wrong'.³ It is above all rational, discoverable through reason, and therefore 'justifiable'. It has been said to be known by all people at all times because of the universal human capacities for exercising reason. Although its actual implementation in any one circumstance or society

may differ from that in another, it is said to generate all other laws. With its aid humankind can live compatibly in the rational order of nature. Hugo Grotius (1583–1645) linked it with a form of reasoning which is ‘of a rational and social nature’, the cause of which ‘can hardly be anything else than the feeling which is called the common sense of mankind’.⁴ Francis Bacon evocatively describes good and evil as having ‘colours’ which can be observed and apprehended as distinctly through the senses as colours in the physical world.⁵ Its most general precept, again according to Aquinas, is ‘do good and avoid evil’, and the human head and the human heart – reason, later supported in Christianity by conscience – are said to be capable of filling this axiom with meaning in every situation. As George C. Herndl epigrammatically sums up, ‘Evil is unnatural, and man’s highest virtues profoundly natural to him.’⁶ No wonder poets, who take as their province the human mind and heart, have been drawn to the subject, whether or not they know its tangled history, or directly refer to its philosophical roots.

Early theorists of Natural Law, at least up to St Thomas Aquinas and through several centuries of his scholastic followers, maintain that it is an innate form of knowledge, imprinted on the human mind (although this knowledge can, to a greater or lesser extent, be clouded over by experience), and they concede that no single definition can be universally accurate. It sounds somewhat mystical in its origin, and yet no significant western theorist has used the appeal to mysticism, locating Natural Law rather in faculties like reason and knowledge which are presented as practical, not theoretical qualities. Reason itself is the faculty separating humans from animals: ‘How noble in reason . . . the paragon of animals’, is Hamlet’s optimistic assessment of humanity. The elegantly argued book by Robert T. Hoopes, *Right Reason in the English Renaissance* most comprehensively recuperates the Renaissance emphasis on reason, and defines the point of view which could effortlessly equate knowledge and virtue through it: ‘True knowledge, i.e., knowledge of Truth, involves the perfection of the knower in both thought and deed; the exercise of virtue is itself part of what Whichcote called the “true use of Reason”’.⁷ While earlier traditions of Natural Law relied solely on reason, Christianity, largely through Aquinas and in England St German, added conscience. The Christian version of the theory maintains that God established a universe governed by reason, and he imprinted conscience on the human mind to enable us actively to choose virtue and reject vice. Even conscience itself is interpreted as based on reason: that which conscience bids is by definition reasonable and that which it forbids is unreasonable. Equally, that which is reasonable will satisfy the conscience. In this formulation we find an explanation for one

of the great historical shifts in Natural Law thinking, which happened during the Reformation and deeply influenced the Renaissance world. Classical and early medieval Natural Law theorists built their ideas upon reason alone, while Christianity, afraid that such a reliance might eliminate the need for God (as some, particularly Grotius, deduced by arguing that conscience is no more than reason applied to ethical problems)⁸ added conscience, insisting also that both faculties are God-given.

The essence of Natural Law, by definition, lies not in substantive rules, but in precepts which are the basis for rule-making, and which can be exercised even where no positive laws exist. Many descriptions have been attempted: 'incline to virtue, murmur at vice', *bonum faciendum, male vitandum* ('good is to be done, evil to be avoided'), 'do as you would be done by', 'To thine own self be true', and sometimes more specifically 'private interests should be subordinated to the community's good', all areas constantly plumbed by imaginative writers. John Finnis, who has written one of the most comprehensive books in recent times on Natural Law theory from an ahistorical and jurisprudential point of view, formulates it as 'practical reasonableness in relation to the good of human beings who, because they live in community with one another, are confronted with problems of justice and rights, of authority, law and obligation'.⁹ Natural Law is what enables us confidently to make, if not always to prove, spontaneous statements like, 'That is not fair' or 'That is unjust', even if the actions we are commenting upon may come within 'the letter of the law' or not be covered by any law. By implication it also informs our very powerful feelings about the moral pressures resolved or conspicuously not resolved at the end of works of fiction, particularly Renaissance ones, backed up as they are by a theory of didacticism, and some kind of 'poetic justice' which is the literary work's analogy of Natural Law.

My intention in this book is to demonstrate that a belief in the classical model of Natural Law had widespread, even normative, popular currency in the English Renaissance, no matter how variable were opinions about its specific applications. Most memorably, it inspired works of literature which have long outlasted the bedrock of jurisprudential ideals upon which the theory was built. These works drew not only upon Natural Law itself, but also on the inherent ambivalence of its worldly manifestations, and at times a more damaging scepticism which led to its eventual demise. To claim More, Spenser, Sidney, Shakespeare, Milton, and many others as writers drawing consciously upon Natural Law is to place in its orbit the most important authors of the whole period in England. Before we can interpret their works from a Natural Law