

# The Ontological Foundations for Natural Law Theory and Contemporary Ethical Naturalism

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THE ONTOLOGICAL FOUNDATIONS FOR NATURAL LAW THEORY  
AND CONTEMPORARY ETHICAL NATURALISM

By

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ABSTRACT  
THE ONTOLOGICAL FOUNDATIONS FOR NATURAL LAW THEORY  
AND CONTEMPORARY ETHICAL NATURALISM

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Marquette University, 2011

This dissertation explores some objections to natural law theory- many of which are also leveled against contemporary naturalism. Despite the way the natural law tradition has fallen into disrepute in much of the American academy, this dissertation defends a classical Thomistic approach to natural law from some modern and contemporary criticisms. It begins with a brief explanation of the theory of natural law that will be defended from these contemporary objections. Chapter three examines G.E. Moore and David Hume's classical problems posed to natural law, along with some contemporary defenders of Moore's position. These arguments are purported to undermine using human nature as a basis for ethics. Chapter four considers how moral relativism, especially the form given by Gilbert Harmon and David Wong, offers a unique challenge to natural law that must be answered and one that seems to undermine any ethical theory than any account relying on human nature. Chapter five explores the relation between neo-naturalism and natural law. Although neo-naturalism is a position often thought of as opposed to natural law, the two share many similarities in the positions they oppose. The last chapter examines how natural law reasoning is used in making medical decisions. The overarching thesis is that, insofar as natural law is coherent and answers many major criticisms, the proposal to reexamine this ethical theory stands as viable.

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## Chapter 1

### AN INTRODUCTION TO NATURAL LAW AND CONTEMPORARY NATURALISM

"Folks are dumb where I come from; they ain't had any learnin'. Still they're happy as can be, doin' what comes naturally!" – From Annie Get Your Gun

Although this was a catchy tune in the musical, the question it raises is whether a person can be happy if he has no education. What does it mean to do 'what comes naturally?' What is the happiness that people experience from doing things this way? The answers to these questions are hotly debated. Philosophers disagree with each other over what acts are "doing what comes naturally." Naturalistic and natural law philosophers would want to qualify what doing what comes naturally has to be in order to result in happiness. In addition, when broaching the topic of doing what is natural, one should sort through which natural law theory is being drawn upon. The natural law theorist should answer the major objections that have led many to abandon this theory. Some philosophers outside the natural law tradition take the idea of doing what comes naturally to imply that there is no human nature limiting what is morally good.<sup>1</sup> This dissertation sorts through these issues and argues that natural law should not be dismissed. The theory is viable.

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<sup>1</sup> Theories considered as non-cognitivist, including emotivism and prescriptivism, because they deny that moral statements have truth-value and are meaningful, clearly deny the natural law account. Marxist accounts may also oppose natural law accounts as they deny any "such thing as a fixed, individual human nature, that what is true of them in one society or period may not be true of them in another place or time." Leslie Stevenson & David Haberman, *Ten Theories of Human Nature*, 3<sup>rd</sup> ed. (Oxford, Oxford University Press, 1998): 140.

This dissertation is a defense of natural law ethical theory. I feel very strongly about the truth of natural law as I explain it. The entire dissertation should be read with this in mind. The version of natural law that I will be defending is more fully explicated in the second chapter. Also, because natural law has such a rich history and contains much that is relevant for ethics today, I think it is an important tradition to restore.

It takes very little time when researching ethical theory to find that natural law has fallen into disrepute in the American academy. Perhaps part of the reason is the influence of Darwinism and the ideas that follow from it. It may be that Darwinism has motivated the development of theories which deny several things necessary for natural law theory. One such denial is the existence of a fixed human nature. Darwin's theory explains that life begins in something like primordial soup, and eventually evolves from simple to complex life. There are no 'fixed' unchanging essences that stabilize a species, as one species gives rise to other species. Dismissive of any essence or nature, those following this view state that there is no basis for establishing an ethical theory on a fictional thing like human nature. Another denial inherent in Darwinism is that there is no teleology or final causality in nature. Human nature, teleology and final causality, which were embraced in an Aristotelian framework, were replaced by mechanism and the search for purely material causes in the realm of science.<sup>2</sup> Because of these things, there is only an 'appearance of design' in organisms which is simply illusory.<sup>3</sup> This theory may be

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<sup>2</sup>For a complete history of this phenomena see Etienne Gilson, *From Darwin to Aristotle and Back Again*, (Notre Dame: University of Notre Dame Press, 1984).

<sup>3</sup>For the complete modern argument that presses this point see Richard Dawkins, *The Blind Watchmaker: Why the Evidence of Evolution Reveals a Universe without Design*, London: W.W. Norton & Co. 1996.

summarized as saying, “man is the result of a purposeless and natural process that did not have us in mind.”<sup>4</sup>

This is not to say that all philosophers view the natural law as completely incompatible with Darwinism. Indeed, among those promoting a return to natural law include some Darwinists. Larry Arnhart is one of the most influential Darwinian natural law theorists and has defended human nature, teleology, and Darwinism as completely consistent.<sup>5</sup> Although many of his conclusions are consonant with other theories of natural law, not all agree that Arnhart’s Darwinist foundation is up to the task of justifying his ethical theory.<sup>6</sup> By and large, the Darwinist rejects theories of natural law based on an unchanging human nature because of something built in to their explanation of Darwinistic evolutionary theory. This theory holds two important presuppositions opposed to natural law. The first is that in the existing species the nature of each creature’s offspring can suddenly change. The second is that each change from one species to another occurs because there are no fixed essences.<sup>7</sup> Arnhart and others may simply point out that certain natural ends are given, such as reproduction and survival, and one can use these ends as a basis for natural law. Regardless of whether Darwinism and natural law can be reconciled, the influence of Darwin may be responsible for many to reject crucial components of natural law.

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<sup>4</sup>George Gaylord Simpson, *The Meaning of Evolution*, rev. ed. (New Haven: Yale University Press, 1967): pp. 344-45.

<sup>5</sup>Larry Arnhart, *Darwinian Natural Right: The Biological Ethics of Human Nature*, Albany: State University of New York Press, 1998. Both Darwinists and non-Darwinists should concede that reproductive success seems to be a natural end that factors into morality

<sup>6</sup>For a complete critique of Arnhart’s position and how unlike natural law what he espouses is see J. Budziszewski, *The Line Through the Heart: Natural Law as Fact, Theory, and Sign of Contradiction*, (Wilmington: ISI Books, 2009): Chapter 5.

<sup>7</sup>Peter Doyle, *Understanding Fossils*, (New York: John Wiley & Sons, 1996): p. 67-69.

One of the components that Darwin calls into question is the Aristotelian teleological conception of the universe. W. T. Jones explains the effect of this shift of beliefs from the Middle Ages to the Renaissance:

The fact that men of the classical period and the Middle Ages agreed that values are objectively real is connected, of course, with the teleological conception of the universe that they shared. If the purpose anything subserves gives it value, and if purposes are objective, values will be objective. Anything will be good (really good, apart from some individual's feeling about it) insofar as it consciously or unconsciously realizes its purpose; anything will be bad insofar as it fails to accomplish its purpose....It follows that, in abandoning the teleological conception of the universe, the modern mind abandoned this easy way of establishing the objectivity of value. Moreover, modern men did not merely abandon the teleological conception of the universe; gradually they substituted for it a conception of the universe that seemed incompatible with the objectivity of values.<sup>8</sup>

Although one may doubt aspects of this account provided by Jones (e.g., it wasn't the case that everybody in the classical and medieval period held a teleological conception of the universe, Democritus for instance), one cannot be too dismissive of his main point. It may be the case that Darwinism actually came long after the dismissal of teleology, but nonetheless one may contend that it has played a crucial role for the dismissal of natural law.

There is also a rejection of Aristotle's physics that comes into play when considering why natural law is rejected. Modern science seems chiefly concerned with material and efficient causes. They primarily want to study what initiated the change from outside what is studied and the material out of which it is composed. Although final causality seems somewhat irrelevant to this endeavor, it is not irrelevant to natural law.

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<sup>8</sup> W.D. Jones, *A History of Western Philosophy: Hobbes to Hume*, 2<sup>nd</sup> Ed. (Chicago: Harcourt, Brace & World, Inc. 1969): p. 2.

Despite the widespread rejection of teleology of living things in academia, there has been a modest revival of the natural law tradition.<sup>9</sup> Still, it is far from a popular theory. Why have so many philosophers looked askance at natural law even though historically it has such a rich philosophical heritage?

One may find the presumption in some departments of philosophy the view that natural law has nothing to offer as an ethical system. Up until the 18<sup>th</sup> century some of the greatest minds in philosophy accepted natural law.<sup>10</sup> Through the middle ages and into late modern times many people judged the acceptability and morality of civil law on the basis of how well it was in accord with natural law.<sup>11</sup> Not only were civil laws judged this way, war was also justified in cases where rights that were based on natural law were violated. For example, the justification for the American Revolution was that the King of England was violating certain unalienable rights (that were based on the natural law). There is something about the way man is that helps one determine (and understand) what is good to do. Actions that are determined to be good are naturally good for man.

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<sup>9</sup>Although Vernon Bourke, Henry Veatch, Ralph McInerny, and Anthony Lisska were read in some circles, Germain Grisez and John Finnis were arguably the most influential contemporary natural law theorists in that they greatly impacted the field of political science thus reviving natural law.

<sup>10</sup>The Stoics and Christians promoted natural law in ancient times. In the middle ages, Aquinas synthesized aspects from several philosophers on natural law. The modern period marked the natural law theory of Grotius, Pufendorf, Cumberland, Culverwell, Harrington, and Locke. See *Moral Philosophy from Montaigne to Kant: An anthology*, Vol. I, ed. J.B. Schneewind, New York: Cambridge University Press, 1990. David Braybrooke also argues in *Natural Law Modernized* that Rousseau, Thomas Hobbes, David Hume, and David Copp are all natural law theorists. Contemporary defenders include Vernon Bourke, Ralph McInerny, Russell Hittinger, Philip Devine, Jean Porter, Janet Smith, Germain Grisez, John Finnis, Patrick Lee, Joseph Boyle, William May, and Robert George.

<sup>11</sup>Consider the words of one of the greatest jurists of the 18<sup>th</sup> century, William Blackstone, "Good and wise men, in all ages...have supposed, that the deity, from the relations, we stand in, to himself and to each other, has constituted an eternal and immutable law, which is, indispensably, obligatory upon all mankind, prior to any human institution whatever. This is what is called the law of nature, which, being coeval with mankind, and dictated by God himself, is, of course superior in obligation to any other. It is binding over all the globe, in all countries at all times. No human laws are of any validity, if contrary to this; and such of them as are valid, derive all their authority, mediately or immediately, from this original." *Commentaries on the Laws of England* in the chapter *Of the Nature of Laws in General*.

One can find in the late 18<sup>th</sup> century and early 20<sup>th</sup> century two major arguments that were supposed to put the nails into the coffin of any natural law theory. The one, attributed to David Hume, has been called the Is-Ought fallacy. Those said to commit this fallacy believe that certain facts entail values, which is also the view held by natural law theorists. The other, proposed by G.E. Moore, is called the naturalistic fallacy. Those said to commit this fallacy believe that goodness is a natural property. This is also a view held by some natural law theorists. Despite the influence these fallacies had on secular approaches to natural law, many working in the field of theological ethics continued writing on natural law ethical theory and applying it to situations people encounter in day-to-day living.<sup>12</sup>

The emphasis of this chapter is to briefly explain the following: 1) the problems of natural law as an ethical theory; 2) what natural law theory in general is; 3) the arguments that seem to have put natural law theory on her death bed; 4) the parallels natural law theory has with contemporary naturalism; and 5) an overview of the work to be done in the chapters that follow.

### ***A. What are the Problems of Natural Law?***

This section highlights the problems intrinsic to natural law theory. The arguments against natural law are historically significant because they led to its abandonment by many from the nineteenth century until the late twentieth century. Although there are some thinkers that still worked on natural law ethics in the Catholic tradition during this time, most outside this tradition developed different ethical theories

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<sup>12</sup> Some of those that continued this work in natural law included Heinrich Rommen, A. P. D'Entreves, Jacques Maritain, Etienne Gilson, Yves Simon, Henry Veatch, and Thomas Davitt.

to avoid the ‘errors in reasoning’ found in natural law.<sup>13</sup> Among these errors is included discovering an ‘ought’ in what ‘is’ the case, the challenge of relativism, and in deriving an ethical theory from human nature.

David Hume formulates a significant argument that has been leveled against natural law theory. This argument has classically become known as the ‘Is-Ought’ fallacy or Hume’s Fork. This argument states that there cannot be more in the conclusion than is in the premises of a deductive argument. The common moral syllogism has only facts in the premises, and within them there is nothing of value. However, this syllogism often concludes with a value-judgment about how one ought to act. In other words, although the two premises concern only what *is* the case, the syllogism concludes by stating what *ought* to be done. If this as it seems to be, is illicit, then it seems Hume has a case against those who use facts about reality to deduce how one ought to act. Thus, Hume concludes that the moral theorist has made an error in reasoning.

G.E. Moore offers the second major argument against traditional approaches that emphasize the ‘natural’ as a basis for that which is morally good. The objection he has developed has come to be called the open question argument. Although the seeds of this argument may stem from Hume, Moore’s argument is certainly different. The argument is basically this: For any proposed definition of ‘good’ couched solely in naturalist terms, say X, Y, Z, it is always an open- that is, not self-answering, “analytic”- question whether good is X, Y, Z. If you say that any *X* is *Y*, and you can doubt whether *X* is *Y* (because the two do not entail each other conceptually), then it is an open question whether the two are

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<sup>13</sup>Henry Veatch suggests what he sees as the bankruptcy of all the modern ethical theories as being rooted in the abandonment of natural law and the embracing of Hume and Moore’s arguments. This is the subject of his work titled, *For an Ontology of Morals: A Critique of Contemporary Ethical Theory*. (Evanston: Northwestern University Press, 1971).

the same. Goodness is not something that can be defined in naturalistic terms. In every case the definition of goodness (where goodness is *Y*) that appears in the form goodness is *Y*, one finds that the definition (which is *Y*) is not analytically true. Naturalistic definitions of ‘good’ are simply mistaken. All the theories that claim to define ‘good’ in terms of certain ‘natural’ properties are simply committing the ‘naturalistic’ fallacy.<sup>14</sup> This is a brief synopsis of the argument, although it will be more fully explained in chapter three.

As a result of Hume and Moore, and as a response to the resuscitation of natural law and other naturalist theories, moral relativism has emerged to challenge this revival.<sup>15</sup> Moral relativists hold that there is no single true system of morality. They also point to the evidence that there are foundationally different beliefs or standards about the same subject. They maintain, as Philip Devine writes, that “There is sometimes no further standard to which appeal can be made in order to determine which of the rival standards is correct.”<sup>16</sup> The arguments the moral relativists provide are given to provide an alternate

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<sup>14</sup> Of course it is not the case that natural law theorists hold that goodness is natural as yellow is. In this case, Moore’s argument may be a moot point. However, Ralph McInerny writes of the influence of this view of Moore’s as saying that there is no natural thing that we seek that can be equated with Good. (*Ethica Thomistica*, p. 27) Henry Veatch’s focus on the naturalistic fallacy involves the problems of defining goodness and avoiding circularity in definition. (*For an Ontology of Morals*, p. 108-117) These are real problems that need to be addressed even if natural law doesn’t hold that goodness is a natural property like yellow is.

<sup>15</sup> Moral relativism is not coherentism. Coherentism is an epistemological account that attempts to justify certain beliefs; moral relativism is a meta-ethical account about the way ethics is. Peter Murphy explains, “It implies that for a belief to be justified it must belong to a coherent system of beliefs. For a system of beliefs to be coherent, the beliefs that make up that system must “cohere” with one another. Typically, this coherence is taken to involve three components: logical consistency, explanatory relations, and various inductive (non-explanatory) relations.” From “Coherentism in Epistemology,” *Internet Encyclopedia of Philosophy*, (Oct. 15, 2006).

<sup>16</sup> Philip Devine, *Relativism, Nihilism, and God*, (Notre Dame: University of Notre Dame Press, 1989): p. 43.

account of morality. These arguments must be answered if one is going to have a plausible account of natural law.<sup>17</sup>

There also seems to be a general problem of finding how ethical norms can be taken from human nature. If there is a common human nature, can one discover common moral principles that can guide human action? It seems obvious that there are certainly aspects of human nature that are mutable. How can a nature that is so mutable possibly reveal to us anything about how we ought to act?

The arguments of Hume, Moore, and the relativists are the central considerations that will be dealt with in this dissertation. Each uniquely presents problems for natural law and naturalist theories of ethics. Hume ends up reducing moral judgments to mere feelings. He argues that there is nothing in the act that is seen that is bad or good. The basis for moral judgments is not something that is objective, but merely arises from the feelings one has due to certain observations or thoughts. Natural law also claims that what one ought to do is based upon what a person is. Hume severs that connection. Some note that Moore's theory also challenges several aspects of natural law theory. The classical natural law theorist often claims that what is good is a natural property (at least at times). Natural law also says that goodness can be defined. Moore's argument counters these claims. The relativist challenge to natural law comes from those that deny moral truth and that universal moral rules apply to all people.

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<sup>17</sup> Contrary to what is commonly thought of as a corollary to relativism, Crispin Wright argues that one may be a relativist and still hold that there are some ethical truths. See *Truth and Objectivity* (Harvard University Press, 1992). I will discuss relativism in more detail in chapter four.

### ***B. What is Natural Law Theory?***

There are three different species of natural law, but all share some common ground. Although there are characteristics of the theories that distinguish them as theories of natural law, there are also other aspects of natural law theory that are shared with other ethical theories. This section explicates what natural law is, common features found in every natural law theory, and one particular aspect of natural law that is shared among many normative theories.

Natural law bases the goodness of certain acts on what is natural to humans. The natural law theorist must explain what is natural and what law means. In natural law that which is most natural to man is that which makes him different from other animals.<sup>18</sup> Thus, a man acts naturally when he acts according to the principle that makes him unique among all animals, namely, reason. Reason is said to be the distinguishing principle by which a human acts. Law is, according to St. Thomas, “an ordinance of reason for the common good, promulgated by him who has the care of the community.”<sup>19</sup> The natural law theorist follows St. Thomas in emphasizing that law has the following properties:

1. A prescriptive order
2. Given by reason
3. Supporting the common good
4. Commanded by a ruler.

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<sup>18</sup>Occasionally the term ‘man’ and the masculine pronoun will be used in this dissertation as a generic reference to all mankind. I hesitate to use ‘he/she’ or alternate ‘he’ with ‘she’ because doing so tends to call attention to itself and impede ready understanding of the text.

<sup>19</sup>St. Thomas Aquinas, *Summa Theologica*, I-II, Ed. By Anton Pegis, in the *Basic Writings of Saint Thomas Aquinas*, (Indianapolis: Hackett Publishing, 1973): q. 90, a. 4, c

Natural law combines what is unique in man, i.e. reason, with law. Natural law is the combination of these two functions. Reason acts in man to discern good and evil.<sup>20</sup>

Natural law is the determining characteristic that aids a person in discovering whether an act is good.<sup>21</sup> Natural law in man is called right reason, which is the measure of good acts.<sup>22</sup> Ralph McInerny states it succinctly, “Natural law is the rational direction of action, the formulation of precepts stating how the good is to be achieved, how evil avoided.”<sup>23</sup>

What do all the varieties of natural law share in common? One thing every natural law theorist holds is that morally good acts are based on aspects of mankind that are common to humanity. The philosopher Philip Devine explains,

A common theme in the natural law tradition is the unity of humanity, and consequently the existence of goods, virtues, and moral principles accessible to, and binding upon, men and women as such. Universal human rights also flow naturally from a natural law perspective, though not more easily than universal human goods and universal human virtues. Natural law theorists affirm, moreover, that questions of the good and right are matters of knowledge and truth in as good a sense as, or better than, that of natural science.<sup>24</sup>

The common element of all mankind to which the natural law theorist appeals is universal. Although natural theorists disagree to some extent about what this common element is, all agree that there is something that is common to man.

There are significant implications for these two common elements of natural law. The natural law theorist holds that a man knows what is right by right reason and that

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<sup>20</sup>Ibid. *ST*, I-II, q. 91, a. 2

<sup>21</sup>In St. Thomas eternal law is said to be the supreme measure. Also, this eternal law for St. Thomas is identical to the divine essence.

<sup>22</sup>Ibid. q. 21, a. 1

<sup>23</sup>Ralph McInerny, *Aquinas On Human Action: A Theory of Practice*, (Washington D.C.: Catholic University of America Press, 1992): P. 150.

<sup>24</sup>Philip Devine, *Natural Law Ethics*, (Westport: Greenwood Press, 2000): p. 1.

there is a universal element of man. As Devine says, the theory is also cognitivist, i.e. it holds that it is possible to know what is right or wrong. Because everyone has right reason, and everyone can discover the universal aspect of man, everyone can, in principle, know whether an act is good or evil. This is not to say that natural law theory doesn't recognize that there are difficult circumstances that must be considered in some cases. It also doesn't mean that every case is clear cut as to how one should act. But it does mean that many cases are clear, and that one can know how to act in difficult situations sometimes from guidance one has in clear cases.

The third element that is common to every natural law approach concerns the use of the the first principle of practical reason. St. Thomas identifies this as the universal moral obligation to do good, and avoid evil.<sup>25</sup> Insofar as any action is to be done it falls under the aspect of this universal good found in the first principle. It is said that this first principle has content, and other self-evident principles can be drawn from it.

In brief, all natural law theorists share some common beliefs about natural law. All say that right reason is the way one makes moral decisions. Also, all recognize that there is an aspect of man that is universal. Each also recognizes the first principle of practical reason and that there are certain self-evident principles that follow from it. The nature of these self-evident principles is such that one immediately recognizes their goodness upon formulation. Although these three common threads are essential components of all natural law theories, the most important relates to the guidance it provides for action. McInerney writes, "Natural law is the claim that there are common,

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<sup>25</sup> St. Thomas Aquinas, *Summa Theologica*, First Part of the Second Part, Ed. By Anton C. Pegis. (Indianapolis: Hackett Publishing, 1945): Q. 94, Art. 2, p.774

general guidelines for action, easily formulated by practical reason, with universal application.”<sup>26</sup>

There are many ways to classify types of natural law theory. For the purposes of this treatment, I will categorize natural law theory into three major types. The methodology of each type reflects the metaphysical basis of that theory. This is a brief survey of each of the views, including the one expounded in this work.

There are two major ways of interpreting natural law. The first of these is proportionalism.<sup>27</sup> Proportionalism holds that the good aspects of any act must override the evil aspects.<sup>28</sup> This position does not support the view that any act is in and of itself intrinsically evil or wrong.<sup>29</sup> According to proportionalist Charles Curran, “Catholic theologians thus appealed to commensurate reason, *proportionate* reason or the calculation of consequences to indicate that premoral evil could on some occasions be justified.”<sup>30</sup> (*Italics mine*) Insofar as goodness and evil are not intrinsic to an act, and thus not natural elements of an act, this removes the emphasis on what is natural as a basis for action. Instead, the proportionalist considers an individual’s intentions and attitudes. Thus, one source of goodness and badness arises from the intention or the motive for acting.

The proportionalist claims his theory is better than others which overemphasize one consideration to the detriment of others. A deontologist is said to reduce all morality to merely following a set of rules. A teleological system of ethics is said to reduce all

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<sup>26</sup>McInerny, *Aquinas on Human Action*, p. 134.

<sup>27</sup>Bernard Hoose’s survey of proportionalism is an excellent introduction into the debate between different natural law theorists in his work *Proportionalism: The American Debate and its European Roots*. Washington D.C.: Georgetown University Press, 1987.

<sup>28</sup>Curran, Charles E., “Utilitarianism and Moral Theology,” in *Readings in Moral Theology No. 1*, ed. By Charles Curran and Richard McCormick, (New York: Paulist Press, 1979): p. 353

<sup>29</sup>Ibid.

<sup>30</sup>Ibid.

morality to consequences. The proportionalist insists one cannot reduce all morality to either duty or consequences.<sup>31</sup> Accordingly, the proportionalist claims to avoid the excesses of deontology and teleology, and adopt the best aspects of each. The proportionalist recognizes duty as an important aspect in an ethical system, and also accepts the fact the consequences of an act is another important element in a moral theory. Proportionalism may be a mixed, unqualified, impure consequentialism.<sup>32</sup> The contention here is that considering intentions, duties involved, and consequences are all important when evaluating the goodness of an action. One can hold to this without holding that there is any intrinsically wrong action. Because the nature of an action comes from its end (read consequences), the consequences are of primary importance even if they are not the only factor which is important.

The proportionalist holds a unique view on the universality of moral norms and whether any act can be judged as evil before it occurs.<sup>33</sup> Proportionalist Joseph Fuchs explains,

This notion of a static-universal system of norms is valid to the extent that it believes man is and always will be man (tautology!) and that he must always conduct himself rightly—that is, as man. But this quite accurate perception *does not entail as a necessary consequence a static-universal system of moral norms.* The state of being man does not, in the first place, exclude that the human state may differ in different epochs and cultures, just as it is actualized in different individuals and life situations without placing man's nature in question...For even that which essentially constitutes man, that which therefore belongs to his nature unalterably, as also his permanent structures, is basically mutable. Mutability belongs to man's immutable essence; irrevocably, man is man (tautology!). To be sure, a priori, some essential elements of man's nature can be identified: body-soul unity, personality, accountability, interpersonality; while one

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<sup>31</sup>Ibid. 353-357.

<sup>32</sup>A full discussion of the different views proportionalists hold related to consequentialism, see Bernard Hoose, pp. 76-81. It is also possible that proportionalists are non-hedonistic consequentialists. The problem is how one weighs certain consequences over another.

<sup>33</sup>Although not all proportionalists agree with each other on every issue of how to respond to arguments against natural law, there is a general agreement about these two aspects.

cannot say with equal a priori validity, respecting other components of existential man, whether they belong necessarily and unchangeably to human nature.<sup>34</sup>  
*(Italics mine)*

Fuchs emphasizes that there is not a universal system of moral norms relying on an immutable human nature because man's nature has mutable aspects. Proportionalist Peter Knauer writes,

I plead for a kind of objective relativism in ethics. I think that there are no prefabricated judgments which can be made, but that the judgment of conscience depends on what a particular event is in reality. Whether, for example, particular behavior is hatred of God cannot be known in advance; it requires examination. It may be that the hatred is directed to a false image of God which the person refuses to serve.<sup>35</sup>

Knauer's 'objective relativism' simply refers to the fact that one can know the objective truth of whether an act is good, but not before it occurs in reality when the motivation and consequences are also known.

The second major theory of natural law relies on the first of two absolutist interpretations. This theory, which has been called a basic goods theory, was developed by Germain Grisez and John Finnis. In this theory, which tries to avoid problems attributed to a common human nature, a list of goods common to man is appealed to as the foundation for ethics.<sup>36</sup> That which is universal and absolute on this account are these common goods. So, although there is no common or universal human nature, one can discover a universal list of goods that are necessary for every human. Also, no good listed is of any greater importance than any other. Thus, all goods are equally good.

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<sup>34</sup>Joseph Fuchs, "The Absoluteness of Moral Terms," in *Readings in Moral Theology No. 1*, ed. By Charles Curran and Richard McCormick, (New York: Paulist Press, 1979): p. 107.

<sup>35</sup>Peter Knauer, "The Principle of Double Effect," in *Readings in Moral Theology No. 1*, ed. By Charles Curran and Richard McCormick, (New York: Paulist Press, 1979): 27-28.

<sup>36</sup>One can find this position explained in John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon, 1980); and Germain Grisez, "The First Principle of Practical Reason," in *Aquinas: A Collection of Critical Essays*, ed. A. Kenny (Garden City: Doubleday, 1969), 340-382.

This second major elaboration of natural law was developed as a response to Pope Paul VI's encyclical *Humanae Vitae*, just as proportionalism was. However, Grisez and Finnis reject proportionalism. The thrust of Grisez and Finnis' attack on proportionalism is that there is no hierarchy of goods that justifies doing evil. The proportionalist says that an evil means (*i.e.*, action) may be justified by a good consequence.<sup>37</sup> A person is to consider if the consequence is proportionately greater than the act that is done when the act as a whole is considered.<sup>38</sup> Grisez and Finnis respond that an evil act is forbidden because of an absolute prohibition against performing an evil act. These two men contend that the list of goods is self-evident, and no good is superior to another. J. Budziszewski summarizes this view:

The basic theory of the new natural-law theory is simple. First, we have “pre-moral practical principles” that identify the various kinds of human good as self-evident objects of pursuit. Second, we have “modes of responsibility,” equally self-evident, that tell us how to pursue them. Third are ordinary moral rules, which result.<sup>39</sup>

Principles are pursued as ends, ‘modes of responsibility’ are the means to attain these principles, and our moral rules emerge from the recognition of these first two. There are seven principles each should seek: 1) self-integration, 2) authenticity, 3) Justice and friendship, 4) holiness, 5) life, 6) knowledge, and 7) exercises of skill.<sup>40</sup> Although there are eight ‘modes of responsibility’ or means to pursue these ends, the seventh and eighth can be leveled against the proportionalist. The seventh ‘mode’ is to “respect every human

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<sup>37</sup>Contrary to Grisez and Finnis' description, many proportionalists deny this charge. The reason lies in most, if not all, actions entailing a form of the doctrine of double-effect. Thus, even when it may appear that an evil act is done this is only because one is not able to observe the simultaneous good act that is willed. When the good willed is proportionate or greater than the evil allowed the action is good (or at least neutral).

<sup>38</sup>Peter Knauer, “The Principle of Double Effect,” in *Readings in Moral Theology No. 1*, ed. By Charles Curran and Richard McCormick, (New York: Paulist Press, 1979)

<sup>39</sup>J. Budziszewski, *Written on the Heart: The Case for Natural Law*, (Downers Grove: Intervarsity Press, 1997): p. 197.

<sup>40</sup>*Ibid.*

good in every act,”<sup>41</sup> and the eighth is “never sacrifice any human good to any other; in other words, never do evil that good may result.”<sup>42</sup> Basic goods or principles are equal and the means to pursue them require that this be recognized. According to this line of thinking, the proportionalist is wrong in his assessment that a greater good justifies a lesser evil, because there is no greater good.

There is also a third elaboration of natural law. This third view, one elaborated on by Ralph McInerny and those considered as ‘Thomists,’ offers a different approach to natural law than the other two. It notes that Grisez and Finnis must consider that a *prima facie* case can be made for a hierarchy among a list of goods for man. Grisez and Finnis hold that *basic* goods are incommensurable and thus no hierarchy can be made.<sup>43</sup> Contrary to this, the third elaboration of natural law recognizes a hierarchy of goods, and retains human nature as the foundation for ethics instead of a list of goods. Also, the third approach to natural law rejects Grisez and Finnis’s acceptance of the ‘Is-Ought’ maxim. The third approach also differs in its understanding of ends that need weighing, and process of weighing certain acts versus others, than that of the proportionalist. So, although there is certainly some overlap in aspects of these systems, these unique features of the third view distinguish it from the other two.

This approach is considered in this dissertation as the classical account.<sup>44</sup> The classical view of natural law, one that has been defended especially by Roman Catholics since Pope Leo XIII recommended studying St. Thomas, embraces a different conception

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<sup>41</sup>Ibid. 198.

<sup>42</sup>Ibid.

<sup>43</sup>Robert George defends this view, called the incommensurability thesis, in his work *In Defense of Natural Law* in the article titled “Does the ‘Incommensurability Thesis’ Imperil Common Sense Moral Judgments?” (Oxford: Oxford University Press, 1999): pp. 92-101.

<sup>44</sup> Although I will not defend the thesis that this is really the classical account in terms of being old, I believe it is the classical Thomistic account of natural law broadly stated.

of reality than the modern view. In response to Hume's Fork, this classical position methodologically derives obligation (or what one ought to do) from the nature of man (or what is the case). The moral relativist will also be opposed to the classical natural law theorist. It is this third type of natural law theory that will be explained and defended from several common objections in this dissertation.

### *C. Natural Law in Practice*

The application of natural law to actual cases finds a number of difficulties emerging. This may be expected in cases where it seems there are a lot of ambiguities in interpreting the situation. However, it may also be charged that the real problem emerges in so-called 'clear-cases' of decision-making where people with the same foundational principles disagree. It would be easier there was some way to decide who is right between rival theories of natural law when they come to different conclusions about what to do. The last section of this dissertation deals with practically applying natural law to a medical issue.

The difficulty of practicing natural law comes from at least two areas. First, applying general principles to concrete situations sometimes creates difficulties because of conflicts between principles. Second, deriving concrete norms from general principles for guidance can also be difficult. This may be due to the differences in how the general principles can be applied. For example, if a general principle is that one should promote human happiness, how does one carry out such a general principle when there are limited resources? Involved in discovering how one can do this is an assumption of what

happiness entails and a certain metaphysical background against which one makes judgments. These presuppositions will have to be explored more fully in chapter two.

#### *D. A Brief Overview of the Remaining Chapters*

There are some areas of disagreement between different forms of natural law, even if there is some agreement. Of course an obvious point of investigation is to discover just what is meant by ‘natural.’ In this and the proceeding chapters the different arguments for and against natural law theory will be presented. The natural law theory advanced in this work attempts to remain faithful to what I’ve referred to as a classical approach.

The structure and metaphysical basis for the classical account of natural law theory is set forth in chapter two. The first part of the chapter addresses some of the metaphysical presuppositions and elements of natural law, as well as the distinction between metaphysical and moral goodness. The three aspects of an act that determine the morality of it will also be discussed. Lastly, there is an extensive discussion of the virtues, as well as some common objections to virtue-theories.

The third chapter unpacks the two arguments that Hume and Moore offer. These arguments are presented in the best possible light, as are similar arguments offered by several contemporary defenders. A natural law and neo-naturalist response is made to these arguments to show the fallacies they commit. Although there are some errors that are obvious in Hume and Moore, others are not.

The fourth chapter deals with the arguments that moral relativists advance against a natural law approach. Distinctions between the different kinds of moral relativism are drawn, and there is a brief discussion of arguments normally used against moral relativism that are not successful. The chapter concludes with what I consider to be several plausible arguments against moral relativism.

The fifth chapter discusses the tension between natural law theory and neo-naturalism. The first part of the chapter draws the distinction between naturalism and neo-naturalism. The second part explains more completely the similarities between the two views. The third introduces and answers arguments posed by a ‘Christian’ philosopher against classical natural law theory. The fourth part of this chapter explains the real difference between natural law and neo-naturalism. The fifth part exposes why a natural law approach is foundationally different than a divine command theory.

The sixth chapter sets forth a practical guide for making bioethical decisions. This last chapter advances a proposal about the ways a natural law approach may help all the people involved to make the right choice in life or death decisions. Last, a classical bioethical problem is examined, and the natural law solution is offered.

The goal of this work is threefold. First, I will explain natural law and the naturalistic metaphysical basis for making moral decisions. Second, some of the common objections to natural law and naturalistic ethics will be exposed and cleared away. Although many of these objections have been accepted in the other two approaches to natural law, the third vigorously attacks the arguments as fallacious in some way. Third, it will be shown how natural law can aid in decision-making in medical ethics.

## Chapter 2

### UNDERSTANDING THE STRUCTURE OF NATURAL LAW

The aim of this chapter is to set forth the ethical foundation upon which classical natural law theory rests. Classical natural law, to the best of my understanding, follows the same explanation that St. Thomas Aquinas provides.<sup>45</sup> This theory offers all the tools necessary for ethical analysis, and provides a solid basis from which any ethicist can work. In this chapter I will first explain natural law theory, and then expose the metaphysical underpinnings of natural law.

The chapter is divided into six major sections. The first section expounds the metaphysics of the principles of nature used in natural law. Section two explains the relationship between first principles of being and action. Section three discusses the knowledge of being and goodness. Section four discusses the relation between human nature and the end of man. Section five delves into the moral determinants of action in a natural law account. Section six examines the role of virtue in natural law theory.

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<sup>45</sup>Although I will not argue that my interpretation is the ‘true reading’ of St. Thomas, I do recognize that there are different schools of thought regarding his ethics. I have simply taken what I thought to be elements of his theory that I thought to be relevant to this project and used them here.

### *A. The Principles of Nature*

The basic elements of Thomistic metaphysics, that is, the theory of how St. Thomas describes the way things are ultimately composed, is the foundation upon which one can attain a proper understanding of classical natural law theory. An understanding of these elements also will help one grasp the role the transcendental terms ‘goodness’ and ‘being’ play in natural law. The elements ‘act’ and ‘potential’ are the focus in this section, with ‘being’ and ‘goodness’ as related to these two elements explained in the next. Knowing what act and potency mean, and their relation at various levels of reality, is vital for two reasons. It aids a person in grasping the foundational elements of a natural law theory, and reveals how one can employ act and potency to describe different aspects of reality.

The classical natural law theorist holds the view that one may consider all of reality from the perspective of act and potential. There are many derivations of these two terms. The Latin word for act that St. Thomas uses is *actus*, which was translated from Aristotle’s Greek terms *dynamis*, *energeia*, or *entelecheia*. The meaning of the term ‘act’ can refer to actuality, determination, perfection, activity, or action. The Latin *potentia* corresponds to the English potency, power, potential, or capacity. The term ‘potency’ or ‘potential’ refers to something that can be or act, but is not or has not acted. For example, when Mr. T threatens to throw that fool Murdoch off the building this implies that he has not yet done so. One may say that Mr. T has the potential to do so, but has not actualized it. Similarly, if Socrates is standing, then he has the potential to sit. He does not have the potential to stand because he is actually standing. In this case, Socrates does not exist in a seated position, and for this reason has the potential to sit. One may just as easily

consider either the contrast or the relationship between the concepts act and potential to understand them. Potential or potency is, in some sense, non-being. Potential or potency refers to an aspect of a thing that can be done or actualized but is not. Potency only exists as something that can be in the future. Potency requires that something make it actual in order for it to change. This is also referred to as being reduced from potency to act.

One may also consider how potency and act can be applied to the nature of things. The essence of one thing may have the potential to do something or it may not. If it has the potential, then the potential can be actualized. In view of this, a rock cannot be said to have the potential to see, nor can it actually see. It is not in the nature of the rock to do this sort of activity. The nature or the essence of a rock limits how it acts or what its potential is.<sup>46</sup> Or, consider whether the nature of a dog allows it to fly like a bird. It does not take a rocket scientist to realize that in the nature of a dog there is no potential for it to fly. With this limitation one would not expect this to actually ever occur. Similarly, it takes little effort to realize that a rock has no potential to see, although it does have the potential to fall. A rock's nature has nothing in it that allows for vision, although due to its material nature it is subject to the laws of physics.

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<sup>46</sup> All reality can be examined using the terms act and potency. Things that exist are said to actually exist. Things that could exist are said to have the potential to exist. If something has no potential to exist, like a square circle, then it can never come to be. Aquinas explains, "Being signifies that something properly exists in actuality, as asserted in a. 3: Every being insofar as it is a being exists in actuality." St. Thomas Aquinas, *Summa of Theology*, I, a. 4, a. 1, ad. 1, in *An Aquinas Reader: Selections from the Writings of Thomas Aquinas*, Ed. Mary Clark, (New York: Fordham University Press, 1999): 62. Things that do not currently exist, like my grandchildren, have the potential to come to exist. Potential is here contrasted with actuality and is its opposite principle that refers to non-existing. Potential is not to be understood of in this case as referring to a power. A thing must exist to have any properties, and thus the property of 'potency-to-be' cannot be attributed to something that does not 'be.'

One may also use the terms act and potency to analyze existence as an aspect of reality.<sup>47</sup> In the realm of existence, there can be two types of existing beings. The first type refers to beings that actually exist in reality. This class of beings is not a fictional or mental construct, but exists outside and independent of the mind. The second refers to beings that could exist in reality, but do not. This class only exists in the mind and contains mental fictions. With this second class there is nothing contradictory about the nature of the fictional creature that keeps it from existing, but neither is there anything in reality that has given us any evidence that it exists beyond the mind. For example, one may recognize that there is nothing contradictory in the nature of a unicorn that keeps it from existing. The idea of a unicorn certainly exists in the mind of some people. However, this is something that we have yet to find existing in reality. Thus, it has the potential to exist, but we have yet to find it actually existing except in the mind.

Act and potency can also be used in moral evaluation. In regard to morally relevant action, one speaks of acting where it is possible to actualize the potential. The usefulness of applying this terminology to moral evaluation comes from analyzing it as good or bad as it relates to act and potency. One may have the potential to do a harmful or a good act. A person can analyze the potential to do harm or good, and the actuality of doing harm or good. More importantly, the action of a person can make that person better or worse by actualizing (or determining) specific potentials within his nature. The next section deals with how act and potency may be used in moral evaluation.

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<sup>47</sup> One can see how the distinction between act and potency can be applied at the level of existence or action. Only an existing thing can act. Thus, existence must precede action. Action is the second level to which these terms can be applied. A thing only has the potential to act if it already exists. This allows St. Thomas to say that a thing may be metaphysically good insofar as it exists, and morally bad insofar as its actions do not conform with its proper end. Because everything in act is a being (i.e., in act a being exists), and being is good in a certain sense, and beings also perform evil acts, there must be different levels to which one can apply the terms good and evil to the same being at the same time.

At this point one can see how all of reality may be discussed in terms of act and potency. Act can mean various things, but is normally used to refer to that which perfects something in potency. Of course, potency can mean a power, but in this context it refers to something that can be perfected and made actual but is not yet actualized. Grasping the meaning of these two terms and the way they may be used in various contexts is important in the natural law analysis. The way these two terms are applied to being, goodness, and moral evaluation is discussed in the next section.

### *B. The Metaphysics of Being and Goodness*

The metaphysical foundation for natural law theory rests on the intrinsic relationship between being and goodness. This section discusses three significant features of natural law that explain this relationship. The first concerns the development of the meta-ethical basis for morals in the derivation of goodness from being. The second is the definition for goodness given the relationship of being and goodness. The third is how goodness and being are employed in evaluation.

How does one make the connection between being and goodness? Although there are different senses in which a thing is called good, St. Thomas also thinks goodness and being are convertible in some way.<sup>48</sup> The term 'being' simply means existing. Is the claim that goodness also only means existing? The essence of this explanation is that saying something is *good* expresses a desirableness or perfection that saying something *is* does not. He says that although there is no real difference between goodness and being, a person can make a distinction in his mind between the two. The reason is that the term

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<sup>48</sup> Aquinas, St. Thomas. *Basic Writings of Saint Thomas Aquinas: Summa Contra Gentiles, Summa Theologica*. Vol. I and II. Ed. By Anton C. Pegis. (Indianapolis: Hackett Publishing, 1945): Q. 5, Art. 1.

“being” is too general to fully express the aspect of being that people call “good”.<sup>49</sup> For example, one readily recognizes the difference between saying something is an apple and that it is a good apple. An apple simply refers to the existing object without any mention as to whether it is good.

Following Aristotle, Aquinas also notes the desire all things have for goodness. The claim is ‘good is what all desire.’ The emphasis here is that good and desirable are connected in some way. The connection comes through the desire things have for perfection. A thing desires the good in order to become more complete. The perfection of the good is that which completes a person desiring it.<sup>50</sup> Thus, there is not only a

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<sup>49</sup> Explaining more fully the process of St. Thomas’ reasoning in his identification of being and goodness, Thomistic scholar Jan Aertsen writes, “The starting point is the concept (*ratio*) of good. This consists in the good’s being “desirable,” for the good is the end for appetite. Thomas refers here, of course, to Aristotle’s definition at the beginning of the *Ethics*. The second step in the argument is that the “desirable” is identified with the “perfect” (*perfectum*): “Now it is clear that a thing is desirable insofar as it is perfect, for all things desire their own perfection.” In this step the transition is made from the concept of good to the nature of the good. Proper to the good as good is that it is perfect. “Perfect” is that which has attained its end: the notion expresses completeness. The third step is the identification of what is “perfect” with what is “in act” (*in actu*). A thing is not perfect when its potentialities are not yet actualized. It is not completed until it has attained its act. Only then is the thing what it can be. By means of the notion of “act” Thomas is now able to establish the connection between good and being. For to be (*esse*) is the actuality (*actualitas*) of every thing. With this final step Thomas has arrived at the foundation of the thesis that every being is good.” Jan A. Aertsen, “Thomas Aquinas on the Good,” in *Aquinas’s Moral Theory: Essays in Honor of Norman Kretzman*, Ed. Scott MacDonald & Eleonore Stump, (Ithaca and London: Cornell University Press, 1999): 240 This description of Aquinas’s reasoning shows that the key moves are identifying the concept of the good with the nature of the good, and moving from the desirable to the perfect. Once one has accepted these distinctions, St. Thomas points out that the perfect is fully act, which is not only being, but also good because it is desirable.

<sup>50</sup> There are two potential objections. First, one may say that this definition of goodness is circular. However, something is desirable insofar as it is perfect. A thing is perfect insofar as it is complete. The term complete does not mean good. Just because a student completes a test it doesn’t mean that the test is good. One can say that although everything that is good is complete, not everything that is complete is good. This is an illicit conversion of an A term. Second, one may object that if the good is what all desire, then it seems to follow that pedophiles desire what is good, which is absurd. However, just because something is able to be desired it does not follow that it is truly desirable. This confuses the real with the apparent good. The real good is truly desirable and the apparent good is not. Despite this explanation, however, one must recognize that there are certainly some desires that we have that we recognize as bad, but feel that we are unable to restrain ourselves from acting upon. For example, suppose I recognize alcoholism as bad, but truly feel that I cannot keep another drink from my lips. While there may be biological factors contributing to my difficulties, the point that needs to be made distinguishes the real and

connection between being and goodness, but there is also a connection between goodness and the desirable. One may see from this description where Aquinas comes up with the definition that goodness is being insofar as it is desirable. One may also not only identify specific examples of what is good where something is actual over and against the potential, but can think about degrees of goodness in a thing. So, for example, when a person is courageous, as opposed to only being potentially courageous, it is far better (i.e., there is greater goodness inherent within the person) as the virtue has been actualized.

There needs to be at least one qualification at this point. It is not being said that all things that are desired are desirable in every way. That is not the claim. This is simply talking about the definition of good. Although identifying the real good is important in morality, the definition of good is such that everything that is desired only is that way because of some aspect of good that it has. Ralph McInerny explains,

The *ratio boni* offered in the context of this discussion is that *quod omnia appetunt*. The further assumption is that, whatever is desired is desired as perfective of the desirer. This is as true of the apparent good as of the real good, so that from the point of view of the *ratio boni*, there is no need to distinguish between what is desired and what ought to be desired, between the desired and the desirable. This being the case, that the good ought to be pursued, follows from the meaning of “good.”<sup>51</sup>

One can admit that some things that are desired are indeed not wholly desirable. Some beings with understanding understand the real good, and some do not.

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apparent good. One may try to act on the real good in a variety of ways that will make it impossible for him to act on the apparent good. Also, each thing that is desired is desired under the formality of something good. Nazis could then justify killing human beings for some arbitrary reason that reduced them in the eyes of a greater good like holding mankind back from its true potential.

<sup>51</sup>Ralph McInerny, *Aquinas On Human Action: A Theory of Practice*, (Washington D.C.: Catholic University of America Press, 1992): p. 132.

However, another objection may be raised to Thomas' implicit claim that 'all things' have desire or seek the good. Does he really believe that rocks have desire? Two possible solutions spring to mind when it is said that 'all things seek the good.' One says the word 'seek' here applies differently to different objects. In other words, 'seek' is being used metaphorically here, just as one can say 'desire' is. Natural law certainly does not promote panpsychism, which says all things have some form of consciousness or desire. The foundational constitution of every substance is called a dispositional property.<sup>52</sup> As every substance has these properties, each 'seeks' the preservation of its being. Insofar as each thing resists its destruction, it 'seeks' its sustained existence. Because of human nature, there is a way a human seeks its preservation differently from the rock. Humans 'seek' preservation in a way rocks do, but also rationally. When there is a conflict between them, rationality is superior. There is something in man that motivates him to seek for the truth that rocks do not have because of their nature.

A second way to understand this phrase emphasizes that it is a principle of practical reason. As such, it only applies to creatures with rationality. One may argue that this legitimately eliminates non-rational things like rocks from consideration as having desires. This first principle is a moral principle that is used to judge the action of rational beings. St. Thomas writes, "When we say that good is what all desire, it is not to be understood that every kind of good thing is desired by all, but that whatever is desired has

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<sup>52</sup>As Anthony Lisska has pointed out, because the term 'inclination' may have a misleading Freudian connotation, dispositional property is preferred to some in the natural law tradition to avoid problems associated with the false concepts many have given to what was readily understood in the past. The worry may also be that one would build natural law upon every desire one has. However, this is not the claim. There are two types of desires that can be distinguished- natural and artificial. Natural desires exist in every person. Artificial desires do not. Natural desires include things that St. Thomas lists in *Prima Secundae* article 94 of the *Summa Theologica*. These include continued existence in all things, and don't include artificial desires like running faster than a speeding bullet.

the nature of good.”<sup>53</sup> If one then links the goodness in this phrase with the first principle of morality then non-rational things like rocks don’t desire anything, even if humans do.

Because the terms ‘goodness’ and ‘being’ can be applied to all the categories they are called transcendental. They cannot be limited by genus or species. The categories of which something can apply were first identified in Aristotle’s *Organon*. These categories are based on the ways a person can enumerate anything that is contained in a subject or a predicate. The major two divisions of the categories are between substance and accidents. Although there are ten categories, nine of them are accidents. The accidents are 1) quality, 2) quantity, 3) time, 4) relation, 5) place, 6) position, 7) state, 8) action, and 9) affection. One can apply the terms ‘being’ and ‘goodness’ to substance, to accidents, or to both. For example, if a person has a particular quality that they ought to have, such as seeing, then there is a particular goodness in that person that ought to be there. There is a perfection, as is entailed in the definition of goodness, that exists in a person who sees as they ought. A transcendental term, like the term ‘goodness’ in this example, is called this because one can apply the term across these categories.

Consider a more detailed analysis of how one can use the term ‘goodness’ or a specific instance of the ‘good.’ When a person applies the term ‘goodness’ to different things he may mean it is good in a certain respect or good absolutely. For example, a person can refer to the goodness of God and mean that he is good absolutely. Or, a person can refer to the goodness of a movie and mean that it is good in a certain way (perhaps it has a good plot). It is accidental goodness that is referred to if one only applies the term ‘good’ to a certain aspect of a movie.

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<sup>53</sup> St. Thomas Aquinas, *Summa Theologica*, Q. 6. Art. 2. Ad. 2. “Ad secundum dicendum quod, cum dicitur *bonum est quod omnia appetunt*, non sic intelligitur quasi unumquodque bonum ab omnibus appetatur, sed quia quidquid appetitur, rationem boni habet.”

Similarly, something can be being absolutely or being in a certain respect. A person may refer to God as being, and mean that he is being absolutely and without any qualification. Or, a person can refer to a person as being tan. This second example refers to the person as being in a qualified way or in a certain respect. The fact that the person is tan simply qualifies something accidental to the person. It is not necessary for one to be tan to be a person, and thus it is not essential *qua* person that they be tan.

How does being apply to substance and accident? The primary definition of being, as has already been mentioned, is that which is in act. Each substance and accident, when it exists, can be called being. Of course, one must point out how substance and accident differ in relation to being or existing. The difference between substance and accident is that they exist in different ways. Substance exists in itself; accidents exist in another. The substance of something is what is essential to it. It is essential to humans that they have a rational nature. It is an accident that a human has light or dark skin color. Because one can be a human regardless of skin color, this is accidental to the humanness of man. However, one cannot have a non-rational nature and be human. This is because rationality is essential to humanness. The distinction between substance and accident points to the difference in how things exist.

How does goodness apply to substance and accident? It has been mentioned that the common or primary definition of goodness is that which is desirable. Every existing thing can be called good insofar as it is desirable. There are various degrees of goodness that are applied to a subject, one with a substance and accidents. The degrees of goodness are also applied differently when one speaks of metaphysical versus moral goodness. Metaphysical goodness simply refers to the wholeness of a being. A good man,

metaphysically speaking, is one who has all he needs to have physically. A good man, morally speaking, is one who acts in accordance with his nature, i.e., rationally. He who acts rationally perfects his own rational nature and this is what is truly desirable.

The way goodness applies to substance and accident touches on the classical distinction between what is called the first and the second act. As St. Thomas writes, “Act, however, is duplex: first and second; first act is the form and integrity of a thing; second act is operation.”<sup>54</sup> First act refers to the metaphysical substance of a thing, and second act refers to how a thing acts. The first was referred to as metaphysical goodness and the second is referred to as moral goodness. Metaphysical goodness simply speaks to the completeness of the substance. Moral goodness takes into account how a thing operates. These two levels of goodness are the first and second act.

Let us consider how the natural law account emphasizes how the good absolutely and the good in some way relate to the first and second act.<sup>55</sup> A thing is good absolutely only if it is good in the level of action, or as the Scholastics call it, in the second act. A thing is good in some way at the level of being, or sometimes called the first act, because at least insofar as it exists it is good. Having actualities added to substantial being makes something good absolutely and is the ultimate perfection. This only occurs in the second act. For example, imagine the difference between a man who does nothing and a man who acts virtuously at every opportunity he has. The first man can be said to exist or have

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<sup>54</sup>St. Thomas Aquinas, *ST I*, q. 48, a. 5 c.

<sup>55</sup> St. Thomas discusses the relation between being and goodness as they are found when answering the first objection in Q. 5 of the *Summa Theologica*. In response to Aquinas’s contention that there is a conceptual difference, the objector quotes the authority Boethius who says, “that in nature the fact that things are good is one thing, that they are is another.” (St. Thomas Aquinas, *Summa Theologica, Prima Pars*, Q. 5, Art. 1, Ad. 1.) This is the point at which Aquinas draws the distinction between the two acts. He writes, “[This] is to be referred to being good absolutely, and being absolutely. Because, regarded in its first actuality, a thing is a being absolutely; and regarded in its complete actuality, it is good absolutely, though even in its first actuality, it is in some way good, and even in its complete actuality, it is in some way being.” (Ibid.)

being, but not to necessarily be very good. In other words, it is good that he exists, but he does nothing good to enrich his existence. This man is properly viewed as far from perfect as he does nothing. On the other hand, the second man who acts virtuously adds actualities or becomes more perfect. The virtuous man can be said to be good absolutely as he fully actualizes his potential.

Now consider how being applies at the level of first and second act. A thing is being absolutely in the first act, and being in some way in the second act. A subject is called being in some way in the second act because the actualities in addition to its being simply add actualities to something which is already in being.<sup>56</sup> The actualities added to a subject are simply accidents in the second act, and thus they exist in another. However, when considering being in the first act this is being absolutely as the subject would not exist without this being.

Now consider the complex relationship between goodness as an end at the level of action (hereafter, LA) with goodness at the level of being (hereafter, LB).<sup>57</sup> The LA is

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<sup>56</sup>Aertsen, 241.

<sup>57</sup> These two levels are referred to by the scholastics as first and second act. As St. Thomas writes in *Sententia Libri Ethicorum*, Lec. 1, 12: “*Finale bonum in quod tendit appetitus uniuscuiusque est ultima perfectio eius. Prima autem perfectio se habet per modum formae, secunda autem per modum operationis.*” First act refers to what has been described as the first level, and second act is identified with the second level. Appetites in creatures are directed to satisfying desire, and these acts refer to the operation of the creature. Aertsen clarifies the scholastic notion of first and second act, “The perfection to which the appetite of everything is directed is the operation, because through the activity the powers and faculties inherent in its substance are actualized. In Scholastic philosophy, this actuality is called ‘the second act.’ The first act is the specific form whereby a thing has being; the second act is its operation. By its first act, its substantial being, a thing is “being absolutely”; by its second act, its activity, it is ‘good absolutely.’” (Aertsen, “Thomas Aquinas on the Good,” 242) A thing can be good in a certain respect, or it can be good absolutely. Through the second act a thing can perfect its nature and become good absolutely. The powers of a substance are inherent within it. It is only when these powers are exercised or activated that they work to actualize the potential. Each substance is drawn to its final cause or the good and attains it only through the exercise of the second act. The second act of a thing is what allows a substance to attain complete or perfect being. As Aertsen explains, “the first act is for the sake of the second act; both are an actuality (*actualitas*). Since actuality is always the actualization of being, the absolute goodness of a thing can also be seen as its completed and perfected *being*.” (Aertsen, 242-243). The first act is what makes something exist and is identified as the substantial form of a thing. The second act of a thing brings the first act into completion or fulfillment. Although the first act causes a thing to be, it is the second act that makes a thing

dependent upon the LB insofar as the basis for calling an action good is that it is perfective of the being's nature. Actions that cause a person's nature to become more complete or perfect are called good.<sup>58</sup> In one scenario, the way that goodness at the LA is different from goodness at the LB is that one can perform an evil at the LA, and still be good in some way at the LB. For example, one may feed oneself food when hungry, which will satiate the appetite, but have inappropriately stolen the food as well.<sup>59</sup> Consider a second scenario, where the person feeds himself in order to have the strength to rescue Murdoch from Mr. T. This reveals something good at both the LB and the LA. The end of good human acts perfect man's nature in some way inasmuch as the person develops his virtue in rescuing Murdoch.

In brief, this section treated three major aspects of the metaphysics of being and goodness. First, being and goodness are interconnected after a consideration of perfection and the desirable. Second, being is defined as existence, and goodness as that which is desirable. Goodness expresses a specificity of desirableness that existence does not capture. Third, being and goodness can be employed in analysis in two different ways. One can look at how being and goodness relate to something accidentally or essentially. Or, one can look at the way being and goodness relate to the first and second act. At the LA, which is the second act, goodness may be considered as the actual over and against

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morally good. A substance actualizes its potential through its second act. Thus, in moving itself from potency to act, the substance becomes more fully actualized, and a more complete being.

<sup>58</sup> I realize the case has not been made for a human nature at this point. It is simply assumed during this part of the explanation.

<sup>59</sup> But something cannot be completely evil at the LB and good at the LA because a thing cannot be if it is completely evil. Evil, following Augustine and St. Thomas, is seen as a privation of being or goodness. Evil is not a thing in itself, but, like an accident, always exists in something existing. Aquinas writes, "Just as the color white is spoken of in two ways, so also is evil. For in one way when white is said, it can refer to that which is the subject of whiteness, namely, the accident or quality itself. And likewise when evil is said, it can refer to that which is the subject of evil, and this is something; in another way, it can refer to the evil itself, and this is not something but is the privation of some particular good." Q. 1, *On Evil*, Art. 1, (Notre Dame: University of Notre Dame Press, 1995): p. 4-5.

the potential. Acts that perfect the nature of man, on the LA, are ends to be sought. An application of the definition of goodness to action reveals that the desirable act that is to be sought is the one that perfects a person's nature.

### ***C. Knowledge of the First Principles of Being and Action***

The preceding section explained the intricate relationship between being and goodness. St. Thomas and virtually all other natural law theorists use the first principle of being to reflect on the first principle of action. This section will briefly explain the role of the speculative and practical intellect; the natural law theorist's account for the source of knowing being and goodness; and touch on the role of the practical syllogism.

Knowledge of what is good comes from the interaction of the speculative with the practical intellect. The interaction between the speculative intellect, i.e., that aspect in man dealing with matters of truth, and practical intellect, i.e., the aspect dealing with action, allows the natural law theorist to explain how one judges what is good and what to do. Regarding the first principles of being and action St. Thomas writes:

Now a certain order is to be found in those things that are apprehended by men. For that which first falls under apprehension is *being*, the understanding of which is included in all things whatsoever a man apprehends. Therefore the first indemonstrable principle is that *the same thing cannot be affirmed and denied at the same time*, which is based on the notion of being and not-being: and on this principle all others are based, as is stated in *Metaphy. Iv*. Now as *being* is the first thing that falls under the apprehension absolutely, so *good* is the first thing that falls under the apprehension of the practical reason, which is directed to action (since every agent acts for an end, which has the nature of good). Consequently, the first principle in the practical reason is one founded on the nature of good, viz., *that good is that which all things seek after*. Hence this is the first precept of law, that *good is to be done and promoted, and evil is to be avoided*.<sup>60</sup>

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<sup>60</sup>St. Thomas Aquinas, *Summa Theologica, Prima Secundae*, Q. 94, Art. 2, P. 774.

In this passage St. Thomas explains that the first principle of action is parallel to the first principle of being. One can see his reasoning much more clearly in light of the metaphysical explanation offered above that goodness is being insofar as it is desirable.

What is the role of the intellect in this explanation? The speculative intellect is used in natural law theory to discover truth and the principles of being. The practical intellect is used whenever someone makes a decision related to action. These two aspects of the intellect are treated differently because they differ in the objects that they study. The object of one is truth, and the other is action. The study of truth does influence how one will act, and thus the practical intellect takes into consideration the order and nature of being that the speculative intellect discovers.

Moreover, the practical intellect uses the Aristotelian logical structure for decision-making. This logical structure includes the practical syllogism. The first principle of action --- good should be done and evil avoided --- is the first premise in the practical syllogism. This principle of action guides people in deciding how to act. In addition, there are other precepts that can be derived from the first, and they also can serve as the first premise in practical syllogisms. Natural law theorists have developed various ways of discovering what these precepts are.<sup>61</sup> Here is an example St. Thomas gives:

Some things are derived [*derivantur*] from common principles of the law of nature in the manner of a conclusion [*per modum conclusionis*], as 'one should not kill' can be derived as a kind of conclusion [*ut conclusio quaedam derivari potest*] from 'one should do harm/evil [*malum*] to no one'.<sup>62</sup>

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<sup>61</sup>A couple different treatments include *Man as Man: The Science and Art of Ethics*, By Thomas Higgins, (Milwaukee: Bruce Publishing Co., 1949), and *Aquinas: Moral, Political, and Legal Theory*, By John Finnis, (Oxford: Oxford University Press, 1998).

<sup>62</sup>St. Thomas Aquinas, *Summa Theologica*, I-II Q. 95 a. 2c.

These precepts are at the highest level and known *per se*, or *per se nota*.<sup>63</sup> This simply means that the precepts are known in themselves or through their terms.

The various general precepts associated with good acts refer to the goodness in the nature of each act. Every action has a nature that can be judged as having the character of either goodness or badness. As Aquinas writes:

The moral precepts are distinct from the ceremonial and judicial precepts, for they are about things pertaining of their very nature to good morals. Now since human morals depend on their relation to reason, which is the proper principle of human acts, those morals are called good which accord with reason, and those are called bad which are discordant from reason. And as every judgment of the speculative reason proceeds from the natural knowledge of first principles, so every judgment of the practical reason proceeds from naturally known principles.<sup>64</sup>

In this passage Aquinas notes several things. The goodness or badness of an act proceeds from the nature of the act itself. There are naturally known principles of what acts are good and what are bad. These are seen once one understands the terms involved. When the act is in accord with reason, which is the nature of man, the act is called good. When it is not, it is bad. The goodness or badness of an act can be judged by looking at how the act helps a person move towards or away from his or her proper end. People can use reason to come to know the goodness or badness of an act in two ways. First, they may come to know through grasping the terms involved. They may reason, for example, that it is wrong to do evil, and murdering is an evil, so it is wrong to murder. Second, they may come to know when they observe an act. Because each act has the formality of being good or bad, when a person observes an act, he has the potential to discern whether it is good.

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<sup>63</sup> According to Aquinas, these moral norms are *per se nota*. For example, *Summa Theologica I-II*, q. 100 a. 1c.

<sup>64</sup>Ibid. Q. 100. Art. 1. c.

How are goodness and being known? Each action has a certain form. The form of the act has a degree of goodness that exists in it. We all recognize some acts as better than others. For example, it is better to comfort than to torture your child for fun. These acts can be said to be better insofar as they have a greater degree of goodness than other acts. The form of these acts, where the goodness may be recognized, comes to exist in a person's mind. The form is an immaterial aspect of the act. The immateriality of form allows it to both exist in the act itself and in the mind. The forms of things are their determinate natures. When these things are known these natures exist in both the knower and what is known. The goodness and being comes from the act—the form of these things comes to exist in the intellect.<sup>65</sup>

In sum, there are three major aspects to consider in knowing being and goodness. The first is the relationship between the practical and speculative intellect. The speculative intellect provides facts that are included in making the moral judgment. Among these facts is the hierarchy of beings that are involved as well as the different means one uses to carry out the act. The practical intellect works with the speculative in assessing what one ought to do, but is alone in the process of choosing. The source of knowing the being and goodness of an act or any particular thing is the object under consideration. The speculative and practical intellect each play a role in the practical syllogism that people use to decide what to do, even if a person is unaware of such a process.

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<sup>65</sup>Although this is an explication of how we know, a defense of this position is beyond the scope of this dissertation. It is simply presupposed that this is true.

#### *D. On Human Nature and The End of Man*

Much of the preceding section referred to human nature and proper end, so this section will explain three things. First, it will explain what the natural law theorist means by human nature and its end. Second, arguments against these concepts will be exposed. Third, responses to these arguments will be provided. The explication of human nature and the end of man will reveal how what is natural helps the natural law theorist decide what is good.

The classical natural law theorist, grounding his ethical theory in human nature and its end, follows Aristotle's explanation of nature or essence. This theory, as Anthony Lisska explains, emphasizes the central feature to grasp is that of dispositional properties. Dispositional properties make up the underlying metaphysical structure of a natural law metaphysics of morals. Lisska writes, "A dispositional property is developmental in character."<sup>66</sup> These properties are such that they not only have the potential to be actualized, but they are good when brought to fruition.<sup>67</sup> One can see from this that the

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<sup>66</sup>Anthony J. Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction*, (Oxford: Oxford University Press, 1996): p. 103.

<sup>67</sup>It is certainly the case that some dispositions allow a person to develop in a good way, and some in a bad way. These are characterized by virtues and vices. There are several things that may cause a person's good habits or good dispositional properties become corrupted or fade away. Good dispositions can be corrupted by reasoning contrary to good (because of ignorance, passion, or choice), alterations to a person's body (e.g., sickness causing dementia), or through lack of exercise (unruly desires may destroy virtue if not exercised). Aquinas's full treatment of dispositions is found in the *Summa Theologica, Prima Secunda*, Q. 49-54. Anthony Kenny, in the Blackfriars preface to this section writes, "Again, two dispositions may differ simply in that one is a good disposition and the other a bad disposition. Chastity and unchastity are both dispositions of the same faculties; they have a common object, for both of them are attitudes to sex; they differ only in that chastity is a good attitude to sex and unchastity a bad one. What is a good disposition and what is a bad disposition is to be decided by reference to the nature of the possessor of the disposition; in the case of human beings, by reference to reason (54,3)."

metaphysical explanation of dispositional properties is dependent on a proper grasp of the meaning of the terms act and potency.

There is a structure that underlies a theory of natural law. The essential part of this structure is based on human nature and the end sought. Lisska identifies nine components that are part of the structure underlying a classical natural law theory.<sup>68</sup>

Dispositional properties, which are properties inherent in a human's nature, are foundational. The most important of these include the fact that "the natural bent of a dispositional property is towards the completion of the developmental process; the well-being of a human person is determined by the harmonious completion of the dispositional properties, which determine the content of a human essence; the end- i.e. well-being- is, by definition, a good; to frustrate a natural process in a human being denies the possibility of attaining human well-being."<sup>69</sup> The emphasis in this account is on how the end actualizes human nature. Dispositional properties exist in all men and have the potential to be made actual, i.e., fully functioning. These dispositional properties constituting man's nature can be examined in terms of act and potential. The end that actualizes the potential is the object to be sought. In view of this, it is the fully functioning human person that is the unchanging end toward which men strive. Once a particular property has been made actual or reached its end, it is good.

It is this unchanging standard, i.e., the goal, that is inextricably connected to the function of man. One may consider this unchanging end to be a formal aspect of man, but it is the formal cause that has actualized the final state. Because of this, one can consider in what respect the nature of man is unchanging, and one can use this as a basis for

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<sup>68</sup>Ibid.

<sup>69</sup>Ibid. Lisska derives these principles from St. Thomas's account on natural law in the *Summa Theologica* q. 94. a. 2.

discovering what is common for the good of man.<sup>70</sup> Thus, it is what a human is that determines whether what he does is good, as what he does either actualizes a dispositional property or frustrates it. As Philip Devine notes, “What is good for a human being, and what makes for a good human being, are functions of what a human being is.”<sup>71</sup>

At this stage one can try to discern what is unique to the nature of man that sets him apart from other material things. It becomes apparent that a man shares many desires with other material things. Humans desire sustenance, self-preservation, and procreation. However, there is a rational aspect to man that sets him apart from other material creatures. This rational aspect is pointed to as being the substantial form that sets man

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<sup>70</sup> Some holding the modern, scientific point of view reject an unchanging species or nature. However, this objection does not apply to my argument for three reasons. First, the scientist merely measures the material aspect of a given species. The formal aspect of each species is non-material and thus beyond measurement by the scientist. The DNA certainly is observable, but even DNA, which is a material aspect of an organism, is relatively stable across a species. For example, human DNA generally has 23 pairs of chromosomes. In rare cases where there are more or less chromosomes than the normal 23 pairs, people have what is called Turner’s syndrome (only 45 chromosomes instead of the usual 46) or Down’s syndrome (those with 47 chromosomes). Despite these occasional anomalies, the human species tends to have a stable material structure at the DNA level. On Aristotle and Aquinas’s account, DNA would be an accidental form of an animal. This is different than the substantial form, which is unchanging, that is a human’s nature. Veatch explains these accidental forms, “Indeed, when a particular man grows old and dies and is no more, we do not for a minute suppose that human nature has therefore changed or ceased to be. Accordingly, without matter the things and substances of the world would never change; and with matter, what must be understood is that any thing or substance in the world, in addition to being what it determinately is at any given moment—that is, in addition to its substantial form and all of the accidental forms as a result of which it is just this kind of a thing with these particular characteristics and determinate features at this particular moment.” (Henry Veatch, *Aristotle: A Contemporary Appreciation*, Bloomington: Indiana University Press, 1974: p. 35) Second, the scientist holding this view does so despite all the evidence against his presupposition that all life evolved from a single-celled organism that could self-replicate. So, as there is no evidence to indicate members of one species can produce members of another, why hold to this view? Third, the scientist holding to the Darwinist and materialist philosophy cannot explain why the genetic information of a species is actually relatively stable. For example, no matter how many species of dogs one breeds, the dogs do not have the genetic capacity to ever make an elephant. Changes within a species like dog-breeding, finch-beak variation, and mutated fruit-flies are irrelevant (which is why Darwinists like the late Steven Jay Gould proposed Punctuated-Equilibrium). See Michael Behe, *Darwin’s Black Box*, (New York: The Free Press, 1996); Phillip Johnson, *Darwin On Trial* (Downers Grove: Intervarsity Press, 1993); William A. Dembski, *Intelligent Design* (Downers Grove: Intervarsity Press, 1999); A.E. Wilder-Smith, *The Scientific Alternative to Neo-Darwinian Evolutionary Theory* (Costa Mesa: The Word For Today Publishers, 1987)

<sup>71</sup>Devine, *Natural Law Ethics*, p. 31.

apart as distinct from other creatures. Because man is a rational creature he ought to strive to function rationally. The proper function of a man, or his good, is dependent upon what he is.

One objection to this is that if a man is already a rational creature, are not his actions by definition rational? When a natural law theorist says a human should act rationally, he means that humans should act rationally well. In other words, there is no difference between acting rationally and rationally well. But, someone may say, a good thief may be using his rationality well and this is what makes him good at thieving. However, one can point out the obvious fact that a good thief is not a good man. In the same way, just because someone is a good poker player, dancer, or surgeon, it does not follow that the individual is a good man. Thus, when a man performs the function that helps him attain the end in an individual act, the act may be called good in a certain sense. Yet in another sense, the act may be called bad because the action leads man away from his superordinate end or good. When a particular end is attained and it undermines in some way a person's ability to become perfect, then it is bad. When an action performed in some way perfects a person and contributes to his good, the act is viewed as good. The natural law theorist is looking for constitutive acts that are good *qua* man, and not *qua* thief, basketball player, dancer, or martial artist.

Yet, this explanation needs to extend into the second act, or level of operation, to fully capture how one can discover what is good for man. Ethical judgment plays a role in evaluating the operating (acts in that sense) of a person, and the particular aspects of the situation are considered to determine the goodness of each act. The basis for deciding

what is good in the second act must first consider the relation between the first act and the proper end of man.

One way that some have approached the problem is to posit some general end to which all people are drawn. In addition to being desirable, the good sought when man acts is viewed as an end. It motivates action and is considered a final cause. For example, suppose a student desires to eat because he is hungry. Once food is attained, there is a sense of rest because he has moved from potentially having the good (food) to actually possessing it. The good is an end that is considered to be a first cause in that it is that which is desired and the initial cause of movement. In issues of morality, a person does not begin to move if there is no attraction toward another thing he desires.

A person can agree that the end motivates action, but this explanation seems to fall short in some ways. Although the student in the example attained food, is the food a final cause beyond which nothing else is desired? Also, it is readily seen that it is natural to desire food, but is this necessarily a moral issue?

The distinction can be drawn that something can be desired, and therefore good, in three ways. A thing may be desired for some other end. An example of this is acquiring a car in order to reach places that would have kept you from other goods. A thing may be desired for its own sake and some other end. An example of this may be eating a sandwich in order to remain healthy and pursue other goods. Or a thing can be desired simply for its own sake. In this third way one may desire a particular virtue, or the penultimate, supreme, or superordinate good.

How then does one decide on the proper end of man? The traditional account in natural law closely follows Aristotle's reasoning in the *Nichomachean Ethics*. On this

view, the nature of a thing is that which makes it uniquely what it is. The proper end of each thing is that which perfects its nature. McInerny writes,

The ends of inclinations are natural, that is, given, it is not our choice whether to have them or for them to have the objects they do. What does fall to us is to regulate the pursuit of these goods, and precepts do this by ordering these goods to the good of the whole man, to the common good. This is what is meant by “regulantur ratione: regulated by reason.”<sup>72</sup>

Each thing naturally seeks what it perceives as good. The good that is sought is desired because it is supposed to perfect the seeker in some way. For instance, a man desires health and chooses to exercise to attain it. Health is good and acts as an end in a man’s decision to exercise. Two things are noteworthy in this example. First, health is the condition that the unhealthy desire because it is good. Health allows a living being to function normally. Second, health is a condition that is viewed as natural. The reason health is natural is because if nothing impedes the maturation of an organism it will remain healthy and function properly.

In agreement with Aristotle’s observation, the end of man is that at which all things aim. It is true that each man aims at many different goods. For example, a banker may seek to gain as much money as possible, or a politician may seek to gain as much power as possible. It seems from these examples that there are many different ends. However, the question is whether there is any one ultimate end that all men seek. The classical natural law theorist answers in the affirmative. Although one can recognize that there are as many goods as there are actions, there is one superordinate good to which all other goods are constituents. McInerny explains:

The human good, man’s chief good, is variously expressed as happiness (*eudaimonia*), acting well (*eu prattein*), living well (*eu zen*), that for the sake of which (*hou kharin*), and ultimate end (*ariston teleion*). What these terms mean is

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<sup>72</sup>McInerny, *Aquinas on Human Action*, p. 136.

not some particular good among others (cf. 1097b17-19). Thus, the human good cannot be the end of a particular action, of some one action as distinct from all other human actions. The ultimate good, then, must be that which makes the countless goods at which human actions aim human goods.<sup>73</sup>

Thus, the classical view is that the constituent good human acts are necessary, but not sufficient for the superordinate good of man, namely, happiness.

Happiness is viewed as the superordinate good at which all humans aim. Yet, Aristotle and the natural law theorist do not define happiness in the modern subjective sense. Many modern people take happiness to be a feeling that one experiences one day and loses the next. Aristotle's definition of happiness, to the contrary, is an activity of the soul in accordance with virtue in a complete life (1098<sup>a</sup>16-19). Happiness, in Aristotle's account, turns out to be an objective state of being that is achieved when the human soul becomes good because of a lifetime of virtuous action at the end of a well-lived life.<sup>74</sup>

The Thomistic natural law theorist holds that the human soul comes to an ultimate state of rest once the superordinate good is attained. From this one can take the proper end of man to be happiness. In the realm of action, man seeks constitutive goods needed to achieve a happy state.<sup>75</sup>

However, the objector can point out that some things that appear natural are not good according to natural law theory. This is a criticism raised against both natural law theory and neo-naturalism, which also holds that saying something is good is an assertion of a fact of nature.<sup>76</sup> How can natural law say that the natural is good when many people

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<sup>73</sup>Ralph McInerny, *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas*, (Washington D.C.: Catholic University of America Press, 1982): p. 19.

<sup>74</sup>Aristotle also says luck, which is out of the control of ordinary man, is necessary for happiness. *Nicomachean Ethics*, 1099a 31-33.

<sup>75</sup>There is also the distinction made between human acts, which are morally evaluable, and acts of man, which are not. Acts of man are unthinking actions things like walking, itching, or brushing the lint off your shirt. These are not significant moral acts as they are done without rational contemplation.

<sup>76</sup>William K. Frankena, *Ethics*, (Englewood Cliffs: Prentice-Hall Publishers, 1973): p. 98.

follow their natural desires and perform acts that natural law condemns? That is to say, why does the natural law theorist call some acts natural compared with others that feel just as natural to some people? For example, many types of sexual behaviors, which are also performed among species of non-human animals, are condemned on most natural law accounts. If these behaviors were not natural, then why would non-human animals perform them?

The natural law theorist needs to make distinctions in order to answer the objections. First, when natural law theory says an action is natural, 'natural' refers to acts that are perfective of the nature of the subject. Cancer, although it is natural in one sense, is unnatural in another. The confusion arises because of the ambiguity of the term 'natural.' Cancer clearly doesn't allow for a being to perfect itself physically because it physically destroys its subject. Thus, cancer is a naturally bad disease or a physical evil. Second, in the realm of action, when a person's act helps perfect him it is considered natural. An act is not called natural just because it is spontaneously desired. Natural acts are those that are done according to what is reasonable. An act done in consonance with the specific difference of man, i.e., his rationality, is an act performed in accord with right reason.

The critic may object that the natural law theorist equivocates on 'right reason' in his explanation. At certain times the natural law theorist says that right reason is that by which one knows what is the correct course of action. Call this right reason<sup>1</sup>. At other times he says that acts are right when they are done in conformity with right reason. This will be right reason<sup>2</sup>. The exemplar cause, which is the pattern after which correct action

occurs, is said to be right reason<sup>2</sup>. Thus, the critic may ask whether there is the fallacy of equivocation occurring in the natural law theorist's explanation.

The natural law theorist can respond to this objection in several ways. First, in the classical natural law explanation sometimes 'right reason' refers to the exemplar cause, and at other times it is that by which one knows what act is right. The context of the explanation determines which of these is used. Second, it may be that the natural law theorist does not clearly draw the distinction between these two uses of the same term. However, this does not mean that he himself does not recognize the distinction, or that a cautious natural law theorist would not be wise to take heed of the critic's objection. One should clearly draw the distinction between these two uses of the term "right reason."

Let us make clear this distinction between exemplar cause and efficient cause. The exemplar cause is the pattern or course of action that is recognized as the one to take. The efficient cause refers to a person's intellect and is that by which he recognizes the action to take. The exemplar cause is external to the person; the efficient cause is internal and part of the person. The exemplar cause is referred to as right reason some times, and the efficient cause is referred to at others.

Yet, the objector may point out, there is still a circularity to the natural law explanation. The argument runs as follows. The natural law theorist claims to know by right reason<sup>1</sup> what is the right action. The right action is known because it conforms to right reason<sup>2</sup>. In addition, it seems as if right reason<sup>2</sup> is determined by what is called right reason<sup>1</sup>. If this is the case, then the natural law theorist is caught in a vicious circle from which escape is impossible.

The central problem with this objection shows up in the conclusion. Right reason<sup>2</sup> is not determined by right reason<sup>1</sup>. Right reason<sup>1</sup> is used to discover what is right, and not determine what is right. Right reason<sup>2</sup> refers to the conformity of the act between a human's nature and his proper end. Right reason<sup>1</sup> is often called the proximate standard of human actions by which acts are judged to be right or wrong.<sup>77</sup> Thus, right reason<sup>1</sup> examines right reason<sup>2</sup> in evaluating action. This means, contrary to the critic's claim, that there is no circle. The goodness of the action comes from the relation of the act itself to right reason<sup>2</sup>, and is discovered as being good by right reason<sup>1</sup>.

The most natural thing for man turns out to be that which perfects his nature and allows him to attain happiness. There is a natural desire for perfection in mankind and when a person does what is really good it helps him to come closer to this perfection. A natural act helps man to perfect his intellectual or moral virtues.<sup>78</sup> Humans must use their reason to order their perceptions of what is good so that they choose a good that will further actualize their nature and perfect the virtues.<sup>79</sup>

After dealing with some objections to this account of human nature and the end of man, one is left with the following. One must consider two aspects of human nature in assessing what is good for man. These two are the dispositional properties in every human's nature and the recognition that man is essentially rational. Also, because man is

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<sup>77</sup>Vernon Bourke, *Ethics*, (New York: The MacMillan Company, 1966): p. 125.

<sup>78</sup>As Henry Veatch points out in his book *Rational Man*, "[W]hen a man thus becomes intelligently aware of what the natural goal for him as a human being is, he sees that, so far as its content is concerned, what this natural human end consists in is simply to live intelligently. There is thus a two-fold sense in which, on Aristotle's view, the natural goal or end of man is a rational and intelligent one. It is intelligent in that it is rationally defensible and justifiable: we can see why it is the true and proper end for us, simply because it is the natural end for us. And also, it is intelligent in that what this end consist in and what it calls upon a man to be and to do is simply to be intelligent and to live intelligently. That is to say, the rationally defensible and justifiable end of a human being is simply to be as rational and intelligent as possible in all that he chooses and does." (Bloomington: Indiana University Press, 1962): 118.

<sup>79</sup>See the subsequent section on *The Virtues and Natural Law* for a more complete treatment on the role of the virtues.

essentially rational, truly human acts are those that are rational. Dispositional properties imply that there are certain capacities that can be potentially actualized. Actualizing these is good, and frustration of these is bad. As McInerny notes,

The general moral task is to act well with respect to the goods that are the ends of inclinations [i.e., dispositions] that enter into our makeup, that is, to insure that the pursuit of particular goods does not jeopardize the good of the whole man, something that happens when the pursuit of the ends of lesser inclinations impedes the pursuit of the ends of higher inclinations. The tempering of the lower appetites and making them amenable to rational guidance is what is meant by moral virtue.<sup>80</sup>

Actions that perfect the rational nature of man are good as well. The ultimate good completely fulfills this nature, and is known as happiness.

### ***E. The Moral Determinants of the Goodness of Action***

This section will explain the particular elements of moral decision making according to natural law theory. Although each element is conceptually distinct, some elements seem identical at certain times. In addition, the natural law theorist is well aware that people do not, in general, reflect on the conceptual elements involved in the process of deliberation in deciding on which action to perform. However, even if a person does not do so, the majority of people realize that three determinants for deciding the goodness of an action are important. These three moral determinants are the object, the circumstances, and the end.<sup>81</sup>

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<sup>80</sup>McInerny, *Aquinas On Human Action*, p. 122.

<sup>81</sup>In the *Summa Theologiae*, First Part of the Second Part, Q. 18, St. Thomas discusses the goodness and badness of human acts in general with a detailed account of the object, the circumstance, and the end.

First, what is the formal object of an action? Vernon Bourke explains that the formal object of a person's action is the "judgment which formally determines the act of choice which he elicits through his will."<sup>82</sup> Basically, what this says is that the formal object is a person's reason for acting. When a person comes upon a problem that requires action, the person first determines the ultimate end that he wants to attain. Then the person chooses between several courses of action that he may take in order to actualize the aforementioned end. The formal object includes the intention for acting in one way rather than another to attain a certain end. Although the intention is included in the formal object, it is not all that makes up the formal object. Another aspect of the formal object of action is the means one uses to acquire a given end. An individual must use reason to judge the morally appropriate means by which the end is to be reached. Bourke notes, "Besides intending the right end, the agent must think of a certain species of external action which, in his best judgment, will reasonably attain this end."<sup>83</sup> Thus, in order to determine whether an action was good or bad, one must take into account the reasons why a person acted the way he did, as well as how well he thought through the alternative means to attain the end. The object of an action is primarily the reason one has to take one course of action rather than another in a given situation.

Second, one needs to take into consideration the circumstances of the person. This element is obvious. The circumstances surrounding an act have great importance for deciding whether a person made a morally good choice. Suppose, for instance, one decides that the only way to stop a person from bleeding to death from a gunshot wound is to cauterize the wound. If one is stranded deep in the mountains on a hunting trip, then

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<sup>82</sup> Bourke, p. 137.

<sup>83</sup> Ibid., p. 139.

the decision may be justified. However, if the hospital is two minutes away, it would take longer to light the fire needed to cauterize the wound than it would to take the person to the hospital. In the latter case one could think of several reasons why it would be bad to attempt this procedure.

Third, the end is actually the first in the order of action and refers to a person's motive. An act is initiated because of a person's motive for acting. One may have several motives. These may be very complex. If the motives are good, the act may be good. However, if the motives are bad, the act is evil. If one takes into consideration the various elements of the decision-making process, and one follows a choice ordered to man's ultimate end, then one acts rightly. Consider the case of cauterizing a person's wound. If the motive for doing so is to see him suffer, then the act is bad because of the bad motive. According to the classical natural law approach, if any one of the aforementioned aspects of the human act is bad, then the whole act is bad. That is to say, if one has improper motives, or does not reason about the proper means to reach the end, or does not take into consideration the immediate relevant circumstances, the act is bad.

In short, there are three moral determinants of the goodness of action for the natural law theorist. These are the object, the circumstances, and the end. If any one of the three elements is not considered one could end up in error about whether the action was good or bad. The object refers to both the person's intention and means used to carry out the act. The circumstances refer to the relevant accidental characteristics that qualify a particular act. The end is the person's motive for acting. Some blur the difference between the object and end due to confusing the meaning of 'intention' and 'motive.' Eleonore Stump clarifies the distinction, "The *object* of an action is *what* the agent

intends to accomplish as a direct result of her action, while its *end* is *why* she intends to accomplish it.”<sup>84</sup> This is a very important difference between the elements in moral evaluation.

### *F. The Virtues and Natural Law*

In his treatment of human action, Aquinas has no less than eighteen different chapters that discuss virtue to some extent. Given such an extensive treatment, the virtues apparently have an important role to play in natural law theory. This section explains what the role of virtue is, how one can use virtue in deciding how to act, the use of the cardinal virtues, and some common objections to the concept of virtue.

What exactly does it mean to say that virtue is to be sought or desired? Virtue is usually understood as a power to think or act rightly. Louis Pojman explains, “virtues are excellences of character- trained behavioral dispositions that result in habitual acts.”<sup>85</sup> One can desire excellence of character and have excellence of character. Virtue can be something one desires and be seen as an exemplar or ideal. Our earlier explanation of virtue was: “The second nature or habit which determines an otherwise indeterminate appetite to the true good.”<sup>86</sup> It can also be the character one already has that aids one to act in the right way. Virtue may pertain to thinking rightly or to acting rightly. McInerny notes the difference between intellectual and moral virtues: “Habits which inhabit appetite are virtues in the full sense of the term. Thanks to them, we have not only a

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<sup>84</sup>Eleonore Stump, *Aquinas*, (New York: Routledge, 2003): p. 78

<sup>85</sup>Louis P. Pojman, *Ethics: Discovering Right and Wrong*, (Belmont: Wadsworth Publishing, 1990): 120.

<sup>86</sup>McInerny, *Aquinas on Human Action*, p. 151.

capacity to perform in a certain way, but an inclination to use that capacity. Intellectual virtues, by contrast, give the capacity, but not the inclination to use it.”<sup>87</sup> Of these two, we are here concerned with acting rightly because it deals with moral virtue.

The moral virtues are each related to the common aspects of human nature in relation to a good act. Temperance, fortitude, prudence, and justice serve as broad guides to the different aspects of human action. These have traditionally been called the four cardinal virtues. For instance, one aspect of human nature is the desire for food. The virtue associated with the proper regulation of the consumption of food (i.e., the human act) is called temperance. St. Thomas explains that a man with prudence, “which is right reason in things to be done, a man must be well disposed regarding ends, which is brought about by a rectified appetite. Therefore prudence requires moral virtue through which appetite is rectified.”<sup>88</sup> A third deals with situations in which a person must overcome new obstacles or fears. Courage or fortitude aids one in this task. A fourth relates to treating others fairly, giving to each what is owed. This is called justice. Each one of the virtues aids an individual in understanding the proper relationship between human nature- specifically dispositions, and action.

Moreover, each virtue is a mean between two vices.<sup>89</sup> Because extreme actions destroy a man, the extremes are to be avoided. When one acts too strongly (exhibiting an excess) or not strongly enough (exhibiting a deficit) in an act, as opposed to acting in a

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<sup>87</sup>Ibid.

<sup>88</sup>St. Thomas Aquinas, *Summa Theologica Ia IIae*, Q. 57, a. 4.

<sup>89</sup>Aristotle writes of the mean in his account of virtue in Book II of the *Nicomachean Ethics*: “That we must act according to right reason (1103b32)”; and “That moral excellence [i.e., virtue] is a mean, then, and in what sense it is so, and that it is a mean between two vices, the one involving excess, the other deficiency, and that it is such because its character is to aim at what is intermediate in passions and in actions, has been sufficiently stated. (1109a20-24)” *The Complete Works of Aristotle: Nicomachean Ethics*, Ed. By Jonathan Barnes and Translated by W. D. Ross with revision by J.O Urmson, (Princeton: Princeton University Press, 1984)

way proportionate to the situation, one is not acting according to a mean. This excess or deficit in an act is not referring to how passionately it is done, but how it relates to virtue. For example, when a person is courageous he is neither foolhardy (an excess), or a coward (a deficit). The mean is virtue. The natural law theorist follows Aristotle's explanation that acting in excess or defectively destroys virtue, while acting according to the mean preserves virtue.<sup>90</sup>

One objection that is commonly lodged against virtue-centered ethical theories is that it seems one must have the virtues in order to do virtuous acts.<sup>91</sup> If one does not have the virtues, then how can one act virtuously? And, if one has the virtues, then how can one not act virtuously? In other words, doesn't virtuous action presuppose that one is already virtuous in some way?

However, the critic is wrong here in assuming the virtuous man only becomes so because he has already established a habit of choosing to act virtuously. In such a case, virtue would be an exemplar cause or a model for a man's action. When one considers how to act in regard to a particular situation, one must consider the relevant virtue and act accordingly. For example, suppose a man must defend his city against enemy attackers. The virtue that would be needed in this case is fortitude or courage. However, one must also consider all the options available in the situation. Prudence is needed. It would be

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<sup>90</sup> Ibid. (1104a25-26) This will be treated in more detail below.

<sup>91</sup> Two additional objections to virtue theories deal with the seeming relativity of virtues and also the inability for a virtue theory to guide one through moral dilemmas even if it tells you what kind of person you ought to be. The relativity of virtues and normal decision-making on a virtue theory is dealt with below. Each person is to try to consider various aspects of a situation when there are moral dilemmas. One may consider all the circumstances surrounding a situation and whether there is a hierarchy of virtues. This hierarchy, which will be discussed at length in a later chapter, is essential for resolving moral dilemmas in some cases. One may also consider all the alternatives about how to or whether to act. However, even if one considers all these factors and the decision is not obvious about what should be done, it is acceptable on this account to admit that due to the limited nature of man's reason, one may not have all the facts to discern which of two moral acts is better in a given dilemma. This is not necessarily a flaw in the moral theory being advocated, but instead touches on the finitude of the human understanding.

foolish for the person orchestrating the defense to be in the front line of attack, because this person may be killed. Since the defense of the city is the goal, one must take into account the relevant circumstances in order to best achieve that goal. In this case a number of virtues must work together.

The classical natural law approach considers the primary virtue to which the act is related. St. Thomas explains:

Now that which is not in accord with reason in the object considered can diversify the species of sin in two ways: in one way materially, in another way formally. Materially, by opposition to virtue, for virtues differ in species according as reason arrives at a mean in different matters; for example, justice according as reason establishes a mean in exchanges and distributions and the like, temperance according as reason establishes a mean in matters of concupiscence, fortitude according as reason establishes a mean in matters of fear and daring, and so on in other matters.<sup>92</sup>

Aquinas explains that the moral goodness of an act can be discovered by looking at the virtue under which it falls. However, one may suggest that the mean for some actions still can be considered as immoral. For example, most who hold to natural law theory think no amount of adultery is acceptable. Aquinas agrees with this and responds:

Hence too in moral matters, it must surely be the case that virtues diverse in species are concerned with different matters in which reason arrives at a mean in diverse ways. For example, in concupiscible matters reason arrives at a mean by restraining; hence virtue established in these matters is nearer to deficiency than to excess, as the very name “temperance” denotes. But in matters of daring and fear, reason arrives at a mean not from restraining but rather in attacking; hence virtue in these matters is nearer to excess than deficiency, as the very name “fortitude” denotes; and we see the same in other matters relating to the virtues.<sup>93</sup>

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<sup>92</sup>St. Thomas Aquinas, *On Evil*, Q. 2, Art. 6, cor. :72.

<sup>93</sup>Ibid.

As it relates to virtue, the mean is not a certain allowable amount *per se*. On the contrary, Aquinas makes it clear that the nature of the virtue itself, as it opposes evil, provides the proper mean. The mean is not the median, but the proper amount. If one means the proper amount when referring to an allowable amount, like in cases where there is a mean between extremes, then one understands properly. However, if one takes an allowable amount a median amount (or even a proper amount) of evil as acceptable, then there is a misunderstanding of the act itself. One considers the virtue to which the act is related. As adultery can in no way be a virtue, then there is no proper or allowable amount.

In addition, the cardinal virtues apply to each act. When considering an act a person examines the corresponding virtue to make sure the act should be done, and if it should be done, he or she considers how it should be done. The action, insofar as it accords with reason (i.e., is a virtuous act), is a good that should be done.

An objection may be brought against this account is that different people have different lists of what they consider virtue, so for example, a hedonist may consider temperance as a vice and not as a virtue.

The defender of the cardinal virtues can respond in several ways. One is to point out that because people disagree about what the virtues are, it does not follow that no one is correct. This is a non-sequitur. Another response is that it may be the case that the objector is morally blind. If the objector replies that it is the natural law theorist who is morally blind, the natural law theorist may ask what the primary moral virtues are and what is wrong with using the cardinal virtues as a guide. The objector himself assumes that prudence or wisdom is a virtue that someone can use to properly discern what is

true.<sup>94</sup> But, if this is the case, then at least one of the cardinal virtues is correct. In addition, most people seem to understand that being a coward or a fool in the face of danger is bad. Again, this understanding supports the claim that courage is good. Moreover, it just seems right (*prima facie*) that people should receive what is due them. The innocent should not be punished for the actions of the wicked. The natural law theorist would say that human reason can judge the rightness of the action because of the goodness in the act of justice. Much the same applies to temperance. Because there is goodness in temperate acts, human reason judges them to be good. If the hedonist does not fully understand this one particular virtue, then perhaps he is failing to make a distinction between the real and the apparent good.

Perhaps the reason that different people have different lists of what they consider to be virtuous is that they are dealing with abstractions from the cardinal or primary virtues. People may disagree about the best traits to have in order to achieve the cardinal virtues. For example, some may say that having pride will help one to overcome certain challenges and help a person be courageous. On this view pride is a kind of virtue because it helps one acquire the virtue of courage. Others may contend that pride takes away from being virtuous, and leads to foolishness because the prideful person thinks of himself more highly than he ought to. This group says that pride undermines the virtue of prudence. Both groups agree on the cardinal virtues because they are primary. The debatable issue is about the excellences and attitudes one should have in order to attain the primary virtue.

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<sup>94</sup>The person who argues against the cardinal virtues is using reason to say that one should not use reason when making decisions. Reason's role in the practical intellect is the role of prudence, which is one of the cardinal virtues. One must recognize that accepting this doesn't establish all four virtues, but only one- prudence.

The most potent objection deals with the teleology intrinsic to a natural law account and the virtues. Alasdair MacIntyre has pointed out Aquinas's dependence on Aristotelian cosmology and writes: "We have every reason to reject Aristotle's physical and biological science."<sup>95</sup> If the essence of natural law ethics is a rejected and false teleological account, why should any person accept natural law?

Several things must be noted in response to this charge. First, not everything that Aristotle or St. Thomas said about science must necessarily be true in order to accept natural law. One can reject many aspects of their account and still hold that natural law theory is at least useful in guiding action. Second, scientists actually do recognize the teleological structure of many body parts. For example, the heart is a pump and its function is to circulate the blood throughout the body. The teleological structure of the body is evident in the mechanisms necessary for blood clotting, the biological machinery in the cell, and the biochemical components involved in multiple organic processes.<sup>96</sup> Third, both therapists and physicians aim at restoring function to various parts and processes of the body when working. Although pain management is often a vital aspect of helping an injured person, rehabilitation aims to help a person regain lost functionality. Fourth, the teleological structures of each part is subservient to the individual's total well being. Although there may be some difficulties in applying some treatments, the vast majority aim at the total well being of the individual. In other words, an individual's complete well-being has a greater weight than any one part in the vast majority of cases. So, as teleology is not a concept that is rejected, especially in modern medicine, it

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<sup>95</sup> Alasdair MacIntyre, *After Virtue*, (Notre Dame: University of Notre Dame Press, 1984): 179.

<sup>96</sup> These are described in detail by Michael Behe in *Darwin's Black Box*. The Lilliputian biology shows specified complexity beyond the levels man has attained artificially for even basic functions which occur all the time in our bodies.

certainly seems reasonable that one should also not reject it or dismiss it quite so easily when considering moral evaluation in natural law.

Why is there such a significant difference between the physics of the ancients and that of today? Certainly our understanding of certain areas is greater today. There is no disputing that. However, the wholesale rejection of the use of all four causes in modern science probably is a result of misunderstanding Aristotle's use of them. Modern science seems most concerned with the efficient and material causes. Efficient causality is the agent involved in producing an action. It is the external source of change. Veatch explains the material cause is that material substance which undergoes change, has the potency to change, or sustains change.<sup>97</sup> The material cause of the tree, i.e., that which can change, is the wood of the tree. It may be larger or smaller and remain the same tree. Formal causality may be more disputed. The formal cause of something is that determinate nature that the subject will become. Asking what a thing is questions its formal cause—its nature.

Final causality has been the main subject of criticism against teleology in nature. This seems appropriate to the modern mind if the final cause only has to do with intention. How can an acorn intend to become a full grown oak? This seems like obvious nonsense. If final causality is comparable to the purposive actions of intelligent beings, then there is no room for discussing final causality in the rest of nature. However, it is important to look at how final causes actually function in an Aristotelian or Thomistic account of things. Final causes do not refer to intention when discussing unintelligent agents. Veatch explains:

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<sup>97</sup>Henry B. Veatch, *Aristotle: A Contemporary Appreciation*, (Bloomington: Indiana University Press, 1974): 45.

All the same, the moment we stop to reflect upon it, is it not obvious that the actions, influences, effects—call them what you will—of the various agencies and efficient causes that are operative in the natural world are always comparatively determinate, or, perhaps one should say, regular? Thus we expect the action of the sun’s rays on the stone sill to have the effect of warming the sill, not of turning it blue, or of chipping it into a thousand pieces, or of standing it on end, or of causing it to fly off an float about like a cloud in the sky....in other words, since natural agents and efficient causes, as far as we can properly identify them and come to understand them, are found to have quite determinate and more or less predictable results, to that same extent we can also say that such forces and agencies are therefore ordered to their own appropriate consequences or achievements: it is these that they regularly tend to produce, and it is these that may thus be said to be their proper ends, though not of course, in the sense of any deliberate or conscious purpose. Aristotelian final causes are no more than this.<sup>98</sup>

The kind of being from which action comes determines the final cause. If the being is intelligent, then one may expect the purpose or goal of action for this being to be the final cause. If the subject is not intelligent, the final cause is the “regular and characteristic consequences or results that are correlated with the characteristic actions of the various agents and efficient causes that operate in the natural world.”<sup>99</sup>

It seems that man is justified, *prima facie*, in a teleological ordering of the world as part of his ethical theory. Certainly certain goods are necessary for what men call happiness and others are not. At least some virtues also seem to be necessary for a good life. Although there are certainly some that hold that with knowledge comes sorrow (the writer of Ecclesiastes), perhaps the reason for this has less to do with knowledge and more to do with people not doing what they ought to do. Of course, it also seems reasonable to believe that it takes more than knowledge to be happy. The combination of knowledge and moral virtue certainly seems to be the most reasonable path to happiness.

Thus, the virtues are needed not only to help people decide what to do, but also to help them to do it. Practical reason helps each person discern goodness in an action. Each

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<sup>98</sup>Veatch, *Aristotle*, p. 47-48.

<sup>99</sup>Ibid.

act is to be examined in light of its corresponding virtue. Although people differ in their lists of the excellences, it seems that the cardinal virtues remain the foundational principles needed for a person to decide how to act rightly. Cultures or people that form different lists of virtues overlook natural law claims about the role of virtue. The natural law theorist does not claim that all virtues are equal. The four cardinal virtues are the principle virtues one can use to guide decision-making regarding moral matters.

Although the critic may scoff at this assertion of the unchanging character of the cardinal virtues, even he would be hard pressed to find a culture that touted cowardice, foolishness, intemperance, and injustice as virtues to be cultivated.

### Chapter 3

#### Modern Objections to Natural Law

People often speak as if murder, torture, and rape are really bad, and that self-sacrifice, love, and acts of kindness are really good. However, are people justified in predicating goodness or badness of acts as they normally do? Some philosophers say that moral statements which attribute goodness to an act cannot express moral facts, and if they did, one could not know it. Others, such as natural law theorists and neo-naturalists, hold the view that such statements about acts really do express moral facts and that they can be known. Many in this latter camp also hold that goodness is in some way natural in these acts.

This chapter explains several aspects of natural law theory and contemporary neo-naturalism that provide the foundation for answering the objections initially brought against it by G.E. Moore, via the open question argument, and David Hume, via the is-ought fallacy. These objections are often thought to be fatal to naturalistic ethics. The basis for the dispute concerns the definition of 'good,' or even whether good can be defined, and how one knows what is good. In addition, Moore's open question may be said to make reason-giving impossible for judgments of goodness. As Henry Babcock Veatch explains:

This consequence, accepting Moore's thesis of the indefinability of goodness, is that it becomes difficult if not impossible for one ever to give reasons for

considering something to be good or valuable or worthwhile. In the very logic of the case it would seem that if I say that something is good or worthwhile, and you ask me “Why?” I can answer in all sorts of ways: “Because I like it,” or “Because it gives pleasure,” or “Because it is personally ennobling,” or “Because it contributes to the greater well-being of humankind.” Yet ultimately, if I am pressed as to why my liking something, or finding it pleasant, or considering that it makes for the general welfare, should necessarily make it good, I am forced to fall back on something like a definition of goodness, or a declaration as to what goodness by its very nature is.<sup>100</sup>

As an essential part of their theory, and contrary to Moore, the natural law theorist and neo-naturalist define ‘good.’ The challenge for any naturalistic account is to answer to Moore’s objections and to give a justification for using reason in calling something good.

The answer to Moore comes from considerations, which were explained in detail in the second chapter, that the neo-naturalist and the natural law theorist share. These considerations are the foundation upon which one makes judgments about the definition of good, which act is good, and whether one should act in a given situation. The structure of natural law is implemented in answering Moore throughout the rest of this chapter.

Both Moore and Hume offer substantive arguments against any form of naturalist ethics. If successful, the arguments challenge the natural law theorist’s metaphysical view of goodness upon which he bases his epistemology. A result of accepting these arguments has led many to abandon a natural law approach. The task of this chapter is to grapple with these arguments and show how they do not undermine natural law theory.

Thus, this chapter is divided into four sections. The first section explains the open question argument and how it is tied to the naturalistic fallacy. The second reveals

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<sup>100</sup>Henry B. Veatch, *For an Ontology of Morals: A Critique of Contemporary Ethical Theory*. (Evanston: Northwestern University Press, 1971): 21.

the arguments Caj Strandberg and Connie Rosati present against traditional accounts of goodness based on the open question. The third section provides a response to these objections. The fourth section exposes and answers David Hume's objection.

### *A. The Open Question Argument*

This section explains the details of the Open Question Argument (hereafter OQA). The OQA is given to support Moore's view of what 'good' is. Because it is important to understand Moore's views on 'good,' this is discussed first. Next, the naturalistic fallacy, which says it is fallacious to identify anything natural as good, is addressed and how it relates to the OQA. This is followed by a summary of Moore's position.

Let us first consider Moore's claim about the 'good.' His position is that 'good' is not a natural property, but is a non-natural and simple property.<sup>101</sup> Moore explains, in the Preface of his book *Principia Ethica*, the following three tenets:

- (I) Good is not the same as anything but itself;
- (II) Good cannot be a property capable of analysis;
- (III) Good is not a natural or metaphysical property.<sup>102</sup>

Those committing the naturalistic fallacy err in violating one of these three tenets. In his Preface, Moore also adds a qualification that is given to bolster the plausibility of these

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<sup>101</sup>G. E. Moore, *Principia Ethica*, (Cambridge: Cambridge University Press, 1956): 7.

<sup>102</sup>Lewy, C. "G.E. Moore on the Naturalistic Fallacy," in *G.E. Moore—Essays in Retrospect*, (London: Humanities Press, 1970): p. 296.

tenets. His qualification is simply that the good is not identical to a property of a certain class.<sup>103</sup>

Moore explains that good can only be explained by reference to itself. One cannot overlook the importance of Moore's view of defining good. Moore writes,

If I am asked 'What is good?' my answer is that good is good, and that is the end of the matter. Or if I am asked 'how is good to be defined?' my answer is that it cannot be defined, and that is all I have to say about it. But disappointing as these answers may appear, they are of the very last importance. To readers who are familiar with philosophic terminology, I can express their importance by saying that they amount to this: That propositions about the good are all of them synthetic and never analytic; and that is plainly no trivial matter.<sup>104</sup>

A synthetic proposition is one that adds to a subject a concept not contained in the subject. All propositions about good do this sort of thing, and because of this cannot be definitions since they go beyond the concept of good. According to Moore, one cannot define goodness in terms other than itself. For instance, if one postulates that goodness is something that gives pleasure, one can ask if something that 'gives pleasure' and 'good' mean the same thing. If giving pleasure and goodness are not identical, then they are not the same thing. If they are identical, then one has really given no new information. For example, if 'good' means 'pleasant,' then when one says pleasure is good, it is really like saying goodness is good.

Moore first presents the naturalistic fallacy, based on the open question argument, in the *Principia Ethica*. In Moore's unpublished Preface to a later edition of the *Principia*, he says he would define the naturalistic fallacy as follows:

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<sup>103</sup>Moore, "Preface to the Second Edition," in *Principia Ethica*, ed. Thomas Baldwin, rev. ed. (1903; reprint, Cambridge: Cambridge University Press, 1993), p. 15.

<sup>104</sup>Moore, *Principia*, p. 7: Ch. I. 6.

‘So-and-so is committing the naturalistic fallacy’ means ‘He is *either* confusing Good with a natural or metaphysical property *or* holding it to be identical with such a property *or* making an inference *based* upon such a confusion.’<sup>105</sup>

Any who say, ‘A is good,’ mistakenly think good is the same as the natural or metaphysical property of A.

Much of this discussion may hide an ambiguity in the terms being used. One may ask what exactly Moore means when he refers to natural properties. One may also ask what is normally meant when referring to these properties. Perhaps more importantly, when Moore says that the ‘Good’ is ‘non-natural,’ what is he saying? It is clear that he thinks that ‘Good’ is simple. It is common in modern times to use the term ‘natural’ to refer to the material world.<sup>106</sup> Moore means something more than just using the term natural in this way. Moore explains his view in *The Conception of Intrinsic Value*.<sup>107</sup>

Aaron Preston summarizes Moore’s view in *The Conception*:

Moore holds that value concepts *alone* are to be counted as non-natural, so that “non-natural” is practically equivalent to “moral” and “natural” to “non-moral.” Thus, in the end, it seems that Moore did have a much broader understanding of “natural”—and a correspondingly narrower conception of “non-natural”—than is articulated in the *Principia*.<sup>108</sup>

Assuming this view is correct, then it means that natural is equivalent to value neutral, and only non-natural properties can have value.

Moreover, Moore advances the argument that the notion of ‘good’ is similar to the notion of ‘yellow.’<sup>109</sup> These notions are both simple and as such are indefinable. In the same way that one cannot be expected to understand what ‘yellow’ is for one who does

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<sup>105</sup>Lewy, p. 297.

<sup>106</sup><http://www.iep.utm.edu/moore/#H3>

<sup>107</sup><http://www.ditext.com/moore/intrinsic.html>

<sup>108</sup><http://www.iep.utm.edu/moore/#H3>

<sup>109</sup>*Ibid.* Ch. I.7

not know it, so too one cannot understand what 'good' is. With this understanding, we can proceed to examine the OQA.

The OQA simply says that you can take anything 'A', and to call 'A' good would not be analytic or self-evident. For example, a person's belief that 'steak is good,' it is not self-evident. Steak is by no means good by definition because the meaning of steak is not identical to the meaning of good. Moore may insist that it is analytically true that a 'bachelor is an unmarried man,' but one can find no such analyticity in saying 'steak is good.' It is in the nature of an open question that it is possible to doubt the answer. Open questions are certainly not self-answering because the predicate is not contained in the subject. The contention is that the term good does not express a natural property, or it would be self-answering, but because it is not then in no case is good identical to it.

In sum, there are several aspects of this analysis the natural law theorist should respond to. First, there is the worry that Moore's argument hinders a naturalistic ethic for the primary reason that it makes goodness indefinable. Of course, it may just be the case that one doesn't need to be able to define the good but that it can be identified regardless. Second, one may question whether a person even needs a reason for choosing something beyond saying that it is good. In other words, why does it matter if a person can reduce the good to something else? Third, is there any problem with saying that a natural property is value neutral? If there isn't, then perhaps the apparent tension between Moore's discussion and the view of the Thomist is really just a case of two ships passing in the night.

### *B. Two Contemporary Defenders of the Open Question*

Moore's OQA has fallen into some disrepute recently. There are two philosophers that have slightly altered this argument in order to keep it from some common objections that have been raised. This section discusses the nuances of the OQA that Caj Strandberg and Connie Rosati offer that aim to bolster Moore's case.

The first explanation to consider is that of Caj Strandberg. He explains that there are two parts to Moore's OQA. Strandberg's modified argument is based on the following passage from Moore:

The hypothesis that disagreement about the meaning of good is disagreement with regard to the correct analysis of the given whole, may be most plainly seen to be incorrect by consideration of the fact that, whatever definition be offered, it may always be asked, with significance, of the complex so defined, whether it is itself good. To take, for instance, one of the more plausible, because one of the more complicated, of such proposed definitions, it may easily be thought, at first sight, that to be good may mean to be that which we desire to desire. Thus if we apply this definition to a particular instance and say "when we think that A is good, we are thinking that A is of the things which we desire to desire," our proposition may seem quite plausible. But, if we carry the investigation further, and ask ourselves "is it good to desire to desire A?" it is apparent, on a little reflection, that this question is itself as intelligible, as the original question "Is A good?" - that we are, in fact, now asking for exactly the same information about the desire to desire A, for which we formerly asked with regard to A itself. But it is also apparent that the meaning of this second question cannot be correctly analysed into "is the desire to desire A one of the things which we desire to desire?": we have not before our minds anything so complicated as the question "Do we desire to desire to desire to desire A?" Moreover any one can easily convince himself by inspection that the predicate of this proposition- "good" - is positively different from the notion of "desiring to desire" which enters into its subject: "That we should desire to desire A is good" is not merely equivalent to "That A should be good is good." It may indeed be true that what we desire to desire is always also good; perhaps, even the converse may be true; but it is very doubtful whether this is the case, and the mere fact that we understand very well what is meant by doubting it, shews clearly that we have two different notions before our minds.<sup>110</sup>

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<sup>110</sup>G.E. Moore, pp. 67-68.

The first part of Moore's argument, according to Strandberg, is that if the question is 'open' as to whether “whatever is desired to be desired ‘good’?”, then ‘desire to desire’ and ‘good’ do not mean the same thing.<sup>111</sup> The second part claims, “There can be no successful reductive analysis of 'good,' since 'whatever definition be offered,' we will find the corresponding question intelligible.”<sup>112</sup>

Strandberg modifies the OQA in several ways to avoid traditional objections to Moore's argument. The following will explain two ways Strandberg alters Moore's argument.<sup>113</sup> He will apply the argument to the “thin” terms “morally right,” “morally good,” and their counterparts.<sup>114</sup> These “thin” terms are simple and basic, whereas a “thick” term is something that adds descriptive content to a “thin” term. For example, “courage” is considered as “thick” because it not only includes the “thin” term “good,” but also the specific action that is performed.

He offers two reasons for this alteration. This modification allows him to call into question whether the acts to which “thin” moral properties are ascribed are reducible, and to assert that saying something is right or good presupposes it is right or good in a particular way.<sup>115</sup> A second modification Strandberg makes involves the proper response to the OQA. He takes the proper response to whether one has the correct answer to be doubt.<sup>116</sup> If doubt is the proper response, the “the presence of doubt merely suggests that

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<sup>111</sup>Caj Strandberg, “In Defence of the Open Question Argument,” in *The Journal of Ethics*, v. 8 (Netherlands: Kluwer Academic Publishers, 2004): 181.

<sup>112</sup>Ibid.

<sup>113</sup>I am only presenting the first two of Strandberg's alterations to the OQA because his third argument is dependent upon the first two. Because these will both be answered in the next section and shown to be questionable, so too the third objection is called into question.

<sup>114</sup>Strandberg, 181

<sup>115</sup>Ibid.

<sup>116</sup>Ibid. 182.

the analysis is incorrect.”<sup>117</sup> This objection is based on the lack of the self-evidence of saying that anything is good. The force for this argument rests on the response of doubt. If there is doubt, then there cannot be self-evidence.

To clarify, Strandberg sets forth the following in order to bolster Moore’s OQA:

- (I) If it is an open question that an act can be called morally right, then two things follow. First, the act is not reducible to morally right (or good), and second, saying the act is right presupposes it is right in a certain way.
- (II) If it is an open question whether an act is good, then the reasonable response is to doubt whether it is good.

The first argument focuses on the irreducibility of the good from an act, and the question-begging nature of saying something is right. The second explains that doubt is the proper response to the lack of self-evidence for calling an act ‘good.’ These two are the essence for the rejection of a natural definition for ‘good’ and are given to support Moore’s view.

Connie Rosati, directing her arguments against naturalistic accounts, defends the OQA by clarifying which specific questions are left open in these accounts. She suggests many reasons the OQA succeeds against naturalistic accounts.<sup>118</sup> The primary reason is that “the new naturalism succumbs to the open question argument, I suggest, because it fails to account for our character as persons, as creatures who construct and guide ourselves by ideals of the person.”<sup>119</sup> She adds that we think that what we desire can diverge from our good.<sup>120</sup> Rosati’s initial description of good is either “what a person

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<sup>117</sup>Ibid.

<sup>118</sup>Connie S. Rosati, “Naturalism, Normativity, and the Open Question Argument,” *Nous*, Vol. 29, No. 1, (Blackwell Publishing: Mar., 1995): pp. 46-70.

<sup>119</sup>Ibid. 47

<sup>120</sup>Ibid. 50.

desires' or 'what a person desires to desire.'"<sup>121</sup> This is suggested so the new naturalists can try to link the normativity of goodness with “an internal connection to the individual whose good it is” with “epistemic warrant.”<sup>122</sup>

Rosati argues that three questions “are left open by past definitions of good.”<sup>123</sup>

These three questions are:

1. Does what is said to be good carry motivational force?
2. Does what is said to be good for a person reflect what that person most values?
3. Does what is said to be good for a person meet conditions of justification?<sup>124</sup>

The past definitions of good are inadequate because these questions are not closed. The inability to answer these questions, because of the OQA, leaves an incomplete account of what good is. Also, Rosati admits, closing these questions may show how the descriptive and the normative can be bridged.<sup>125</sup>

### *C. Problems with Defending Moore's Open Question*

This section raises problems with Moore's OQA and the contemporary challenge that its defenders promote. In addition to exposing the questionable underlying presuppositions of Moore's argument, this section will contain the classical response to Moore. Once the foundation for the classical response is in place, the natural law definition of goodness will be defended against the contemporary critique.

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<sup>121</sup>Ibid. 51.

<sup>122</sup>Ibid. 51-52.

<sup>123</sup>Ibid. 52.

<sup>124</sup>Ibid.

<sup>125</sup>Ibid.

Moore's first criticism of a natural basis for defining 'good' is that it cannot be defined in terms other than itself. However, when a person encounters an act that he views as good, he does not think that the act contains all particular types of goodness. On the contrary, goodness can be said to be in the act in some way. The classical explanation from the Thomistic natural law tradition of the relationship between goodness and good is comparable to the relationship between the whole and a part. When a person refers to the goodness of a certain act, he refers to its formal principle. This may be understood from the example of how humanity exists in Socrates and Diotima. Humanity is the formal principle that exists in the universal concept in the mind. It can be granted that humanity (as a formal principle of the species man) exists only in the mind in one sense, but understanding this distinction, humanity exists in each individual human in another sense.<sup>126</sup> It is common to Socrates and Diotima that humanity is the formal principle of their species. However, one cannot say that Socrates or Diotima is humanity, since this only represents the formal aspect of the individual. Matter is included with form in the essence of individuals. Since matter is excluded from humanity as such, one cannot say that Socrates or Diotima is humanity, though one can say that Socrates or Diotima is human (which does not represent only the formal aspect).

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<sup>126</sup>Thomas Aquinas would say that the term 'humanity' refers to the formal principle of the species man. As such, it refers only to a part of man, the formal part. Since it refers only to part of man it cannot be said of the whole individual man. When referring to species and genera of an individual, like Socrates or Diotima, the mind abstracts what is common and indistinct to the individuals so that it can be applied to them in that way. Thus, the species of Socrates is man and his genus is animal. Both these terms can be predicated of Diotima as well. However, if one prescind from the genus and species, then this abstracts animality from animal and humanity from man. By abstracting with precision one cuts off or excludes characteristics. This is why one cannot say that Socrates is humanity (which is a formal principle of the species man), but can say that Socrates is man or human. Under the category of genera the generic nature of what is common to species is described. Under the category of species, the specific nature or form of what is common to individuals is described. Thomas explains abstraction as the process of considering things according to what is in common.

Similarly, application of the aforementioned distinction between the formal aspect and the particular instance can help resolve difficulties about goodness. Goodness would be the formal part of the act that allows a person to call it good. Acts are called good because an act's specific nature or form makes it good in all instances. The goodness in a specific act is identified and the act is called good. One can understand that there can be many things that are called good, but only one thing called goodness. Goodness has the status of a universal with intentional existence.<sup>127</sup>

Some may charge that Moore begs the question in the assertion that good cannot be capable of analysis. However, he has three reasons for this assertion that aid him in avoiding this fallacy. On the one hand, he says that goodness is only identical to itself as a simple property; on the other, when any property beyond 'good' is used as a definition, one can question whether this outside property really is 'good.' Third, he offers an argument by analogy to explain how 'good' is simple and thus indefinable. In this argument he compares the concept of 'good' to the concept of 'yellow'. The two are analogous in that both 'good' and 'yellow' are simple, and because of this are indefinable.

One may also compare what definition and description tell a person. Both explain the qualities or properties of something. A definition may differ from a description in that a definition 'bounds' essential properties. A definition, in this case, explains particular determining qualities of a concept. A description may add accidental properties to the concept being considered. Some may point out the difficulty, and some say even the impossibility, between making the distinction between accidental and essential

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<sup>127</sup>Intentional existence, as it is used here, does not mean existence that is on purpose, but instead existence that is in the mind. I am following the classical Thomistic explanation of universals.

properties. If this is the case, and good can be described in some way, then it is possible that 'good' can be defined.

Moreover, there are two problems with Moore's argument by analogy. First, 'good' can be natural just like 'yellow.' 'Yellow' may not be identical to another natural property, but it still could be natural in its own right as could be 'good.' A second problem is Moore fails to consider the natural law theorist's definition for 'good.' The term 'good' can be defined as 'being insofar as it is desirable,' and goodness is the formal principle whereby something is perfected. The natural law theorist considers the goodness of an individual act to be the formal principle whereby one identifies that act as perfective. Insofar as an act perfects the agent, the act is called good. As Joseph Owens explains:

A horse is absolutely a horse as long as it is just alive, but is it a good horse if it lacks sight, hearing, and sound limbs? Hardly. The reason is that goodness is based upon perfection, and accidents are necessary for anything finite. If all the required physical perfections are present, the thing is physically good. A lack of a required physical perfection is called a physical evil, like blindness in a man. The required moral perfection in human conduct is called moral goodness, and its privation is called moral evil.<sup>128</sup>

Goodness in the second act, i.e. the act at the level of operation, perfects a person morally. Goodness in the first act is based on the perfection of a person's essence.

Let us consider perfection as it relates to goodness in these two acts before touching on Moore's aforementioned account. Something is good only insofar as it is perfect. This definition is not circular as what perfects something is taken to mean that which makes it complete. This is the classical understanding of perfection. In first act, which refers to the metaphysical level, something is good insofar as it perfects the

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<sup>128</sup>Joseph Owens, *An Elementary Christian Metaphysics*, (Houston: Center for Thomistic Studies, 1963): 121.

essence of a being in some way. In second act, which refers to the level of operation, acts that are seen as good are considered to be morally good. This is not the case in the first act. A thing may be morally good, but metaphysically bad in some way. For example, it is morally good to save someone's life by removing a part of the body that is gangrenous, even if it is metaphysically destructive (evil) for some of the body.

What does Moore mean when he claims that 'good is not the same as anything but itself'? Is he simply asserting that the principle of identity (that  $A$  is  $A$ ) is all that one can say of good? If this is Moore's view, it seems to be a plausible account if anything else said of good is equivalent to saying  $A$  is non- $A$ , thus violating the law of non-contradiction. In fact, some philosophers have thought that Moore makes this claim.<sup>129</sup> It is hard to dispute Moore's claim if it is simply saying that something is itself, and is not another thing. Denying this means one must reject the law of identity, although the consequence for doing so leads to self-contradiction. Perhaps Moore's claim links the law of identity with definition because of his emphasis on our inability to analyze goodness.

It is evident that there is a necessary link between the law of identity and the definition of a thing. Definition is important for analysis in order to clarify the terms that are used. A definition clarifies in setting that which is defined apart from other things and helping us to identify it. That is to say, the purpose of a definition is to distinguish one thing from other things. It is certainly the case that a thing is identical to its definition, and if it is not, then it is a bad definition. All of these considerations, however, do not rule out the possibility that goodness can be defined or analyzed. On the contrary, 'good' can definitely be distinguished from 'bad.' Consider a functional definition of 'good' as 'that

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<sup>129</sup>See Henry Veatch for example in his book *Two Logics*, (Evanston: Northwestern University Press, 1969): especially in chapters 4 and 5, and in *Rational Man: A Modern Interpretation of Aristotelian Ethics* (Bloomington: Indiana University Press, 1962): pp. 188-203.

which works in the way in which it ought.’ One can use this definition as a way to decide whether an automobile is good or bad. The one that runs well is good, and the one that fails to start isn’t. A good act can be defined from a consideration of looking at the proper function of the agent. If the agent acts in accord with its function, it is a good act, and if not, it is a bad act. Moore’s contention that good cannot be defined or analyzed seems implausible given our ability to discern the difference between things that are good and those that are not.

As the second chapter explains, the good can be considered from the first or the second act. Good in the first act refers to metaphysical goodness and in the second act refers to operational goodness. The basis for calling something morally good on this account is related to perfection, or, as explained in the first chapter, to the actual insofar as it is over the potential. This is but one challenge to the OQA and the claim that good cannot be defined.

How does the natural law theorist respond to Moore’s claim that good is neither a metaphysical or natural property? Chapter two explained that the term good, like being, is transcendental. This means that the term ‘good’ can be applied differently to many things. If natural properties are those that can be measured by science and metaphysical properties are those that cannot, then one may consider the various ways ‘good’ can apply to them. Good applies to these properties as a transcendental. On this understanding, one can reject Moore’s claim that ‘good’ is *neither* metaphysical nor natural. Consider two examples. If I have virtuous character, then it seems one can rightly say that I am good. Also, if I am born with all the physical appendages that humans ought to have, then people would also be right to say that this is good too. These seem to

be examples of using the term good to what are normally referred to as natural and metaphysical properties. However, as previously mentioned, if Moore simply means that natural properties (and it seems to imply that metaphysical properties are included) are value-neutral, then perhaps Moore's explanation is a moot point. But surely if natural properties are those that a being has or should have because of what they are then it seems Moore's explanation of this value-neutrality is inadequate (if not simply an odd way to use the term). It is meaningful to say that it is good for my child to have all his digits when he is born. I say it is good because he naturally should have ten fingers and toes.

It is important to reiterate that this is not saying that all things are good in the same way, even if goodness has the same definition. When I say that my professor is good, he is so in a different way than my veggie sub. Or, when I say that my child is good, I may be referring to any number of different ways that he is good. I may mean that he is healthy, or that he is behaving the way in which he ought. There is certainly a noticeable difference between these two things, but I can say that both of them are good.

An analogous argument can be made using the transcendental term 'being.' A person who uses this term can apply it differently. As a matter of fact, he does so when he says different kinds of things exist. For example, both I and unicorns exist. One has real existence and the other intentional existence (existing in my mind). This is not saying that they exist in the same way, but merely that the word 'exist' means the same thing when it is used. A transcendental term applies to all existing things in some way. Thus, as transcendental terms, 'good' and 'being' applies in some way to everything which exists.

Moore may respond that this analysis fails to understand the thrust of his argument. He may side with Strandberg in saying that, unless there is a conceptual identity between what is 'good' and a reductive analysis of what is called 'good,' a person has no justification for saying 'good' is a natural property. He may add that there is a gap in the definition between 'good' and all natural things called 'good.' All men should also have the object described as good in their minds when they think of 'good' if good is really definable. He may also add that the natural law theorist's definition of good is circular, especially considering his claim that 'good' is a transcendental. After all, doesn't the very concept of 'good' mean 'perfect' or 'desirable'?

There are several ways the natural law theorist may respond. Natural law describes goodness as the formal aspect of all acts, and as such, does not suffer from having this gap. Everything that is called 'good' can be said to mean 'perfective of the nature of a thing' without a conceptual gap. The natural law theorist may also hold that the property of goodness may be said to supervene on an object when certain natural properties are in place. This object that is called 'good' may be in the first act (applying to the metaphysical level) or the second act (applying to the level of operation). One may also hold that things perfective of a nature are desirable ends and should be sought. There are certainly many natural things a person would say can perfect human nature and are good, so this explanation simply reveals that the good can be natural.

This also helps the natural law theorist respond to the charge of circularity in his definition of good. In a circular definition, the concept to be defined is unanalyzed because a term used in it is synonymous with the concept. For example, if someone tells you the definition of moonlight is light from the moon, he has offered no new

information. The term to be defined is used in the definition. Based on this, the natural law theorist argues that his definition for good is not circular. A metaphysical definition of good is ‘being insofar as it is desirable,’ or ‘that at which all things aim.’ As was mentioned in chapter two, one can make a conceptual distinction between being and goodness, in that goodness expresses desirableness that being alone does not. Similarly, desirableness does not mean good, but attraction or what is pleasing. Yet, some find things that are not good to be pleasing. So, everything that is good may be pleasing, even if not everything that is pleasing is good.<sup>130</sup> This means the two are not synonymous. One can also consider the operational definition of the good as acting in a way that perfects one’s nature.<sup>131</sup> The way one ought to act is in accord with perfecting a person’s nature. Perfection includes the idea of completeness or wholeness. These terms are complementary, but not univocal or identical. Good and perfect are not synonymous and using perfect in the definition is not circular. Consider the following proposition. A student’s test can be good, even if it is not perfect. If ‘good’ here means ‘perfect,’ then there is the following contradiction: “A student’s test can be good, even if it not good.” Because of the fact the first proposition is not contradictory, then ‘good’ and ‘perfect’ are not synonymous.

Hopefully the following illustration will make this explanation clearer, especially in regard to the relationship between the metaphysical and the operational definitions of ‘good.’ If I tell you that the coffee that I had was good, I am not telling you that it was perfect, whole, or complete. I’m simply meaning the metaphysical definition for good

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<sup>130</sup>This is a classic example of an illicit conversion of an *A*-term.

<sup>131</sup>A person moves from potentially doing a virtuous act to actually doing it in the process of perfecting one’s nature. It is assumed that when habitually performing virtuous acts it eventually leads to a person becoming a virtuous man.

which implies desirableness regarding the coffee. If I tell you that Mr. T's teaching is good, it not only tells of a certain desirableness, but also indicates that it met certain criteria that justify calling it such. Or, suppose I tell you that Mr. T is good. Considered from the perspective of morality, this claim not only refers to the desirability of how he acts (which keeps us from injury), but also that he acts in a way that perfects his nature and is virtuous. This explanation may help the natural law theorist answer Strandberg's argument.

Strandberg argued that when one applies the OQA to certain judgments of moral acts, it is an open question as to whether an act called good is good. Can an act be good if the act itself is not self-evidently reducible to 'good'? Perhaps the answer comes from understanding two things about this evaluation. The first is that the natural law theorist says that there are degrees of goodness. This means that a comparison of two acts as good may reveal many differences between the two acts. There will certainly be a similarity in that both acts are good, but this also leaves it open to broad differences. It would be hard to map one right on to another and the analyst would be hard-pressed to reduce one to the other. The second is that although each moral act is complex and has many parts, there is a common basis for calling something morally good when looked at as something that perfects human nature. With these two things in mind, one can find a common basis for identifying morally similar acts as good, and recognize that some acts are better than others.

Strandberg's other argument focuses on what may be the question-begging nature of the way the natural law theorist or neo-naturalist qualifies certain acts as 'good.' He

explains that when the natural law theorist says an action is good, he presupposes that it is good in a certain way. This point fails to be a criticism with teeth for several reasons.

One reason is that it does not look at the comprehensive nature of moral acts. When the natural law theorist calls an act good, the goodness of the act comes from certain good aspects of the action all being present. This is the point at which the threefold distinction, explained in the second chapter, between the formal object, the circumstances, and the end come into play. When all three of these are present in an act and are good, then the entire act is good.

A second reason is that any type of evaluation can be qualified, but the qualifications made do not make the evaluation incorrect. For example, when one is grading a piece of writing there may be certain criteria necessary for it to be called good in every way. One can easily say that a person's grammar, spelling, and ideas in a particular writing are good, but the structure was not good. Thus, the writing can be good in a certain way. Similarly, distinctions may be made when one is evaluating a particular action. For example, suppose a person pulls hundreds of people each year out of the water, effectively keeping them from drowning. Aside from other information, these particular acts may be called good, as saving someone from drowning is good. However, when the circumstances are considered, one finds that some people were simply swimming and were in no danger of drowning, and others were actually trying to escape from the island they were on because of the person who rescued them, Mr. T, had created a dangerous environment. With the additional information, one may say that the action was not absolutely good, even if it was good in some way.

A third reason is that Strandberg seems to commit a genetic fallacy in his criticism. Suppose that it is the case that someone believes one act is right and another is wrong before he has developed reasons for thinking this way. It could still be the case that the person's analysis is correct even without reasons. Simply pointing to the fact that the person holds a particular view before thinking through it, or to a source the natural law theorist uses, does not disqualify the view. It may be the case that what a person believes before thinking through a position is actually true. But it is a non-sequitur to say that, because a person believes it before thinking it through, it is false. The natural law theorist is not begging the question when he has *reasons* for saying that certain acts are good in a certain way.

There is one line of reasoning that some have developed that tries to answer Strandberg with his own argument. Those who try to turn his argument on its head see Strandberg as offering a test for the truth of whether goodness can be defined in a naturalistic way. These people then take this test and apply it to Strandberg's argument. So, in asking whether the proper response when something is not self-evident really is doubt, one can ask the same of Strandberg's argument. If doubt is the proper response, then one may ask if his argument is self-evident. It is certainly intelligible to ask this question, and it does not appear to be self-evident then, at least on this interpretation of his objection, one must doubt it. Certainly it seems that part of his argument is that the proper response when a person cannot be entirely certain about whether something is good is to doubt that it is good. This line of thinking claims that the same argument Strandberg raises against the definition of goodness can be raised against his position.

Yet, there is a problem with using this argument against Strandberg. His argument is not that the OQA is a test for truth but that it is merely a test for a definition. Thus, the attempt to turn Strandberg's argument on itself fails because it did not distinguish that he was only referring to a test for the definition of good.

However, there may be another approach to Strandberg's argument that is successful. This comes from a consideration of Strandberg's criteria for understanding what is good. He says that a definition of good must be self-evident in order for it to be accepted. However, as St. Thomas notes, something can be self-evident in two ways.<sup>132</sup> It can be self-evident in itself or self-evident in relation to a person. A proposition that is self-evident in itself has the predicate contained in the concept of the subject. A proposition that is self-evident as it relates to another is only self-evident to the wise. In this case, understanding or reasons for holding such a view would be enough for self-evidence. The natural law theorist can then respond that a wise person is one who understands that certain natural things are good. In this case, it may be that the one who is wise does not doubt because of his understanding and that the one who doubts is not wise because of his lack of understanding.

Connie Rosati uses a different approach to defend Moore's thesis. She establishes her argument by giving a definition of good that the natural law theorist does not hold. She explains that good is either 'what a person desires' or 'what a person desires to desire.' These definitions are not acceptable to the classical natural law theorist. In natural law, on a foundational level, good is defined as being insofar as it is desirable. Some may accept the definition, good is what a person desires to desire, when everything relevant

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<sup>132</sup>This explanation follows St. Thomas's reasoning in ST, Q. 94, Art. 2.

has been taken into account. This definition seems to fail to distinguish between right and wrong desires. Right desires aim at real goods and wrong ones aim at apparent goods.

One may also take into account the varied goodness of the nature of things. Finite things are limited in their goodness because they are finite. No finite thing determines the one choosing it since there are so many finite goods to choose among. A person may choose among many acts, all of which are good because they perfect a person. Acts that perfect people have being insofar as they are desirable. One act may be more desirable than another because of how it contributes to perfecting an individual. Thus, the natural law theorist would point out that Rosati's definition shifts the focus from the object that is desirable or good to an individual's subjective mental state.

Rosati raises four objections that the natural law theorist should be able to answer. She admits that if these are answered then the 'normative and descriptive could be bridged.' The criticisms are whether the natural law theory can account for our character as persons, whether the good for a person carries motivational force, whether it reflects what a person most values, and whether it meets conditions of justification.<sup>133</sup>

The first objection can be understood to mean either (1) natural law theory does not account for our character as persons, or (2) natural law doesn't account for the goodness or badness of a person's character. If Rosati means (1), the natural law theorist can simply point to his account of the virtues. The virtues, which are excellences of character, are an essential part of natural law theory. St. Thomas devotes twelve chapters

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<sup>133</sup>It seems Rosati also presupposes that the natural law theorist must be an internalist, or one who grounds motivation for action in internal desires. There does not seem to be a necessary connection between natural law and an internalist account. Support may be given to the view that St. Thomas was an externalist. Thomist Eleonore Stump describes Aquinas's account as externalist. She writes in *Aquinas*, "In light of Aquinas's views about human cognitive faculties, it seems reasonable to take his theory of knowledge as a species of externalism, with some reliabilist elements. On Aquinas's account, when they function as they were designed to function, our cognitive faculties, in particular our senses and intellect, work in a reliable way to yield knowledge of ourselves and everything else as well." (p. 234)

in the *Summa Theologica* to the virtues before explaining natural law. He spends significantly fewer chapters on the subject of natural law than he does on virtue. As the first chapter explains, the classical natural law theorist is justified in adopting many aspects of virtue-ethics. Thus, natural law theory not only accounts for our character but also provides criteria about how to improve it.

This explanation does not answer Rosati if she means (2), namely that natural law doesn't account for the goodness or badness of someone's character. This means that either (i) natural law does not explain how a person's character is good or bad, or (ii) that natural law doesn't say how one can judge a person's character, or (iii) that natural law doesn't determine the character of a person. These objections fail for the following reasons. As chapter two explains, natural law is simply the law that says a person should act in accord with what is most essential to his nature-- namely, rationality. He who does so actualizes the dispositional properties of his nature, acquires virtue, and attains happiness. The answer to (i) is that a person's character is determined by his choices about whether to follow the natural law. The response to (ii) is that a person's character is judged in accordance with how he has responded to natural law. To respond to (iii), the natural law theorist can simply point out that it is not the function of natural law to 'determine the character' of anyone. Each individual determines his own character by how he responds to natural law. The character of an individual is a habit; whereas natural law is the principle in man recognized by the practical intellect by which discerns good and evil. A man can use natural law to discern or to discover whether a person's character is good, but natural law in no way determines it. It seems the main point of this objection says that there is no link between character and natural law, and with no connection, a

person has no motivation to develop good character.<sup>134</sup> This is dealt with in the next objection.

To Rosati's second objection the natural law theorist responds that the good for a person carries more motivational force than other accounts. Rosati's psychological definition of 'good' uses an individual's preference as the basis for what is good. However, the natural law definition shifts the 'good' to the object. The object is what perfects each person and makes him good in some way. Some things that are considered good are food and water. Other things that are good are acts that perfect the individual and make him more virtuous. A person may have difficulties discerning what is actually good because he has confused what appears good with what good really is. Regardless, in shifting the source of what is good from the individual subject to the object that is desirable because it is good, one establishes an objective basis for goodness. Shifting the good to the object also establishes the good in some way as supporting an externalist account. This objective basis provides motivation for a person seeking to perfect himself.<sup>135</sup>

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<sup>134</sup> The natural law does not determine someone to develop good character. There are always a number of goods to choose between, some real and some apparent. The internalist account for motivation says that moral beliefs are internally motivating. Although he identifies the real good with the desirable, the natural law theorist seems to have more in common with the externalist account, which says reasons independent of a person's internal motivations spur action. It is in this second account that a theory of right reason, or natural law, can find itself operating within as there seem to be no things that determine one to act a certain way. The reason for this is the result of the nature of all the possible goods one can choose. The limited nature of each good means that one can decide between various competing goods.

<sup>135</sup> Rosati's response may be to expand this argument by pointing out how few people are virtuous and how few people agree about which acts are good. In the first, one may easily see that just because there are only a few instances of someone being dealt a perfect bridge-hand, it does not follow that no person has ever been dealt such a hand. Just as some people have been dealt such a hand, so, too, some people are truly virtuous. These people may be rare, but they are examples for the rest of us to follow so that we too can strive to become people of virtue. An additional problem with Rosati's argument is that most people do agree on the goodness of many acts. The majority of humans think that it is good to love and not to torture one's child. Thus, there seem to be more people in agreement about what is good than are in disagreement about it.

One can ask whether natural law holds that there is something within man that inclines him to virtue. Inclinations, or dispositional properties as these have been called, are varied. As we have discussed, some dispositions are good and others are bad. Whether a disposition is good or bad is discovered by reference to a person's nature. One must not forget that there is a difference between disposition and habit. Anthony Kenny explains,

A *habitus*, or disposition, we are told more than once, is what can be exercised at will; but an action, in so far as it becomes a habit, to that extent escapes voluntary control. The difference between disposition and habit might be roughly characterized thus. If one has a *habitus* to *q* then it is easier to *q* than if one has not: examples are *being generous* and *speaking French* (cf. *De virtutibus* I, ad 13). If one has a habit of *q*-ing, then it is harder not to *q* than if one has not: examples are *smoking* and *saying 'I say!' before each sentence*.<sup>136</sup>

Everything we can do at will we have a disposition to do. If we have a habit, then it is harder not act in accord with the habit. We are not determined from our dispositions to either be virtuous or not as these can be either good or bad. All people have the potential to be virtuous, as each can develop the habit to do what is right.

Rosati's also questions whether a naturalist explanation accounts for what a person values most. Again, the natural law account does explain this. First, traditional theories of morality say that one needs to properly align his values to what should be valued. This occurs because a person may have values that are wrong or immoral. Consider the connection between value and desire. If what a person values means what a person desires, then it is possible that what a person values most may not be something that he really ought to value. Our position is that people should only value real goods. Second, if a person values what is wrong, natural law accounts for this in saying that the

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<sup>136</sup>Anthony Kenny, Preface to St. Thomas's *Summa Theologica* Q. 49-54.

value he has is merely an apparent good and not a real good. He has simply made an error in judgment in valuing the apparent good. Fergus Kerr explains Aquinas's account:

He is not tempted by the modern ('Cartesian') idea that one knows nothing directly except one's own sensations, impressions or ideas, and thus that one never has *certain* knowledge of anything outside one's own head — an idea, then, leaving one always open to doubt about the existence of 'other minds' or 'the external world'. The problem, for Aquinas, is not (as in post-Cartesian scepticism, supposedly) to account for our ability to have sure and certain knowledge at all; but rather to explain the fact that we are so often in error, in a world created by a good God. For Aquinas, that is to say, error, deception and so on, far from seeming threateningly 'natural' in creatures in our epistemic situation, are the result of sin, or the punishment for sin, and not 'natural' at all, in beings created to know the truth. When our senses and intellect function *as God designed them*, then they work in a reliable way to yield knowledge of ourselves and everything else in our reach.<sup>137</sup>

This explanation is clearly externalist. People know what is good in the world through their senses and intellect when they are properly functioning.

Rosati's fourth challenge to the natural law theory raises the problem of justification. Rosati's primary problem with justification seems to revolve around finding someone who is sufficiently rational and well-informed to make a decision.<sup>138</sup> The difficulty in making a rational decision about moral issues arises because two different people may have different motivational tendencies, traits, and desires.<sup>139</sup> The problem is that the justification of a judgment of goodness depends upon an "ideal of the person," and this rests not upon a natural property, but upon their motivational tendencies, traits, and desires.<sup>140</sup> This constitutes the thrust of her argument.

One point that Rosati overlooks helps to answer the aforementioned problem. Rosati fails to distinguish what is good for a man *qua* man, and what is good for a man

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<sup>137</sup>Fergus Kerr, "Thomistica III," *New Blackfriars*, Vol. 85, Issue 1000, Oct 20, 2004, pp. 628-641.

<sup>138</sup>Rosati, p. 56.

<sup>139</sup>*Ibid.* 55.

<sup>140</sup>*Ibid.*

*qua* banker, golfer, or lawyer. If one discusses the good for these two different categories without recognizing that there is a difference, then one will invariably come up with some difficulties. Although what is good for man *qua* man will be equally so for the banker, golfer, and lawyer, what is good for each individual to excel in his respective trade is different. The trade itself may even be something that is called morally questionable or bad. For example, if someone is a thief, this would not be a good trade, even if some of the skills the person has are skills that are good. In contrast to individual skills that may allow one person to succeed at one profession as opposed to another, all people who are good *qua* man benefit from this. As it is good for all men, one should strive to attain rational activity and virtue. Rational activity may have as its end either the perfection of the intellect, or, as McInerny writes, “perfection of an activity other than thinking.”<sup>141</sup> When the intellect is used for the purpose of other acts, it ought to order the goodness of various courses of action. The constituent goods that are possible in life are many and allow for any number of different realizations.<sup>142</sup> Although these individual goods one can pursue may differ, the moral and intellectual virtues are the same for everyone. When these virtues are acquired, one is considered to be good *qua* man.

These distinctions are relevant for Rosati's challenge about both the 'ideal of a person' and closing the question about a person's good. The 'ideal' for a person is answered when considering man *qua* man. Rosati's arguments only seem to work because of the ambiguity of her standard for an 'ideal' and her description of what is necessary to close a question about a person's good. However, the problem disappears once one understands that the 'ideal' for a person can be fixed even if the way he attains the ideal is

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<sup>141</sup>McInerny, *Thomistica Ethica*, p. 32.

<sup>142</sup>*Ibid.*

not. In the same way, a person's ultimate good or his constituent goods can have any number of ways to become part of a person. The means to attain each virtue may change and may differ among persons even if the virtue itself does not change. Consider the analogy of desiring to have a car. One can lease, rent, borrow, or buy the car to fulfill this desire. A person can use any number of ways of paying for the car, if that is required for having it in his possession, without changing the end. In the same way, one can become virtuous through a variety of activities. The virtue does not change, even if the means to attain it does.

One may consider this small sampling of modern attempts to defend the open question argument. The problems with each of these arguments are exposed and the natural law explanation is given. Yet there remains one major unexamined challenge to natural law theories and contemporary neo-naturalism from Hume that is dealt with in the next section.

#### *D. David Hume and the Is-Ought Problem*

David Hume's challenge comes from what some have called 'Hume's Fork,' and others have called the problem of arguing from facts, or what is the case, to values, or to what ought to be the case. To say that Hume's is-ought problem is the same as the naturalistic fallacy misidentifies the two. The famous passage on what has been called this is-ought problem is found in his work *A Treatise on Human Nature*. He writes,

I cannot forbear adding to these reasonings an observation, which may, perhaps, be found of some importance. In every system of morality which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes

observations concerning human affairs; when of a sudden I am surprised to find that, instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, it is necessary that it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention would subvert all the vulgar systems of morality, and let us see that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceived by reason.<sup>143</sup>

The 'is-ought' question has been the subject of an entire book to which many of the best philosophical minds in the world contributed.<sup>144</sup> The primary defense of this position is that one cannot have more in the conclusion than is contained in the premises of the argument, unless one is fallaciously reasoning. Stated another way, some say that one cannot derive values from facts.

The strength of Hume's argument is that it seems to be correct in at least two ways. First, one indeed cannot have more in the conclusion than is contained in the premises. Second, few would argue that many things that are done ought not to be done. For example, it is a fact that children are molested and killed. One cannot deny that this is the case. However, it is repulsive to think that this is the way it ought to be. The argument that Hume makes is that when one looks at certain facts there are no values that can be derived from the facts themselves. Humans project values onto certain acts that they observe, based upon how they feel. Hume highlights this point when he writes:

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<sup>143</sup>David Hume, *A Treatise of Human Nature*, contained in *Ethics: Selections from Classical & Contemporary Writers*, Edited by Oliver A Johnson and Andrews Reath. (Belmont, CA: Thompson Publishing, 2004): p. 185.

<sup>144</sup>*The Is/Ought Question: A Collection of Papers on the Central Problem in Moral Philosophy*. Ed. W.D. Hudson. Bristol: Macmillan Publishing, 1969.

Nor does this reasoning only prove, that morality consists not in any relations, that are the objects of science; but if examined, will prove with equal certainty, that it consists not in any *matter of fact*, which can be discovered by the understanding. This is the *second* part of our argument; and if it can be made evident, we may conclude, that morality is not an object of reason. But can there be any difficulty in proving, that vice and virtue are not matters of fact, whose existence we can infer by reason? Take any action allowed to be vicious: Wilful murder, for instance. Examine it in all lights, and see if you can find what matter of fact, or real existence, which you call *vice*. In whichever way you take it, you find only certain passions, motives, volitions, and thoughts. There is not other matter of fact in the case. The vice entirely escapes you, as long as you consider the object. You never can find it, till you turn your reflection into your own breast, and find a sentiment of disapprobation, which arises in you, towards this action. Here is a matter of fact; but it is the object of feeling, not of reason. It lies in yourself, not in the object. So that when you pronounce any action or character to be vicious, you mean nothing, but that from the constitution of your nature you have a feeling or sentiment of blame from the contemplation of it.<sup>145</sup>

One may concede certain aspects of what has been said without fully committing to the conclusion that some draw about the is-ought problem. It is said that one cannot draw any conclusion about values from propositions that are factual. One obvious problem for Hume arises from the following argument:

P1: Everything Jesus believes is true.

P2: Jesus believes that his father is good.

Therefore, Jesus' father is good.<sup>146</sup>

Given the premises are true, the conclusion, a judgment of value, must also be true. This is an obvious counterexample of Hume's claim. As the aforementioned example shows, certain facts do entail values.

Hume may respond that this aforementioned argument doesn't work for two reasons. First, he may point out that the claim of values that are implicitly contained in human nature is question begging. Second, he may point out that premise 1, which says

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<sup>145</sup>Hume, p. 184.

<sup>146</sup>Dr. Michael Wreen used a similar example in conversation.

everything Jesus believes is true, includes judgments of value and therefore falls on the Ought side of the divide.

Hume's hypothetical response shows the foundational difference in approach to these problems. It is certainly evident that each of the parts of a person has a teleological function. The eyes are for seeing, the ears for hearing, etc. As each of the parts of a person has a teleological order, so too does the whole of man. What is true of the parts is also true of the whole- there is a *telos*. Every man strives toward the same common end—what has been referred to as happiness. This end helps guide a person's actions. A person's decision to pursue one course of action over another is chosen to try to attain this end. An individual doesn't reach his goal for various reasons, but without exception those that do have developed virtuous character and perfected various traits. Progressing toward an end and toward becoming a better person, which people certainly recognize, is an indication of the teleological aspect found in mankind.

A couple of points may be made to Hume's hypothetical objection to the logical syllogism. If the thrust of Hume's argument is that my syllogism is question-begging, then it appears that I'm in what one may refer to as a 'tis-taint' standoff with him. However, this doesn't seem to be the case as I've provided reasons to believe that there is a teleological structure in man. This teleological order makes sense of our ability to recognize how one person is better than another in any variety of ways (e.g., a person may be morally better or simply more adept at a particular skill). One can easily recognize the moral superiority of Mother Teresa over Adolph Hitler. The problem with the second objection (which points out Jesus's true beliefs about value fall on the ought side of the divide) shows that ought or value judgments are part of factual judgments.

One may then say, in the Jesus example, although all his value judgments are also factual judgments, not all his factual judgments are necessarily value judgments.

A second point that natural law theorists make comes from the two properties one can observe in many acts. There is a teleological aspect to human action; many acts humans do are for an end-- that of perfecting one's nature. There is also an ontological property to consider, because these acts exist in relation to the kind of thing that acts. There is a link between this ontological aspect, the nature of the agent, and the teleological aspect of the end sought. Specifically, man is a rational creature that seeks what he perceives as good as a way to perfect himself. Now one can concede that a person sometimes confuses the real good and the apparent good. However, this is because the person thinks that the apparent good is the real good. As explained in the second chapter, the perfections a good man has include the four virtues. The natural law theorist answers Hume's challenge by noting that the acts of man have a teleological dimension because of human nature. Thus, the problem with Hume's account is that he fails to consider the values that one can draw from human nature. This is another point of agreement where the natural theorist agrees with the neo-naturalist who says that certain facts entail values.<sup>147</sup>

Hume's explanation of morality raises a deeper problem that must be dealt with in a separate chapter. He provides the foundation for the contemporary moral relativists who deny the reality and factual nature of any judgments of value. Whereas Moore and Hume provided the original attack on natural law and neo-naturalists, the relativists are the philosophers who provide the contemporary assault. It is a subject of speculation whether

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<sup>147</sup>See Philippa Foot, "Moral Beliefs" in *The Is/Ought Question*, (London: MacMillan Publishing, 1969). Foot argues that certain words are action-guiding as to whether or not to act. The action-guiding nature of these words eliminates the gap between factual premises and moral conclusions.

Moore envisioned the way that his arguments would be used to undermine any objective account of ethics. Some may dispute whether his arguments really undermined such accounts. However, short of developing an intuitionist approach, which Moore himself supported, there seems to be many other approaches to ethics that don't need to go the route of intuitionism, especially given the arguments offered against his position.

### *E. The First Wave of Attacks*

This chapter has exposed the flaws in Moore's and Hume's objections to natural law and contemporary neo-naturalism. The problems with the contemporary defenses of Moore by Caj Strandberg and Connie Rosati were also considered. The arguments in this chapter provided the impetus to reject the natural law and neo-naturalist explanation, but the challenge from moral relativism remains. As a consequence to the arguments Hume provides, many moral relativists reject the view that values can be a subject that are objective or mind independent. Hume's view that vice is something that is not in the act itself, but only in the individual, has paved the way for the moral relativists. This is the debate that will be examined in the next chapter.

## Chapter 4

### MODERN OBJECTIONS II: RELATIVISM'S CHALLENGE TO NATURAL LAW

“Who are you to say that I’m wrong?” This popular slogan exhibits a mind-set that calls into question several things. It may be asking whether the person who says another is wrong is qualified to judge what is wrong. Or, this may be asking whether anyone can judge another person as to if he or she is wrong. It may even be an assertion that no one can judge another person. Few would doubt that these expressions indicate the degree to which moral relativism has been accepted into our culture. On one account, moral relativism is a normative theory, which simply means that it says some acts are right and some are wrong. David Wong writes that normative moral relativism says, “it is wrong to pass judgement on others who have substantially different values, or try to make them conform to one’s values.”<sup>148</sup> The basis for the claim that it is wrong to judge is that there are no universal standards of value.

The opposite view from normative moral relativism is proposed in the natural law account. As was explained in chapter two, natural law says **there are universal standards** to which a person can appeal to judge right or wrong acts. Natural law stands opposed to moral relativism and must answer its arguments. The claims moral relativists

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<sup>148</sup>David Wong, “Relativism” in *A Companion To Ethics*, ed. By Peter Singer (Cambridge: Basil Blackwell, 1991): p. 442.

make include that ethical claims are at best constructs of our own making, that there is no objective framework to understand them, and that morally conflicting views can be equally true.<sup>149</sup> Since ethics is not objective, some say, it engages in describing subjective feelings about things seen as right or wrong depending on the individual.<sup>150</sup> These differ between people because they interpret differently, or because of an individual's culture.

Many relativists, following David Hume, tend to argue for two points. First, they contend that morality is constructed rather than discovered. People create their morality. Second, they contend that either moral claims are not factual claims, or if they are factual, then they are only relatively so. Although many prominent philosophers have made contributions to this debate, this chapter will only focus on a handful of arguments that moral relativists offer against a natural law theorist's conception of morality.

It is important to understand that this chapter will not deal with every type of relativism. The focus in this dissertation is on relativism as it applies to morality. Relativism in matters of science or in linguistics is not the subject that will be treated unless it is so accidentally as it relates to moral relativism.

This chapter is divided into six sections. The first section will explain what moral relativism is. The second explains some common arguments offered against natural law that seems to undermine its account of ethics. The third section shows these arguments are inadequate to undermine the natural law account. The fourth advances arguments in support of a basis for natural law theory. The fifth section exposes three contemporary

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<sup>149</sup> Relativism is a species of anti-realism. J. L. Mackie summarizes and defends the views of some forms of anti-realism in his work *Logic and Knowledge: Selected Papers* in the chapter titled "Anti-Realisms," Vol. I (Oxford: Clarendon Press, 1985). Many relativist arguments are indebted in some way to Thomas Kuhn. See Thomas S. Kuhn. *The Structure of Scientific Revolutions*. Chicago: University of Chicago Press, 1996.

<sup>150</sup> Although this is what some forms of moral relativism say, relativism does not entail this, and what relativism actually is will be explained in section three of the chapter.

arguments for moral relativism. The sixth section critiques these arguments and shows that the foundation upon which the relativist stands when advancing these arguments is sinking sand.

### *A. Identifying Moral Relativism*

Some claim that nothing is absolute and all is relative. This is an easy claim to grasp, but does not represent our concern in the context of ethics. Although relativism is a view that takes many different forms, only ethical relativism is relevant to understand as opposing natural law. Thus, it only seems proper to understand exactly what this theory says in order to respond to it. Many principles that seem easy to grasp at first become similar to smoke upon closer examination. Relativism argues that many things that some think are clear and unambiguous become otherwise. The same holds for finding a description of relativism. First, there are many forms of moral relativism. Second, one may be a relativist about some things and not others.<sup>151</sup> Third, few have taken the time to give a precise definition of moral relativism. Taking all this into consideration, we must proceed carefully to understand the nature and *raison d'être* of moral relativism.<sup>152</sup> This section will address the definition or description of relativism.

There is a basic definition of relativism that is easy to grasp. This is one that states, “there is no Truth, but rather a multitude of truths, corresponding to the multitude

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<sup>151</sup>This same thing can be said about the many forms of anti-realism. See the first footnote in this chapter.

<sup>152</sup>One of the most important challenges to natural law theory, if not the most important contemporary challenge, comes from moral relativism. One important article that argues all forms of moral anti-realism collapse into moral relativism is written by Paul K. Moser and Thomas L. Carson in *Moral Relativism: A Reader*, titled “Relativism and Normative Nonrealism: Basing Morality on Rationality,” Ed. And Introduction By Paul K. Moser & Thomas L. Carson, (Oxford: Oxford University Press, 2001): pp. 287-304.

of frameworks within which human beings attempt to conduct their lives.”<sup>153</sup> Neil Levy conjoins two claims to define moral relativism:

1. Moral claims are only true relative to some standard or framework.
2. This standard or framework is not itself uniquely justified.<sup>154</sup>

The framework or standard used in this description is most often the culture,<sup>155</sup> although it has also been described as “a collection of methods and habits of thought and action that determines what those who adhere to it regard as good and true.”<sup>156</sup>

Although it may be difficult to find agreement about what is central to many theories, the essence of relativism is straightforward. Michael Krausz, in the book *Relativism: Interpretation and Confrontation*, explains:

But we may broadly characterize relativism as holding, characteristically, the cognitive, moral, or aesthetic claims involving such values as truth, meaningfulness, rightness, reasonableness, appropriateness, aptness, or the like are relative to the contexts in which they appear. Often such contexts are formulated in terms of conceptual frameworks. And the range of such conceptual frameworks may extend from a highly localized person-specific or occasion-specific state to that of a community, culture, tradition, historical epoch, or the like. Relativism denies the viability of grounding the pertinent claims in ahistorical, acultural, or absolutist terms.<sup>157</sup>

The emphasis of this description of relativism is that ‘conceptual frameworks’ determine value and truth in judgment. In general relativism all norms are regarded as relative as they are dependent upon and determined by a framework.

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<sup>153</sup>Philip E. Devine, *Relativism, Nihilism, and God*, (Notre Dame: University of Notre Dame Press, 1989): 37.

<sup>154</sup>Neil Levy, *Moral Relativism: A Short Introduction*, (Oxford: Oneworld Publications, 2002): 16.

<sup>155</sup>*Ibid.*

<sup>156</sup>Devine, *Relativism, Nihilism, and God*, p. 38.

<sup>157</sup>*Relativism: Interpretation and Confrontation*, Ed. & introduction by Michael Krausz (Notre Dame: University of Notre Dame Press, 1989): P. 1.

Consider Paul Moser and Thomas Carson's description of meta-ethical relativism.<sup>158</sup> They write the meta-ethical relativism holds "that no moral judgments or standards (about any moral questions) are objectively true (or, correct) or false (or, incorrect)."<sup>159</sup> Moser and Carson also explain that this entails that one cannot "justifiedly believe whether things are good or bad or right or wrong."<sup>160</sup> They also say that relativism (on some accounts) allows that some moral judgments are objectively true or false and some moral judgments are not.<sup>161</sup>

A second kind of relativism to consider is normative relativism. This view, according to Carson and Moser, "states that different basic moral requirements apply to (at least some) moral agents, or groups of agents, owing to different intentions, desires, or beliefs among such agents or groups."<sup>162</sup> Either the individual's or the society's moral principles are the basis for deciding whether an action is morally obligatory. One may have moral obligations, but these come from the beliefs an individual or society has created. It may be that a person's morality is not chosen but determined by culture- in this case the society. However, if morality is constructed by society the problem is that society itself is a construction. If the moral obligation comes only from what the individual has created- what was the source of the norms he uses as a guide for action? Does he need any source external to himself?

These options present two models. One may opt for the individual moral-requirement model or the social moral-requirement model. On both models an individual is obligated to obey a system of morals, but it is not a universally binding system of

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<sup>158</sup> *Moral Relativism: A Reader*, Paul K. Moser & Thomas L. Carson, p. 3.

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.* p. 1-2.

morals because it is relative either to an individual or a culture. In other words, not all humans have to obey the same system for two reasons. First, not all live people in the same society. Due to living in different societies there can be different moral systems. Second, not all individuals are going to choose the same set of principles by which to live.

One additional distinction may be made to normative relativism as it relates to the individual moral-requirement model and the social moral-requirement model. Michael Wreen distinguishes between agent-centered and appraiser-centered relativism:

At least two basic forms of relativism are thus possible, one which (basically) says that the code to use in evaluating conduct is the agent's own, or that of the group that he belongs to; the other which says that it's the appraiser's, or the appraiser's group, that counts. In other words, and to be clear: the first form, agent-centered relativism, says: Judge acts by the (valid) standards that the agent himself, or the agent's group, subscribes to; the other, appraiser-centered relativism, says: Judge acts according to the (valid) standards that you, the appraiser, subscribe to, or that your group does.<sup>163</sup>

The distinction in this explanation is between two kinds of relativism. One may adhere to agent-centered relativism, or to appraiser-centered relativism.

There is a significant consequence of holding to one of these two theories as a relativist, along with the fact that relativism is a normative theory. This explanation clarifies that a person can judge acts in one of two ways. When a person acts, then one can judge the act according to the agent's standards (or those of his group), or the observer's standards (or those of his group). Thus, one still makes moral judgments with this distinction, contrary to the criticisms that many raise against relativism.

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<sup>163</sup>Michael Wreen, "A Prolegomenon to Moral Relativism," *Philosophia* Vol. 32, nos. 1-4 (2005): p. 262.

Both normative and meta-ethical relativism agree on one thing. There can be no universal moral norm. As Michael Wreen explains, “In stark contrast to relativism is universalism, the view that there’s a single true or valid moral code which is binding on all mankind, at all times, in all places.”<sup>164</sup> Although the normal position that stands in contrast to relativism is objectivism, Wreen notes that relativism also is incompatible with a universalistic subjectivism, or a theory that grounds moral truths on universal human states.<sup>165</sup>

In sum, two things can be said to describe moral relativism. First, moral relativism is a theory that stands opposed to moral universalism. Moral universalism says that moral judgments are true because of universal standards that exist. Relativists deny such standards. Second, moral relativism says that the moral relativist ought to judge. Although there is no universal standard that applies across cultures, there can be two equally valid, morally conflicting claims that are both true because they only apply relative to a person or group.

### ***B. The Argument for Relativism***

Various arguments have been given for relativism. Although some have greater explanatory force than others, this section will summarize the basic argument for relativism. Philip Devine explains the argument in five theses:

1. Whenever someone makes an assertion, he presupposes some standard, according to which his assertion is judged to be either true or false, and on which its intelligibility depends.

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<sup>164</sup> Ibid. p. 260

<sup>165</sup> Ibid.

2. People have employed incompatible standards in making assertions about the same subject matter.
3. Sometimes these differences in standards are ultimate. That is to say, there is sometimes no further standard to which appeal can be made to determine which of the rival standards is correct.
4. Where the condition described in (3) obtains, it is nonsense to speak of one set of standards as correct. Such fundamental standards can only be described.
5. A decision to accept or reject some fundamental standard, to the extent it lies within our power, must of necessity be arbitrary.<sup>166</sup>

Numbers (4) and (5) are taken to follow logically and necessarily from the truth of theses (1) to (3). Numbers (1) and (2) are pretty straightforward, and number (3) is taken to be the most controversial claim that needs support. Even though (1) and (2) are pretty clear, a brief explanation is called for before proceeding to (3).

The first thesis is about presuppositions that apply to a certain type of statement. These statements are not questions, commands, or exclamations. They are presuppositions that apply to propositions that are judged to be true or false. The presuppositions involved in judging these propositions are standards of an individual or of a collective. Those who claim that these presuppositions are intuitive still have a challenge from relativism. Devine explains, “an intuition is nothing but a clear and lively propensity to believe, whose claim to disclose a universally accessible reality at least requires defense against the relativist’s argument.”<sup>167</sup> One approach to defend (1) offers reasons in support of the position espoused absent any counterevidence.<sup>168</sup> Those that seek to avoid (1) end in overt subjectivism thereby “abandoning the concept of truth,” or they shift the reasons for belief from positive to negative which shows a proposition “has

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<sup>166</sup>Philip E. Devine, *Relativism, Nihilism, and God*, (Notre Dame: University of Notre Dame Press, 1989): 43.

<sup>167</sup>Devine, *Relativism, Nihilism, and God*, p. 44.

<sup>168</sup>Ibid.

been refuted rather than when it has been confirmed.”<sup>169</sup> Both these attempts to avoid (1) do nothing to negate its significance.

Thesis (2) deals with standards that people use which are not compatible. The focus of this thesis is not about an individual’s convictions. It is about what seems to be obvious to most people—there are incompatible differences in what people take to be foundational norms and standards.<sup>170</sup> When these differences are evident “the notion of truth...is relative to the intellectual and social framework and that alternative frameworks are not wrong but different.”<sup>171</sup>

The truth or falsity of thesis (3) is taken to be the primary issue separating relativist and non-relativist. Although non-relativist’s have offered arguments against it that are inadequate (Devine notes the leaky boat argument for one<sup>172</sup>), the strength of the relativist argument is at the point where two people reach the end of a conversation having attained a shared understanding and still have differing ultimate principles. This emphasizes the point that people have fundamentally different moral beliefs and principles.

One can also consider the negative case that can be made in favor of relativism. Neil Levy has pointed out that there are two fallacies that stand in the way of any anti-relativist system of morality- begging the question and Hume’s fork.<sup>173</sup> As we have already discussed Hume’s fork, let us examine the problem of begging the question against relativism. The intellectual case against moral relativism, Levy contends,

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<sup>169</sup>Ibid.

<sup>170</sup>Ibid.

<sup>171</sup>Ibid. p. 46.

<sup>172</sup> Devine mentions that “the leaky boat argument confuses relativism and subjectivism. The point of the relativist argument is not that cognition expresses personal or collective bias, rather that the procedures that historians or scientists employ to eliminate such biases reflect an understanding of the world and the inquirer’s place in it and that such an understanding is beyond the reach of rational argument.” (p. 47)

<sup>173</sup> Neil Levy, 49.

considers arguments against relativism to be true only if relativism is false.<sup>174</sup> As such, anti-relativist arguments are invalid because they assume the truth of one of the premises that is in contention.

### *C. The Argument Against Relativism*

There have been several approaches used to refute relativism. Many of these remain unconvincing—which accounts for the number of philosophers who believe in relativism. Levy and Devine offer a number of problems with the arguments against relativism. Levy also offers a negative argument in favor of relativism. This section will answer Levy’s arguments and examines what I take to be a couple of the best responses to relativism a little more closely to see whether or not they are effective.

One approach used to show that relativism is false tries to circumvent the frameworks inherent in the relativist approach. This approach, as Devine notes:

[A]ttempts to find some point outside all frameworks, or necessarily common to them all, that provides a basis for their acceptance or rejection. What we are looking for here is norms binding upon all rational beings, which will determine or place limits on the frameworks they can accept.<sup>175</sup>

The obvious candidate for such a task is the principle of non-contradiction. This principle is the best candidate for several reasons. First, communication is only possible if this principle is true. Those that seek to communicate the truth of relativism or that even ‘preach to unbelief’ in it presuppose that the opposite of what they are saying is false. As Aristotle noted, when there are those that object to this principle, “if our opponent would only say something,” it is shown that this principle cannot be denied without assuming it

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<sup>174</sup>Ibid. 46.

<sup>175</sup> Devine, 49.

is true.<sup>176</sup> One can also surmise that this aspect of the principle of non-contradiction—its undeniability—makes it an excellent candidate for a foundation against relativism.

But, the relativist may aver, there are certainly some people that deny that this principle practically in that they hold doctrines that are self-contradictory. One need not look so far as theologians who hold what appear to be contradictory doctrines, but one can merely look at our own lives. However, there is something that is missed in this objection. No one is saying that our beliefs are the standard for what is true. We all certainly may hold beliefs that are contradictory. What is certain is that contradictory beliefs cannot both be *true*. So, regardless of the contradictory beliefs we hold, it is impossible that these beliefs are both true. If beliefs were the test for whether something is true or false it would render them incoherent as there would be no difference between them. If there were no difference between opposites, then communication and learning would be impossible. But, we know that we have learned and that we do communicate. The critic who disagrees with me only does so because he thinks I am wrong about the truth. All of these arguments point to the fact that the principle of non-contradiction is undeniable. Undeniability seems to be a pretty good test for truth.

However, although the principle of non-contradiction does well in addressing relativism generally, how can it be applied to moral relativism? Can't a person believe that there are some things that are true and false, and believe that there are no moral standards that are framework-independent (or that can be reduced to one framework)? It is important to note that it is not merely about what people believe that matters, but what they actually *ought* to believe. Many people believe all sorts of wacky things (I'm sure I'm included as believing in some), however, should we believe this way? Should people

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<sup>176</sup>Aristotle, *Metaphysics*, 1006a1- 1006b34.

believe that some truths are really contradictory, but this doesn't relate to morality? I think that people really ought to believe things as they really are. This can apply to speculative or practical truth.<sup>177</sup> If  $2+2=4$  is a speculative truth that everyone ought to accept, and if practical truth is similar, then people should also accept these truths. So then, how is practical truth similar? Mortimer Adler explains that practical truth is actually analytic.<sup>178</sup> Adler bases this observation off a comment by Aristotle in *Nicomachean Ethics* VI, 2. After making the distinction between apparent and real goods, he points out the obvious fact that real goods ought to be desired and pursued.<sup>179</sup> A denial of this is tantamount to saying that a real good should not be pursued or something really bad for us ought to be desired.<sup>180</sup> Adler admits the claim that this truth is analytic differs from the modern conception of analytic truths (which he finds to be uninformative tautologies).<sup>181</sup>

What does the discussion of practical truth do for this argument? In linking real goods with what humans ought to desire, one can infer that identifying real human goods one ought to pursue is similar to identifying knowledge that every human ought to know. These real human goods are such that befit (and benefit) the nature of man.<sup>182</sup>

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<sup>177</sup>I am using speculative truths here as referring to truths that don't necessarily entail that someone ought to act. Practical truths are action-guiding.

<sup>178</sup>Mortimer J. Adler, "Aristotle's Conception of Practical Truth and the Consequences of that Conception," *Paideia*, Special Aristotle Issue, MCMLXXVIII, George C. Simmons, ed., State University College at Buffalo and State University College at Brockport, 1978.

<sup>179</sup>Ibid.

<sup>180</sup>Ibid.

<sup>181</sup>Ibid. "I said earlier that the modern conception of analytical truth is defective by virtue of limiting it to propositions that are trivial or uninformative tautologies. While they are analytical in the sense that their truth is known from an understanding of their constituent terms, the proposition about wholes being greater than parts and the proposition about real goods being what ought to be desired are not trivial or uninformative. These propositions are not verbal tautologies. The predicate is not contained in the meaning of the subject. The understanding of wholes involves the understanding of parts, *and conversely*; the understanding of real goods involves the understanding of what ought to be desired, *and conversely*."

<sup>182</sup>Of course we haven't listed all the sorts of things that count as real human goods at this point. Regardless of this fact, one can see that there is certainly a difference between real and apparent goods.

However, what about Levy's objection about the question-begging nature of arguments against relativism? A problem with this argument is that the law of non-contradiction is actually undeniable. Foundational truths like the principle of non-contradiction are not question-begging. These are simply evident by their very nature (and they are actually undeniable.) Even the relativist uses this principle to deny it. Similarly, in understanding the difference between real human goods and apparent goods that are really bad, it is evident that to attain happiness (the end that all men strive toward) one needs to pursue real goods. One may allow room to debate what these real goods are, but one cannot deny that one can discover whether some things are good or bad (this would render the debate useless).

The relativist may appeal to the problems or indeterminacy of translation between people or cultures. This suggests that the difference between the two groups leads to foundationally different frameworks leading to different concepts of truth, right, and wrong. The standard objection to this view is that many have learned and communicated to others in foreign languages.<sup>183</sup> But a more serious problem is raised by Mohammad Shomali, a philosopher who thinks this objection actually works against moral relativism. He writes, "Without being able to understand properly what the other people say, how can the relativist assure us that, in spite of different appearances, there are no common moral principles? Indeed, this theory teaches us not to be hasty in inferring fundamental differences from mere different appearances."<sup>184</sup> On this account, and in accordance with natural law, apparent conflicts are not necessarily real conflicts.

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<sup>183</sup>Mohammad A. Shomali makes this point in *Ethical Relativism: An Analysis of the Foundations of Morality*, (London: ICAS Press, 2001): 84.

<sup>184</sup>Ibid. 84-85.

#### *D. The Argument Supporting Natural Law*

This section advances one argument in support of the natural law claim that there are universal moral values. Up to this point, the chapter has primarily answered arguments relativists have leveled against universalism. Although there were a few arguments suggested in the last section as a response to modern objections, this section bolsters the natural law position. The argument of this section is that there is a human nature that is universal upon which one can build a moral system. This common nature gives a foundation for ethics, explains a way for people to morally improve, and undermines relativistic moral approaches.

Human nature was identified as important throughout this work, and its existence has been presupposed in much of the discussion. Although there appear to be several ways to argue for its existence, two ways of arguing for human nature seem to be most obvious. First, a nature for each species accounts for stability between different species. Second, one can appeal to aspects of human nature that make them unique from all other creatures. There are two considerations one can make from these arguments. On the one hand, what is unique in man ought to be the highest guiding principle in his life. On the other, this account establishes a foundation for how each man should treat all others as there are universal things necessary for perfecting human nature.

The first argument is from the general stability in a species.<sup>185</sup> All this means is that each creature has an essential form from which it doesn't change. This essential form does not take into account what Aristotle has listed as accidental properties. The color or

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<sup>185</sup>Those that are grouped in the same species in this description indicate those who are capable of interbreeding.

size of a species can differ, but that does not change the species essentially. For example, one can find men that are short or tall, skinny or obese, lighter or darker skinned, with or without hair. Despite the different accidental characteristics, one recognizes that these people are all men. A person may even go from lighter to darker skin, or from having hair to being without, in an extremely short period of time. These changes do not affect the fact that they are human. The thing that accounts for their humanity is a common human nature.

Moreover, every person expects this stability offered in a common nature throughout life. Despite some discredited scientific accounts<sup>186</sup>, when a female of a certain species gives birth everyone knows that she will give birth to the same type of species.<sup>187</sup> One doesn't have to be a farmer to know that rabbits give birth to rabbits, cows give birth to cows, and humans give birth to humans. A reasonable explanation for the stability of these species is the common form or universal nature that they share.

Second, there is a rational aspect of man that sets him apart from all other creatures. This aspect is essential to his nature. The natural law theorist discovers the existence of this nature from an observation of the way a creature acts. Certain operations presuppose the existence of particular powers that are inherent in the creature. In the case

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<sup>186</sup>Richard Goldschmidt's 'Hopeful Monster' theory is one example of a discredited theory that attempts to explain a different account. For a description of the details of this theory see the link: [www.dartmouth.edu/~dietrich/NRG2003.pdf](http://www.dartmouth.edu/~dietrich/NRG2003.pdf)

<sup>187</sup>It is said that females may produce offspring of another species. The problem with this assessment is what is meant by 'species.' Jonathan Wells points out the problem is evident in Jerry Coyne and H. Allen Orr's book *Speciation* (2004). In it they point out that biologists can't agree to a definition of "species" as no definition fits every case. The website [discovery.org](http://discovery.org) has several articles dealing with this. The problem of speciation for Darwinism runs deeper than just being able to define a species. What biologists refer to as primary speciation is required for Darwinism to be plausible. However, as famed bacteriologist Alan Linton noted after reviewing the literature for examples of this, "None exists in the literature claiming that one species has been shown to evolve into another. Bacteria, the simplest form of independent life, are ideal for this kind of study, with generation times of twenty to thirty minutes, and populations achieved after eighteen hours. But throughout 150 years of the science of bacteriology, there is no evidence that one species of bacteria has changed into another." ("Scant Search for the Maker," *The Times Higher Education Supplement* (April 20, 2001), Book Section, p. 29.)

of man, a rational nature is present before he functions rationally. Just as the structure of an airplane must be a certain way before it can fly, so too must the essence (which accounts for the structure) of man must be rational before he functions rationally. One can quickly observe that man functions very differently than non-human creatures around him. For example, a man not only uses language, but builds hospitals, schools, and machines to work for him. Why don't we find dolphin hospitals (even if we find schools of dolphin)? The reason comes from the essential difference between man and other creatures—namely, our rational nature.

This universal human nature, which both accounts for rationality and the stability of our species, is the foundation for a theory of natural law ethics. As explained in chapter two, each human nature has certain capacities that it is possible to develop. Beyond the physical needs man shares with other creatures, he has certain rational potencies that are good to develop, and actions that keep him from developing these capacities are bad. Although the rational principle in man is the highest for guiding decision-making, some of the essential needs man has that are shared with other living beings (i.e. the need for nutrition, rest, etc.) are necessary in order to allow a person to develop these rational capacities. Because each person has a common nature that is universal, this establishes a non-relativistic basis for ethical decision-making and is a challenge a relativist account must overcome.

### *E. The Contemporary Challenge to Natural Law*

One can imagine that there are better arguments for moral relativism than the six in the second section. Three prominent arguments against natural law are offered in different forms from contemporary philosophers that argue for moral relativism. In this section, these will be expounded in their strongest possible form.<sup>188</sup> Before turning to the arguments, moral relativists claim that there is one important virtue that is a consequence of relativism.

It is said that relativism requires a person to develop the virtue of tolerance. This virtue arises from each individual approaching all moral issues from a view of accommodation.<sup>189</sup> The common complaint against moral realism is that it is intolerant, and thus does not accommodate views that differ from it. Moral relativism, because it does not say that there is any universal moral truth, says that people should tolerate others because moral relativism is true. David Wong explains why the virtue of accommodation is important:

Given the inevitability of serious disagreement within all kinds of moral traditions that have any degree of complexity, a particular sort of ethical value becomes especially important for the stability and integrity of these traditions and societies. Let me call this value “accommodation.” To have this value is to be committed to supporting noncoercive and constructive relations with others although they have

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<sup>188</sup>There are several arguments that I will not address in this section due to the accusation that they miss the mark of being strong arguments for relativism. For example, the argument from disagreement is commonly given as an argument for relativism. One can easily see that just because people disagree it does not follow that no one is right. For example, people may disagree whether the earth is spherical or flat. Disagreement about the subject does not entail that everyone is right.

<sup>189</sup>David Wong, *Natural Moralities: A Defense of Pluralistic Relativism*, (Oxford, Oxford University Press, 2006): pp. 63-65.

ethical beliefs that conflict with one's own. Why is this value important? From the standpoint of the integrity and stability of a society, this value is important given the regularity of occurrence of serious ethical disagreement. If such disagreement always threatened to become the source of schism, no society could survive very long without brutal repression.<sup>190</sup>

The importance of accommodation or tolerance arises because there is obviously going to be moral disagreement. This virtue allows for the possibility that one can learn from another, and it allows that people can peacefully coexist despite their disagreement.

The relativist claim is much stronger than merely that the relativist should have the virtue of tolerance. A moral relativist links relativism with tolerance because no person has a corner on moral truth, and because of this no person or culture can judge another. Hye-Kyung Kim and Michael Wreen explain:

Relativism has a lot to say for it, according to its proponents. One point in its favor, they say, is that it recognizes that there's not just one correct way of doing things, not just one right answer to every moral question. To think otherwise, to think that one moral code has all the answers, is to think that one moral code is capable of validly criticizing another. But criticism of one moral code from the standpoint of another is baseless. There simply is no absolute moral code, no moral code that transcends cultural, personal, and societal standards, and in virtue of which other moral codes can be judged. Relativism thus requires us not to interfere with or condemn behavior, conduct, attitudes, and so on that are not approved by our own moral code. In other words, relativism requires us to be tolerant. With no moral code being any truer or more valid than any other moral code, there is no rational attitude to take toward another's conduct except tolerance.<sup>191</sup>

As a relativist, tolerance is the only reasonable virtue one ought to exercise. What arguments are given that make relativism plausible?

One may call the first the argument from convention. Saying a moral system is based on convention means that people construct their system of values, rather than

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<sup>190</sup>Ibid., p. 64.

<sup>191</sup>Hye-Kyung Kim and Michael Wreen, "Relativism, Absolutism, and Tolerance," in *Metaphilosophy*, Vol. 34, No. 4, (Oxford: Blackwell Publishing, July 2003): pp. 448-449.

discover it. This view rightly points out that everyone learns what is right or wrong from different sources, and that each person constructs his moral system from his beliefs. Sometimes these sources are in conflict with each other as to what is right or wrong. People may hold identical views on some scientific matter, but still differ in belief regarding what action is right. As Wreen says,

Moral relativism, then, is simply cognitive relativism applied to moral judgments. Moral reality and moral truth are perspectival under relativism, and constructed out of our experience and cognizing, in the broadest senses of the terms, even if there are conceptual, quasi-conceptual, and empirical constraints on what counts as moral reality and moral truth.<sup>192</sup>

Just as an individual's non-moral beliefs are perspectival, so too moral beliefs on this view are perspectival. The moral relativist believes that there is no objective framework by which a person can evaluate a different framework about what is morally correct.

The second is the argument from the relativity of justification. This basically says that there is no way to find a basis for one rational justification over another when people disagree. Gilbert Harmon explains that any proposed course of action may be rational or reasonable for the person acting.<sup>193</sup> One cannot scientifically discover a sufficient reason for saying a person ought to act one way rather than another.<sup>194</sup> In addition, rationality and reasonableness, if they do exist, are only relative standards.<sup>195</sup> For example, one may condemn a criminal as wrong for a certain act, but the criminal carries out the act for certain reasons that seem reasonable. One may not condemn this person according to his moral standards, especially using a criterion of reasonableness, because he is only doing

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<sup>192</sup>Wreen, p. 267.

<sup>193</sup>Gilbert Harmon, "Is There a Single True Morality," in *Relativism: Interpretation and Confrontation*: p. 366.

<sup>194</sup>Ibid.

<sup>195</sup>Ibid.

what he thought was most reasonable in his situation. Science does not appeal to normativity except as a relative notion.<sup>196</sup>

All moral justification can have is reflective equilibrium. This simply means that the system should strive to logically cohere, but it does not necessarily correspond to reality. When a person constructs his moral system, he may find that he has two conflicting views, and then he revises his system in order to prevent conflict. Because the system is completely internal and relative to the individual or culture, and there is no universal standard to which a person may appeal that can justify one system over another, the best one can attain is a reflective equilibrium. The most one can expect to find is a person striving to be logically consistent in his moral system, even if most do not attain to this standard.

The third is the argument David Wong makes based on two features he finds in analyzing our moral beliefs.<sup>197</sup> The first aspect we have he refers to as moral ambivalence. Our ambivalence comes from being unable to decide between conflicting basic rights or values. For example, a person may face a tough decision about whether to invest in helping the poor or a retirement account. Basic values may conflict as one tries to make a decision about whether to take steps to secure his future with an investment, or to help those in need in the present. The second aspect we have is called value pluralism. This says that there are many basic values that are irreducible. If there are many values, then a monistic view that there is only one basic value that is universal is false. It appears that we do hold to many values that cannot be reduced to one another. Thus, this seems like a strong argument against universalism.

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<sup>196</sup>Ibid.

<sup>197</sup>The following argument is a brief form of Wong's central thesis in his book *Natural Moralities*.

The argument for value pluralism rests on conflicting human values. These values cannot coexist in a culture because of their conflicting nature. People recognize many societies that promote some values and exclude others. This is a consequence of the intrinsically contradictory nature of some values. In addition, there are many basic values that different cultures recognize. This is said to undermine universalism, which claims there is one single true morality. Value pluralism argues that there cannot be one single true moral code, when it is clear there are many basic moral beliefs.

Moral relativism purports to give a better explanation of moral ambivalence and value pluralism than universalism. As Wong explains, “The kind of moral disagreement that poses the steepest challenge for moral universalism is the kind in which others share values with us but in which they have made different choices in the fact of conflicts among these values.”<sup>198</sup> Moral ambivalence arises from seeing how others made different decisions than we would, even when sharing the same values. “The reality of moral ambivalence,” Wong writes, “calls for a deeper explanation than universalist theories of morality can provide.”<sup>199</sup> Moral relativism is said to provide a more plausible account for ambivalence and moral pluralism than universalism. When cultures clash, one view imposes upon another and has the illusion of being universal only because it is dominant. The relativistic explanation is purported to be better than any universalistic account due to the existence of different moral systems in different cultures.

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<sup>198</sup>Ibid., p. 6.

<sup>199</sup>Ibid.

### *F. Answering the Contemporary Challenge*

There are a multitude of arguments that have been given against moral relativism. Many of these, however, miss the mark because they falsely characterize what moral relativism actually says.<sup>200</sup> Two things must be kept in mind when dealing with these arguments. First, there are many fully rational and intelligent people that believe relativism is true for various reasons. Second, there are some good arguments for moral relativism that must be answered, and the last section only explained a handful of them. There are aspects within the arguments in the last section that rightly point out many truths that can add to our understanding of ethical theory. However, these truths do not require a person to adhere to moral relativism. Therefore, this section will do two things. First, it will expose some of the flaws in some of the arguments for relativism.<sup>201</sup> Second, in answering the relativist, it presents some additional arguments that make universalism plausible.

In the first argument relativism says that morality is constructed and thus conventional. There are several problems with this. First, just because people construct moral systems it doesn't follow that the values that the systems express are conventional. There may be multiple expressions of one set of values. The expression that each society

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<sup>200</sup>For a sampling of some arguments offered that miss the mark against moral relativism see Michael Wreen's aforementioned article titled, "A Prolegomenon to Moral Relativism," *Philosophia* Vol. 32, nos. 1-4 (2005): 253-274.

<sup>201</sup>This is by no means an exhaustive survey of all the arguments moral relativism offers, nor of all the responses that can be given to their arguments. However, these are some of the most popular arguments, and some relativists even reject some of these as fallacious. For a survey of a relativist that attempts to tread a middle ground through many arguments on both sides see David Wong, "Relativism," pp. 442-450.

constructs may be different, but may still reflect values that are common. It is certainly possible that values are universal, even if the expression of those values is not. Second, the moral relativist has failed to point out how foundational values or virtues contradict each other. The relativist would probably agree that simply highlighting how different values are emphasized in different cultures does not mean that there is an inherent conflict between values. Third, the point that is made that morality is perspectival is not as significant as one may think. Saying someone's view is perspectival could mean nothing more than it is a view from one's own perspective. However, if this is the case, then all views are perspectival. Yet, just because a view is perspectival it does not mean that it cannot be universally true. If every person's perspective included the same universal moral principles this would support the natural law position. Thus, a person's moral values can be both perspectival and universal. Given these three considerations, this argument is not as strong as some may think.

In the second argument one must deal with the problem of the relativity of justification. It seems evident that it is difficult to decide who is right when there is disagreement. If there is a true conflict between virtues or the most basic values, then it seems this is a very difficult problem for the universalist. Although the difficulty for the universalist has been mentioned, there is also a difficulty for the relativist. The relativist has to find two virtues that are truly in conflict. Many universalists and relativists would agree that there are differences in laws that would seem to make them conflict in many nations. Both would also agree that these differences and conflicts do not necessarily entail either position. Thus, it is not enough to point to a difference in laws, but the relativist must truly find a conflict between virtues or basic values.

Suppose that the relativist succeeds in finding the aforementioned conflict for argument's sake. How can the universalist answer this charge? There seem to be a few different responses available for the universalist. He may point out that disagreement about basic values between people or even cultures means one of three things has occurred. 1) One group or person has found the true good and those with conflicting values or virtues have not. 2) Both groups have conflicting virtues or values that really conflict but both are wrong about these virtues or values being good. Or, 3) there is a transcendent virtue above both positions that resolves the conflict and the disagreement has occurred because of a non-moral belief (e.g. the aforementioned case about abortion). It certainly is possible that good and reasonable men differ about basic moral values. The relativist would concur that the differences of judgment may be caused by any manner of things. There may be different standards by which each judges, different ways the people were raised, and a variety of other factors. Each of these can be examined to try to locate the source of disagreement. An analysis like this would probably resolve the problem the vast majority of the time. However, there is a more difficult case to consider.

Suppose one finds that two people share all the identical beliefs but still come to different moral conclusions about some basic virtue or value. How, then, can the universalist resolve this? It seems that the universalist can again make an argument from analogy to resolve this problem. Two people may be looking at the same painting and one can see what the other cannot. This can occur when one observer is color-blind, and the other can see all the colors. There are some universalists, certainly natural law theorists, who hold that it is possible for some people to suffer from some type of moral blindness. In these cases, it is not as if the universal nature of basic morality has changed, but only a

person's ability to see it. Just as one cannot make a color blind person see certain colors, so too, the natural law theorist proposes, one cannot make the morally blind person see.

The consequence of holding the position that some people are morally blind does not change the nature of universal values or virtues. This defect is attributable to something wrong with the observer, and not something in the nature of the universal value. When virtues or values are called universal this simply means that if a person is fully rational he has the potential to discover them. Moral blindness, according to this, indicates that a person is not fully rational. If two people are fully rational, then reasons can be provided in order to discover what is universal. It cannot be overlooked that the moral relativist often holds all the same basic values and principles as the universalist. He justifies these principles on a different basis, but recognizes them just the same which indicates that he is just as rational, though, according to the universalist, he is mistaken about his belief in moral relativism.

The third argument against universalism covered moral ambivalence and value pluralism. There are several ways the universalist can respond to this challenge. First, the relativist presupposes that in universalism, a person is morally permitted to perform one act per situation. This is not true on many universalistic accounts. In the classic natural law approach, that which is universal is the abstract moral principle. The particular situation, as a thing that is constrained and has various circumstances surrounding it, may allow for different acts that are all morally acceptable. The universal moral principle may be that a person should love his neighbor as himself. The expression of this principle may come from the act of shoveling a neighbor's drive, bringing the neighbor soup when sick, or visiting when lonely. There are a variety of morally good acts that are allowed even on

a universalistic system. The assertion that there is only one morally acceptable act per situation is false.

This explanation helps one understand why there are so many societies that have what appears to be different moral codes. The abstract principles are often the same, but the expression of those principles often differs. The universalist may even go so far as to say that many of the ways the principles can be expressed are conventional. Consider again the principle of loving our neighbor. One society may have it as an expression of love to sing to the neighbor under certain circumstances, and a different society may make an equivalent expression as killing a fattened calf for your neighbor under the same circumstances. The principle guiding the act is universal, even if the expression of the act is not. This does not mean that all the particular expressions of a principle are morally right. Some acts that are done may not actually express the principle that the person thinks it does. Consider the man who thinks he is expressing the principle to love his neighbor when he coerces her to marry him.<sup>202</sup> In this case he has wronged his neighbor due to an error in judgment on the level of the particular action. The universal principle is good, but the act fails to fall under it.

Lastly, one must consider seriously the claim that relativism better accounts for at least one virtue—namely tolerance. However, despite the claim to lead to the virtue of tolerance, relativism entails no such thing. All it entails is that an individual or society can choose whether or not to be tolerant. After examining the two claims of the relativist

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<sup>202</sup>One may point out that some cultures find the practice of killing your parent shows respect after they've reached a certain age. Yet even this practice shows the universal value of respect for parents, even if the actual practice is seen as flawed. A similar application can be made to Herodotus's example of burying versus eating dead relatives.

one can see the absence of logical relation between relativism and tolerance. Kim and Wreen identify and show the relation between the two claims:

- (1) There are two or more- a plurality- of equally true or valid moral codes, and (1) doesn't entail
- (2) Tolerance of moral practices or moral codes other than one's own is morally required.<sup>203</sup>

This shows that, contrary to the relativist claim, moral relativism does not entail or require one to be tolerant. Thus, what is extolled as the greatest strength of relativism—the promotion of the virtue of tolerance—is not even entailed by adhering to moral relativism. There are actually no virtues that are entailed in this system, and, just as predicted, what seemed to be such solid ground ended up as sinking sand.

One cannot neglect the claim that relativism may contend that its view gives us the best reason to be tolerant. However, relativism actually may have to support intolerance when the differences between cultures are most significant (e.g., like between American and Nazi culture). Although relativism is said to uphold tolerance as a virtue that is a transcendent principle that governs “relations among moralities,” in reality it cannot do so as it presupposes “that there is some standard to which one can appeal in evaluating moral systems or sensibilities, which is precisely what the relativist denies.”<sup>204</sup> If one rejects certain assumptions made by relativist, like the value (which I find quite appealing) of equal human worth, then one will reach different moral conclusions.<sup>205</sup>

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<sup>203</sup> Kim and Wreen, “Relativism, Absolutism, and Tolerance,” p. 450.

<sup>204</sup> Philip E. Devine, “Relativism, Abortion, and Tolerance,” *Philosophy and Phenomenological Research*, Vol. 48, No. 1 (Sep. 1987): 137-138.

<sup>205</sup> Ibid.

In sum, this section has considered a few of the contemporary arguments for moral relativism. Although there are many more that are offered, those included in this section are among the most popular. One can see the many insights moral relativists bring into the discussion about ethics and universalism. One significant contribution relativists make is revealing that certain customs in society often taken to be universal values are not really universal. Despite these positive aspects of relativism, it still seems more plausible that universalism is true.

### *G. A Brief Recapitulation*

This chapter considered some arguments supporting and opposed to universalism. The primary arguments that opposed universalism, appealed to human convention as a source of value, revealed the problems that occur when people disagree on basic values, extolled the virtues of relativism, and tried to show that relativism was more internally coherent than universalism. These arguments were worthy of serious consideration and cannot be easily dismissed. Moral relativists have much to offer in many aspects of their ethical analysis.<sup>206</sup> However, despite the many truths in the relativist's description of morality, there were some aspects of their evaluation that did not include some distinctions that were very important to make. Arguments in support of universalism were implicit in the responses to relativism. The explicit argument was based on human

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<sup>206</sup> One consideration that the relativist offers is the test of internal coherence. This is a fantastic test to discover whether a theory is false. No theory can be true that is not at least internally coherent. One must admit that the relativist and the universalist are internally coherent in the views each hold. However, internal coherence fails as a test for truth as a romance or science fiction novel can also be internally coherent. One may also point out that internal coherence can make matters worse when a person consistently treats people worse than he ought to given his view (*e.g.*, treating slaves worse because they are not seen as persons).

nature as a foundation for universal virtues or values. The combination of these two factors favors the plausibility of holding to some form of universalism.

## Chapter 5

### THE TENSION BETWEEN NEO-NATURALISM AND NATURAL LAW

Isn't it the case that a natural law approach is foundationally different from one that is naturalistic? After all, theists and the religiously minded usually are those defending the natural law approach, and naturalists are usually trying to work to avoid references to religion or God. This difference indicates that the motivation for the two theories seem to be in opposition. Further evidence for this can be found from looking at the sources of the work that has been done in these two areas. Scientists are the major proponents of various forms of naturalism. This group may claim that science can explain all that is necessary to live a good life. Theologians, on the other hand, have done much of the work on natural law theory. Many in this area have developed natural law systems that are inextricably tied to theological ethics.

One can also find that two opposing camps use the same arguments against naturalism and natural law ethics. Certain 'Christian' philosophers oppose naturalistic ethics and 'atheistic' philosophers oppose natural law ethics for the same reasons. The similarity between the natural law theory and one that espouses a form of naturalism allows for the same criticism to be equally applied. Both naturalists and natural law theorists allegedly commit the naturalistic and is-ought fallacies discussed in chapter three.

This chapter will explicate several differences that are important in understanding the neo-naturalist and natural law position. The first section explains neo-naturalism. Naturalism as well as the modern ‘naturalized’ approach to ethics is distinguished from neo-naturalism. The different approaches for ethical decision making between these systems will be explicated. The second section explains the agreements between neo-naturalism and natural law theory. The third section exposes and answers the arguments that Christian philosopher J.P. Moreland uses that can be applied to neo-naturalism and natural law theory. The fourth section uncovers the real distinctions between neo-naturalism and natural law. The fifth section compares natural law theory and divine command theory.

#### *A. What is Distinctive about Neo-Naturalism*

One may surmise that there must be some difference between naturalism, neo-naturalism, and naturalized ethics. I will not be using these different names interchangeably as each uniquely represents a different approach to ethics. The purpose of this section is twofold. First, the section compares neo-naturalism with both naturalism and naturalized ethical theory. Second, it explains several aspects of neo-naturalism that make it a distinct ethical theory.

Of the three aforementioned theories, the first two are cognitivist theories, and the third is a non-cognitivist theory. The following are definitions of each theory:

- a. Naturalism or ethical naturalism is the view that says moral judgments are a class of facts about the natural world.

- b. Neo-naturalism is the view that there are virtues that guide a person to recognize facts about certain natural goods for man.
- c. Naturalized ethics is the view that values are invented and as such not absolute.

Both naturalism, which is sometimes called ethical naturalism, and neo-naturalism are cognitivist and objectivist. These two theories hold that moral claims are true or false independently of our beliefs about morality. As cognitivist theories, these also claim that it is possible for people to know what is right or wrong. The third theory, naturalized ethics, is usually presented as a non-cognitive theory. As a non-cognitivist theory, naturalized ethics does not hold there are any ethical propositions that are true or false. Although it may seem counterintuitive given that this view says no ethical proposition is true, naturalized ethics holds that at the most ethical propositions are true or false relative to a person's own individual belief or his community's teaching.

One can identify several similarities between naturalism and neo-naturalism. They both emphasize what they take to be natural properties. These natural properties are thought to include goodness and to be knowable in both systems. They also have problems with G.E. Moore and David Hume's ethical theory. Specifically, these groups would take issue with Moore on our ability to define and identify goodness in natural things. Also, these systems would argue against Hume's contention that one cannot derive an 'ought' from an 'is.'<sup>207</sup>

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<sup>207</sup> I am only arguing here that the classical natural law theory as I describe it would have an issue with these objections. I recognize that that 'new' natural-law theory of Finnis and Grisez, which was briefly mentioned in chapter one, accepts these objections and develops their own versions of natural law. Their versions of natural law are significant and to their advantage in that they avoid any need to appeal to "metaphysical biology."

There are two different ways of thinking about the relationship between neo-naturalism and ethical naturalism. In the first, neo-naturalism can be thought of in relation to ethical naturalism as being related as species to genus. Thus, although all neo-naturalisms are a form of ethical naturalism, not all theories identified as an ethical naturalism are neo-naturalist. According to this view, for example, some utilitarian philosophers can be said to hold to a form of ethical naturalism. They would be so if they held that goodness is pleasure. It is recognized that utilitarians like Mill and Bentham sought to explain a scientific approach to ethics that used ‘good’ to mean ‘pleasure produced.’<sup>208</sup> However, one can also find neo-naturalists like Philippa Foot arguing against it.<sup>209</sup> Ethical naturalists are the group, as Antony Flew explains, that may be considered as those who take “the naturalistic fallacy to be not really a fallacy” and “insist that value words are definable in terms of neutral statements of fact.”<sup>210</sup> A slightly different perspective says that neo-naturalism is not a straightforward naturalism, as it doesn’t subscribe to the belief that “value terms can be defined by factual statements.”<sup>211</sup> However, neo-naturalism still holds that “certain facts logically entail values.”<sup>212</sup> Philippa Foot takes the first view as indicative of neo-naturalism. Neo-naturalism specifically argues against Moore’s anti-naturalism and against “the subjectivist theories such as emotivism and prescriptivism.”<sup>213</sup> Unlike, neo-naturalism, naturalism may accept Moore’s intuitionism, even if it denies his anti-naturalism.

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<sup>208</sup> Anthony J. Lisska, *Aquinas’s Theory of Natural Law: An Analytic Reconstruction*, (Oxford: Clarendon Press, 1996): p. 58.

<sup>209</sup> Philippa Foot, *Natural Goodness*, Oxford: Clarendon Press, 2001

<sup>210</sup> Antony Flew, *A Dictionary of Philosophy*, (New York: St. Martin’s Press, 1979): p. 240.

<sup>211</sup> Louis Pojman, *Ethics: Discovering Right and Wrong*. (Belmont: Wadsworth Publishing, 1990): p. 156.

<sup>212</sup> *Ibid.*

<sup>213</sup> Foot, *Natural Goodness*, p. 5

Another difference between these theories (i.e., naturalism and neo-naturalism) may be understood from looking at where they fall in the genus to species relationship. The difference between realism and anti-realism is the most general difference that one can grasp in meta-ethics. Under moral realism one can find naturalism and non-naturalism. According to naturalism, ethical terms refer to natural properties and in non-naturalism they don't. One could conceivably be either a natural or non-naturalist and an intuitionist. This is primarily because in intuitionism one knows what is good intuitively. Intuitionism merely describes the epistemological process one uses to know either the natural or non-natural good.<sup>214</sup> However, neo-naturalism rejects intuitionism. Thus, there seems to be a difference between naturalism and neo-naturalism that goes beyond a mere genus to species relationship. Neo-naturalism is a form of naturalism that rejects intuitionism as a theory of moral knowledge. Also, in neo-naturalism there is an emphasis on virtue as providing the way to answer what goodness is. Other ethical theories that hold principles of moral realism from a non-virtue ethic approach are naturalism, but are not what this work has referred to as neo-naturalism.<sup>215</sup> This modern, virtue-based theory is what is referred to in this work as neo-naturalism.<sup>216</sup>

What of the relationship between neo-naturalism in and naturalized ethics? One may admit that some who call themselves 'naturalists' hold the view that is here described as naturalized. Looking at what is common among naturalized non-cognitive theories allows a contrast with neo-naturalism. It is helpful to turn to Harman for a

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<sup>214</sup> Richard Brandt, *Facts, Values, and Morality*, (Cambridge: Cambridge University Press, 1996): p. 5.

<sup>215</sup> Ibid. 165-166

<sup>216</sup> The leading neo-naturalists that fall into this category are G.E.M. Anscombe, P.T. Geach, Rosalind Hursthouse, and Philippa Foot. Their view is also sometimes referred to as neo-Aristotelian naturalism. Although not a complete list, these philosophers represent some of the leading thinkers that espouse neo-naturalism.

description of naturalized ethics to contrast with neo-naturalism. Although he calls his theory a naturalism, and not naturalized ethics, Gilbert Harman's description of his view is in diametric opposition to both ethical naturalism and neo-naturalism. Harman describes this 'naturalism':

I am using the term "naturalism" more broadly in a more traditional and accurate sense. Naturalism in this sense does not have to lead to naturalistic reduction, although that is one possibility. Another possibility is that there is no way in which ethics could fit into the scientific conception of the world. In that case naturalism leads to moral nihilism, as in Mackie (1977). Mackie supposes that ethics requires absolute values which have the property that anyone aware of their existence must necessarily be motivated to act morally. Since our scientific conception of the world has no place for entities of this sort, and since there is no way in which we could become aware of such entities, Mackie concludes that ethics must be rejected as resting on a false presupposition. That is a version of naturalism as I am using the term.<sup>217</sup>

The contrast is immediately evident in that neo-naturalism and ethical naturalism hold that there are absolute values, and a naturalized approach does not.<sup>218</sup> Harman clearly holds the view that Mackie so fully explains in his book *Ethics: Inventing Right and Wrong*. Mackie's title is illuminating in that, according to this naturalized account, all of ethics is merely invented. Harman, echoing Mackie's thesis, can argue that moral truths are certainly not discovered.<sup>219</sup>

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<sup>217</sup> Gilbert Harman, "Is There a Single True Morality," in *Relativism: Interpretation and Confrontation* (Notre Dame: Notre Dame University Press, 1989): p. 366.

<sup>218</sup> Harman tries to hedge on his description of naturalism as saying one can "be both a naturalist and an absolutist." (p. 366) He is saying that one can be a subjectivist and absolutist. As Michael Wreen explained in the previous chapter, absolutism comes from the one who grounds moral truths in a subjectivist account on universal human states. Despite this move away from relativism, Harman thinks that moral relativism is the most plausible account of ethics. (366)

<sup>219</sup> Gilbert Harman, *Explaining Value and Other Essays in Moral Philosophy*, (Oxford: Oxford University Press, 2000): p. 151-164. In the chapter he writes on *Human Flourishing, Ethics, and Liberty*, Harman analyzes problems in contemporary accounts of virtue ethics. He argues for four things. The first is that they can all be reduced to a form of consequentialism, complete with all the problems entailed in this. The second emphasizes the relativistic conception of human flourishing in these different accounts. The third deals with the relativistic nature of the reasons one gives for acting a certain way. He cannot conceive of any reason for another person to accept the reasons we give for an act when the person does not accept our values. The fourth explains what he takes as the real source of values and morality. One is urged to accept "the fact that morality is a compromise between people of different powers and resources" and

Consider the parallel between naturalized epistemology and what I have dubbed naturalized ethics. Naturalized epistemology seeks a scientific explanation for the reasoning process. Although the idea of epistemology naturalized was popularized by W.V.O. Quine, his explanation of what this means is not the only one.<sup>220</sup> The common elements between these various epistemological accounts are the emphasis on the empirical method and that man has biological limitations that must be considered. Just as the naturalized accounts of epistemology emphasize biology and the empirical method, so too does naturalized ethics. Harman argues that a person's approach to ethics and moral judgments can affect his view on whether to be an absolutist or relativist.<sup>221</sup> If one places a greater emphasis on science (i.e., the empirical method) in his approach he will be a relativist, and if he doesn't he will be an absolutist.<sup>222</sup> This is not to say that Harman claims an absolutist allows no role for science. However, he does argue that the role of values and obligations explained from a completely scientific perspective will lead to relativism.<sup>223</sup> Relativism, thus conceived, claims there is no moral truth.

Naturalized ethics can appeal to certain biological and psychological desires, and Harman recognizes the legitimacy of evaluating certain biological structures of man functionally.<sup>224</sup> Also, naturalized ethics attempts to explain away certain acts and attributes that a naturalist may call good with a scientific explanation as to why one calls certain things good. Any explanation for the goodness of certain acts may be reduced to an analysis as to why someone calls something good. The shift in emphasis in this

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acknowledge that the "basic rights of liberty have come to be recognized only as the result of these bitter conflicts." (164)

<sup>220</sup> Quine, Willard (2004). "Epistemology Naturalized". in E. Sosa & J. Kim. *Epistemology: An Anthology*. Malden, MA: Blackwell Publishing, pp. 292–300.

<sup>221</sup> Harman, "Is There a Single True Morality" p. 365.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Harman, *Explaining Value*, pp. 152, 165-178.

explanation diverts attention from the act, and places it instead on the psychological reasons of the one who explains the act as good.

Naturalized ethics also denigrates ethical theories that stress virtue. Harman, for example, offers a scientific account as to why character-based virtue ethics are foundationally wrong.<sup>225</sup> He finds several problems with virtues as a foundation for ethics. Harman writes, “the main point is that this sort of virtue ethics presupposes that there are character traits of the relevant sort, that people differ in what character traits they have, and that these traits help to explain differences in the way people behave.”<sup>226</sup> He argues that the foundation upon which the virtue ethicist starts is faulty. This is because experiments have shown the circumstances often affect a person’s behavior more than his character.<sup>227</sup> Another problem arises, according to Harman, because virtue ethicists commit the fundamental attribution error.<sup>228</sup> What this means is that virtue theorists overlook relevant details of a situation to explain a person’s behavior and instead attribute the action to character. This calls into question whether character drives a person to act a certain way, when it is certainly sometimes the case (or according to the naturalized ethicist it is always) that the circumstances explain behavior in a more complete way. Harman goes beyond saying that it is merely sometimes the case that circumstances explain behavior. He argues that there is actually no such thing as character, and thus a virtue theory of ethics that seeks to improve character is a vacuous notion.<sup>229</sup> Harman concludes,

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<sup>225</sup> Ibid. pp. 168, 176.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid. p. 170. He specifically cites Stanley Migram’s experiment on obedience to authority and Darley and Batson based on the parable of the Good Samaritan.

<sup>228</sup> Ibid. p. 166.

<sup>229</sup> Ibid. p.178.

We very confidently attribute character traits to other people in order to explain their behaviour. [sic] But our attributions tend to be wildly incorrect and, in fact, there is no evidence that people differ in character traits. They differ in their situations and in their perceptions of their situations. They differ in their goals, strategies, neuroses, optimism, etc. But character traits do not explain what differences there are.<sup>230</sup>

In this account virtue theorists suffer from confirmation bias and overlooking that behavior can be explained from situations without having to appeal to character. With the assumption of character dismissed as vacuous, any virtues that are supposed to help form, guide, or build character are useless.

Despite the bleak picture some may see emanating from the naturalized account of ethics, the neo-naturalist assures us of the possibility of human flourishing.<sup>231</sup> The virtues mark the target at which one must aim in order to flourish. This view stands in stark contrast to Harman's account. The neo-naturalist says that virtue plays a key role in ethics. Philippa Foot argues that certain dispositions we call virtues are dependent upon certain facts about human beings.<sup>232</sup> Thus, contrary to the naturalized ethicist, the neo-naturalist says that scientific facts do not lead away from virtue, but toward it. Biological and sociological facts can direct us to see what is virtuous. Each individual should strive to recognize, pursue, and attain the virtues that can lead one to happiness or human flourishing.

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<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

<sup>232</sup> Philippa Foot, *Natural Goodness*, pp. 43-44; Ralph McInerny, *Ethica Thomistica*, pp. 35-62.

### *B. Similarities between Neo-Naturalism and Natural Law*

Natural law and neo-naturalism both hold many of the same foundational principles. These principles are similar between the two views and justify moral decisions. One can give an account in five specific areas that overlap from both a NL and neo-naturalist perspective.

The first of the area of overlap between these two views is the idea that goodness is a natural property. Both link a being's natural goodness to its teleological function.<sup>233</sup> Both agree that this attribution of goodness is not a reference to psychological states or positive attitudes. The moral norms that help a person discover whether something is good may be taken from facts about what that thing is. This judgment can be made about human or non-human things. Foot explains,

the norms that we have been talking about so far have been explained in terms of *facts* about things belonging to the natural world. We have not had to think that in evaluations of non-human living things our use of 'good' has to be explained in terms of 'commendation' or any other 'speech act', nor as the expression of any psychological state. The main thesis of this book is that propositions about goodness and defect in a human being—even those that have to do with goodness of character and action—are not to be understood in such psychological terms. In describing my view, Thompson rightly said that I saw vice as a form of natural defect, and I have therefore used a corresponding wording in the title of this book.<sup>234</sup>

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<sup>233</sup> Foot, *Natural Goodness*, p. 33

<sup>234</sup> *Ibid.* pp. 36-37

This emphasis on goodness not coming from a mere psychological or attitudinal disposition is against the non-cognitivist description of morality.<sup>235</sup> In this attribution of goodness as natural both NL and neo-naturalism align themselves completely against the three non-cognitivist views, namely, emotivism (moral judgments only express attitudes), subjectivism (moral judgments based on feelings), and prescriptivism (moral judgments have no truth-value but are universalizable, and there is a radical separation of facts and values).<sup>236</sup>

The second area of agreement is that biology and science can give us insight into the nature of things to help us make informed decisions about what we ought to do. Biology and technology can inform and equip us about the best way to feed and clothe ourselves in order to survive. Sociology and psychology may inform us about the best ways to attain friendship and love. Survival, love, and friendship are examples of good natural ends of man.<sup>237</sup> Thus, many scientific fields of study can provide guidance to aid a person making a decision about how to act in a given circumstance.

The third area of agreement is that the function of something can help us discover its goodness. This is the case whether one is referring to the goodness of the individual part, the good of the act as a whole, or even the good for a person. In the first case one can consider individual organs. For example, consider the heart's function as a pump. A heart is called good when it is properly functioning and bad when it is not. Or, a person may examine whether one action is better than another. He would have to take into account the entire act, including the motivation, the action itself, and the

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<sup>235</sup> Foot is especially targeting Stevenson, Hare, and Mackie about these issues.

<sup>236</sup> See James Rachels, *Elements of Moral Philosophy*, New York: McGraw Hill Publishing, 1986; Louis Pojman, *Ethics*.

<sup>237</sup> Foot, *Natural Goodness*, pp. 38-44; McNerny, *Ethica Thomistica*, pp. 11-33.

circumstances.<sup>238</sup> One may also consider an individual as a whole. She may be called a good golfer because she shoots a low score, or a good dancer because of her performance of the proper steps. Both would recognize that there are virtues characteristic of a good man as well. Thus, the NL theorist and neo-naturalist share the view that one can look at the function of something or someone to see how it is good.<sup>239</sup>

The fourth area of commonality is that the virtues can play some role in helping us to make morally good decisions. Gilbert Harmon recognizes the role of virtues in neo-naturalism when he writes, “One type of virtue ethics appeals to a type of functionalism that seeks to derive normative results from assumptions about functions.”<sup>240</sup> One cannot discount the eighteen chapters that St. Thomas devotes to virtue in the *Summa Theologica* and the role these play in NL theory.<sup>241</sup> The role of the virtues was also explicated in the previous chapter on The Metaphysics of Natural Law Theory. Philippa Foot is very open about the influence of Aquinas’ writing on the virtues as having an influence on her neo-naturalism. She writes:

However, there are different emphases and new elements in Aquinas’s ethics: often he works things out in far more detail than Aristotle did, and it is possible to learn a great deal from Aquinas that one could not have got from Aristotle. It is my opinion that the *Summa Theologica* is one of the best sources we have for moral philosophy, and moreover that St. Thomas’s ethical writings are as useful to the atheist as to the Catholic or other Christian believer.<sup>242</sup>

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<sup>238</sup> Both Aquinas and Foot hold the view that these three must be taken into consideration. See Aquinas in the *Summa Theologiae* Q. 7, 12, and 18. Foot explains this in *Natural Goodness* p. 72-74.

<sup>239</sup> Ibid.

<sup>240</sup> Unpublished paper by Gilbert Harmon, *Naturalism in Moral Philosophy* (Princeton University, 2008) : p. 5, current version (November 26, 2008) of a talk given at a conference at Kansas State University in early April 2008 and at CUNY Graduate School in November 2008. The paper can be found at this address: <http://www.princeton.edu/~harman/Papers/Naturalism.pdf>

<sup>241</sup> St. Thomas spends questions 49-89 in the aforementioned work on the subject of habits, virtues and vices.

<sup>242</sup> Philippa Foot, *Virtues and Vices*, (Berkeley: University of California Press, 1978): p. 2.

Foot's account of natural goodness relies heavily on the virtues as helping one discover the teleological structure of human acts.<sup>243</sup>

A fifth common area, as is evident from the last chapter, is the defense of a cognitivist and objectivist account of ethics. Again, the NL theorist finds himself to have an ally in arguing against non-cognitivist accounts of ethical theory. These two ethical theorists are also united in arguing for ethical objectivism, contrary to accounts that say moral statements cannot be true or false.

Thus, one can find five common areas of agreement which are very important for moral explanation between neo-naturalism and natural law theory. These areas include the views that: goodness is a natural property; science gives an individual insight about which moral acts are good; identifying the function of something helps us discover what is good for it; virtues play a crucial role in making moral decisions; the objectivist and a cognitivist approach provide the correct account of ethics. These five areas form a common backbone for two ethical theories which are both cognitivist and objectivist.

### ***C. Moreland's attack on the foundation of Classical Natural Law***

One of the leading Christian philosophers has expounded a theory of ethics that appear to be a double-edged sword. Considered as one who has written many articles defending various forms of Christian morality, Moreland used an argument that can also be used to undermine the foundation of natural law, which is a view he claims to support. That this foundation is undermined is problematic at many levels. First, there is the

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<sup>243</sup> This idea is found in several of Foot's works including *Natural Goodness* and *Virtues and Vices*.

admission of certain epistemological problems one may have in knowing the natural law. The seriousness of this charge, at least to many Christians, is that natural law is a foundation whereby even the Gentiles, who do not have the written law, have a moral law written on their heart, according to the Bible in Romans chapter 2.<sup>244</sup> Second, the uncritical acceptance of certain premises contrary to a classical NL approach can be said to be the equivalent of removing the heart from the body, or the engine from the car. This section will briefly examine and critique the ethical explanations the Christian philosopher J.P. Moreland provides that seem to undermine a classical NL approach.<sup>245</sup>

J.P. Moreland sets forth an apologetic against atheism that is supposed to show that Christianity is true. Bearing this in mind, one can look at J.P. Moreland's explanation of morality in his book *Scaling the Secular City*.<sup>246</sup> The NL theorist is typically a theist, and as such, there is an important aspect of J.P. Moreland's arguments that the he can agree with. Moreland uses arguments from the existence of objective moral norms against those who deny God's existence to show that God exists. The NL theorist can agree quite easily with this argument. However, even though he may agree with the implication of God's existing occurring concurrently with objective moral norms, what the NL theorist may still deny is the moral account Moreland sets forth that undermines the NL as it has been described.

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<sup>244</sup> This is the classic passage many Christian theologians refer to when speaking of the natural law in the Bible: "For when the Gentiles who do not have the Law do instinctively the things of the Law, these, not having the Law, are a law to themselves, in that they show the work of the Law written on their hearts, their conscience bearing witness and their thoughts alternately accusing or else defending them." Rom. 2:14-15 NASB

<sup>245</sup> Before delving into a detailed explanation and critique of these two views, one caveat to this analysis must be added. The NL theorist may still hold that many of the things these two men say are correct. They may even help us understand and identify what is good in the detailed analysis of moral action. However, the fact that some areas of their explanation are actually true does not remove the charge that is being leveled against them in this section. The starting point of these men, although each begins from a slightly different perspective, undermines the traditional foundational explanation for NL theory.

<sup>246</sup> J. P. Moreland, *Scaling the Secular City*, Grand Rapids: Baker Book House, 1987.

Moreland offers the standard arguments against ethical naturalism and NL as it has been defended here. Contrary to a naturalistic account, he holds the view that a form of intuitionism seems to be the best account for discovering what is correct.<sup>247</sup> He claims that the two objections that were dealt with in chapter two seem to be reasonable arguments against ethical naturalism. He writes,

Two major objections can be raised against ethical naturalism. First, it confuses an “is” with an “ought” by reducing the latter to the former. Moral properties are normative properties. They carry a moral ought with them. If some act has the property of rightness, then one ought to do that act. But natural properties like the ones listed do not carry normativeness. They just are. Second, every attempted reduction of a moral property to a natural one has failed because there are cases where an act is right even if it does not have the natural property, and an act can have the natural property and not be right. For example, suppose one reduces the moral property of rightness in “x is right” to “x is what is approved by most people.” This reduction is inadequate. For one thing, the majority can be wrong. What most people approve of can be morally wrong. If most people approved of torturing babies, then according to this version of ethical naturalism, this act would be right. But even though it was approved by most people, it would still be wrong. On the other hand, some acts can be right even if they are not approved of (or even thought of, for that matter) by most people.<sup>248</sup>

Moreland succinctly sets forth Hume and Moore’s arguments, and adopts Moore’s solution of intuitionism as well.

In addition to the problems with these objections that were previously addressed, it seems Moreland also has the following problems. First, he begs the question. His argument can be constructed as follows:

P1: Moral properties are normative.

P2: Natural properties are not normative

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<sup>247</sup>Ibid. p. 126

<sup>248</sup> Ibid. p. 112

Therefore, moral properties are not natural properties.

The second premise is question begging. As has been discussed, natural properties are naturally teleological and thus have a normative element built into them. In his second argument, he criticizes the reduction of moral properties to properties that are natural. When a person acts in a way that is good, which is definitely a moral property, it can also be said to be a rational act, which is naturally how man should act. One can concede that a person should not define rightness as being what the majority approves of. However, the natural law theorist doesn't hold this position. Thus, at least this argument Moreland offers here against natural law fails.

Moreland also attacks a person's ability to have anything beyond a general grasp of acts described as good. In other words, he implies that in natural law one cannot know whether specific acts are good or not.<sup>249</sup> He finds natural law theory to be not only weak, but also best reduced to divine command theory. There is what he calls a problem with 'epistemological adequacy' in the natural law account. Although one can have "broad, general ethical knowledge" from a natural law theory, Moreland thinks there is a serious problem with this account.<sup>250</sup> Moreland writes of the natural law,

This [general ethical knowledge] is fine as far as it goes, but it does not go very far. The immanent purpose view cannot offer much help in trying to decide what specific values are true and worthwhile. This epistemological problem is solved in Christian theism by supplementing natural law or general revelation- broad ethical principles which exist and can be known by all men- with special revelation in the Bible. This is not to deny the reality of natural law. It is merely to point out its epistemological inadequacy if it is un-supplemented by special revelation.<sup>251</sup>

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<sup>249</sup> Ibid. 126

<sup>250</sup> Ibid.

<sup>251</sup> Ibid. 127

Moreland clearly thinks that a natural account is epistemologically inadequate. As Michael Wreen explains, “Moreland’s charge is that instead of directions to a destination, natural law hands you a compass. Unless something is added in the way of guidance, natural law doesn’t do what an ethical theory should do: provide sufficient guidance.”<sup>252</sup>

There are several problems with this criticism. First, in order to answer the problem with whether natural law provides sufficient direction about how to live one must first consider the various accounts of natural law. One common feature in each account is that good acts are those performed in accordance with reason. There are many acts that fit this description. The natural law reveals that there are many actions that a person can perform that are good, even if some acts may be better than others. For understanding a natural law approach consider the following analogy. One may think of himself as a person who is on a playground where it is morally acceptable to play on any piece of equipment as long as he remains on the playground. No matter how the person acts within the boundaries set for the playground the person has acted rightly. However, if the person transgresses the boundary of the playground one has acted wrongly. As detailed in chapter two, the natural law provides sufficient guidance about how to act morally- using both virtue and reason as it is applied to the three areas of every act.

The second significant problem is that his criticism of natural law can be applied to his ethical account which allegedly provides a superior explanation for decision-making. Moreland’s criticism is that natural law is epistemologically inadequate although it provides and weighs different reasons for acting. However, his own account does nothing of the sort. On the contrary, Moreland defends ethical non-naturalism

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<sup>252</sup> Dr. Michael Wreen wrote this explanation in correspondence to me during the Fall of 2009.

(specifically intuitionism) as being the best moral theory.<sup>253</sup> Yet this does not give a person any epistemological account about what is good or bad. One either does an act because he knows it is the right thing to do on account of his intuition, or he does something because there is some form of divine revelation that guides him about how to act.<sup>254</sup> The criticism that Moreland levels against natural law, regardless of which form of non-naturalism he holds, is a more significant objection to his view than it is to natural law. Moreland does not offer an adequate epistemological account. He doesn't explain why his procedure yields knowledge or justified belief rather than mere guesses.<sup>255</sup> Moral argument is pointless given his position as reason is abandoned and one knows 'intuitively' what to do.

Moreland seems to be open to some serious objections. As an intuitionist, the accounts that are given are open to standard objections to intuitionism. It is not surprising that he falls into intuitionism, given his embrace of Moore's 'naturalistic fallacy.' Also, his account makes the nature of things irrelevant for deciding how one ought to act. This may not be a problem for some philosophers, but for Christians it is problematic, given the differences between the nature of men and that of other animals. This criticism again appeals to a human nature that he has rejected. Lastly, Moreland can be charged with accepting too quickly the 'naturalistic' and 'Is-ought' fallacy before investigating whether these are even well founded.

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<sup>253</sup> Moreland p. 112

<sup>254</sup> Pojman, p. 155

<sup>255</sup> Michael Wreen made this point in correspondence in the Fall of 2009.

#### ***D. The Real Distinction between Classical Natural Law and Neo-Naturalism***

What then is the real distinction between classical natural law and neo-naturalism? Of course the two are the same in many ways, but the classical natural law account has an implicit theism at its foundation, upon which is based a transcendent standard of morality.<sup>256</sup> Neo-naturalism avoids references to any transcendent basis for goodness.<sup>257</sup> In fact the originator of neo-naturalism, Philippa Foot, proudly calls herself a card-carrying atheist.<sup>258</sup>

One can hardly fault neo-naturalists as seeing a system of ethics without God as a potential strength of their position. Some even call the ‘New’ natural law theorists, like John Finnis, neo-naturalists.<sup>259</sup> Finnis appeals to both non-Christian and non-religious philosophers who argue against homosexuality on the basis of reason alone. For example, in his article about same-sex relations, Finnis explains the views of five non-Christian and non-religious philosophers who argue against homosexuality in this way.<sup>260</sup> One would expect this sort of thing as the results of natural law ethics are accessible to all people. The similarity between this view and neo-naturalism is the emphasis on reason for action and no indication of any divine guidance or basis for goodness. Because each

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<sup>256</sup>It is important to note I am only contrasting a classical Thomistic view of natural law and not any of the agnostic or atheistic versions with neo-naturalism.

<sup>257</sup> This was the thrust of Moreland’s aforementioned criticism of the immanent purpose view. The immanent purpose view he refers to says both that objective values exist and that there is no transcendent meaning in life.

<sup>258</sup> Philippa Foot interview on “The Grammar of Goodness” in *The Harvard Review of Philosophy*, XI (Cambridge: 2003): p. 35, <http://www.hcs.harvard.edu/~hrp/issues/2003/Foot.pdf>

<sup>259</sup> Both Kenneth Einar Himma of Seattle Pacific University and William R. Long classify Finnis this way.

<sup>260</sup> John Finnis, *Law, Morality, and “Sexual Orientation”*, the pdf can be found online at Princeton’s website: <http://www.princeton.edu/~anscombe/articles/finnisorientation.pdf>

of these philosophers uses reason and base moral judgment on what is perceived as an intrinsically moral act, one need not have any theological basis to decide whether homosexual acts are wrong. Philippa Foot, as a philosopher who promotes a form of virtue-ethics, also appeals to specific virtues as standards that can be used for moral decisions. Many hold that one need not appeal to any transcendent standard beyond what is virtuous for man to make moral decision. Foot's neo-naturalism does base moral goodness on human nature. As she writes, "To determine what is goodness and what defect of character, disposition, and choice, we must consider what human good is and how human beings live: in other words, what kind of a living thing that a human being is."<sup>261</sup>

The apparent strength of the neo-naturalist view comes from some significant features. First, the neo-naturalist does not have to grapple with or even defend the existence of God as a basis for ethical decision. Second, the neo-naturalist can appeal to what is seen as intrinsically right or wrong to make judgments about the morality of certain acts. If a person's act violates some basic good essential to man, the action is bad. Or, suppose a person's action undermines the virtue towards which the 'ideal' person should strive. This act would also be bad. Third, it is a strength of the position to develop an objectivist account without appealing to a deity in that there will be a broader consensus to appeal to. It is more likely that people would be willing to accept an account that is simpler. On these accounts, one would not have to deal with the extra metaphysical baggage that an appeal to a deity entails.

There are a couple of problems with this view according to many in the Christian philosophical tradition. One is based on whether one can have a basis for ethics without

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<sup>261</sup> Foot, *Natural Goodness*, p. 51.

God's existence. Another involves how the ethicist who ignores the question of God's existence may actually be losing what could be a robust metaethical basis for his theory if it is true that God really exists. A third is that if God exists there may be more that is morally entailed by this existence- perhaps certain obligations to Him. The first two problems may seem to be making the same point. The difference between them is the first calls into question whether anything is actually wrong or evil if there is no God; the second touches on what God's existence can give you beyond a minimum foundation for justifying judgments of good and evil.

The first problem is that the neo-naturalist seems to hold two incompatible positions. First, neo-naturalists hold that there are objective moral truths. Second, they believe that the existence of God is not really a significant question for ethics. The problem with holding these two views, as many atheists and theists have pointed out, is that these two beliefs seem to be in conflict.<sup>262</sup> As John Rist notes, "Where we have found common ground with the Nietzscheans is in the fact that without God there can be at least no objective *moral* truth."<sup>263</sup>

Also, if God exists this certainly may actually provide us with some insight about moral decision-making. If the philosopher is really a seeker after truth and knowledge about reality, and if God really exists, then God's existence and his nature certainly at least have the *possibility* of contributing something to our moral understanding. God's existence may supplement our moral framework for making moral decisions. Perhaps

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<sup>262</sup> Bill Craig and Norman Geisler are both prominent theists who argue that without God's existence, there is no basis for morality. Craig makes this point in his book, *Reasonable Faith*, (Wheaton: Crossway Books, 1994): pp. 88-90. Geisler makes the same point in his book *Christian Ethics* (Grand Rapids: Baker Books, 1989). Atheistic philosopher Friedrich Nietzsche (see "The Gay Science," in *The Portable Nietzsche*, ed. and trans. W. Kaufmann, New York: Viking, 1954) also argues that if God does not exist then there is no basis for morality.

<sup>263</sup> John Rist, *On Inoculating Moral Philosophy Against God*, (Milwaukee: Marquette University Press, 2000): p. 95

knowledge of God's existence can also add to understanding how one can know what is good.

There are several potential objections to the theistic explanation for morality. One may argue that morality ends up being reduced to a sort of divine command theory. Thus, natural law becomes plagued with the objections raised against this view. A second objection is that if one can recognize what is good and evil independent of whether God exists, then it matters little whether he does exist. What this objection confuses is an epistemological and a metaphysical claim. It is not the theist's contention that one must recognize God's existence in order to know whether some act is good or not. That is a mischaracterization of his argument. The theist's argument is that God must exist for there to be a basis for good and bad acts. Recognizing good and bad acts is an epistemological matter. The foundation for the morality of acts is God's existence. The classical natural law theorist would make a distinction between a proximate and remote end of an act.<sup>264</sup> The proximate end is the goodness of the act itself and how the act is in accord with reason. The remote end is the eternal law against which the act can be judged.

Given the classical natural law account of the quest for the attainment of happiness, especially in the afterlife, one might expect there to be a difference in this respect with the neo-naturalist. This expectation is confirmed. Consider Foot's explanation of happiness:

In terms of the contemporary discussions of happiness and its relation to virtue, I should describe my own view in the following terms. I agree with John McDowell that we have an understanding of the word 'happiness' that is close to Aristotle's *eudaimonia* in that operation in accordance with the virtues belongs to its

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<sup>264</sup> See Joseph Pilsner, *The Specification of Human Actions in St. Thomas Aquinas*, New York: Oxford University Press, 2006

meaning. In my own terminology ‘happiness’ is here understood as *the enjoyment of good things*, meaning enjoyment in attaining, and in pursuing, right ends.<sup>265</sup>

Happiness on Foot’s account is in accord with Aristotle. Happiness is only considered from the standpoint of this life- which is not an unreasonable position if this life is all there is. Virtue is necessary for its attainment, but, due to the misfortune that life can bring, it can be out of reach for even the best of men.<sup>266</sup>

The classical natural law account of happiness is different from Foot’s. It is because the classical natural law theorist’s examination of happiness extends beyond this life. As was discussed previously, the constitutive goods of the exercise of virtue are necessary, but not sufficient conditions for attaining the superordinate good of happiness. Contrary to Aristotle, who holds happiness is attainable in this life, the classical natural law theorist, at least in the Christian tradition, holds that happiness is attainable only in the next life if one lives well now. Of course this touches on a theological belief, which may or may not be true.

Thus, the neo-naturalist and the classical NL theorist part company in two ways. First, the neo-naturalist holds that it is unnecessary to postulate anything beyond the natural world to account for the goodness of certain acts. The natural law theorist would disagree with this assessment, and many theist and atheist philosophers recognize the slide towards nihilism without a transcendent basis for goodness.<sup>267</sup> Second, the neo-naturalist focus deals only with happiness in this life. Of course the neo-naturalist may be thought to have a particular strength in this view given that happiness is attainable in this life. It must be reiterated that the natural law theorist doesn’t hold that temporary feelings

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<sup>265</sup> Foot, *Natural Goodness*, p. 97

<sup>266</sup> Ibid.

<sup>267</sup> Consider the aforementioned work Rist has written as well as Nietzsche.

of happiness are unobtainable, especially to those who have led virtuous and fortunate lives. However, if the classical natural law account is true, then one need not say those millions who have lived virtuous but unfortunate lives have no chance for happiness.

One last point is very important to emphasize. I have only described the difference between classical (*i.e.*, a Thomistic) natural law and neo-naturalism. One claim I have not made is that an agnostic or atheistic reconstruction of natural law is impossible. I do not think it is. Larry Arnhart has done this very thing and explains how human nature, virtues, and the end need not refer to the supernatural for morality.<sup>268</sup> This reconstruction looks identical to neo-naturalism. This may be expected as both Arnhart and Foot rely heavily on the writings of St. Thomas—minus any theological underpinnings. Again, there can be great advantages to such an approach. However, insofar as such a view overlooks an important aspect of reality, I think it is insufficient.

### ***E. A Comparison between Natural Law and Divine Command Theory***

Because a classical natural law theory requires the existence of God in order to make sense of morality, it is often attacked as if it is a divine command theory. Although the two are similar in recognizing God's existence and even a hierarchy of goods, they are not identical. As such, and contrary to popular belief, natural law theory is not open to the same criticisms made of divine command theory. This section explains some

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<sup>268</sup>Larry Arnhart, *Darwinian Natural Right: The Biological Ethics of Human Nature*, Albany: State University of New York Press, 1998. For a thorough response to Arnhart see J. Budziszewski, *The Line Through the Heart: Natural Law as Fact, Theory, and Sign of Contradiction*, (Wilmington: ISI Books, 2009): Chapter 5.

similarities and key differences between the two theories, along with the ways natural law escapes some of the criticism made of the divine command theory.

Consider the tenets of divine command theory before contrasting it with natural law theory. Ethicist Scott Rae writes, “A divine command theory of ethics is one in which the ultimate foundation for morality is the revealed will of God, or the commands of God found in Scripture.”<sup>269</sup> Pojman says that in the divine command theory moral principles “derive their validity from God’s commanding them.”<sup>270</sup> Rightness and wrongness, according to the traditional divine command theory, simply means being willed by God.<sup>271</sup> Divine command theory also believes that God’s will is revealed in sacred texts. Thus, divine command theory emphasizes God’s will for morally right acts, are valid because of God’s will, and right acts are revealed in sacred texts.

In contrast to divine command theory, one can be a natural law theorist and still deny divine commands as revealed in the holy books of all the different religious traditions. This is certainly the case when one looks at the historical record of many of the ancient Greek philosophers.<sup>272</sup> Consider the writing of Cicero,

True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions... It is a sin to try to alter this law, nor is it allowable to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is God, over us all, for his the author of

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<sup>269</sup> Scott B. Rae, *Moral Choices: An Introduction to Ethics*, (Grand Rapids: Zondervan Publishing, 1995): p. 31.

<sup>270</sup> Pojman, *Ethics: Discovering Right and Wrong*, p. 181.

<sup>271</sup> Ibid. Although Pojman explains this traditional version of divine command, Scott Rae explains that other versions say what is right or wrong is so not just because God commands it, but also because it is so in accordance with his nature. See Rae, *Moral Choices*, pp. 31-33.

<sup>272</sup> Although ancient Greek philosophers are not Christian natural law theorists, they still hold the ontological basis for morality is natural law and that God is a transcendent basis for morality.

this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, even if he escapes what is commonly considered punishment.<sup>273</sup>

Cicero clearly holds a natural law position without adhering to any religious tradition.

Although Greek philosophers appealed to reason, they would not have recognized as authoritative the religious teachings expressed in Judaism or any ‘revealed’ religious system. This is especially true given that Christianity and Islam were not even around at the time the ancient Greek philosophers wrote. Finnis argues for this very point about Socrates, Plato, Aristotle, Plutarch, and the Stoic Musonius Rufus, using the power of reason to show that acts were intrinsically immoral apart from any sacred writing.<sup>274</sup>

In addition, some classify the divine command theory as a kind of non-naturalism.<sup>275</sup> That is not to say divine command theory is non-cognitivist. In a theory that is non-naturalistic, as Pojman explains, “ethical conclusions cannot be derived from empirically confirmed propositions.”<sup>276</sup> The two major cognitivist views that are non-naturalist are intuitionism and divine command theory. According to intuitionism, what is right or wrong is known through intuition alone. In divine command theory, according to Pojman, revelation confirms the right thing to do and is not based on independent reasons for acting.<sup>277</sup>

One cannot classify natural law theory as a non-cognitivist theory given that it is a kind of naturalism. There are certain tenets of ethical naturalism and neo-naturalism to which the natural law theorist would also hold. These three theorists all can hold that

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<sup>273</sup> MARCUS TULLIUS CICERO, *De Re Publica*, book 3, paragraph 22. *De Re Publica, De Legibus*, trans. Clinton W. Keyes, p. 211 .

<sup>274</sup> Finnis, *Law, Morality, and Sexual Orientation*, p. 3-6.

<sup>275</sup> Louis Pojman describes this in his aforementioned work.

<sup>276</sup> *Ibid* p. 155, 182.

<sup>277</sup> *Ibid*. Although divine command theory is not usually explained this way, one can wonder where one would receive what the divine commands are if not from revelation.

goodness is a natural property in things. They also all hold that the good is knowable. Thus, natural law theory differs from divine command theory in that one is a naturalistic theory and the other is not.

There is other evidence that natural law theory is not a divine command theory.<sup>278</sup> Some versions of divine command theory say that something is right if God wills it. The natural law theory says that God wills something because it is right. The natural law theorist takes the second horn of what has become known as the Euthyphro dilemma, and the divine command theorist often takes the first horn.<sup>279</sup> The non-theist may then respond, “If you think God wills something because it is right, then the goodness does not entail God, because the goodness of the act is intrinsic to the act.” This criticism basically says that God’s existence isn’t needed to account for ethical truth. This is partially true, but overlooks one aspect of morality according to the theist. The natural law theorist agrees that goodness is intrinsic to the act, but also adds that there is a transcendent standard against which one can measure the act as good or bad. This transcendent standard is of course God. That is not to say there is not a measure of goodness in the act itself. According to the classical natural law theory, as I have explained it, goodness is seen both in the act and as measured against a transcendent standard of goodness. Yet, how is it the case that God is still necessary given the natural law account?

One must consider two things in natural law theory. First, there is a teleological dimension of all human acts that have varying degrees of importance. Some human acts

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<sup>278</sup>Robert Adams gives a contemporary explanation of divine command theory in his work *Finite and Infinite Goods* (New York: Oxford University Press, 1999). Although natural law theory agrees with Adams’ account and distinction between finite and infinite goods, it disagrees insofar as a natural law theory is different from a divine command theory.

<sup>279</sup>Scott Rae has explained that some divine command theorists admit that God cannot will anything that is against His nature. This position is similar to the natural law position. See Rae, *Moral Choices*, pp. 31-35.

are necessary in order to attain other things. For example, if one doesn't eat or sleep, one would be unable to carry out a variety of other human activities. These are foundational for other acts. Furthermore, one can recognize that a person must develop certain virtues to become a good person. There are a very specific and complex set of virtues that may be actualized in a number of ways. Anytime we have discovered specified complexity within the sciences a person rightly points to an intelligence behind the information. Similarly, the specified complexity one finds in the criteria necessary for a man to be considered to be good bears the marks of having an incredible design. It is the natural law theorist's contention that God is the best explanation for this design. Second, consider a parallel between natural law and civil laws in our society. Societal laws are only followed because someone with a mind has formulated them. If societal laws came about because of a computer typographical error then there is no reason to follow them because they are accidental. Similarly, if there is no mind behind the natural moral law then there is no reason to follow that either. Thus, according to natural law theory God is the best explanation for the design or teleology intrinsic to both human acts and the virtues of a good man in addition to the objective force of a natural law given by a being with a mind. If the natural law theorist is correct about this then God is necessary.

This part of the natural law treatment is a good segue to discuss the moral argument for God's existence. Although there have been various forms of this argument,<sup>280</sup> I will only deal with one popular explanation of it. I will summarize C.S. Lewis's argument in *Mere Christianity*:

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<sup>280</sup>One may consider St. Thomas's fourth way to be a variant of the moral argument. Kant offered a postulate that said God is a morally necessary presupposition—not something that could be proved. Hastings Rashdall offers a moral argument in *The Theory of Good and Evil: A Treatise on Moral Philosophy*, Volume I (Oxford: The Clarendon Press, 1907).

1. There must be a natural law that universally applies to all people to make sense of (a) moral disagreement, (b) moral criticism (e.g., the Nazi's are wrong), (c) our obligation to keep promises, and (d) the reason we make excuses for breaking this law, as we all do.
2. But the source of this requires a Law Giver since it (a) gives commands (as lawgivers do) and (b) is interested in our behavior (as moral persons are).<sup>281</sup>

Lewis explains that we can each look inside ourselves and discover that there is a law that we feel as if we ought to obey.<sup>282</sup> This law communicates a message about what we ought to do, and makes “me feel responsible and uncomfortable when I do wrong.”<sup>283</sup> Now a person would feel no obligation in a scenario where he drops scrabble pieces on a board and it spells ‘go out.’ When the pieces fall the laws of gravity aren’t commanding him to do something. The natural law, however, has a binding force, which derives from a moral Law-Giver.

Many objections have been brought against the moral argument. John Hick summarizes the problem:

The basic assumption of all argument of this kind is that moral values are not capable of naturalistic explanation in terms of human needs and desires, self-interest, the structure of human nature or human society, or in any other way that does not involve appeal to the Supernatural. To make such an assumption is to beg the question.<sup>284</sup>

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<sup>281</sup>C.S. Lewis, *Mere Christianity*, (New York: Harpers Collins, 2001). Norman Geisler details more of Lewis's argument in the *Baker Encyclopedia of Christian Apologetics*, (Grand Rapids: Baker Books, 1999): 500.

<sup>282</sup>Lewis writes, “The only packet [i.e., letter] that I am allowed to open is Man. When I do, especially when I open that particular man called Myself, I find that I do not exist on my own, that I am under a law; that somebody or something wants me to behave in a certain way.” (Ch. 4, p. 25)

<sup>283</sup>Ibid.

<sup>284</sup>John H. Hick, *Philosophy of Religion*, (Englewood Cliff: Prentice-Hall, 1973): 28.

Whether one reasons from objective moral values or the voice of conscience to a transcendent Ground of Value, one is simply begging the question in assuming God is a better ground than a naturalistic explanation.<sup>285</sup>

Although it is far beyond the scope of this dissertation to offer the needed defense for the moral argument, and I will not attempt to extricate it from a number of difficulties, I think several things work in its favor to support the existence of God. Consider the following aspects of the natural moral law. Francis Beckwith explains, “moral norms are a form of communication, an activity in which one mind through statements conveys meaning to another mind.”<sup>286</sup> Also, Gregory Koukl writes that the natural moral laws “have a force we can actually feel prior to any behavior. This is called the incumbency, the ‘oughtness’ of morality....It appeals to our will, compelling us to act in a certain way, though we may disregard its force and choose not to obey.”<sup>287</sup> Beckwith notes that this moral law can be illusory, accidental, or from a Mind (as it transcends all other minds).<sup>288</sup> If it is merely illusory, then there can be no moral conflict or progress—for all morality is just an illusion. Yet this seems to be a pretty hard pill to swallow. One may say he believes morality is an illusion, but shows his true belief the moment he is wronged. If it is merely accidental, then a difference in morality is comparable to the difference in the color of people’s skin.<sup>289</sup> However, a consideration of morality as accidental means that following moral laws is equivalent to following the command of the scrabble pieces falling. It seems that neither the binding force or the communicative aspects can be

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<sup>285</sup>Ibid.

<sup>286</sup>Francis J. Beckwith, “Why I am Not a Moral Relativist,” in *Why I Am a Christian*, (Grand Rapids: Baker Books, 2003): 26.

<sup>287</sup>Gregory P. Koukl, *Relativism*, (Grand Rapids: Baker Books, 1998): 166.

<sup>288</sup>Beckwith, 27.

<sup>289</sup>Beckwith, 27-28.

explained according to this account.<sup>290</sup> Therefore, God's existence makes both the binding force of morality and its communication coherent.

How can one who defends the moral argument answer Hick's objection? Two ways immediately come to mind. First, to his charge that those promoting the moral argument don't consider naturalistic explanations for morality, I find this to simply be untrue. As far back as 1885 William Sorley dealt with and claimed to have refuted these naturalistic explanations. As William Lane Craig explains:

In his *The Ethics of Naturalism* (1885) he had refuted the historical, evolutionary approach to ethics, and now he turns to refute psychological, sociological explanations of value. The fundamental error of all these approaches is that they confuse the subjective origin of our moral judgments and the objective value to which the judgments refer. Just because the origin of our moral judgments can be historically or sociologically explained does not mean that there are no objective, corresponding values in reality.<sup>291</sup>

Now it may be the case that Sorley failed in his attempt, but he certainly considered naturalistic option. Secondly, Craig's explanation is that there can be both a subjective origin—which includes culture, human nature, needs, desires, and the like—and an objective, transcendent source to which these moral norms appeal. Hick's objection may simply be presenting a false dichotomy to avoid the implications of a transcendent source. This explanation by no means exhausts the extent of the work that needs to be done to find a reasonable defense of the moral argument, but it does present some potential responses to Hick's position.

One must properly understand what is being said about the relation between the natural law and God's existence. The natural law claim is not to say that people cannot see the goodness in certain acts if they do not believe in God. Nor is the claim being

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<sup>290</sup>Ibid.

<sup>291</sup>William Lane Craig, *Reasonable Faith*, (Chicago: Crossway Books, 1994): 89.

made that unless people believe in God they cannot make judgments about what is morally good. What is being said is that in the classical natural law account there is a transcendent measuring rod against which the goodness of certain acts can be judged. The natural law theorist claims this is the eternal law, of which the natural law is a part.

What is this eternal law? The eternal law, in the classical account, is the divine essence or reason.<sup>292</sup> This eternal law is the transcendent source of the natural law that each person finds within. William May explains:

Thomas taught that all creation—the cosmos and all thing within it—is under the governance of God’s intelligence. Thus the eternal law is the ratio or divine plan of the governance of all things insofar as this ratio or divine plan exists within the mind of God himself as the ruler of the universe. The eternal law directs the entire created universe and the activity of all created things, including the activity of human persons.<sup>293</sup>

Natural law is taken to be a participation in eternal law.<sup>294</sup> The evidence that men participate in the eternal law comes from, Aquinas notes, “its being imprinted on them, they derive their respective inclinations to their proper acts and ends.... Therefore [rational creatures] has a share of the eternal reason, whereby it has a natural inclination to its proper act and end; and this participation of the eternal law in the rational creature is called the natural law.”<sup>295</sup> Thomas concludes with this explanation:

He thus implies that the light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the divine light. It is therefore evident that the natural law is nothing else than the rational creature’s participation of the eternal law.<sup>296</sup>

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<sup>292</sup> Quod autem ratio humana sit regulavoluntatis humanae, ex qua eius bonitos mensuretur, habet ex lege aeterna, quae est ratio divina .... Unde manifestum est quod multo magis dependet bonitas voluntatis humanae a lege aeterna quam a ratione humana: et ubi deficit humana ratio, oportet ad rationem aeternam recurrere. (ST, IaIIae, Q 19, a.4)

<sup>293</sup> William E. May, *An Introduction to Moral Theology*, (Huntington: Our Sunday Visitor Publishing, 1991): 39.

<sup>294</sup> ST, I-II, Q. 91, Art. 2.

<sup>295</sup> Ibid.

<sup>296</sup> Ibid.

This is the explanation of eternal law and its distinction from natural law. This explanation says that the binding obligation of moral norms comes ultimately from the eternal law.

Despite this arrival at God's existence in a classical natural law approach, it differs from one that is a divine command. Although there is a difference, there are two significant ways that natural law theory complements a divine command approach without having to answer some of the serious charges brought against it. One thing a natural law theory is open to, although it is by no means required by it, is the possibility of divine revelation as a guide. The natural law theorist can acknowledge that the different 'holy books' of the various world religions may have conflicting ethical principles. However, just because there is disagreement that does not mean that all the books are wrong. Thus, if one or more of the 'holy books' are true, it or they could provide a guide in cases in which the human mind cannot find a clear answer to a moral problem. This could be especially helpful insofar as the natural law theory holds that reason is a guide for making moral decisions. If reason fails to ascertain which action is the good one in a given scenario, then divine revelation certainly has the possibility of being helpful. It would be incumbent upon the natural law thinker to sort through which, if any, of the versions of divine command is the one that is true. A second way natural law theory complements the divine command approach arises from a consideration of what these commands are. The natural law theorist can point to the common ethical values that are taught in the various 'holy books.' These values, on the classical natural law account, are included in the different works because each person has access to a transcendent natural law no matter what religion he follows. Although the natural law

theorist allows for the possibility that some deity spoke to each individual who wrote the various works about the common moral standards, the transcendent law seems to be a more plausible explanation of the similarities in each of the works.<sup>297</sup> Again, the NL theorist doesn't hold that every act can be measured against this transcendent moral framework. The NL theorist can then attribute similarities in the different religious traditions to NL, and differences in the various moral perspectives to errors in reasoning. It must be reiterated that sorting through the various religious traditions to determine which, if any, is correct remains a task that lies far beyond the scope of the present work.

There were three significant features of this chapter which help one to recognize where the tensions lie between natural law and neo-naturalism. The first is the argument that one should use different terms to refer to the different types of naturalism. Confusion abounds in the discussion. Using terms consistently that correspond to each of the different types of naturalism is most useful for clarity and understanding. Adopting different terminology will also add to understanding where the real tension lies between natural law and neo-naturalism. Second, one can see the real distinction between natural law and neo-naturalism focuses on the question of God's existence. If God exists, as the natural law theorist claims, then there are morally significant implications. The neo-naturalist does not really see this question as being that significant to the pursuit of moral philosophy. The third feature of this chapter drew the distinction between natural law and divine command theory. Many charge natural law with being identical to divine command. They will then argue against divine command theory and think in doing so that they are bringing the same charges against natural law theory. Natural law theory is

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<sup>297</sup> This can be ruled out only if one can present a plausible argument against the existence of a deity.

much more nuanced than these critics understand. Because natural law accepts elements of naturalism, neo-naturalism, and divine command theory, the moral truths discovered from these other approaches can easily be assimilated into natural law theory. These three theories can complement a natural law approach. Natural law theory, therefore, has allies among all these ethical theories as it may draw upon the strengths of each view, while avoiding many of their weaknesses.

## Chapter 6

### NATURAL LAW AND DOUBLE EFFECT

Patients have many different fears about going to hospitals. Although bizarre incidents like leaving things in patients after surgery are among them, it is probable that a greater percentage of the time the patient has fears about how he will be treated.<sup>298</sup> These fears are warranted at least some of the time.<sup>299</sup> Although each hospital takes great pains to do what is ethically best, there remains a number of vexing moral problems that makes many nervous about what the right action is. It is the goal of this chapter to briefly expose the ways some principles taken from natural law ethics can give guidance in medical ethics.

Moral theories need to take into account the dilemmas people encounter daily in the realm of medicine.<sup>300</sup> Due to the complexities of reality, every moral evaluation should consider all relevant elements in order to reach a right judgment. A person's moral

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<sup>298</sup> Although crazy things occasionally happen, the emphasis here is that people are likely to be much more concerned with the ethics of health-care workers. Although people hear of things like this: "A 10-inch metal surgical device was left inside a patient for a month and when he pointed out the problem to doctors, he was told he may need a psychiatrist." <http://kdkainvestigators/surgery.retractorUPMC.2.651494.html>. More practical considerations probably influence their thinking much more.

<sup>299</sup> Much of the recent fear can also be seen from the reactions people have had to the suggested changes in healthcare in America. The natural law approach does not necessarily relieve fears about issues of payment for treatment or level of care, but can significantly reduce fears about those making the decisions for care.

<sup>300</sup> See Higgs, R. "Certainty and Uncertainty: Medical Ethics and the General Practitioner," *Family Practice* 1985 Dec;2(4):193-4; Pattison, S and H.M. Evans. "Cause for concern: the absence of consideration of public and ethical interest in British public policy," *Journal of Medical Ethics* 2006; 32: 711-714.

judgment is only as good as the breadth and accuracy of the data used in making the decision.

Among other things, this chapter deals with some tools the natural law theorist offers to medical ethics. These include an exposition of the doctrine of double effect and proportionate reason- not necessarily a defense of them. With this in mind, let us proceed to the divisions of this chapter. The first section introduces the case of Tony Bland for consideration. The second section explicates the difference between proportionate and disproportionate treatment. The third applies the doctrine of double-effect (DDE) to Tony Bland's case. The last section summarizes my treatment of the classical natural law approach.

#### *A. Patients with Brain Death*

A patient diagnosed as brain dead provides an ideal candidate for consideration of how the doctrine of double effect works in hospitals today. There is great controversy surrounding the type of treatments a patient in a PVS ought to have. Peter Singer presents the case of Tony Bland for consideration.

The case of Tony Bland goes to the essence of this discussion. In 1989 eighteen-year-old Tony Bland suffered serious brain injuries sustained at a football game he was attending. After having been crushed by a crowd, Tony's biological life was saved—i.e., his heart and lungs still functioned—but he suffered a serious brain injury and lost the 'higher functioning areas' that were not associated with the brain stem. The brain damage

was a result of having been deprived of oxygen for such a long period of time after his initial injury. His body was being kept alive only by ‘artificial nutrition and hydration.’

Peter Singer raises the question about whether one ought to continue to sustain the life of a person is suffering from a serious brain injury—like Tony Bland. After explaining the history of recent redefinitions of death—including the whole-brain and higher-brain oriented definitions—he explained that a patient’s organs can be transplanted even if his heart is still beating if he adopts the brain definitions of death.<sup>301</sup> Although the traditional definition of death was a cardiac version—saying a person is alive as long as the heart still beats—the other two definitions were developed to try to take into account what could be done with emerging technology and in order to have more organs available for transplantation. This indicates that science fiction writers were not the only people that imagined keeping the brain alive in a vat separated from the body. The whole brain criterion says that a person is dead, “when there is irreversible cessation of all functions of the entire brain, including the brain stem.”<sup>302</sup> The relevance of the brain stem is that it is primarily responsible for cardiac and respiratory function. This criterion basically says if the machine that operates the cardiopulmonary function is destroyed, then one may be classified as brain dead. The higher brain criterion describes death as evident when “there is an irreversible loss of higher brain functions” because of damage to the cerebrum.<sup>303</sup> The cerebrum is primarily responsible for communication, memory, and imagination. Complete damage to the cerebrum, because it controls these ‘higher functions,’ is seen to take away a human’s personhood.

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<sup>301</sup>Peter Singer, “Is the Sanctity of Life Ethic Terminally Ill?” *Bioethics* Vol. 9 No. 3 (1995): pp. 327-343. Singer primarily draws on the report of the Harvard Brain Death Committee.

<sup>302</sup>Robert Veatch, *The Basics of Bioethics*, (Upper Saddle River: Prentice-Hall, 2003): p. 37.

<sup>303</sup>*Ibid.* 39.

Singer rejects both of the modern criteria to determine death in favor of the cardiac criterion. He writes: “people have enough common sense to see that the brain dead are not really dead.”<sup>304</sup> Even if the brain dead are alive, what he goes on to argue one can still attain the same results that the Harvard Brain Death Committee (the original group that made distinction of brain death in order to have more usable organs for transplant) were seeking if he would only “break out of the intellectual straight-jacket of the traditional belief that all human life is of equal value.”<sup>305</sup> If one does this, he can keep the cardiac definition of death AND still allow for the withdrawal of life-support and distribution of organs from a person whose heart is still beating.<sup>306</sup> The intention involved in ending a patient’s life is not relevant because not all life is of equal value. The patient’s life and organs may be taken because “the patient’s life is of no benefit to her...when the patient is irreversibly unconscious.”<sup>307</sup> Singer adds that there is no sanctity of life in this case because a human’s life is not intrinsically valuable. The primary thing that is valuable is a person that can gain consciousness in this life. There seems to be several problems with this analysis. Those that are least likely to gain consciousness—people in a PVS—are the primary candidates for Singer and the Brain-Death committee’s exploitation (if their description is wrong).

Singer rightly pointed out how the Harvard Brain-Death Committee introduced problematic criteria to determine whether someone was dead or not. The problem with this analysis is, as Scott Henderson has pointed out, “brain death fails to correspond to

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<sup>304</sup>Singer, “Is the Sanctity of Life Ethic Terminally Ill?” p. 333.

<sup>305</sup>Ibid. 336.

<sup>306</sup>Ibid. 343.

<sup>307</sup>Ibid.

any coherent biological or philosophical conception of death.”<sup>308</sup> Certainly those labeled as ‘brain dead’ meet the scientific criteria that are used to determine whether something is alive—namely, metabolism, responsiveness, growth, and reproduction.<sup>309</sup> A person who is ‘brain dead’ may continue to respond to stimuli, grow, [re]produce cells, and even deliver children.<sup>310</sup> This seems to be a problem for those who argue that a human is dead. Despite the apparent difficulty this raises, critics can simply avoid the problems of this by saying that the human being is alive, but the human person is not.

There is much discussion about whether someone should be allowed stop certain life-sustaining procedures—like offering ‘artificial nutrition and hydration.’ However, there is an assumption when calling attention to these life-sustaining procedures that all ‘treatment’ is equal. It seems question-begging to assume that providing ‘artificial nutrition and hydration’ are ‘treatments’ when these are the very things keeping each of us alive. There needs to be grounds other than the fact that the delivery mechanism is different for those in a PVS than us for stopping their ‘treatment.’ Babies in the womb, newborns, infants, and adults each have different ways their food is delivered to them. It is not obvious that the mechanism in itself is something that rules out the delivery of food and water to patients in a PVS. However, it may still be the case that the mechanism in itself makes it difficult to administer food and water. This would be a relevant reason and would fall under consideration when examining proportionate and disproportionate reasons.

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<sup>308</sup>D. Scott Henderson, “An Assessment of Brain Death as a Means of Procuring Transplantable Organs.” This paper was delivered at the annual conference of ISCA in 2008. The PDF can be found at <http://www.isca-apologetics.org/papers>.

<sup>309</sup>Gerard J. Tortora and Sandra Grabowski, *Principles of Anatomy and Physiology*, (New York: Harper Collins Publishers, 1993): pp. 6-9.

<sup>310</sup>Rosalie Ber, “Ethical Issues in Gestational Surrogacy,” *Theoretical Medicine and Bioethics*, Vol. 21, No. 2, pp. 153-169.

Another issue emerges from the claim that it is in the best interest of all those involved that the lives of those in a PVS cease. This seems to overlook a couple of things. First, it is hard to see how something that ends a person's life is in his best interest. What is absent from this discussion is whether the person is in pain. It is not apparent that ingesting food and water cause pain. If they do so, then it would be relevant. Second, this seems to confuse the expedient with what is the best. Just because it may be easier on some (or even all) of those involved in caring for a person in a PVS, it doesn't mean it is the best for them. Some virtues can only be realized through trials. If virtues are attributes that we ought to cultivate, then even if it is a trial to serve those in a PVS doing so can help us to build virtue. This is not to say it is the only way to build virtue, but merely that taking care of a loved one in this state gives us an opportunity to do so. Furthermore, I am not saying that this alone provides a demonstration that we ought to sustain the lives of those in a PVS. However, what I am saying is that one should have a reason other than the 'best-interest' argument as what is in our best interest is certainly sometimes something that appears to be difficult.

There is also a controversial view of the human person that is assumed in this discussion. Competing models include the materialist, Platonic (or Cartesian), and Aristotelian view of persons. If a materialist conception of human nature is correct, then it follows that the physician is correct in assuming the brain is the mind, or at best the mind is an epiphenomenon of the brain.<sup>311</sup> However, if an Aristotelian or Platonic

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<sup>311</sup> Richard Taylor provides a survey of the different theories of human person in *Metaphysics*, (Englewood Cliffs: Prentice-Hall, 1963): Chapter 1. One may also find a good survey in *Philosophy of Mind: Classical and Contemporary Readings*, Ed. By David J. Chalmers, Oxford: Oxford University Press, 2002. Chalmers summarizes what each theory espouses in chapter 1. As Chalmers points out, it is intuitively more plausible that thoughts and feelings affect the body than it is to believe that these do not as epiphenomenalism claims. (p. 2) Despite this, Chalmers offers a defense of epiphenomenalism while recognizing the intuitively more plausible claim he has mentioned. (Chapter 27) Some non-reductive

account is correct, brain function is not equivalent to mind function.<sup>312</sup> Arguments have been offered on both sides of the debate. Opposed to a materialist conception, one may consider the substantial identity of a person. A person may remember earning grades when she was young that were hers. She recognizes them as such even if her physical body is no longer the same. One may also remember many experiences that she went through in the past, despite the fact her body has changed. People rightly celebrate the day they were born. These experiences and this recognition provide evidence that there is more to us than merely the material. In fact, our identity is tied up not merely with the material aspects of our body, but our immateriality as well. These arguments may be used to make a *prima facie* case opposing the materialist assumption, and though they cannot be touted as solving the debate, they at least allow for the possibility that the materialist conception could be mistaken. In introducing this doubt, the conservative course of action would be to error on the side of caution. Consider an analogous example. Suppose a person was going to demolish a building with explosives, and they hadn't checked whether anyone was inside before detonating. Those destroying the building would not only be foolish for acting without checking, they would be guilty of a serious

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materialist theories offer functionalist accounts where the relationship between the brain and mind is similar to that as between a computer and a computer software program. In this view, as Pojman notes, "Against reductive materialism, it denies that just one type of brain state can always be correlated with a type of mental event. Just as a watch can be operated by a battery or springs, different material constructions could yield the same kind of mental event." In *Who Are We? Theories of Human Nature*, (Oxford: Oxford University Press, 2006): 227.

<sup>312</sup>John M. Cooper outlines Plato's account of the dichotomy between the senses and the mind in "Sense-Perception and Knowledge," in *Plato 1: Metaphysics and Epistemology*, (Oxford: Oxford University Press, 1999): 355-376. J. P. Moreland & Scott B. Rae argue that many ethical problems occur because of a foundational difference in opinion between which view of human nature is correct. They provide arguments supporting the Platonic view in order to remedy what they perceive to be many of the ethical dilemmas faced in healthcare. See *Body & Soul: Human Nature & the Crisis in Ethics*, Downers Grove: Intervarsity Press, 2000.

wrong if it were discovered that people are inside- especially when people can marshal evidence and arguments in support of this view.<sup>313</sup>

What of the distinction between human person and human being? A problem with this distinction is that it assumes a functionalist view of persons. Those holding to a substance view of human persons can say that this distinction leads to the confusion of a sign of value with the source of value.<sup>314</sup> The source of value is a person's rational nature. He cannot act rationally unless he is already a rational being. Just as my wedding ring is a sign of my marriage, so too acting rationally is a sign of being rational. My wedding ring is not the source of my marriage, and a person acting rationally is not the source of his value. For example, if while on my honeymoon I lose my wedding ring in the ocean, then it doesn't follow that I am no longer married. I'd still remain married even if I have to wait until a later date - after graduate school for example - to afford a new ring. The value of man comes from the kind of being he is- a rational one. Whether conscious or not, as those holding the substance view of persons argue, humans remain rational beings of intrinsic value until death. Other creatures exhibit traits that follow upon having a certain nature. They do not acquire the nature after displaying the trait, but first have the nature in order to display the trait. The metaphysical assumptions on both sides of this analysis should be clear. The assumption that allows certain procedures which kill patients in a coma or a PVS is that a person is just a bundle of properties and not a

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<sup>313</sup>One cannot deny that evidence can also be marshaled in support of materialism. However, there is much more at stake if the materialist is wrong than if the non-materialist is wrong. If the materialist is wrong then their actions cause an end to a human life. If the non-materialist is wrong then their action causes the prolonging of the function of body whose most important function is permanently lost.

<sup>314</sup>Ibid. For those that think that a person is a substance, these distinctions and arguments are misguided at best insofar as they rest upon an incorrect metaphysical foundation. Patrick Lee and Robert George offer arguments in support of a substance view that attempts to show the difference between man and other creatures. There is an emphasis that each person has a unique nature that distinguishes her from other animals. This nature, which includes both the material and immaterial elements, establishes the moral obligation humans have to one another.

substance. This lends itself to the assumption in much of modern thinking that a functionalist view of persons is correct.

Despite the functionalist assumption, if a person is essentially a rational being, then this person does not lose this nature as long as they are living. This is the reason many pro-life advocates argue that an embryo is just as valuable as an adult despite not having a functioning or developed brain.<sup>315</sup> Budziszewski adds, “Nonpersons do not turn into persons, any more than characters, given time, turn into actors....In short, one is either a person or not, just as one is either a human or not. Unborn human beings are not ‘potential’ persons, but actual persons loaded with inbuilt potentialities which still await expression.”<sup>316</sup> The implications for this may extend to non-human animals. If some time in the future it is discovered that there are other rational beings, then these too should be protected. One may certainly make the case that there are other animals that meet this standard. However, as this takes us far beyond the scope of this dissertation, we will have to save this treatment for another time.

### ***B. Proportionate and Disproportionate***

Before examining the scenario in more detail, briefly consider the difference between proportionate (or ordinary) and disproportionate (or extraordinary) means.<sup>317</sup> As Kevin O’Rourke writes, “From an ethical perspective, there is general agreement that

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<sup>315</sup> Patrick Lee. “The Pro-Life Argument from Substantial Identity.” *Bioethics*, Volume 18 Number 3, Oxford: Blackwell Publishing, 2004.

<sup>316</sup> Budziszewski, *The Line Through the Heart*, p. 101.

<sup>317</sup> Recent theologians have often used the terms proportionate and disproportionate to supplant the traditional ordinary versus extraordinary distinction. The terms ordinary and extraordinary mean the same thing as proportionate and disproportionate.

ordinary means must be used to prolong life when fatal or terminal illness threatens and extraordinary means may be forgone in the same circumstances.”<sup>318</sup> The main problem of this distinction comes from describing what constitutes proportionate versus disproportionate means. Philip Devine writes, “An extraordinary remedy is a remedy the agent has a proportionate reason to omit. The only means of prolonging life which are ordinary whatever the circumstances are not remedies but such things as food, water, and air ingested in the usual way.”<sup>319</sup> Devine apparently means the ‘usual’ ways to receive food, water, and air are those that do not require any medical apparatus. Although this description seems pretty straightforward, problems abound in the history of the changing ways these terms were applied. O’Rourke describes this problem,

It seems the main reason for the suggested change in terminology arose from the tendency to interpret the terms *ordinary* and *extraordinary* in an abstract or generic manner; that is, the decision whether a medical means to prolong life was ordinary or extraordinary was often made without reference to the condition of the patient. Using the terms in an abstract or generic sense, only the cost, usual effectiveness, availability of a medical device, and potential pain inflicted would be considered when designating a medical or surgical procedure as ordinary or extraordinary. The overall condition of the patient was not considered until after the terms of ordinary or extraordinary care had been decided. This would often result in confusing terminology. The means in question might be considered ordinary in the abstract, but this designation would be changed to extraordinary once the condition of the patient had been considered. Thus, a respirator or a

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<sup>318</sup>Kevin D. O’Rourke, “The Catholic Tradition on Forgoing Life-Support,” *The National Catholic Bioethics Quarterly*, Autumn 2005, Vol. 5 No. 3, pg. 537. This general agreement to prolong life is based on recognizing the value of each person. This reason can be used to motivate people to protect those dying of famine and genocide. Those dying of famine are not necessarily targeted by other humans, although for political reasons some corrupt and evil regimes do target people seen as their opponents. When aid is offered to countries to stop those dying of hunger, and the aid is kept from people, the famine becomes the means of killing the select group. Although Jonathan Glover mentions in his book *Causing Death and Saving Lives* that one should not resort to speciesism, i.e. the superiority of one species to another, because it is arbitrary and doesn’t cite relevant differences, the case can be made for speciesism, as Michael Wreen has done in his essay, “In Defense of Speciesism,” *Ethics and Animals* 5 no. 3 (1984): 47-60. One can find many arguments supporting the view that speciesism is not immoral like racism and sexism are. Whereas race and sex are accidental to being human, the rationality associated with humanness is essential to man even when it is not expressed.

<sup>319</sup>Philip Devine, *The Ethics of Homicide*, p. 229.

feeding tube might be designated as an ordinary means to prolong life, but after consideration of the patient's condition, it might be considered extraordinary.<sup>320</sup>

This inconsistent use of the distinction is obviously problematic if one were to use proportionate and disproportionate as a way to decide when one is to attempt to prolong a person's life.<sup>321</sup> Devine's description seems to circumvent the problem of changing terminology as the basis for ordinary means are things necessary for every person's continued life, although his language about these things as necessarily provided in the 'usual way' may be challenged.<sup>322</sup>

The traditional natural law approach uses this terminology to help clarify when a treatment is obligatory and when it is not. It is important to understand that proportionate and disproportionate care does not mean what has commonly been associated with the terms.<sup>323</sup>

A treatment that is proportionate is morally obligatory, and one that is disproportionate is not. One uses a proportionate means in a treatment where the benefits outweigh the burdens to the patient and others. One uses disproportionate means in treatments where the burdens outweigh the benefits. Smith and Kaczor make the important point that,

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<sup>320</sup>O'Rourke, p. 542.

<sup>321</sup> One would be remiss to ignore that there are limited medical resources everywhere, and the ceiling of care that can be provided seems boundless. The problem arises from trying to determine what is appropriate care compared to what is heroic. One may say that this judgment is really about weighing what is an ordinary and what is an extraordinary treatment.

<sup>322</sup>Janet Smith and Christopher Kaczor argue that providing food and water (even by artificial means) is always a natural, ordinary way to preserve life. It is therefore proportionate and morally obligatory to provide these as long as the patient can assimilate them. *Life Issues, Medical Choices*, (Cincinnati: St. Anthony Messenger Press, 2007):pp. 112-115.

<sup>323</sup>*Ibid.* Smith and Kaczor explain, "The terms themselves are somewhat misleading, insofar as ordinary and extraordinary normally have to do with how common something is or how frequently it is used. Sometimes it is *medically* ordinary (that is, often used) may be morally optional and thus extraordinary in the moral sense. Similarly, sometimes what is *medically* extraordinary (that is, rarely used) may be morally obligatory and thus is called "ordinary" in moral judgments." (110)

“although *human life* is always a good, in a particular situation a *medical treatment* may be more burdensome than beneficial.”<sup>324</sup>

How does a person judge whether a treatment is beneficial or not? In the case for consideration, the family must take into account the benefits and burdens for the *patient* being treated. The following chart illustrates the considerations that may be factored in when deciding the appropriateness of treatment:

| <b>BENEFITS</b>      | <b>BURDENS</b>                              |
|----------------------|---|
| Prolongs life        | Costly                                      |
| Cures                | Psychologically Repugnant                   |
| Alleviates Pain      | Painful                                     |
| Relieves symptoms    | Unlikely to succeed & provide great benefit |
| Restores Function    | Difficult to administer and experimental    |
| Engenders well-being | Detrimental side-effects                    |

These benefits and burdens are factored into the consideration and constitute whether a person should take a particular action. In difficult cases, a proportionate reason justifies actions that may have two effects- one bad and another good.<sup>325</sup> This principle will be discussed shortly when we introduce the intended/foreseen distinction. The same treatment that is beneficial to one patient may not be to another because of the circumstances. Consider a heart transplant for an otherwise healthy 20 year old versus

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<sup>324</sup>Ibid.

<sup>325</sup> For a detailed analysis about proportionate reason see Connery, John R., SJ, “The Teleology of Proportionate Reason,” *Theological Studies*, 44:3 (1983:Sept.) p.489-496; Johnstone, Brian V. CSSR, “The Meaning of Proportionate Reason in Contemporary Moral Theology,” *Thomist; a Speculative Quarterly Review*, 49:2 (1985:Apr.) p.223-247; Kaczor, Christopher, *Proportionalism and the Natural Law Tradition*, (Washington D.C.: CUA Press, 2002): p. 39-44; Janssens, Louis, “St. Thomas Aquinas and the Question of Proportionality,” *Louvain Studies* 9 (1982): 26-46.

one for a 90 year old whose body is riddled with cancer. Although the procedure is the same, the burdens and benefits for the patient are significantly different.

Admittedly, there is an aspect of this analysis that is evidently less clear than may be preferred regarding the morality of all decisions regarding particular cases. This is the subjective nature that may constitute some of the 'burdens' upon the family- including cost of care. The cost of care may not be burdensome to some families, and it is to others. The previous chart shows objective factors for consideration. However, there are certainly non-objective factors that can play a role in the decision. Despite this, objective factors should be the preferred elements upon which to make a decision as they provide more concrete grounds to measure the morality of the act.

It is important to expose how the apparent similarities between Singer's position and that of the natural law rest on altogether different premises. First, both views allow for the removal of life support for patients in a PVS. However, the nuances of the justifications for this action are different. The natural law view only allows for removal of food and water if a person's body can no longer assimilate it. Singer allows it if a person has been diagnosed as irreversibly unconscious. Also, although both views say one can be justified in allowing someone to die, each offers a significantly different reason for this justification. Singer says intention doesn't matter when allowing a person to die. The distinction between intended and foreseen effects is irrelevant in his view. The natural law view says the intention is extremely important as is the difference between intended and foreseen effects. In sum, although the actions that Singer and the natural law view allow are superficially similar, the ethical account given for justification is extremely different.

### *C. Application of DDE*

Now we should consider what can be discerned in the scenario with Tony Bland. In addition to the object, circumstances, end, and virtue- the natural law theorist has another tool at his disposal. This can help one discover what the good action was with regards to Tony Bland, and is especially important when a person confronts a moral dilemma. This tool of moral analysis when there is a dilemma is called the principle of double-effect. Its use consists in analyzing the different ends and objects under consideration in an action. Understanding this may aid a person to make good decisions in some very difficult cases.

The principle of double-effect has been used in medical ethics to help people make decisions when two effects are foreseeable from one act - one good and the other bad.<sup>326</sup> Simon Blackburn has defined the principle of double-effect as: “A principle attempting to define when an action that has both good and bad results is morally permissible.”<sup>327</sup> The classic text discussing the principle of double-effect is found in Thomas Aquinas. He writes,

Nothing prevents that there be two effects of one act: of which the one is in the intention, but the other is outside the intention. However moral acts take their species from that which is intended, not however from that which is outside the

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<sup>326</sup>Double-effect reasoning has a long and varied history. Christopher Kaczor writes, “The history of double-effect reasoning (DER) has been shaped in its most important aspects by Thomas Aquinas’s thirteenth-century *Summa Theologiae*, in particular its treatment of self-defense.” *Proportionalism and the Natural Law Tradition*, (Washington D.C.: The Catholic University of America Press, 2002): p. 23. Some people attribute double-effect reasoning to French Jesuit Jean Pierre Gury and not to St. Thomas. However, even if Gury popularized the principle, St. Thomas may have been the first to provide an initial explanation of this doctrine in the *Summa Theologica* II-II 64.7.

<sup>327</sup>Simon Blackburn, "Principle of double effect" *The Oxford Dictionary of Philosophy*. (Oxford University Press, 2008) *Oxford Reference Online*. Oxford University Press. Marquette University. [www.oxfordreference.com.libus.csd.mu.edu/views/ENTRY.html?subview=Main&entry=t98.e2506](http://www.oxfordreference.com.libus.csd.mu.edu/views/ENTRY.html?subview=Main&entry=t98.e2506)

intention, since it is *per accidens*, as is clear from things said before. Therefore, from the act of one defending himself, a two-fold effect is able to follow: one the preservation of his own life, the other however the death of the aggressor. Therefore, an act of this type, from the fact that the preservation of one's own life is intended, does not have the character of the illicit, since it is natural to anyone to preserve himself in his being insofar as he is able. Nevertheless, it can happen that some act proceeding from a good intention be rendered illicit, if it is not proportioned to the end. Therefore, if someone for the sake of defending his life uses more force than is necessary, it will be illicit. If however he repels the violence moderately, it will be a licit defense. For according to rights, it is licit to repel force with force with the moderation of a blameless defense. Nor is it necessary for salvation that a man forgo an act of moderate defense to that he might avoid the death of another, since man is held to provide more for his own life than for the life of another. But since it is not licit to kill a man, except for public authority acting for the common good, as is clear from what was said above, it is illicit that a man intend to kill a man, so that he might defend himself, save for him who has public authority, who intends to kill a man for his own defense referring this to the public good, as is clear in the case of a soldier fighting against the enemy, and an officer of the law fighting against thieves. Although even these too would sin, if they were moved by private animosity.<sup>328</sup>

This explanation of self-defense is the passage often cited as an example of an act that has two effects. A person may defend himself and in doing this accidentally kill the person attacking him. Similarly, many medical treatments have multiple effects- some good and some bad.<sup>329</sup> Heinrich Rommen says of double-effect, "It is morally permissible to perform an act (whether of commission or omission) good or indifferent in itself from

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<sup>328</sup>St. Thomas Aquinas, *Summa Theologiae*, II-II, 64.7.

<sup>329</sup>David Mapel explains this principle as: "The central idea of the Doctrine of Double Effect is that an act that is intended to have the effect of harming a person as a means to our ends is morally worse, other things being equal, than an otherwise identical act that brings about harm to a person as a foreseen but unintended effect." David R. Mapel, "Revising the Doctrine of Double Effect," *Journal of Applied Philosophy*, vol. 18, no. 3 (2001): p. 257. Mapel's article powerfully critiques the doctrine of double effect espoused in Warren Quinn's 1993 article, "Actions, Intentions, and Consequences: The Doctrine of Double Effect," in *Philosophy and Public Affairs*, Vol. 22 no. 1, and Jeff McMahan's 1994 article, "Revising the Doctrine of Double Effect," in *Journal of Applied Philosophy* vol. 11, no. 2: pp. 201-212. He explains two views that try to revise this principle on different grounds. Warren Quinn argues that it is permissible to use another person as a means to our end unless some right is violated. Jeff McMahan argues that it is impermissible to use another person as a means to our end unless we have a moral duty to do so or the other person has provided consent. Mapel shows the problems of these views. For the historical development of this principle before 1950 see Mangan, J. T., 'An Historical Analysis of the Principle of Double Effect', *Theological Studies*, Vol. 10, 1949, pp. 41-61, at p. 43. For a recent explanation see Sophie Botros "An Error About The Doctrine of Double Effect," in *Philosophy* (1999), 74: 71-83 Cambridge University Press.

which follow a good effect and a bad effect, provided (a) that the good effect follows from the act at least just as immediately as the bad effect, and it not obtained by means of the latter; (b) that the good effect alone is intended, the bad effect though foreseen being merely permitted; and (c) that the good resulting from the act outweighs or equals the evil.”<sup>330</sup> Philip Devine summarizes what this principle entails.

It is sometimes permissible to perform an act having as a consequence (e.g.), that someone dies, where it would be forbidden to kill. It is sometimes permitted to do indirectly what one may not do directly. It is sometimes permitted to act, foreseeing a consequence one is not permitted to intend.<sup>331</sup>

The reason for allowing bad effects, or at least explaining how one is not responsible for them, is one may foresee certain consequences of an act that are not intended.<sup>332</sup>

This principle of double-effect is also structured in a way that does not allow for an ‘end justifies the means’ type mentality. However, this principle (and natural law theory for that matter) *never* justifies or permits using an ‘evil’ means or ‘bad’ means for a good end. The reason for this is the same that said evil that enters into the three moral determinants corrupts the entire act. On the contrary, the structure of this principle says

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<sup>330</sup>Heinrich A. Rommen, *The Natural Law*, (Indianapolis: The Liberty Fund, 1998) p. 197

<sup>331</sup>Philip Devine, *The Ethics of Homicide*, p. 117.

<sup>332</sup>The way this may be worked out in the case of a boat that is overloaded with people is discussed by Philip Devine. He argues the intention for those that choose to abandon the boat is not to commit suicide but to preserve the lives of those in the boat. See Philip Devine, *Natural Law Ethics*, pp. 96-97. One should certainly not overlook the debate surrounding whether there is a difference between what is ‘intended’ and ‘foreseen.’ A complete discussion of this debate is beyond the scope of this work, but certainly those holding to the principle of double effect think the distinction between ‘intended’ and ‘foreseen’ is legitimate. Although some of the leading bio-ethicists today reject this distinction, the arguments answering these critics seem more plausible to me. For those opposing the distinction see: Judith Jarvis Thomson, “Physician-Assisted Suicide: Two Moral Arguments,” *Ethics* 109 (1999): 497-518; Jonathan Bennett, *The Act Itself* (Oxford: Oxford University Press, 1995); Tom Beauchamp and James Childress, *Principles of Biomedical Ethics*, 4<sup>th</sup> ed. (Oxford: Oxford University Press, 1994): 210-214. Those defending the distinction include Joseph Boyle, “Toward Understanding the Principle of Double Effect,” *Ethics* 90 (1980): 527-38; Thomas Cavanaugh, “Act Evaluation, Willing, and Double Effect,” *American Catholic Philosophical Quarterly* 71 (1997): 243-53; H.M. Giebel, “Ends, Means, and Character: Recent Critiques of the Intended-Versus-Foreseen Distinction and the Principle of Double Effect,” *American Catholic Philosophical Quarterly*, Vol. 81, No. 3 (2007): 447-468. In particular, (I believe) Giebel’s arguments show that criticisms against the intended versus foreseen distinction fail, and a *prima facie* case can be made for the legitimacy of the distinction.

several things.<sup>333</sup> First, there is a difference between acting badly and acting in a way where bad consequences will result. The one act is intrinsically bad; the other foresees bad consequences resulting from an action. As Devine writes, “It should be clear that the distinction between doing something and only bringing the effect about as a consequence is crucial to both the formulation and the application of the principle.”<sup>334</sup> Second, the principle makes a distinction between foreseen and intended consequences. Intended consequences are desired and are considered as part of the ‘object’ of moral action. The intention of an act answers the ‘what’ question and reveals the immediate effects the person desires. Foreseen consequences are not intended, and the person does not desire them even if he knows they will happen. Third, the principle of double-effect distinguishes the act from the consequence. One certainly can see that some consequences following acts cannot be blamed on the agent. For example, there is the case of the beautiful woman on the side of the road who was blamed for causing a car accident because the guy driving was looking at her. The woman in this case certainly cannot be blamed, although she was an element in some way of the car accident scenario.<sup>335</sup> Fourth, the principle distinguishes between direct and indirect acts. As Devine notes, “Where the ascription of an act is negotiable, we can say that it was

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<sup>333</sup>In their article titled “Business Ethics and Natural Law,” Manuel Valasquez and F. Neil Brady describe the Thomistic version of double-effect, “In a crucial qualification, Aquinas noted that destroying the good of life of another, in the course of defending one’s own life, is morally licit because when an action has the good effect of preserving a basic good and the bad effect of destroying another basic good, the destruction of the one good is permissible, provided the person “intends only” the preservation of the other good, and provided that the destruction of the one good is “proportioned” to the preservation of the other.” *Business Ethics Quarterly*, (Mar. 1997), p. 87.

<sup>334</sup>Devine, *The Ethics of Homicide*, p. 106.

<sup>335</sup>Devine explains that in our description of one thing doing another “we base our statement on a mixture of narrative, explanatory, and what may be called ascriptive considerations.” (*The Ethics of Homicide*), p. 116.

performed indirectly; where it is not, that it was performed directly.”<sup>336</sup> Devine’s argument hinges on the distinction about whether an act is negotiable. One can recognize there are many ways to describe an act. A person’s movement can be described as pointing to something with his finger or poking another person in the eye. If a person’s act accidentally precedes some consequence, then the person cannot be said to directly cause the consequence (as in the previous scenario with the beautiful woman). This is an example of an indirect consequence where a description can be negotiable. When a person is to blame for an act connected to a consequence it is direct. A person’s desire for a certain consequence is present in a direct act as well.

One can find four conditions for the application of the principle of double-effect.

These are:

1. The act itself must be good in itself or at least indifferent.
2. The good intended must not be obtained by means of the evil effect.
3. The evil effect must not be intended for itself, but only foreseen.
4. There must be proportionately grave reason for permitting the evil effect.<sup>337</sup>

Many point to the apparently utilitarian spin (which emphasizes the effects, the ends, or the results from the act) on many of these conditions. To the contrary, the means, which are unimportant for the sake of the end for the utilitarian, must always be good or indifferent for an act to be morally good.<sup>338</sup> The end never justifies bad means, nor does

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<sup>336</sup>Ibid.

<sup>337</sup>Mark P. Aulisio, “Principle or Doctrine of Double Effect,” *Encyclopedia of Bioethics*, Ed. Stephen Post. Vol. 2. 3<sup>rd</sup> ed. (New York: Macmillan Reference USA, 2004): p. 687.

<sup>338</sup>John Stuart Mill seems to contradict this assertion. He writes, “Utilitarians are quite aware that there are other desirable possessions and qualities besides virtue, and are perfectly willing to allow all of them their full worth.” *Utilitarianism*, (Indianapolis: Hackett Publishing, 2003): p. 110. He also says, “The utilitarian doctrine is that happiness is desirable, and the only thing desirable, as an end; all other things being only desirable as means to that end.” *Ibid.* p. 122. Virtue is said to be part of the end of happiness, but not naturally so. Although not all Utilitarians agree that the means are unimportant, it is a general

the end make a bad means good. The first and second conditions also clearly refer to the object (the act itself and the intention). The third clearly refers to the intention of the object (evil must not be intended – even if it is foreseen). The fourth asks a person to consider the hierarchy of goods, and to make sure that the good intended (that is the motive) is equal to or greater than the evil foreseen. This evaluation is an assessment of the act and appeals to the first (the object) and the third (the end) element of every moral action.

One can see how applying the principle of double-effect to the previous scenario can help achieve greater clarity about how to act. In the scenario with Tony Bland, if one chooses certain acts to make him more comfortable, but withholds certain treatments that simply prolong his life for a day or so, and they have the foresight to realize he will die nonetheless, and they need not blame themselves for the death because it is not intended. Food, water, and air are not ‘treatments’ *per se* for Mr. Bland and withholding these means is immoral *as long as he can assimilate them*. It is commonly thought that the skillful means by which these three are delivered may contribute to them being considered as disproportionate treatments rather than proportionate. There are two things to note about this. First, as has been mentioned, proportionate and disproportionate treatments actually refer to weighing the burdens and benefits of various treatments- not the skill involved in treatment or the rarity or frequency by which such treatments are given. Something infrequently given may be medically disproportionate or extraordinary (in terms of being rare) but morally proportionate or ordinary (and as such morally

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criticism that the Utilitarian end of happiness justifies evil means that may be used to attain it. This would seem to obscure or significantly reduce the importance of the means as long as happiness is attained. See James Rachels, *The Elements of Moral Philosophy*, (New York: McGraw-Hill Publishing, 1986): pp. 90-103. Also, Louis P. Pojman, *Ethics: Discovering Right and Wrong*, (Belmont: Wadsworth Publishing, 1990): pp. 82-86.

obligatory). Secondly, one can ask whether food, air, and water are treatment. Although this is a subject of debate, the traditional natural law theorist follows the view that “The administration of water and food, even when provided by artificial means, always represents a natural means of preserving life, not a medical act. Its use, furthermore, should be considered, in principle, ordinary and proportionate, and as such morally obligatory.”<sup>339</sup>

Yet this seems to be question begging in some way. Isn't the very issue at stake whether providing 'artificial food and water' is a medical act? It is not- although it is unfortunately the way Smith and Kaczor put it. The issue is whether administering food and water is an act that is proportionate. Putting a feeding tube in a patient is a simple medical act and is always proportionate on this view as long as the patient can assimilate these things. In sum, patients—including Tony Bland—should receive air, food, and water- regardless of how it is delivered.

In sum, the principle of double-effect can be employed to help a person's decision-making. These principles can be traced in the natural law tradition to various sources. Aquinas's double-effect reasoning has influenced the natural law tradition in end-of-life issues. Using the principles of this can help people clarify moral decisions to ensure that the best act is performed in each case.

#### ***D. Conclusion***

This work has briefly explicated and defended aspects of a classical view of natural law. The first chapter surveyed much of the work that would be covered in the

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<sup>339</sup>Kaczor and Smith, *Life Issues, Medical Choices*, quoting Pope John Paul II, p. 113.

rest of the dissertation. There is an explanation of the metaphysical structure of the classical view in the second chapter. The third and fourth chapters raise some of the common objections to natural law including those raised by David Hume, G.E. Moore, and some contemporary proponents of relativism. The fifth chapter drew some distinctions between natural law and other theories, and the last dealt with tools of natural law found in much of modern medical ethics today.

Although I have tried to defend natural law from some common criticisms raised against the theory, I recognize there is much work to still be done. It is certainly a significant criticism that it is hard to ask people to accept an ethical theory that rests on a controversial metaphysical foundation. Admittedly I've not dealt with many opposing views, but have offered some reasons throughout this dissertation for rejecting aspects of theories like intuitionism and relativism. The assertion from the beginning of this work was that I think a natural law approach is the best way to do ethics. This work is far from ending the debate in favor of natural law. However, I hope to have rendered the theory slightly more plausible than that of rival ethical theories.

Of course, the goal of an ethical theory goes beyond helping a person come to *know* what acts are good and bad. In life it is not merely knowledge that is important. A theory of human action must be tied together with the goal of human life. As Ralph McInerny writes,

In order to change our lives, to become what we ought to be, we must perform repeated acts of the same kind, first against our grain, perhaps, then with less and less resistance, until finally we do joyfully and with pleasure the right thing... When we reach that point we will have become the sort of person of whom Aristotle speaks. In questions of human good, of what ought to be done, the good man is the measure.<sup>340</sup>

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<sup>340</sup>Ralph McInerny, *Ethica Thomistica*, pp. 126-127.

The habitual conformity of our will with what is in accord with virtue can make us good, help us do what is right, and guide us toward happiness.

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