THE CATHOLIC UNIVERSITY OF AMERICA

Natural Law and History: The Use and Abuse of Practical Reason

A DISSERTATION

Submitted to the Faculty of the

Department of Politics

School of Arts and Sciences

Of The Catholic University of America

In Partial Fulfillment of the Requirements

For the Degree

Doctor of Philosophy

Natural Law and History: The Use and Abuse of Practical Reason

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The new natural law theory of John Finnis and others is an ambitious but flawed reinterpretation of the natural law tradition. It dispenses with ontological or teleological commitments, appealing instead to practical reason and self-evident first principles directing one toward basic human goods as starting points for moral reflection. The new natural lawyers claim that their methods yield absolute moral norms that must never be violated, but these norms produce legalistic casuistry and undermine personal moral responsibility.

Among the alternative approaches to natural law theorizing that help rectify these difficulties is the work of Jean Porter, whose interpretation of Aquinas deemphasizes natural law as a means of deriving specific universal moral principles, instead viewing the natural law as a capability for moral reflection. The work of Alasdair MacIntyre, who argues that truth emerges from within traditions, not as a universally accessible set of principles, is also valuable for this project.

Such considerations direct one to Hans-Georg Gadamer, who provided an understanding of truth that is neither relativistic nor scientistic. Rather than viewing human contingency and finitude as obstacles to be overcome in the quest for truth, he regarded them as the conditions in which truth may be known. Although it is not possible to arrive at a final, universal formulation of moral truth, moral truth is not beyond our grasp. Rather, truth has the character of an encounter in the moment of moral insight or communication. Reconsidered in light of this, the natural law is best understood not as a universal set of moral principles, accessible to all reasonable people of goodwill, but the capability for true moral apprehension, communication and imagination within the contingencies and finitude of human existence.

Edmund Burke is an example of a statesman who embodied this approach to the natural law. He also illustrates the too-often neglected importance of imagination to the apprehension of moral truth. While the theological side of this reconsideration of natural law remains to be explored, a beginning may be made by considering Soren Kierkegaard and Dietrich Bonhoeffer, and their emphasis on the personal God of Christianity.

This dissertation by Nathanael Alan Blake fulfills the dissertation requirement for the doctoral degree in political theory approved by Claes Ryn, PhD, as Director, and by David Walsh, PhD, and Stephen Schneck, PhD as Readers.

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Claes Ryn, Ph.D., Director

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David Walsh, Ph.D., Reader

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Stephen Schneck, Ph.D., Reader

To my lovely wife Julie, sunbeam and sub-editor

"Across the pale parabola of joy"

"The deity does not view the human race collectively. With one glance he sees every human being separately and sees in each the resemblances that make him like his fellows and the differences which isolate him from them. It follows that God has no need of general ideas, that is to say, He never feels the necessity of giving the same label to a considerable number of analogous objects in order to think about them more conveniently. It is not like this with man. If a human intelligence tried to examine and judge all the particular cases that came his way individually he would soon be lost in a wilderness of detail and not able to see anything at all. General ideas do not bear witness to the power of human intelligence but rather to its inadequacy."

Alexis de Tocqueville

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Preface

"Oh, we always give our testimony. We always manage to give that somehow, even if it is discredited by the witness...We are the miserable race of poets, of writers, of men who think they have something to say."

G.K. Chesterton

In addition to the difficulties attendant upon writing any piece of political theory, works addressing moral philosophy also face the problem of the evident unworthiness of the author. This is exacerbated when the arguments presented emphasize not impersonal reason, but personal knowledge and the importance of the will to moral understanding. The author is liable to be challenged not merely on his intellectual credentials, but his moral ones as well. Not only may I be ignorant or mistaken on the scholarly points, but I may be a moral failure, manifestly unqualified to offer moral reasoning to the world. Short of a life of outstanding virtue, which I can hardly be credited with, this is a hard charge to answer. The best I can say is that my position is not simply my own, but has been informed by many others, often wiser and more virtuous than myself. I do not claim that it is objectively true, for that would be to presume a God's-eye perspective. I offer it from within my horizon, and hope it will prove to be of worth when it is encountered by others.

Acknowledgments

That a project like this is impossible, both intellectually and materially, without extensive reliance upon others is a central presupposition of this work, and so it is only just to express here my gratitude toward some of those who have made it possible.

I must begin by thanking my wife Julie for her steady support and encouragement through the many years of graduate school, as well as for editing far more of my writing than anyone should have to.

I owe the faculty of CUA's politics department a great deal of thanks, especially my committee members, Dr. Ryn, Dr. Walsh, and Dr. Schneck, all of whom I have learned much from. In particular, Dr. Ryn, as the director of this dissertation, has taken great pains to review it thoroughly and provide excellent advice and guidance.

During my time at CUA, I have been fortunate enough to have known many fellow graduate students outstanding in both intellect and conviviality. In no particular order, and without any claim to be exhaustive, they include David, Toby, Gustavo, Jan, Luke, Carol, Josh, Lucy, Jeremy, and Michael.

I would like to thank the Intercollegiate Studies Institute for the generosity of their Weaver Fellowship program, as well as the intellectual stimulation they have provided over the years through books, lectures and conferences.

Introduction

"Good men don't need rules. Today is not the day to find out why I have so many."[1]

-The Eleventh Doctor

It is now commonplace for moral philosophers to begin their efforts by noting the

dissolution of moral agreement, both within and between nations and cultures. Sometimes these

disagreements lead to violence; sometimes, especially within the Western liberal democracies,

they are largely held in check by a shared commitment to political systems and processes. There,

academic philosophers of widely disparate views sit cheek-by-jowl on the same faculty—

followers of Marx, Mill, Foucault, Rawls and many more are jumbled together while their

students imbibe a cocktail of these disparate viewpoints. Each new philosophy is raised upon the

razed ruins of the previous system while the exiled heirs of each dislodged approach plot their

return to the throne.

The Greeks have stubbornly hung around, as have the Christians, and we still look East

beyond Europe, or West over the Pacific at other cultures and creeds. It is logomachy as trench

warfare, each faction dug in and difficult to dislodge. Not only is there no agreement as to what

justice and the good are (or if they even exist as standards independent of human invention),

there seems little hope of even agreeing on how agreement might be found. Must

epistemological questions be resolved first (and, if so, *how*, after centuries of inconclusive

wrangling within Western philosophy), or can ethical inquiry and practical politics be

prioritized?

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[1] Doctor Who, Season 6 (2011) episode 7, "A Good Man Goes to War"

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Within this cacophony of philosophies there are a multitude of divisions and subdivisions; within Christianity—and Catholicism in particular—there have arisen a variety of competing natural law theories, including neo-scholastics, existential Thomists and new natural law theorists. John Finnis is perhaps the foremost champion of the last of these.[2] He has attempted to set forth an understanding of the natural law that avoids what he considers the epistemological pitfalls of the later Scholastic theories. From this foundation, which has become known as the new natural law, and which is meant to be rationally compelling to all people of goodwill, he and other new natural law theorists have offered moral, jurisprudential and political judgments on topics ranging from nuclear disarmament to abortion to the role of religion in public life.

This dissertation provides a critique of the new natural law theory's claims to provide universally demonstrable moral principles and prohibitions, and offers suggestions for a natural law self-understanding that emphasizes the communicative and communal nature of moral inquiry within the finite, historical existence of human persons and communities.

According to the new natural law approach, one may proceed from the first injunction of practical reason (to do good and avoid evil) and the recognition of certain basic, incommensurable goods (which must always be respected and never directly acted against) to a fully developed moral system. Between these self-evident first principles, which direct one to pursue and protect the basic goods, and specific moral norms are "modes of responsibility" that help direct when and how various basic goods are to be pursued, protected and so forth. Without

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[2] Other prominent adherents of the new natural law include Germain Grisez, the moral theologian who first articulated its unique approach, and Robert George, who has engaged in prolific writing and debate over the conclusions of the new natural law, especially as it applies to hot-button moral and political topics.

these modes of responsibility the new natural law theorist would be at a loss to explain why a golfer who sees a child drowning in a water hazard should prioritize the good of life over that of play and save the child instead of continuing his game. Also, as the theory has been developed, a commitment to "integral fulfillment" (specified alternately as human or communal) has been found necessary to orient the will and provide additional guidance when facing choices between incommensurable goods. The basic framework of the theory, however, has remained nearly unchanged over the decades since Finnis embraced and articulated it. The new natural law seeks to avoid foundational commitments to ontology, teleology or theology. It strenuously disavows dependence on any religious or ethical tradition, instead claiming to be rational and universal. It moves from a foundation of self-evident principles directing one to the basic goods, to exceptionless prohibitions against acts that directly harm them and a framework for moral analysis that is supposedly accessible to any reasonable person of goodwill.

While the new natural law has had some success in avoiding the complications and pitfalls associated with the metaphysical and religious commitments of older natural law theories, it nonetheless has become entangled in several significant difficulties.

First, the new natural law purports to rely on practical reason, self-evident first principles and experientially known basic human goods, yet it produces moral injunctions that are repugnant to many rational people of goodwill. This is a significant problem for the new natural law, insofar as it, like other philosophical approaches that claim self-evidence, is ill-equipped to explain moral disagreement and why it is so often rejected. Since its proponents proclaim it to be accessible to all reasonable persons of goodwill, when it is rejected they regularly question the rationality or the goodwill (or both) of its critic. This problem is particularly acute with regard to

its rejection by skilled analytic philosophers, who are not easily dismissed as intellectually unable to understand the precepts of the natural law. This does not comport well with the new natural law theory's aim of providing a basic, universal moral framework available to all.

Furthermore, while the new natural law theory claims that practical reason is sufficient for moral guidance, its concept of practical reason is poorly defined and regularly seems to expand to include non-rational aspects of consciousness such as the will and the imagination. In particular, the catch-all ideal of integral human or communal fulfillment seems to provide cover for the elasticity of practical reason in the new natural law theory.

Another difficulty is that the new natural law method, despite its experiential claims, operates through analysis of abstract concepts that are brought to bear on specific situations. In particular, the new natural law emphasizes exceptionless moral norms. This opens it to methodological critiques that call into question the possibility of rationally validating universal moral precepts. Additionally, the new natural law theory's analysis of intentions has regularly entangled it in interminable casuistry as it seeks to determine exactly what constitutes a violation of such universal moral precepts. The juxtaposition of this casuistry (and the apparent loopholes it provides) with the otherwise inflexible moral absolutes produced by the new natural law method produces an appearance of extreme legalism.

Finally, while it claims to be experientially grounded, the new natural law theory proceeds by an analytical, abstract methodology that ultimately results in calls to martyrdom— calls which seem to have had little success in winning over rational persons of goodwill. Finnis and other prominent exponents of the new natural law theory propose absolute moral norms that must remain inviolate, regardless of the consequences. Thus, Finnis explicitly teaches that one

must never tell a lie, not even to save Jewish children from the Nazis. During the Cold War, Finnis and his allies urged Western nations to immediately and unilaterally dismantle their nuclear arsenals, even if such a policy resulted in worldwide totalitarianism, which they conceded as a likely possibility (the willingness of Finnis and his fellows to address such examples is a mark of either intellectual forthrightness or fanaticism—perhaps both). Letting Nazis and Stalinists win does not seem to comport with the new natural law's claim to be based in experiential goods.

The Christian might take comfort in martyrdom, with incomparably greater rewards waiting in heaven, but such a theological commitment is precisely what the new natural law hoped to avoid (its proponents do indeed make such specifically Christian appeals, but insist they are merely supplemental, not essential). Deontological approaches might also produce similar moral absolutes, but they lack the experiential basis that the new natural law claims, which poses a significant problem in light of the results of the prohibitions it proclaims. These seemingly impractical results of ostensibly practical reason expose a tension within the new natural law between its abstracted, analytic approach to moral knowledge and the experiential knowledge of basic human goods it claims to be rooted in. Even if the reasoning of Finnis and other new natural law theorists from premises to conclusions is impeccable, the conclusions may only drive people away from the premises.

However, if the new natural law is inadequate, the difficulties within the natural law tradition that Finnis and his allies attempted to resolve remain. There is still an opening for a natural law approach that does not require agreement on an established, foundational ontology or teleology, let alone theology, before discourse can begin. In this dissertation I provide a critique

of the new natural law theory on the points enumerated above, before considering how a natural law theory might correct these defects. Drawing from several different thinkers, I suggest an approach to the natural law that deemphasizes it as a means for producing specific moral norms derived and demonstrable from self-evident first principles. Instead, I emphasize the communicative and communal nature of moral inquiry within the finite, historical existence of man, suggesting the natural law as a self-understanding and explanation of this capacity for moral inquiry and dialogue.

First, I turn to the work of the Catholic theologian Jean Porter, who has developed (or rediscovered), an interpretation of Aquinas and the scholastic approach to the natural law that deemphasizes it as a means for producing absolute moral principles and formulas. Her primary contributions are in understanding Aquinas, and the scholastic tradition following immediately after him, as seeing in the natural law not a set of universal precepts accessible to all through reason, but an explanation for the ability of humans to engage in moral reasoning. She has also emphasized the importance of theological influences upon the medieval development of the natural law tradition, which, she claims, never attempted to provide a universal, rational system of moral precepts and rules. If she is correct, then the new natural law has, in its interpretation of Aquinas, mistakenly grafted distinctively modern views and concerns onto his philosophy.

In addition, Porter has made an important contribution by drawing out the continuing relevance to the natural law of the ontology and teleology of human existence in history. Linking ontology and teleology to the natural law is not novel; it is the new natural law's distinctive boast to have severed that traditional bond. But Porter argues that these fields remain important to the natural law, though not as dispositive, foundational elements of it. Proving, to

the standards of analytic philosophy or the physical sciences, that something is part of human nature or is a natural end for humans is a fool's errand. But this does not mean that nothing true can be said about human nature or human ends. Indeed, we know a great deal about them, but we cannot model our knowledge of them upon the methods of the natural sciences. Thus, there is a need for this knowledge to be brought into the discussion without being posited in the terms of the physical sciences. Porter argues that Aquinas and the scholastics did this, incorporating a variety of sources, ranging from Scripture to observations of human and animal behavior, into their understanding of what was natural. Their methodology was therefore quite different from that of the new natural law, and while it would be insufficient to fulfill the ambitions of the new natural law project (universal moral precepts demonstrable to all rational people), Porter argues that this was because they lacked such ambitions.

If Porter is correct, she has provided an alternative interpretation of Aquinas, but has also raised the question of what role a natural law theory may play today, and how it could be justified in a culture that has generally abandoned the theological commitments of the scholastics. Besides serving as a Christian explanation for the emergence of moral truths among non-Christians, what role might the natural law play in a broader philosophical and political dialogue, and how would it have to be understood to do so?

One promising approach can be extracted from the work of Alasdair MacIntyre, who has objected to Finnis' seeming indifference to tradition and to his attenuated conception of the common good. MacIntyre, a convert to Catholicism and Thomism, has explored how rationality arises from within tradition. Reasoning, including practical reasoning about moral questions,

cannot operate in an abstract, ahistorical realm of universal principles, but emerges from (and remains connected to) particulars, including language and culture.

According to MacIntyre, human beings are, *contra* Locke, born neither free nor rational, but can only attain degrees of freedom and rationality, at least initially, through submission to proper teaching authority. Children only acquire the ability to challenge their instructors through that instruction. Nor is this simply a matter of imparting the proper concepts and terms. Rather, the pupil must also be inculcated with the virtues necessary to inquiry.

This view poses several challenges to the new natural law. First, if it is correct, reasoning about the precepts or injunctions of the natural law cannot operate in the way that Finnis and his compatriots think it does. It is not a matter of only reasoning properly from premises to conclusion, as if it were a problem in algebra or Euclidian geometry, but of being properly shaped by the virtues required for correct moral reasoning.

This may explain, in part, why the new natural law has had such limited success in persuading its academic adversaries. The new natural law, with its emphasis on analytical rationality and reasoning from first principles, has difficulty explaining its own rejection by intellectuals who are skilled in analytical philosophy. Robert George, for example, has engaged in numerous debates with respected philosophical opponents that have resulted only in both sides honing their arguments to make ever more precise distinctions and definitions—no one is convinced and converted. Such intransigence is difficult to account for if moral reasoning proceeds as the new natural law theory holds it does. However, MacIntyre's account, with an emphasis on the prerequisites of moral reasoning (virtue, culture, and, it may be added, a certain

disposition of the will), is better positioned to explain the rejection of natural law theory, whatever variety it may be.

Furthermore, MacIntyre's approach better explains the apprehension of the natural law by ordinary people in their lives. While the new natural law, with its emphasis on the basic goods, does offer an explanation for how its precepts are apprehended by lay experience and intuition, MacIntyre provides a more comprehensive, true-to-life account of how someone with no skill in analytic philosophy may nonetheless come to know and abide by the natural law. Of course, the new natural law theorists distinguish between ways of knowing the content of the natural law: the non-philosopher may know it imprecisely but effectively through intuition, education and cultural inculcation, while the philosopher may also know it through rational reflection and precise formulation of universal moral precepts. However, such appeals to philosophical exactitude and universality are challenged by the realization of mankind's contingency and finitude. While Finnis has responded to such difficulties by dismissing them as moral relativism, MacIntyre, as a Thomist, provides a more credible challenger who is harder to brush off as a mere moral relativist. MacIntyre does not deny the existence of real moral truth, but he does deny that it takes the form Finnis ascribes to it.

Here, the philosophical hermeneutics of Hans-Georg Gadamer provide a valuable model of how truth can be known without objectifying or denying man's finite, historical existence. He defends truth against both the skeptic and those for whom all knowledge must conform to the methods of the natural sciences. For Gadamer, the contingency and finitude of human knowledge are not obstacles to be overcome in the quest for a universal, transcendent truth, but the conditions within humans can know and share truth.

Other than one important passage in *Truth and Method*, which discusses its role for Aristotle, Gadamer wrote little about the natural law. Thus, it is unsurprising that while MacIntyre acknowledges a great debt to Gadamer, whose influence is constantly seen on MacIntyre's thought, he has also wished that Gadamer had engaged more seriously with a Thomistic Aristotelianism. While Porter gives Gadamer credit for influencing her approach to texts, she does not directly draw on him for much more than that. Neither MacIntyre nor Porter treats him directly as a source that might help remedy difficulties within the natural law tradition. Meanwhile, Finnis and the new natural lawyers seem to have ignored Gadamer entirely.

While this is understandable, given Gadamer's limited interaction with the natural law tradition, his insights may prove valuable for reconsidering the natural law (a point bolstered by the extent to which Gadamer is always in the background of MacIntyre's thought). First, Gadamer defends truth, including moral truth, as neither necessarily relative nor scientifically objective. Such truth is real and not subject to the whims of man, but its essence is not found in universal statements of absolute precepts. Gadamer, like MacIntyre, invokes Aristotle's notion of *phronesis*—knowledge of the good that is most fully known by the virtuous man, not through universal principles, but personally.

Second, Gadamer provides a model for the apprehension and communication of truth that is consistent with the contingent, finite nature of man. While the fullest explanation of his approach, detailed in his masterwork, *Truth and Method*, has only a limited discussion of its application to moral truths, it clearly holds for them as well. This view is buttressed by the more explicit discussions of moral truth found elsewhere in his work. Gadamer emphasizes that the apprehension of moral truth is always situated within man's conditioned existence, but that this

does not invalidate it. Instead of directing us to a realm of universal, final formulations of transcendent truth, Gadamer draws us back into experience and dialogue. By bringing ethics into hermeneutics, Gadamer provides a model that is neither relativistic (as feared by new natural law theorists) nor subject to the critiques that claims to universal, transcendent principles fall victim to. Taken together with the reconsiderations of the natural law provided by MacIntyre and Porter, this may provide a natural law approach that pays due homage to the historicity and finitude of human existence. This understanding of the natural law would view itself as operating less in the abstract formulation of universal principles, and more in the development of moral tradition and dialogue.

The life and thought of Edmund Burke offer a lived example of such an approach. Long considered to be a utilitarian with a penchant for rhetorical flourishes, the natural law tendencies in Burke's thought were rediscovered in the 20th century, and it is now readily acknowledged that there was some element of natural law theory informing his views. However, all too often this is interpreted as either commonplace (if Burke was a natural law thinker, so was nearly everyone at that time; e.g., the appeal to the laws of nature and nature's God in the Declaration of Independence), or in accord with a strict neo-Thomism. Francis Canavan, for instance, while doing excellent work in challenging the utilitarian interpretations of Burke, tended to shoehorn Burke into a staid Thomism, and chide him when he wouldn't fit.

But it is a mistake for the natural law tradition to be content with claiming Burke as one of their own—pleased to collect another eminent thinker, but doubtful that he has much to contribute to natural law theory. Rather, the natural law tradition has much to learn from Burke, and several scholars have recognized that Burke has something to add to natural law philosophy.

Peter Stanlis charted some of the unique aspects of Burke's understanding of natural law, and took preliminary steps toward recognizing his ability to correct certain deficiencies in what had become the natural law tradition. More recently, William Byrne's focus on Burke's imagination has made a valuable contribution to Burke scholarship, which may help revitalize natural law approaches to understanding him.

Burke was uniquely sensitive to the importance of the particular and the historical to the natural law, not only in application, but in its apprehension. He famously abhorred abstract, rationalist systems of moral and political philosophy, but he nonetheless made appeals to a natural law, most especially in his impeachment of Hastings. In both his theory and practice, the natural law was not a rationalistic system of moral precepts; rather, it was something that required practical wisdom to put into practice. Rationalistic systems were more likely to lead one astray than to direct one toward what needed to be done in the here and now.

Additionally, Burke understood the importance of imagination to moral insight. His speeches and writings were richly evocative not only as a stylistic choice or personal idiosyncrasy, but because he knew the power of imagination to shape moral vision. Moral reasoning is always undertaken with the active involvement of the imagination—the mode of moral reasoning, modelled on mathematics that many of Burke's opponents favored is itself an imaginary, one whose claim to have left conditioned-ness behind flattered those who constructed and believed it. Against such approaches Burke remains not only a theoretical force but a practical exemplar.

The New Natural Law: From Methodology to Martyrdom

John Finnis and the New Natural Law Method

The new natural law theory[1] seeks to provide moral reasoning and guidance that is rooted in self-evident first principles accessible to all reasonable persons of goodwill. It is determined to avoid the aporias of conventional natural law theorizing; in particular, it is concerned with avoiding any reliance on ontological or theological commitments, considering these to have been the bane of most previous natural law systems. It claims to be grounded in practical, not speculative, reason, and many of its advocates have engaged in extensive efforts to apply it to jurisprudence and politics, particularly in the Anglosphere.[2] More traditional natural law thinkers have hotly contested its conclusions, reasoning and claim to be generally consistent with Aquinas. It has thus been consistently engaged on two fronts, arguing with (mostly) Catholic

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[1] While the "new natural law" appellation is disliked by some of its advocates, no obvious alternative is as widespread and well-defined.

[2] This political application of the new natural law was recently praised by Robert George's comments on John Finnis, "In normative ethics and political theory, Finnis has been a force second to none in defending the moral inviolability of human life in all stages and conditions and the norm against making the death or injury of a human being the precise object of our choosing. And so he has written powerfully against abortion, infanticide, euthanasia, and the intentional (including the conditional) willingness to kill or main noncombatants (including captured or subdued enemy soldiers) even in justified wars (whether the weapons used are nuclear or conventional). Similarly, he has been a leading voice in defense of the historic understanding of marriage as a conjugal partnership—the union of husband and wife." (Robert George, "Introduction: The Achievement of John Finnis" in Reason, Morality, and Law: The Philosophy of John Finnis, Oxford, Oxford University Press, 2013. page 7).

theologians and natural-law philosophers as well as with secular philosophers and political

theorists.

Early in his magisterial *Natural Law and Natural Rights*, John Finnis, a leading

proponent of the new natural law theory,[3] provides a summary of his approach,

> There is (i) a set of basic practical principles which indicate the basic forms of
> human flourishing as goods to be pursued and realized, and which are in one way
> of another used by everyone who considers what to do, however unsound his
> conclusions; and (ii) a set of basic methodological requirements of practical
> reasonableness (itself one of the basic forms of human flourishing) which
> distinguish sound from unsound practical thinking, and which, when all brought
> to bear, provide the criteria for distinguishing…between ways of acting that are
> morally right or morally wrong—thus enabling one to formulate (iii) a set of
> general moral standards.[4]

For Finnis, these basic forms of the good, or principles of human flourishing, are: life,

knowledge, play, aesthetic experience, sociability (friendship), practical reasonableness, religion,

and marriage. The list is a work in progress, changing as various new natural law theorists

(especially Finnis, Germain Grisez, and Joseph Boyle) try to determine which goods are truly

basic and which are secondary and derived from basic goods.[5] With the first principles directing

us to protect and pursue these basic goods as a methodological starting point, the new natural law

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[3] A good, brief summary and history of the new natural law theory has recently been written by Christopher O. Tollefsen: New Natural Law Theory, available at http://www.nlnrac.org/contemporary/new-natural-law-theory (accessed 6/19/2014).

[4] John Finnis, *Natural Law and Natural Rights 2nd ed.*, (Oxford: Oxford University Press, 2011), 23. Hereafter cited as *NLNR*.

[5] The new natural law theorists explain this imprecision about which goods are truly basic (and therefore the objects of self-evident first principles) by stating that self-evident is not the same as obvious.

theorists hope to establish a foundation for a moral theory that will be rationally persuasive to all persons of goodwill.

According to Finnis, these self-evident first principles direct us toward the basic goods, each of which "is fundamental. None is more fundamental than any of the others, for each can reasonably be focused upon, and each, when focused upon, claims a priority of value. Hence there is no objective priority of value amongst them."[6] These experientially known, non-hierarchical goods, and the first principles which direct us to them, provide a self-evident starting point for moral reasoning. Every rational act, Finnis holds, seeks some intelligible good that may be identified with one of the basic goods, however one-sided, clouded or poorly thought-through the pursuit of that good may be. Thus, the pursuit of an intelligible good is no surety of moral action. New natural law theorists often describe the first principles of practical reason and the basic goods as pre-moral, for while they provide the necessary foundation for moral reflection, mere recognition of them does not in itself produce moral principles.

The experiential self-evidence of these basic goods as desirable is a necessary proposition of the new natural law theory, for as Germain Grisez, a moral theologian who pioneered the approach,[7] has put it, "A sound account of normative existential principles must show how they are grounded in human goods. If they are not so grounded, there is no adequate answer to the question, 'Why should I be morally good?'"[8] Grisez, like other new natural law theorists, rejects

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[6] Finnis, *NLNR*, 95.

[7] See Germain Grisez, "The First Principle of Practical Reason: A Commentary on the *Summa theologiae*, 1–2 Question 94, Article 2," *Natural Law Forum* 10 (1965): 168–201. For a recent critique arguing that Grisez's interpretation of Aquinas is fundamentally flawed (and consequently that the new natural law theory is not Thomistic) see Michael Pakaluk, "*Is the New Natural Law Thomistic?*" National Catholic Bioethics Quarterly, Spring 2013; 57-67.

[8] Germain Grisez, *The Way of the Lord Jesus, Volume 1: Christian Moral Principles*, (Quincy, Illinois: Franciscan Press, 1997), 115. Hereafter cited as *Christian Moral Principles*.

divine commands as a sufficient reason for action, for though believers ought to do what God commands, this is not a self-evident foundation for moral reasoning. However, according to the new natural lawyers, the first principles that direct us toward the basic goods do provide such a foundation, for they are self-evident reasons for action, comprehensible to all rational persons.[9] Grisez has recently reiterated this view, asserting that "there are self-evident practical truths, which take the form: X is a basic human good to be promoted and protected. These self-evident practical principles direct human beings toward various intelligible aspects of the well-being and flourishing of individual persons, and of communities."[10] Thus, according to the new natural lawyers, a choice that does not seek some good (however one-sided or distorted) is irrational in a strong sense—it is simply unintelligible.

But despite such self-evidence, this list of basic, incommensurable goods provides insufficient guidance for living morally, for life presents a constant succession of choices to be made between pursuing these different goods. A life solely dedicated to play, or to aesthetic experience, for instance, would not necessarily be a moral one, even though both play and aesthetic experience are basic human goods. Such lives would not be fully rational, though they would not be utterly irrational in the way that choices that seek no intelligible good are. Thus, there is a need for another set of principles, described by Finnis as the basic requirements (or modes) of practical reasonableness. These requirements "express the 'natural law method' of

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[9] A good, brief articulation of the new natural law response to skepticism has been recently made by Finnis, who argues that the "proper response to skepticism about a basic human good is, I think, to invite skeptics both (a) to articulate any reason they may have in mind for doubting that this (say, knowledge) is intrinsically good (a distinct, irreducible element of human flourishing), and (b) to attend closely to the relevant field of human possibility, and to instances of the states of affairs in which this good is realized, and of the states of affairs in which it is possible by *not* realized (but rather ignored, impeded, destroyed…)." (John Finnis "Reflection and Responses" in *Reason, Morality, and Law: The Philosophy of John Finnis*, Oxford, Oxford University Press, 2013. 460).
[10] Germain Grisez, "Natural Law and the Transcendent Source of Human Fulfillment" in *Reason, Morality, and Law: The Philosophy of John Finnis*, Oxford, Oxford University Press, 2013, 443.

working out the (moral) 'natural law' from the first (pre-moral) 'principles of natural law.'"[11]

These rules, as articulated in *Natural Law and Natural Rights*, are: 1. Harmony of purpose/a coherent plan of life; 2. No arbitrary preferences amongst values; 3. No arbitrary preferences amongst persons; 4. Detachment from particular realizations of good (avoiding fanaticism); 5. Fidelity to commitments (avoiding apathy and/or fickleness); 6. Efficacy (within limits); 7. Respect for every basic value; 8. Respect for community and the common good; 9. Following conscience and being authentic.

According to the new natural law, it is these "modes of responsibility" which provide coherence and remedy partiality as humans act to realize instantiations of the basic goods. Without them, there would be no harmony among the pursuit of the various basic goods, either for the individual or for a community. These requirements allow the transition from pre-moral basic human goods to moral judgments. The complexity of human life is such that simple recognition of the basic goods is not enough to integrate them all into true human flourishing. Choices must always be made between which good to pursue at a given time, and which to emphasize over the course of one's life. As Finnis concludes, "the real problem of morality…is not in discerning the basic aspects of human well-being, but in integrating those various aspects into the intelligent and reasonable commitments, projects, and actions that go to make up one or other of the many admirable forms of human life."[12] Each choice for one good precludes choices for others, making the identification and application of these secondary principles key for determining any moral choice or action. For example, at the moment of writing this, I face a choice between different basic goods: I could pursue the good of knowledge by continued

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[11] Finnis, *NLNR*, 103.
[12] *Ibid*, 31.

writing and research; or I could pursue the good of life by exercising to improve my health; or I could pursue the good of aesthetic experience by practicing the guitar, and so on.

Such choices extend from the immediate decision of which good to pursue in a given moment to how one integrates their pursuit throughout an entire life. This may be seen in everyday clichés and truisms. For example, many Americans are fond of telling children that they can be whatever they what when they grow up, if only they apply themselves. While this is untrue, it nonetheless does implicitly concede the truth of excluded possibilities. Even if children, with hard work and effort, could grow up to be whatever they wished, they still could not be everything they might wish: a boy might grow up to be successful and admired, but he cannot do so as an astronaut, and as president, and as a Marine, and as a football star and as a biochemist all at once. All may be good and worthwhile endeavors, but they cannot all be pursued at the same time, or even in the same lifetime.

As with careers, so to with the realization of the basic goods in one's life. One cannot pursue all of them at once, let alone realize all their possible instantiations in one's life. However, Finnis and his allies insist that despite this they can all be integrated into an ideal of human flourishing, an ideal which orients the will and reintroduces a sort of teleology into the new natural law method. As they state,

> The first principle of morality, can, perhaps, best be formulated: In voluntarily acting for human goods and avoiding what is opposed to them, *one ought to choose and otherwise will those and only those possibilities whose willing is compatible with integral human fulfillment*. This formulation can be misunderstood. 'Integral human fulfillment' does not refer to individualistic self-fulfillment, but to the good of all persons and communities. All the goods in

which any person can share can also fulfill others, and individuals can share in goods such as friendship only with others. Nor is integral human fulfillment some gigantic synthesis of all the instantiations of goods in a vast state of affairs, such as might be projected as the goal of a world-wide billion-year plan. Ethics cannot be an architectonic art in that way; there can be no plan to bring about integral human fulfillment. It is a guiding ideal rather than a realizable idea, for the basic goods are open ended.[13]

In contrast to the other components of the new natural law methodology, the ideal of integral fulfillment is vague, seemingly more a general state of mind or orientation of the will than a means of philosophical analysis. Indeed, it might best be described through a phrase like "goodwill toward all" or something similar. It also provides, albeit in an ambiguous manner, a moral goal beyond any particular instantiation of a human good. Integral human fulfillment is a guiding ideal of human good and flourishing, but not in any specific way, or with a particular program.

Nonetheless (or perhaps because it serves as a catchall for everything left out of the lists of basic goods and modes of responsibility), Robert George considers the articulation of this ideal to be an extremely important development in the new natural law because it provides a better criterion by which alternatives may be evaluated and choices may be judged. "We cannot choose to bring about integral human fulfillment, but we can choose compatibility with a will to integral human fulfillment." Thus, in his view, it is not "how close we come to bringing about integral fulfillment in our choices (nor is it how 'much' fulfillment, in some aggregative sense, we bring about); rather, it is whether our choices are compatible with a will to integral

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[13]John Finnis, Joseph Boyle and Germain Grisez, *Nuclear Deterrence, Morality and Realism*, (Oxford: Oxford University Press, 1988), 283-284. Emphasis in original. Hereafter cited as *Nuclear Deterrence*.

fulfillment."[14] Integral human fulfillment does not entail any hierarchy of the basic goods, or

provide a simple good or a single overriding principle that can settle all disputes. Nor does it

present an identifiable goal to be achieved, for "none of the basic aspects of one's well-being is

ever fully realized or finally completed."[15] It is not a philosophical system or explanation.

Rather, it seems to be an attempt to account, within the analytic system of the new natural law,

for the necessity of virtue and the importance of elements of consciousness like imagination and

will. This non-specific ideal seems to denote an orientation of the will and a quality of

character—someone who is able to rightly value all of the basic human goods, and respect them

all in making choices.[16]

According to the new natural law, each basic good is incomplete by itself, and while the

pursuit of all may be integrated, they cannot all be achieved in all ways. Thus, one must take

care to never directly act against any of them or to violate the modes of responsibility as one

selects between them. Consequently, the task of practical reason is never finished, but further

discernments and judgments will always be needed. As Grisez has put it, "these same goods are

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[14] Robert George, *In Defense of Natural Law*, (Oxford: Oxford University Press, 1999), 68. Hereafter cited as *In Defense of Natural Law*.

[15] Finnis, *NLNR*, 96.

[16] Without disavowing the ideal of integral human fulfillment, Joseph Boyle has recently expressed some reservations about its ability to direct moral choice, writing that, "Moral goodness is not in itself ideal; it obtains when people choose in accord with the integral directiveness of practical reason…the realization of the moral goodness comes precisely in choosing rationally, and in the proper fruits of such choices. These fruits are realized in moral goals—the future selves we realize by aiming to be conscientious, just, and pious in pursuing the other basic human goods. Since these moral goods instantiate basic human goods, the motivation which ideals as such cannot provide are fully in place. We can be motivated to respond to the integral directiveness of practical reason because we can judge, for example, that the fulfillment anticipated when we organize the elements of our very selves, by harmonizing our feelings and choices under the stable and satisfying direction of reason, instantiates a basic human good. It seems to me, therefore, that Finnis' discussion of the good of practical reasonableness and the other reflexive goods, draws our attention more directly and effectively towards the reality of moral goodness than the ideal formulation of willing integral human fulfillment could." (Joseph Boyle, "On the Most Fundamental Principle of Morality" in *Reason, Morality, and Law: The Philosophy of John Finnis*, Oxford, Oxford University Press, 2013. 71-72).

to be realized indefinitely—that is, they are always to be realized, and new ways of realizing them can always be found. **In acting for a good, one gradually comes to perceive its possibilities more and more fully.**"[17] The new natural law seeks to remain open to ever-expanding possibilities for realizing basic human goods, rather than limiting their fulfillment to certain prescribed forms, while at the same time precluding actions that would directly harm any basic human good.

This dynamism is meant to protect the new natural law and the ideal of integral fulfillment against charges of utopianism and of scheming to implement an abstract master plan. Integral fulfillment is not meant to represent a realizable state in this world. As Robert George puts it, integral human fulfillment not an ideal in the Platonic sense, "but in the sense of something that, while not a direct object of choices or attainably by and in them, can nevertheless be imagined (if imperfectly) and even wished for, and so can provide the standards by which choices may reasonably be guided." Thus, there is no moral injunction to bring about integral human fulfillment, for that would be to demand the impossible. Rather, "It directs us to do something that can be done. It says that in choosing partial fulfillments, as we inevitably must, we should treat every possible human fulfillment for what it is; i.e., an essential aspect of integral human fulfillment."[18] The clearest applications of this approach are the negative moral norms that forbid, always and everywhere, certain actions against the basic goods. These are the most contentious of the new natural law's results, with constant debate between its adherents and critics over how to define them and whether they are defensible. Beyond providing support for

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[17] Grisez, *Christian Moral Principles*, 182. Emphasis in original.
[18] George, *In Defense of Natural Law*, 51.

the universal negative norms of the new natural law, the idea of integral human fulfillment seems to provide a vague teleology and guide for the will.

In recent years, Germain Grisez has updated the concept of integral human fulfilment, changing it to "integral communal fulfilment."[19] The immediate motivation for this rephrasing is a disagreement with Aquinas over the nature of the ultimate end (or ends) of human beings, but the function of the ideal in the new natural law system is little changed. It does involve more recognition of the importance of community to human fulfillment. Some of the groundwork for this shift may been seen in Grisez's earlier comments that,

> People are naturally inclined to society; they need one another to exist and be fulfilled…Among the reasons for this need is the fact that every choice involves self-limitation as well as self-fulfillment. Some possibilities must be set aside in order to pursue others. To realize oneself as much as possible, one must accept limitation. Only genuine community can make up for this limitation. **In such community one identifies with others by love and so is fulfilled in them in ways in which one can never be fulfilled in oneself**.[20]

The new natural law theory may have more integrals than a calculus textbook, but whether the "integral fulfillment" is labeled as "human" or "communal" it functions as a way to orient the will and involve it in moral decision making. A properly formed moral will must be oriented beyond oneself, not only in duty, but in love. The new natural lawyers are somewhat aware of their conception of practical reason's limited ability to direct choice between different goods. Thus, they need to deploy something else as a guide, and so they have quietly

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[19] Germaine Grisez, "The True Ultimate End of Human Beings: The Kingdom, Not God Alone." *Theological Studies*, no. 69 (2008): 38-61. See also, Germain Grisez, "Natural Law and the Transcendent Source of Human Fulfillment" in *Reason, Morality, and Law: The Philosophy of John Finnis*, Oxford, Oxford University Press, 2013.

[20] Grisez, *Christian Moral Principles*, 53. Emphasis in original.

reintroduced the will to their approach to moral understanding. The will (toward integral human or communal fulfilment) is seen not merely as that which chooses, but is that which illuminates the right choice. Expressed in a stronger formulation (and one which the new natural lawyers might balk at), it may be said that the right quality of will produces moral knowledge while a corrupt will clouds moral insight.

But while it may be a necessary concession to admit that a corrupt will occludes moral knowledge, this insight is only partially articulated, and it is at odds with other parts of the new natural law approach. This importance of a certain orientation of the will to moral knowledge is in tension with those aspects of the new natural law theory that emphasize the acquisition of moral knowledge through dispassionate philosophical analysis, proceeding from first principles rationally knowable by all.

However, this dispassionate methodology is not always easy to apply to specific situations, and this difficulty is only exacerbated by the vagueness of the ideal of integral fulfillment. After running through the new natural law approach (basic goods pursued under the modes of responsibility and the ideal of integral human fulfillment), Robert George comments that the, "modes thus provide premises for the often complex moral analysis by which persons can reason their way to specific moral norms. While our grasp of the modes gets moral argument off the ground, it does not always make such argument easy. Often, extremely careful and insightful analysis is required."[21] For the new natural lawyers, this analysis is philosophical,

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[21] George, *In Defense of Natural Law*, 52. In this passage George specifically provides killing as an example of an act that may need to be subject to such subtle analysis.

proceeding through the definition of terms and close reasoning from premises to conclusions.[22]

Their emphasis in making these more difficult determinations is on the definition and rational

manipulation of concepts, not the practical experience of virtue. Like many other systems of

moral philosophy, the new natural law has struggled with the insufficiency of any set of rules or

formulation of precepts to provide a complete guide to making moral choices. In response, its

advocates have insisted that certain negative moral norms may be adequately articulated by such

a system, while conceding the need for virtue and right willing (often presented under the ideal

of integral fulfillment) for otherwise apprehending morally right courses of action.

The New Natural Law and the Old

The new natural law is radically different from the natural law tradition of previous

centuries, though it claims to be consistent with Aquinas, arguing that he was misunderstood and

misapplied as the natural law tradition evolved in the centuries following his life.[23] The new

natural law is stripped of metaphysics and ontology (as well as much teleology) and it is

grounded instead in practical reason and experiential knowledge of human goods. While

distortions may obscure the principles and precepts of the natural law more in some cultures than

others, Finnis proclaims that, ""judgments about human good(s) and the truly worthwhile objects

of human existence are objective judgments, judgments capable of being true regardless of our

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[22] A series of extended examples may be found in the third volume of Grisez's work, *The Way of the Lord Jesus, Volume 3: Difficult Moral Questions*. Quincy, Illinois: Franciscan Press, 1997.

[23] For a recent example disputing this claim, and offering a wholesale criticism, and even condemnation, of the new natural law theory, see Steven A. Long, "*Fundamental Errors of the New Natural Law Theory*" in National Catholic Bioethics Quarterly, Spring 2013; 105-131. This issue of the journal contained several critiques of the new natural law theory; unfortunately, it did not include any response by the new natural lawyers themselves, nor have subsequent issues offered any articles in response. Thus, while providing a valuable collection of current criticisms of the new natural law from a traditional Catholic perspective, it falls short of providing dialogue between the contending intellectual factions.

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decisions or the conventions of our language or the customs of our communities."[24] Thus, the

new natural law declares itself to be independent of particular theological or cultural

presuppositions, and to provide precepts that are universally applicable and demonstrable.

Despite its sobriquet, proponents of the new natural law consider their approach to be

consonant with that of Aquinas, contending that they are merely avoiding some of the difficulties

that have plagued subsequent natural law theories, especially the later Scholastics and the Neo-

Scholastic revival. In particular, the new natural law theorists have been keen to avoid the

charge of deriving "an ought from an is" that has dogged assertions of the moral normativity of

nature. Consequently, Finnis asserts that, "A theory of practical reasonableness, of forms of

human good, and of practical principles, such as the theory Aquinas adumbrated but left

insufficiently elaborated, is untouched by the objections which Hume (and after him the whole

Enlightenment and post-Enlightenment current of ethics) was able to raise against the tradition of

rationalism eked out by voluntarism."[25] According to Finnis, while that tradition claimed to be

the main current of natural law theory it was only a later scholastic variation. The new natural

law, according to its adherents, has recovered the proper interpretation of Aquinas.

And so the centuries-long controversy over the fact-value distinction and deriving "an

ought from an is" does not trouble Finnis, for he does not claim to be able to do so. Instead, he

asserts that what is good is not demonstrated by examining human nature or practice, but by

reflection on the first principles of practical reason and experiential goods. He argues that for

Aquinas, "the way to discover what is morally right (virtue) and wrong (vice) is to ask, not what

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[24] John Finnis, *Fundamentals of Ethics*, (Washington, DC: Georgetown University Press, 1983), 22-23. Hereafter cited as *Fundamentals of Ethics*.
[25] Finnis, *NLNR*, 46-47.

is in accordance with human nature, but what is reasonable. And this quest will eventually bring

one back to the *underived* first principles of practical reasonableness—principles which make no

reference at all to human nature, but only to human good."[26] In Finnis' view, anyone who acts

for intelligible reasons (i.e. for an experiential basic good) is already expressing, in some limited

way, agreement with the principle that good is to be done and evil avoided, which is the first

principle of practical reason. Thus, the new natural law claims to rely upon self-evident

principles without presuming a philosophy of nature. And while new natural law theorists are

willing to discuss the final end or ends of human action and existence, they do not consider it

foundational to natural law theory to resolve such questions.

  While it has been accused by critics such as Russell Hittinger of being Kantian, the new

natural lawyers vehemently dispute this charge and argue that their theory retains the strengths of

its rivals while avoiding their weaknesses. As they put it, new natural law theory, "seeks to

combine the strengths and avoid the weaknesses of teleology and deontology. Morality is indeed

grounded in human good—the goods of real people living in the world of experience. Still, each

person's dignity is protected by absolute moral requirements, and it is never right to treat anyone

as a mere means."[27] Like many other modern natural law or natural rights theories, the new

natural law seeks to provide a standard of morality rationally accessible to all, and therefore

capable of providing a basic foundation for political and social cooperation and agreement.

Additionally, it is frequently invoked in attempts to vindicate Catholic views through public

reason, not appeals to revelation or church authority. Its leading proponents have engaged in

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[26] Ibid, 36.
[27] Finnis, et al, *Nuclear Deterrence*, 276-277.

extensive debates over jurisprudence and public policy, discussing issues ranging from nuclear disarmament to abortion to marriage.

These disparate projects seem to partake of a difficulty that Hittinger has identified in the modern separation of the natural law portion of Aquinas' teaching from the rest of his project, namely that the "natural law was placed in the most unfortunate position of being organized around two extreme poles. On the one end, it represented the conclusions of church authority; on the other, it represented what every agent is supposed to know according to what is first in cognition. We have Cartesian minds somehow under church discipline."[28] Such presentations of natural law as providing both a broad public foundation for basic moral agreement and a rational defense of a specifically Christian morality have been common throughout the centuries. A similar problem seems apparent for the new natural law, as its proponents are insistent that Roman Catholic teachings, such as those affirming the intrinsic immorality of contraception or homosexual actions, are demonstrably true based upon universally accessible practical reasoning. This assertion (particularly in the case of Robert George, who has a more perfectionist and less liberal view of the state than either Finnis or Grisez), has been a constant target of criticism.[29] Of course, this does not by itself discredit the new natural law approach, but it is a difficulty that it must address, insofar as it feels the tension between the two "poles" that Hittinger describes.[30]

In his *A Critique of the New Natural Law Theory*, Hittinger provided a detailed criticism of the new natural law as exemplified by Finnis and Grisez. In his view, the new natural law's

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[28] Russell Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World*, (Wilmington, DE: ISI, 2003), 21.

[29] See Leslie Green and Christopher Tollefsen in *Reason, Morality, and Law: The Philosophy of John Finnis*, as well as Finnis' responses from contemporary discussion of the new natural law and the role and limits of government.

[30] An obvious defense is that since all truth is of God, it is only to be expected that the truths of the natural law and reason would concur with those of revelation, with the latter making more clear and explicit to the layman that which could be naturally known through skilled philosophy.

abandonment of ontology and metaphysics did not resolve difficulties in the natural law tradition, but only added more. The new natural law, he charges, is a natural law without nature. Operating from a perspective favorable to the classic view of the natural law, he characterizes the new natural law approach "as a natural law theory that substitutes intuitions for a philosophy of nature…Grisez and Finnis want the results of a natural law theory but are unwilling to defend and deploy the theoretical apparatus necessary to sustain it. It is a case of wanting to have one's cake and eat it too."[31] Offering an example, Hittinger argues that Grisez's case against contraception, "looks very much like the older natural law argument except that it lacks the philosophical apparatus for making, justifying, and sustaining the series of theoretical moves which involve the relationship between the person and the body, the nature of life, and the relative importance of the procreative power in relation to human organicity in general."[32] Thus, Hittinger charges, the new natural law theory finds itself without the foundations necessary to sustain itself. In particular, it is in need of an understanding of the nature of the human person and of that nature as normative. Attempting to resolve the difficulties of natural law theory by abandoning the normativity of nature is a cure worse than the ailment.

There is, Hittinger claims, nothing in the new natural law theory sufficient to unify the various basic goods within an individual's life. Furthermore, he charges that Grisez' anthropology provides no "coherent explanation of how to speak of a teleological and ontological unity of the human being. There is a teleology for each basic good, to which the moral self is obligated, *but there is no corresponding teleology of the moral self*…we are dealing

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[31] Russell Hittinger, *A Critique of the New Natural Law Theory*, (Notre Dame, IN: University of Notre Dame Press, 1987), 164. Hereafter cited as *Critique*.
[32] Ibid, 63.

with a *homo absconditus*, for we are only given a miscellany of orders which somehow involve a self."[33] The increased emphasis in recent years by new natural lawyers on the ideal of integral fulfillment may have blunted this criticism by providing a unifying, if vague, ideal of the moral self, as well as an orientation for the will of that unified moral self. The moral self is the self which idealizes and acts for integral fulfillment, thereby harmonizing all the disparate basic human goods.

Even so, Hittinger's broader critique of the new natural law remains, charging it with abandoning any attempt at a philosophy of nature, a philosophy he considers necessary to ground a natural law theory. How can a natural law theory not prioritize nature? As he put it, "the effort to retain a natural law foundation for practical reason by substituting intuitions for the evidence derived from a philosophy of nature does not work. It either presupposes or postpones a philosophical explanation of the interrelation between inclinations, goods, and precepts."[34] Hittinger claims that ontology and teleology are not as easily dispensed with as the new natural lawyers suppose, thereby providing a counter-pouch from the older natural law perspective. He finds it incredible "that one could purport to have a coherent theory of practical rationality, even while disclaiming to know (in the strong sense of the term to *know*) what it is to be human, whether human beings have ends, and how the overall setting of nature either orients or disorients human action."[35] Surely, Hittinger argues, a natural law theory must begin with some conception of what is natural and how nature is normative. He concludes that, "it is not advisable to suppress the issues in a philosophy of nature and then, as it were, to take the ethics

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[33] Ibid, 74.
[34] Ibid, 174.
[35] Ibid, 193.

and run. We need to determine whether it is possible to provide a coherent philosophy of nature, and, if there be competing systems, which one is true."[36] Despite the apparent difficulties that reliance on a philosophy of nature created for the natural law tradition, Hittinger considers it indispensable.

At the least, Hittinger's criticisms forced the new natural lawyers to clarify their position. They have since taken pains to acknowledge that human goods are rooted in human nature, emphasizing that their claim is that methodologically we proceed to knowledge of moral truth from knowledge of experiential goods, not from knowledge of human nature. Thus, George later complains that, "Neo-Scholastic critics of the position Finnis defends have ignored the distinction between ontology and epistemology to which he appeals."[37] This alleged confusion leads them to mistake the issue. New natural law theorists, George argues, do not deny that morality is grounded in human nature. Rather, the real issue is "whether their claim that the most basic practical principles and moral norms are not inferred from prior knowledge of human nature somehow entails the proposition that morality is not grounded in nature."[38] In George's view, the methodological question of where natural law reflection should begin is not the same question as what the source of human goods is, and careful philosophers will keep this distinction in mind. Thus, he declares that, "The proposition that our knowledge of basic human goods and moral norms is not derived from prior knowledge of human nature does not entail the

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[36] Ibid, 194. Hittinger was also deeply critical of the new natural law's lack of a hierarchy of goods, complaining that, "In this sense, the deck is already stacked before we arrive at a specifically moral principle. That is to say, whatever morality turns out to be, it could not enjoin one to violate a principle of practical reason." (*Critique*, 48) He also found it troublesome that the lack of a hierarchy among the basic goods seems to leave no reason to prefer the good of religion over others. He believed that neither Finnis nor Grisez had dealt with this problem effectively, though he thought Finnis had done better at addressing it.

[37] George, *In Defense of Natural Law*, 86.

[38] Ibid, 85.

proposition that morality has no grounding in human nature."[39] That human goods are what they are because human nature is what it is does not mean that our knowledge of human goods must be preceded by knowledge of human nature. The basic human goods are still prior in perception, the new natural law theorists hold, to any systematic theory of human nature. As Finnis has expressed it, "Epistemologically, (knowledge of) human nature is not 'the basis of ethics'; rather, ethics is an indispensable preliminary to a full and soundly based knowledge of human nature."[40]

According to the new natural lawyers, the basic goods, which are intuitively and experientially known, are the immediate ends of rational action. And so, George asks rhetorically, "If Grisez and his followers are correct in supposing that the most basic reasons for action are not inferred from propositions about human nature but are instead self-evident, does that mean that these reasons (and the moral norms whose derivation they make possible) are detached from human nature? The answer is no."[41] Human goods may be known immediately and experientially. The new natural lawyers look for the sources of the natural law in neither human nature nor metaphysics. For them, one need not definitely define human ontology nor demonstrate man's final *telos* in order to comprehend the natural law. Thus, there is no reason for the new natural lawyers to object to Hittinger's characterization of them as postponing a discussion of a philosophy of nature, for that is something they readily accept. The real dispute, which Hittinger has helped clarify, is whether such a philosophy necessarily precedes moral discussion: for theorists of the older natural law tradition it must; for new natural law theorists, it only obscures the issue if undertaken too soon. For the former, there cannot be a natural law

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[39] Robert George, "Natural Law and Human Nature" in *Natural Law Theory: Contemporary Essays*, (Oxford: Oxford University Press, 1994), 35.
[40] Finnis, *Fundamentals of Ethics*, 21.
[41] George, *In Defense of Natural Law*, 86.

theory without a philosophy of nature first; for the latter, a philosophy of nature is secondary, both in importance and in method.

Connaturality and Principles

This dispute puts the spotlight on the disparate ways the new natural law theory and the older tradition view the apprehension of the natural law. An interesting twist on the older tradition was expressed by Jacques Maritain, the existential Thomist who emphasized that the moral insights of the natural law are accessible to all, regardless of philosophical training. Like nearly every other natural law theorist, Maritain maintains that his view is the correct interpretation of Aquinas.

The natural law, Maritain claimed, is primarily known neither through analysis of self-evident first principles nor through a philosophy of nature. Rather, it is known immediately, and it is only secondarily that it is codified into concepts for philosophical analysis. The natural law, Maritain argued, is "known through inclination or through connaturality, not through conceptual knowledge and by way of reasoning…My contention is that the judgments in which Natural Law is made manifest to practical Reason do not proceed from any conceptual, discursive, rational exercise of reason."[42] This does not mean that there is no role for the philosopher to play in explaining the natural law, but for Maritain, philosophers and philosophical theories enter only "to explain and justify, through concepts and reasoning, what, from the time of the cave-man, men have progressively known through inclination and connaturality. Moral philosophy is *reflective* knowledge, a sort of after-knowledge. It does not discover the moral law."[43] The

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[42] Jacques Maritain, *Natural Law: Reflections on Theory and Practice*, ed. William Sweet, (South Bend, IN: St. Augustine's Press, 2001), 20. Hereafter cited as *Natural Law*.
[43] Ibid, 22. Italics in original.

moral law is inborn within human persons, as part of their nature. Philosophic knowledge of it, and the construction of a moral philosophy around it, is not how it is primarily known. Rather, Maritain observes, the moral law was known long before the invention of moral philosophy. Natural law theories must therefore bear their secondary role in mind—their purpose is to explain and better articulate something that is already present, not to discover the moral law and its foundations through the exercise of sheer intellect. First principles or a philosophy of nature may still be important for a philosophical articulation of the natural law, but they are not necessary for its discovery.

This sort of view, Maritain holds, follows from a right understanding of Aquinas, albeit one that has often been obscured. Maritain argues that natural law theories since Grotius have been "spoiled by the disregard of the fact that Natural Law is known through inclination or connaturality, not through conceptual and rational knowledge."[44] This temptation was especially strong among natural law and natural right thinkers during the Enlightenment, and it continues to shape natural law discourse to this day. Thus, Maritain declares that:

> Through a fatal mistake, natural law—which is within the being of things as their
> very essence is, and which precedes all formulations, and is even known to human
> reason not in terms of conceptual and rational knowledge—natural law was thus
> conceived after the pattern of a written code, applicable to all, of which any just
> law should be a transcription, and which would determine a priori and all its
> aspects the norms of human behavior through ordinances supposedly prescribed
> by Nature and Reason, but in reality arbitrarily and artificially formulated.[45]

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[44] Ibid, 23.
[45] Ibid, 56. Italics in original.

According to Maritain, this modern perversion of natural law seeks to reduce it to geometric or mathematical precision, modeled on the optimistic naturalism of the Enlightenment. This view allowed natural law and natural rights theories to provide a potential ground for political agreement based not on tradition or divine right, but on self-evident first principles and rationality. The corollary of this modern view was that if the natural law could not attain the apparent universality and precision of the likes of Euclidian geometry or (later) Newtonian physics, its validity was suspect. Although Maritain also hoped that the natural law (and natural rights) could provide a source of political agreement, he nonetheless thought it remained important to "recognize that human reason does not discover the regulations of natural law in an abstract and therefore theoretical manner, as a series of geometrical theorems. Moreover, it does not discover them through the conceptual exercise of the intellect, or by way of rational knowledge."[46] Philosophical articulations of the natural law are just that—improved articulations of something already present and known, not discoveries of something otherwise unknown to men and women.

Contrary to the Enlightenment view of natural law principles being discovered by theoretical reason and articulated as objectively demonstrable principles, Maritain argues that, "being known through inclination, the precepts of Natural Law are known in an *undemonstrable* manner." Except when making use of philosophy, men "are unable to give account of and rationally to justify their most fundamental moral beliefs; and this very fact is a token, not of the irrationality and intrinsic invalidity of these beliefs, but on the contrary, of their essential

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[46] Ibid, 33.

naturality, and therefore of their *greater* validity, and of their *more than human* rationality."[47]

For Maritain, the natural law's strongest evidence is not in its defensibility by analytical, abstract universally-accessible rationality, but in its inarticulate but pervasive influence. This presence, inchoate though it may be, is for him a reason to defer to the authority of the natural law, rather than a reason to discard it or redefine it. Philosophical articulations of the natural law, in his view, are only a reflection of the moral truths that are already existentially present to human beings by their nature.

At first glance, though there is a difference of emphasis, this view of the connaturality of the natural law does not necessarily conflict with the understanding advanced by the new natural lawyers. Joseph Boyle, a new natural law theorist who has frequently collaborated with Finnis and Grisez, has written that,

> natural law theorizing supposes that people's everyday moral reasoning is
> continuous with general moral norms and principles. Natural law theorizing is the
> attempt to formulate those principles in an analytical and systematic way and to
> make clear how they bear upon everyday moral judgments. Thus, natural law
> theorizing makes reference to common moral experience, not to theoretical
> constructs which seek to organize moral experience without being part of it.[48]

The new natural law, after all, does claim to have an experiential foundation in the basic human goods toward which we are directed by self-evident first principles. Additionally, Grisez has acknowledged that the historical development of moral norms and the formulation of moral principles were not carried out according to the methodology of the new natural law, writing that

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[47] Ibid, 21. Italics in original.
[48] Joseph Boyle, "Natural Law and the Ethics of Tradition" in *Natural Law Theory: Contemporary Essays*, ed. by Robert George, (Oxford, Oxford University Press, 1994), 21.

"specific moral norms have not been derived by people who had clearly articulated the basic human goods and the modes of responsibility, and who then set about to formulate norms. Rather, the principles of practical reasoning and the normative principles were understood by direct insight, but not explicitly formulated." Even when philosophical reflection and clarification were undertaken, they rarely proceeded by new natural law methods. Rather, "Consideration began from deliberation about possibilities for choice, and also (perhaps even more) from criticism of actions which in one way or another let to trouble and second thoughts. Reflection often refined previous formulations."[49] This historical account, along with the desire for continuity between everyday moral practice and the formulations of the natural law, would seem to indicate a good deal of comity between the new natural law and an approach like Maritain's.

However, within the new natural law school there is still a strong tendency toward an emphasis on reasoning from first principles—and the ambition to provide a universal, non-sectarian foundation for public and political morality. This is seen in the faith the new natural law places in method, in its insistence on the rational objectivity of its precepts and in the dichotomy it often erects between emotion and reason. For example, writing about the relation between natural law and conscience, Grisez avers that, "there can be no inconsistency between the objectivity of its norms and the personal quality of conscience. Natural law is our understanding of the basic principles of our fulfillment as human persons, and these principles are the premises from which we reason to judgments of conscience."[50] But such reasoning from "basic principles" is not how most people arrive at judgments of conscience. The moral

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[49] Grisez, *Christian Moral Principles*, 255.
[50] Ibid, 84.

reasoning of most people is based on intuition, habit, tradition and instruction—in short, nearly everything except close reasoning from first principles. Grisez is presenting a confused combination of a philosophical method and the ordinary, everyman experience of the natural law.

Thus the new natural lawyers must argue, as Boyle has, that "the knowledge of basic moral principles possessed by everyone need not be articulate, philosophically elaborated knowledge. Principles can be present and operative within knowledge without being explicitly formulated."[51] Boyle is trying to protect the primacy of the new natural law method and its understanding of principles as a means for arriving at true moral judgments, even while conceding its irrelevance (or, at least, significantly limited role) for ordinary people apprehending moral truth well enough to make correct moral judgments in moments of decision. This tension is reminiscent of that between the new natural law's initial method of moral reasoning (based on basic goods and modes of responsibility) and its later emphasis on the ideal of integral fulfillment. The new natural law theorists have, to some degree at least, recognized the insufficiency of their initial legalistic, rationalistic approach, but are unwilling to abandon it as a primary method of moral reasoning.

Thus, despite some agreement with Maritain (the natural law can guide moral decisions even for those who have no philosophical knowledge of it), the new natural law operates with a very different model. For the new natural law theorists, principles are primary, even when inchoate; they are the true reality of the natural law, awaiting discovery and philosophical formulation, rather than being merely one among many possible articulations of the natural law.

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[51] Joseph Boyle, "Natural Law and the Ethics of Tradition" in *Natural Law Theory: Contemporary Essays*, ed. by Robert George, (Oxford, Oxford University Press, 1994), 25.

The insistence of the new natural law proponents on the primacy of self-evident first principles and a rationalistic method is motivated by their desire to provide a universal, rational source of public and political morality. However, their failure to persuade their scholarly peers of the merits of the new natural law leads to a significant theoretical problem for their approach.

The Problem of Moral Disagreement

While Finnis and other new natural lawyers seek to ground the natural law in self-evident first principles directing persons to basic experiential goods, rather than complex and contentious metaphysical theories or ontological claims, the result is far removed from their starting point. The moral prohibitions of the new natural law theory are absolute and abstract, claiming precedence over all consideration of circumstances, regardless of necessity, responsibility or consequence, which results in rules every bit as given to contention and casuistry as those of the older natural law approaches Finnis and his allies seek to supplant.

Far from providing a universal, rational foundation for moral knowledge, the new natural law theory has become merely another position in the interminable logomachy of modernity, one more academic proposition with little chance of swaying skeptics. Furthermore, it has provided little explanation for why it has failed to persuade so many rational people of goodwill, whether academic philosophers or ordinary people. And this is a problem for the new natural law, insofar as it should, if it is correct, win the assent of rational people of goodwill. Yet it remains, if not marginal, at least far from triumphant. Advocates of the new natural law, such as Robert George, spend a lot of time arguing with people who are very skilled at casuistry and moral parsing, and yet very bad (by the lights of the new natural law theory) at reaching the right conclusions. Although the new natural law theory has little difficulty in dismissing the

disagreement of non-philosophers, generally characterizing them as allowing their reason to be overcome by emotion and self-interest, the disagreement of philosophers provides a more serious challenge. While ordinary persons may intuitively accept or reject the precepts of the (new) natural law without understanding them, it becomes more difficult to make this claim about skilled and experienced moral philosophers.

Why do so many skilled philosophers, trained in the analytic methods the new natural law utilizes, reject the new natural law? Why are they reluctant to recognize its supposedly self-evident first principle? Is it because they are irrational? Is it because they lack goodwill? The new natural law theory has struggled to present a third option based on its own understanding of how human reasoning and moral knowledge operate. A critic, of course, could point to an alternative, which is that the new natural law theory is, in part or in whole, wrong.

Accepting that they are wrong is not an option for the adherents of the new natural law, and so they must either claim that their philosophical opponents are (despite their training and credentials) irrational and mistaken, or that they lack goodwill. Although the new natural lawyers are fond of noting that self-evident is not equivalent to obvious, this only gets them so far when confronting the opposition of skilled philosophers who have had the new natural law theory thoroughly explained to them. And so, John Finnis has, at times, challenged the motives of his opponents, calling into question their goodwill, if not their rationality. In the lectures that became *Moral Absolutes*, he argued against liberal Catholics, declaring that, "One fact seems clear and basic. The formal attack on the moral absolutes emerges, among Catholics, in response

to the problem of contraception."[52] It is on this point, he believes, that the will of various

Catholic thinkers has been corrupted, leading their intellects astray. He declares that "the will to

justify contraception for Catholics did not weaken. Hence there emerged a series of arguments

seeking to reshape the very foundation of Catholic moral theology, so that those foundations

might cease to provide obstacles to accepting the conclusion desired."[53] Finnis holds that these

Catholic thinkers, who are generally familiar with natural law reasoning (old and new) on the

subject but nonetheless reject Church teaching on the matter, will be prevented by this willful

prior determination from reaching the right conclusions, no matter how skillfully they reason.

As an example he selects Karl Rahner, asserting that, examining his arguments will

provide "some confirmation of the hypothesis that, underlying the whole effort to develop a

theoretical critique of the tradition's absolutes is a simple *antecedent* wish to approve some of

the actions they exclude."[54] Finnis may be correct on this point, at least as regards the motives of

many of the liberal Catholic theologians and moral philosophers he has tangled with. But it also

introduces a problem for his own system—if the rationality necessary to reason correctly

(according to the new natural law method) is so easily corrupted, there would seem to be

significant difficulties facing the new natural law's aspiration to provide a universal set of moral

principles derived from self-evident premises.

Therefore, it seems that moral virtues and a proper disposition of the will are far more

important to correct moral reasoning than the new natural lawyers have usually given them credit

for. To be sure, Boyle had granted that "the moral virtues have an irreducible role in moral

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[52] John Finnis, *Moral Absolutes: Tradition, Revision, and Truth*, (Washington, DC: The Catholic University of America Press, 1991), 85. Hereafter cited as *Moral Absolutes*.
[53] Ibid, 89.
[54] Ibid, 101. Italics in original.

knowledge. As dispositions of character necessary for the developed capacity to make moral judgments correctly and easily they are necessary for mature, competent moral decision-making." But he immediately qualified this by stating that, "it is clear that the moral virtues do not constitute a source of moral knowledge independent of the knowledge of the universal principles of the natural law."[55] The new natural lawyers maintain the primacy of abstract principles and analytic philosophical methods for apprehending and explaining the natural law even while acknowledging the importance of the virtues to putting it into practice. The virtues, on this view, appear to be a sort of moral muscle-memory, important for moral living, but subordinate, even irrelevant, to moral reasoning and philosophy.

However, in recent years Finnis has begun to give more recognition to the importance of the virtues in the apprehension of the natural law, not only for the layman, but for the philosopher as well. He has occasionally seemed to adjust his approach significantly, at times moving away from an attempt at universally applicable and demonstrable moral precepts known through reason and analytic philosophy to something more personal, rooted in the will and in love. In particular, he is sometimes insistent upon the importance of a rightly-ordered moral character for the proper practice of moral reflection and philosophy.

Without the virtues, Finnis now acknowledges, it is difficult, perhaps impossible, to undertake moral reasoning aright. He has recognized that the principles identified by and which shape philosophical ethics, "cannot be other than a reflectively self-aware and appropriately extended version of *prudentia*—of right-minded thinking about what to do with one's life." He observes that although, "the thought that one cannot do ethical/political theory well without

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[55] Joseph Boyle, "Natural Law and the Ethics of Tradition" in *Natural Law Theory: Contemporary Essays*, ed. by Robert George, (Oxford, Oxford University Press, 1994), 14.

having the moral (and intellectual) virtue of practical reasonableness," might seem arrogant, it is a "recognition that in *this* kind of theorizing one has a special and unavoidable vulnerability to theoretical error, namely to theoretical error arising precisely because of some regrettable defect in one's character, which entails some want of *prudentia*." He further distinguishes between this *prudential*-dependent theorizing and the academic ability to be "adept at articulating and finding one's way around an ethical system which one accepts as propositions already articulated by others…This needs no well-developed practical reasonableness, no *prudentia* or other virtues."[56]

Nevertheless, after his previous emphasis on impersonal reason and philosophic method, Finnis has not gone all the way to the other extreme, holding that all theoretical errors are due to moral flaws. He maintains that, "Failure to reflect accurately upon one's deliberations and dispositions, and/or to reason from one's reflections correctly and energetically, can be the cause of oversights and errors of theoretical judgment." Considering an error of his own, he admits that *Natural Law and Natural Rights* overlooked the importance of "morality's master principle (that one should remain open, in all one's deliberating and willing, to integral fulfillment— fulfillment which is not one's own, nor indifferent to one's own, but locates it in the fulfillment of all human persons in all their communities)."[57] Finnis believes that the guiding ideal of integral fulfillment for humans and communities may provide a strong resource against temptation, which he still tends to identify with emotion.

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[56] John Finnis, "Foundations of Practical Reason Revisited" 50 Am. J. Juris. 109, 2005, 121-122. Italics in original. This is much more emphatic and direct than previous statements on the subject, such as that found in Foundations of Ethics, which briefly notes the "virtues required for any successful intellectual pursuit." (*Foundations of Ethics*, page 6).

[57] Ibid, 122.

Despite this increased recognition of the insufficiencies of analytic reason and philosophical method as a sure moral guide, Finnis maintains the reason/emotion dichotomy of his earlier work, with reason always presented as a source of correct moral knowledge, while emotion is either a source of temptation or, at best, only a motivating auxiliary to reason's conclusions. While now admitting a greater role for virtue as a precondition of correct moral reasoning, and, conversely, of the power of bad character to corrupt moral reasoning, Finnis maintains the privileged places of reason, self-evident first principles and objective universal moral prohibitions in his system.

In the same essay Finnis rearticulates the new natural law approach while more explicitly acknowledging the role of personal knowledge, virtue and will. A proper knowledge of ourselves, Finnis argues, depends upon our grasping the goods for which we act. And so he writes that the "foundational epistemological insight of Aristotle and Aquinas that I regret not articulating as such in *Natural Law & Natural Rights:* a nature such as ours is *known* by understanding the objects that make sense of the acts by which the capacities of a being of such a nature are realized."[58] Among other things, this provides for a readmission of ontology on terms acceptable to the new natural law method: human nature is known according to the goods that fulfill humans, not the other way around. Thus, there can be a discussion of human nature of the sort that Russell Hittinger thought essential to a natural law theory, but it will still, for the new natural law theorist, be secondary.

Finnis also shows a greater sensitivity than before to the personal nature of "identifying each of the basic forms of human good," writing that "'Identifying' is hardly an adequate term,

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[58] Ibid, 117. Italics in original.

however. What we are here concerned with is an understanding of each of these kinds of opportunity, of these desirable aspects or ways of being a human person and a human community…What we call *will* is essentially one's responsiveness to one's understanding of such opportunities."[59] The will is thus explicitly tied to the ability to understand and act in ways that contribute to integral fulfillment. This is a significant departure from the intellectualism of the earlier articulations of the new natural law theory, which granted little importance to the right orientation of the will for the apprehension of moral possibilities.[60]

Continuing to consider the will as a contributor to moral insight, Finnis avers that at the core of right willing, we may find love. Reflecting upon the Shakespearian line, "Love hath Reason" Finnis asks whether it may,

> be compatible with and perhaps even affirm the position that love of persons, each precisely for his or her own sake, has the reasons which the first practical principles pick out, the human goods towards which those principles direct us, each of these goods an aspect of the worth (in deprivation or fulfillment) of each human being? Practical reason's first principles are, so to speak, transparent for the persons who can flourish in the kinds of way to which those principles direct us—so transparent that it is, in truth, those persons for whose sake we are responding when we respond at all to those reasons' summons.[61]

Love, Finnis now believes, illuminates moral truth and directs one to right action. This articulation of the new natural law is much less intellectualist than Finnis' initial presentation of

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[59] Ibid, 123-124. Italics in original.
[60] Contrast this with the definitions of will and the virtues found in *Foundations of Ethics*, which emphasize intelligence. There, Finnis wrote that "*Will* is simply the capacity to act in order to preserve or respect, realize or participate in, goods which may at the time of action be apparent only to the intelligence," (*Foundations of Ethics*, 22-23) and "moral virtues are the attitudes, habits, dispositions, willingness…which can be justified as reasonable modes of response to the opportunities which intelligence makes evident to us" (*Foundations of Ethics*, 56).
[61] John Finnis, "Foundations of Practical Reason Revisited" 50 Am. J. Juris. 109, 2005, 128.

it. It gives much more credence to the importance of personal knowledge, virtue and will—conceding the inadequacy of an intellectual articulation of precepts and propositions to determine and motivate right action. The formulations of the new natural law, while not abandoned by Finnis, now serve primarily to determine that which is wrong, and especially that which is always and everywhere wrong. Thus, he writes in another relatively recent essay that "moral rules thus picking out kinds of act that are exceptionlessly wrong" are themselves "exceptions to the generalization that moral reasoning becomes less certain as its propositions descend from high-level universal principles towards specific conclusions about particular options available in complex and imperfectly foreseeable or controllable circumstances." There is, Finnis observes, no shortage of principles identifying, with more or less specificity, positive responsibilities, but "the relatively few exceptionless moral rules are all negative, identifying kinds of option always to be excluded from one's deliberations."[62] The identification and vindication of these exceptionless moral norms remains a central goal of the new natural law approach, whose theorists believe that such precepts can be demonstrated to be objectively true. Such a demonstration, if generally accepted, would serve their goal of providing the boundaries of public and private morality. New and unique instantiations of goods would always be available for imagination and invention, precluding any single scheme to implement the Good, but objective prohibitions against certain actions would remain unchanging.

This emphasis on objectivity is illustrated by Grisez, when writing on conscience, he declares that, "Although conscience is one's own grasp of moral truth, this does not make it

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[62] John Finnis, "Reason, Revelation, Universality and Particularity in Ethics" (July 1, 2008). American Journal of Jurisprudence, Vol. 53, pp. 23-48, 2008; Notre Dame Legal Studies Paper No. 09-12. Available at SSRN: http://ssrn.com/abstract=1392283, page 13.

one's own wish or fiat. Conscience is personal just as seeing something for oneself is personal.

What one sees truly for oneself is an objective fact which others, too, can see. And the moral

truth grasped by one's conscience is true apart from one's grasping of it."[63] Furthermore, Grisez

proclaims, these objectives facts of the natural law (a law written in human hearts and there

discovered by them), "consists of a group of moral principles which God gave us in creating us

and which we know naturally…this law written in our hearts is made up of general principles."[64]

Despite his recent reconsideration of portions of the new natural law theory, Finnis does not

seem to have abandoned this shared commitment to objectivity and general principles as

essential to the natural law.

<div align="center">Moral Reasoning and Absolutes</div>

Even after his shift toward a greater recognition of the importance of virtue to moral

knowledge, Finnis, along with other new natural lawyers, has devoted extraordinary energy to

the defense of exceptionless moral norms. These are, he still declares, objective, derived from

self-evident first principles (directing one to the basic goods) and hold come what may. Thus,

although the pursuit of some of the basic goods is often incompatible with the pursuit of other

basic goods, Finnis and his allies thoroughly reject any sort of consequentialism or

proportionalism, which they see as pitting one good against another and as (at least in some

formulations) demanding the impossible—that humans calculate the total good and bad

consequences of every decision. Finnis has explained this view thusly,

> To choose an act which in itself simply (or primarily) damages a basic good is
> thereby to engage oneself willy-nilly (but directly) in an act of opposition to an

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[63] Grisez, *Christian Moral Principles*, 86.
[64] Ibid, 76.

incommensurable value (an aspect of human personality) which one treats as if it were an object of measureable worth that could be outweighed by commensurable objects of greater (or cumulatively greater) worth. To do this will often accord with our feelings, our generosity, our sympathy, and with our commitments and projects in the forms in which we undertook them. But it can never be justified in reason.[65]

Because the basic goods are incommensurable and cannot be ranked in a hierarchy of value, it is always wrong to harm one, even in the service of another. Thus, there are precepts of the natural law that always apply and must be held inviolate. These protect basic goods and are expressed in negative formulations. As is usual for the new natural lawyers, reason is identified as the source of true moral knowledge, in contrast to the temptations that emotions offer. And this reason precludes direct acts against basic goods. Finnis states that it "is always unreasonable to choose directly against any basic value, whether in oneself or in one's fellow human beings. And the basic values are not mere abstractions; they are aspects of the real well-being of flesh-and-blood individuals."[66] There are therefore certain absolute human rights and certain acts against them are always and everywhere wrong, even if this is not always recognized.

The injunctions of the new natural law theory, its proponents claim, are universally valid and impartial, and are not swayed by attachments to some persons or goods over others. Finnis writes that in addition to the "requirement of fundamental impartiality of recognition of each of the basic forms of good," there is a requirement of fundamental impartiality among human subjects, which "is expressed as a requirement that one's moral judgments and preferences be

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[65] Finnis, *NLNR*, 120.
[66] Ibid, 225.

universalizable."[67]   The non-philosophical expression of this, he says, is the Golden Rule: do

unto others as you would have them do unto you. Thus, Finnis argues that "the way from first

practical principles to specific moral norms about murder, adultery, theft, and so forth is a way

which runs through the 'neighbor as oneself' principle."[68] This way moves toward the universal,

and toward universal moral rules, for "the direction the first practical principles give one's

deliberation is towards goods one can share in along with others, and it has no rational stopping-

place short of a universal *common good*."[69] Such rationality demands that one set one's biases

aside to survey ethical choices from an objective impartiality: "to violate the Golden Rule is to

allow emotional motivation for self-interested preference—independent of rational grounds for

prioritizing among persons—to override the rational rule of fair impartiality."[70] Impersonal

reason, in this account, is the source of correct moral judgment.

Again Finnis invokes the Enlightenment ideal of rational objectivity and opposes it to the

potential dangers of convention and emotion. The new natural law method, its proponents

believe, allows the formulation of truly rational moral norms; by relying on analytic methods—

the proper formulation and logical manipulation of concepts—it seeks to avoid reliance on

personal knowledge or insight. For the new natural law, as initially formulated, anything

personal was invariably corrupting to moral reasoning—a source of illogic induced by partiality

and emotion. Even as the new natural law has evolved, it has maintained this stance with regard

to the formulation of exceptionless moral norms.

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[67] Ibid, 107. Italics in original.
[68] John Finnis, *Aquinas*, (Oxford: Oxford University Press, 1998), 128. Hereafter cited as *Aquinas*.
[69] Ibid, 132. Italics in original.
[70] Finnis, *NLNR*, 420.

For Finnis, this approach allows these norms to always mark the limits of what is morally

licit; "negative moral norms can be, and a number in truth are, binding and governing always and

on every occasion {*semper et ad semper*}. Negative moral norms of this sort are, in short, both

specific—immediately applicable without further moral reasoning—and exceptionless."[71] These

prohibitions preclude acts that are always directly against a basic good, regardless of the

situation or consequences. Nor is the validity of these exceptionless norms called into question

by the many other moral norms that the new natural law does not declare to be exceptionless.

Grisez argues that, "Nonabsolute norms simply are those which can be specified further, with the

result that the moral determination changes. But the change is not dictated by some impossible

weighing of goods and bads promised by various alternatives, to see which will yield the greater

good or lesser evil."[72] Furthermore, according to the new natural law theory, reason precludes

any true moral dilemma. As Grisez puts it,

> **Since the first principle of morality is one and the various modes of
> responsibility are negative, there can be no conflict at the level of moral
> principles.** Faced with an apparent conflict of responsibilities, one should first
> consider the facts and the relevant norms, to see whether there has been an error
> in identifying possibilities or in applying moral principles to arrive at specific
> norms. Usually, apparent conflicts are cleared up by carful reflection…Excessive
> attachment to certain goods and failure to rely on divine providence often lead
> people to think they must do things which are always wrong.[73]

Arguments rooted in forms of proportionalism or consequentialism may be invoked to

justify such wrongdoing, but they are, in the view of the new natural lawyers, merely a cloak

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[71] Finnis, *Aquinas*, 164.
[72] Grisez, *Christian Moral Principles*, 259.
[73] Ibid, 295. Emphasis in original.

over a failure of reason to rule emotion. Furthermore, they will corrupt the rest of one's moral reasoning. Finnis declares that to add a "consequentialist principle into one's ethics, at any point…is to introduce an element of arbitrariness and rationalization which must consume the moralist's non-consequentialist principles."[74] Once introduced, he believes, any limits on consequentialist principles will be merely arbitrary, and therefore the remainder of one's ethics will always be prone to future consequentialist incursions. According to the new natural lawyers, the proper functioning of practical reason will necessarily resolve any apparent conflict between moral demands, and therefore preclude the necessity of acting against a basic good or violating an exceptionless moral prohibition.

The defenders of the new natural law theory claim that they should be unperturbed by its detractors or by those who ignore it, for "even the most elementary and easily recognizable moral implications of those first principles are capable of being obscured or distorted for particular people and, indeed, for whole cultures, by prejudice, oversight, convention, the sway of desire for particular gratifications, etc."[75] While the natural law is present everywhere, so are the obstacles to perceiving it and the temptations to ignore it. And as is usual with the new natural lawyers, reason is presented as the source of true moral knowledge, in contrast to emotion, tradition, desire, etc., which may lead one astray.

Offering another argument against consequentialism, Finnis writes that reasonable "judgments are arrived at by a steady determination to respect human good in one's own existence and the equivalent humanity or human rights of others…rather than trade off that good and those rights against some vision of future 'net best consequences'—consequences which

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[74] Finnis, *Fundamentals of Ethics*, 83.
[75] Finnis, *NLNR*, 30.

overall, both logically and practically, one cannot know, cannot control or dispose of, and cannot evaluate."[76] This is a regular refrain among the new natural lawyers: precisely calculating the greater good and lesser evil is impossible. This is true, but it does not discredit consequentialism or proportionalism. One can seek the greater good, so far as one can see it, while acknowledging that one may be mistaken, and without claiming to infallibly and precisely tally the good and ill consequences of a decision. While the future cannot be known with certainty, it is hardly inscrutable to practical rationality. Indeed, at other times Finnis is quite willing to predict likely future consequences in order to emphasize that the negative moral norms of the new natural law apply in all situations, regardless of the incentive to violate them.

Intention and Absolutes

This abstract and legalistic approach of the new natural law, regardless of consequences, may be seen in Finnis' outspoken condemnation of nuclear weapons. In a collaborative volume, published only a few years before the collapse of the Soviet Union, he, along with Grisez and Boyle, concluded that, "Our nations ought to renounce nuclear deterrence. They should do so at once. They should do so even though their unilaterally initiated renunciation would almost certainly go unreciprocated by the Soviets."[77] Furthermore, unlike some who thought unilateral disarmament might have practical benefits, the new natural lawyers counselled it even though they believed that "governments and citizens reasonably judge nuclear deterrence their only defense against Soviet power."[78] They also thought that while "unilateral disarmament by the US or by all of the Western powers…would very probably avoid nuclear war and produce a kind of

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[76] Ibid, 226.
[77] Finnis et al, *Nuclear Deterrence*, 328-329.
[78] Ibid, 65.

peace. It would be a peace under widespread tyranny."[79] But if such global tyranny was the price of adherence to the precepts of the new natural law, Finnis and his co-authors were willing to accept it, both for themselves and for their countrymen. No matter what their responsibilities were or how grim the apparent consequences, the new natural lawyers believed that political leaders had a duty to follow the norms of the new natural law theory—norms that prohibited the use, or even the threat of using, nuclear weapons.

This stance is the logical conclusion of the new natural law approach that emphasizes moral purity and absolute standards over seemingly more practical considerations and personal responsibilities, which are thought to be rooted in partiality and emotion. While conceding that normally the consideration of likely consequences is an important part of moral reasoning, the new natural lawyers argue that when contemplating direct action against basic goods, the consideration of consequences is an emotionally-grounded temptation away from rational moral truth. One is morally bound to avoid direct action against any basic good. In such cases, providence, not man, is responsible for the consequences of one's morally imperative inaction.

With regard to nuclear deterrence, Finnis and his collaborators did not dismiss the threat posed by the Soviets, writing that the "reality here is twofold: the menace of Soviet power if it were undeterred by a deterrent system such as actually exists, and the threat to kill the innocent, with its underlying intent, and its guilt. The reality, in both respects, is horrible. Every reasonable person wishes to escape it. But the only thing one can escape is the guilt."[80] Finnis and his allies argued that while the leaders of the free world had a responsibility to preserve and protect their citizens and their liberties from Soviet aggression, they had to stand down if they

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[79] Ibid, 66.
[80] Ibid, 161.

could not do so without violating absolute moral precepts. Though the nuclear deterrent was necessary to protect the Western nations, they did not believe this sufficient to show "that the deterrent is morally justified. For even if one has a serious moral responsibility, one can be morally barred from using the only available means to fulfill it."[81] Not even the greatest responsibilities are sufficient to justify the slightest violation of the absolute moral norms picked out by the new natural law. And this is so, Finnis declares, for while "moral norms alone cannot tell political leaders what to do…moral absolutes tell everyone, including political leaders, certain things *never to do*."[82] Necessity is not a defense, and Finnis and his allies reject the view that "there is a fundamental and overriding moral responsibility, at least of national leaders: that a future state of affairs shall be realized, viz. the foreseeable well-being of a community. Expressed in theoretical terms, the assumption is simply a form of the consequentialism we examined and found wanting."[83] Neither responsibility nor consequences have any weight against the exceptionless moral norms identified by the new natural lawyers.

Indeed, Finnis argues that one's responsibilities necessitate the exceptionless norms of the new natural law theory. The basic human goods, he reiterates, "are not mere abstractions; they are aspects –all the constitutive aspects—of the being and well-being of flesh and blood individuals." Therefore, he continues, "Our fundamental responsibility is to respect each of those aspects, in each person whose well-being we choose (whether as end or as means) to affect. We never have sufficient *reason* to set aside that responsibility." Regardless of our sympathies and intuitions, we need "intelligent reflection on the fate of the person against whose well-being,

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[81] Ibid, 75.
[82] Ibid, 198. Italics in original.
[83] Ibid, 330.

in some basic aspect, one is proposing directly to choose and act and who, therefore, falls more immediately within one's responsibility."[84] One's first responsibility, then, to take an example *in extremis* that Finnis confronts, is to the Gestapo agent one is considering lying to, rather than to the hidden Jews who would be protected by such lies. The immediate basic good to be protected in such a situation, Finnis holds, is the good of community with the Gestapo agent; the basic goods of the hidden Jews can only licitly be protected to the extent that one does so without violating the basic goods of the Gestapo agent.[85]

Finnis's quest to avoid the perils of consequentialism leads him to embrace moral absolutes that intentionally ignore the practical results of their declared moral imperatives. As he has reiterated elsewhere, "Moral rules thus picking out kinds of act that are exceptionlessly wrong identify those acts by their objects, that is their close-in objectives, not by reference to their consequences or other circumstances."[86] But it turns out that the new natural law has ways to parse these objectives so that otherwise forbidden acts may be justified. Despite piously preaching exceptionless, objective moral standards in many volumes over many years, the new natural lawyers have nonetheless keenly sought loopholes.

There is within the new natural law approach a good deal of casuistry devoted to determining and distinguishing between different objectives, often determined by an agent's subjective intentions. To take one example, Finnis is not a pacifist but adheres to a version of just war theory, with an emphasis on the principle of double effect. With regard to killing, what

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[84] Finnis, *Fundamentals of Ethics*, 125. Italics in original.
[85] See Finnis, *Aquinas*, 160, quoted below.
[86] John Finnis, "Reason, Revelation, Universality and Particularity in Ethics" (July 1, 2008). American Journal of Jurisprudence, Vol. 53, pp. 23-48, 2008; Notre Dame Legal Studies Paper No. 09-12. Available at SSRN: http://ssrn.com/abstract=1392283, page 13.

matters is not how direct the relationship between action and consequence is but rather "the relationship between the moral agent's will and the death brought about…the relationship is specified by the agent's intention."[87] As Finnis and his co-authors explain, "Killing people is not a permissible means to promote other goods or prevent other evils. Yet accepting death(s) as a side-effect of one's chosen action is not the same things a choice to kill."[88] They then elaborate, arguing that,

> Some killing does not involve a choice to kill, and such killing may sometimes be justified, though certainly not always. Killing can carry out a choice to do a deed which in fact is deadly without being a choice to kill. Such a choice can be to do something else, to which death will be a foreseen side effect. The casual consequences of executing a choice, even if they are known to be inevitable, are not necessarily part of what one chooses…Thus, individuals and groups can do things which they know will kill someone without intending to kill anyone.[89]

Such reasoning is not original to Finnis and his fellow new natural lawyers, but their explication shows how torturous its logic can become. By this account, soldiers in a just war may take actions that they foresee will kill civilians along with enemy soldiers without choosing to kill those civilians, even though they know that their deaths will be the immediate result of their actions. Additionally, those entrusted with maintaining the order and welfare of the community may act against basic goods (including, according to some new natural lawyers who support capital punishment, the basic good of life) in the administration of justice and deserved punishment.[90] New natural law theorists have also made use of this reasoning to analyze other

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[87] Finnis et al, *Nuclear Deterrence*, 79.
[88] Ibid, 294.
[89] Ibid, 310-311.
[90] See Finnis, *Fundamentals of Ethics*, 128-133.

life and death situations, including those involved in a childbirth gone horribly wrong.

According to their reasoning, which they have thoroughly debated with their critics, one may

crush the skull of a baby without the intention of killing the baby, but only of protecting the life

of the mother by reducing the size of the skull in order to facilitate delivery.[91] To borrow a

phrase from Finnis, the contemporary literature of the new natural law theory is rich with

diverting rationalizations.[92]

A good deal of the debate regarding the new natural law theory's understanding of action

and intention has focused on the work of Elizabeth Anscombe, with both the new natural lawyers

and many of their Catholic critics laying claim to consonance with her views (she herself was

silent regarding the new natural law theory). Finnis claims that her work, particularly that of

Intention, is congruent with the new natural law theory, though he has charged her with some

inconsistency between her early and late work. Meanwhile, multiple critics have found the new

natural law incompatible with her approach.[93] However, it may be more relevant to ask whether

the new natural law theorists are consistent with themselves. Consider craniotomy, which it is a

real-world moral dilemma (though thankfully rarer as medical care improves), and one that

clearly pits advocates of what has become traditional Catholic teaching (intrinsically evil acts,

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[91] For a recent critique of the new natural law's theory of act and intention, including in such cases, from a traditional Catholic perspective, see Rev. Kevin L. Flannery, SJ, "*Thomas Aquinas and the New Natural Law Theory on the Object of the Human Act*" in National Catholic Bioethics Quarterly, Spring 2013; 79-104. See also his entry in *Law Morality and Reason: The Philosophy of John Finnis*, and Finnis' response in the same volume.
[92] See Finnis, *Fundamentals of Ethics*, page 95, for the original line.
[93] See, for example, Matthew B. O'Brien, "*Elizabeth Anscombe and the New Natural Lawyers on Intentional Action*" in National Catholic Bioethics Quarterly, Spring 2013; 47-56. The crux of his argument is that for Anscombe the question "Why?" about an action is meant to be a third-person or social question, while for the new natural lawyers it is a first-person question: "The function of Anscombe's "Why?" question is heuristic or epistemic: it isolates which events are intentional actions by placing them in a social, third-person perspective. It is not a formula for how to deliberate from the first-person perspective of the agent, which is what the NNLT collaborators wrongly assume." (Page 52).

such as killing a baby, are never to be done, even for a good end) against proportionalism or consequentialism (it is better to save the life of the mother, even if that means killing the baby, than to allow both to die). However, the new natural lawyers want to have it both ways—to achieve consequentialist or proportionalist results while retaining the perceived moral purity of holding to exceptionless moral norms.

Thus, while their interpretation of the principle of double effect might be necessary to render the new natural law positions tenable, it tends toward legalistic casuistry. It is, however, necessitated by the new natural lawyers' vehement rejection of anything resembling proportionalism or consequentialism, which they seem to see as intrinsic to any moral theory that does not articulate absolute moral prohibitions. And so, according to their moral mathematics, a doctor must never reason that he must kill the child to save the mother, rather than letting both die through inaction. Instead, he must contort his reasoning in such a way as to disavow an obvious and inevitable consequence of his actions in cutting the baby's head off and crushing its skull—namely, the death of the baby. Moral rectitude, in this account, seems to depend on how cleverly one can frame propositions for action.

And so, Luke Gormally objects that, "A surgeon giving a truthful, clear-headed account of what he is intentionally doing would not allow himself to be confused by the fact that he did not desire the death of the child—for he had chosen an intrinsically lethal way of proceeding in order to save the life of the mother."[94] One cannot so easily set aside what one knew one was doing. In response, Finnis argues that "it is incorrect to hold that craniotomy performed in order to relieve the obstetrical blockage which will imminently kill (both) the mother (and her child)

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[94] Luke Gormally, "Intention and Side Effects: John Finnis and Elisabeth Anscombe" in *Reason, Morality, and Law: The Philosophy of John Finnis*, ed. Robert George, (Oxford, Oxford University Press, 2013), 101.

always involves an intent to kill (to shorten the life) or even to harm (impair the functioning and capabilities of) the child." According to Finnis, it may be killing and harming in "the order of actions, causality, and events," but that need not make it harm or killing in the "order of intentions."[95] In this analysis, one may do all sorts of things that directly harm basic human goods, provided that one is clever enough to describe them as foreseen but undesired side-effects of one's proposed actions. Finnis relies on this approach to defend a variety of examples where he argues the importance of distinguishing between various scenarios: "therapeutic craniotomy" vs partial-birth abortion, jumping from the World Trade Center on 9/11 to avoid the fireball and jumping to commit suicide, shooting down an airplane to save a skyscraper and shooting it down to kill the passengers, etc…[96] In the first situation in each pair of scenarios, Finnis believes it is possible for the acting agent to construct a proposal for action in such a way as to avoid any intention of directly harming a basic human good, even if such harm is a necessary and foreseeable result of the action.

Gormally and other critics of the new natural law have argued that this approach leaves too much wriggle room for self-serving justification, with Finnis replying that his approach still provides a sufficient reality check because "all of these attempts of mine emphasize that what counts in such analyses and descriptions is the actual practical reasoning of the acting person about what he actually needs and wants in order to accomplish his actual purposes. Ideal or merely conceivable possible eventualities are completely beside the point."[97] Thus, lying, either to oneself or to others, about what one intends is still condemned, and, in Finnis' view, may be

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[95] John Finnis "Reflection and Responses" in Reason, Morality, and Law: The Philosophy of John Finnis, ed. Robert George, (Oxford, Oxford University Press, 2013), 481.
[96] Ibid, 481.
[97] Ibid, 482-483.

detected through analysis of proposals for action. He notes that "much in *Nuclear Deterrence, Morality and Realism* was a relentless critique of strategies of redescription or rationalization by 'focusing' or 'direction' of intention."[98] Furthermore, one may be guilty even if one did not directly intend a particular harm against a basic human good. In response to his critics in *Reason, Morality, and Law*, Finnis refers to his previous work arguing, for example, that a surgeon who removes vital organs from a patient for research or transplantation may not "intend" the death of that patient, but nonetheless is guilty of murdering him. Indeed, Finnis asserts that he may be guiltier because he so callously treated the life of another as an object for his ends.

It might be possible to catch the new natural lawyers in a contradiction here—what exactly separates the evil surgeon who removes one patient's vital organs for a lifesaving transplant, from the good surgeon who removes a patient's vital organs (i.e. a brain) for a lifesaving obstetrical clearance?—but it seems unlikely that such a challenge would resolve the matter. As the debates between new natural lawyers like Finnis and George and their analytic and Neo-Scholastic critics have shown, each party concedes little and is extremely resistant to persuasion.

Why do Finnis and the new natural lawyers try to square the circle and allow someone to violate ostensibly exceptionless moral norms—provided that person's proposal for action is formulated properly? Why, in many situations, do they not hold the line as they do with nuclear weapons—unequivocal and exceptionless condemnation, regardless of the consequences? Perhaps it is because in these situations they have already tacitly accepted the consequentialist premise—it is better to save the mother's life, though the action required will kill the baby, than

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[98] Ibid, 488-489.

to let both die through inaction; it is better to shoot down a plane of innocent people than to allow it to be used as a missile to target a skyscraper. But, since the new natural lawyers are also committed to rejecting consequentialism, they have to find some way to have it both ways, to reach consequentialist conclusions based on consequentialist premises without admitting to doing so. However clever the analytic reasoning they employ in these logical contortions may be (and some of the new natural lawyers are rather clever), it is a sign of philosophical weakness, not strength. Except for academic philosophers and theologians who are unlikely to ever face such moral dilemmas, only scoundrels reason in such a way.

It would be far simpler to either accept that some acts are intrinsically evil, and never to be done, or to accept that one may intentionally do things that one does not desire (or, rather, desires only as a lesser evil than the clear alternative). Such a distinction between intention and desire is a common-sense delineation that is well-expressed in ordinary language. "I didn't want to, but I had to" is a common and recognizable sentiment; a doctor who carries out a "therapeutic craniotomy" would likely express himself in such terms, presumably explaining that he "had to" because the consequences of inaction (the death of both mother and child) were even worse. But, to the new natural lawyers, such reasoning, whether expressed in commonplace or philosophically sophisticated terms, is damnable, and so instead of building off of this common moral experience (or rejecting it wholesale) they continue to try to finesse their way into exceptions to their exceptionless moral norms.

Though the Heavens Fall

Nor are the difficulties produced by the exceptionless moral norms of the new natural law confined to actions of horrible effect, such as the threats involved in nuclear deterrence or the

decision of whether to kill a baby to save her mother. Rather, they extend to a plethora of situations where the violation of basic goods is much less apparent—though often where the Catholic tradition has taken a strong position. In particular, citing Aquinas, Finnis writes that, "It is always wrong to lie. It is wrong to lie to enemies in war. It is wrong to lie to save oneself or one's client from unjust conviction and execution. Or to save some other person or group from destruction by genocidal killers who have no right to be told the truth." But, as soon as he sets up this demanding standard as an inviolate precept of the natural law, he qualifies it in a legalistic way. While one cannot lie, one need not always tell the truth, for "it can be right to ensnare the enemy's forces by deliberately deceptive maneuvers, ruses, and ambushes…As for killers to whom one must not lie, one normally has a strong obligation to frustrate their purpose by silence, defiance, concealment, distraction, force, or any other morally acceptable means."[99] This distinction between direct and indirect deception is all-important for Finnis and holds even in the most drastic situations of war and genocide, as well as in the more ordinary business of undercover investigations, espionage, police sting operations and the like.

Though it is not as readily apparent how direct dishonesty harms a basic good as it is for other (mostly) forbidden actions (such as killing), the new natural law theorists are convinced that it is always wrong. For Finnis, in lying, "what purports to be a relating of mind to mind and thus of person to person—the relationship whereby self discloses self to another—is in reality made to be not that relationship at all but an act of *duplicity*, the presentation to another person of a pretended mind and heart." This direct duplicity is absolutely wrong, for though "one can rightly 'hide oneself' by one's silence…*if* one does make an act of communication which,

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[99] Finnis, *Aquinas*, 154-155.

because assertive in its meaning, is purportedly self-disclosing, one should never make it the duplicitous act of projecting for acceptance (belief) a phony self while actually remaining hidden behind one's pretended self-disclosure."[100] This prohibition on lying (while allowing indirect deception) would still render impossible many tactics in war, espionage and police work now taken for granted, but it would not preclude all deception, and would thus encourage ever finer logic chopping of the distinction between direct and indirect deception.[101] The new natural law would become even more inextricably entangled in extensive casuistry. And if the new natural law carried the day, the clever, who would have the edge in such lawyerly distinctions, would inherit the earth. Such a thought makes one long for good, honest lies.

But this approval of indirect deception, or deception by omission, would seem to contradict the emphasis the new natural law places on intention (as opposed to the intrinsic evil of certain actions). It seems ridiculous to insist that one may tell the truth with the intent to deceive, but that it is utterly forbidden to tell an untruth with the intent to deceive. By the reasoning of the new natural law theory, surely it is the intent to deceive that embodies the intent to harm the good of community that Finnis feels deceit injures. According to the new natural law, with regard to killing it is the intent (defending one's country against unjust aggression) that redeems the act (firing a bullet one knows will kill); with regard to deception, it is the act (technically telling the truth) that redeems the intent to deceive (perhaps in the same just cause of defending one's country). Here Finnis and his new natural law colleagues undoubtedly try to have their cake and eat it too. Of course, there are ways that the new natural lawyers could try to

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[100] Ibid, 157-158. Italics in original.
[101] Unsurprisingly, Finnis seems to emphasize propositional truth here, compared to other methods of communication such as gesture, expression and deed.

justify their convoluted reasoning (and they do try). For example, the intent of the truth-telling

deceiver could be described in terms not of his immediate intended effect (deception) but in

terms of his longer-term goal (defending his country, protecting his family, or whatever else it

might be). But there are always such legalistic justifications available for everything, and so the

new natural lawyers' understanding of act and intention favors the clever manipulation of

propositions for action over genuine moral virtue or insight.

At the level of theory, Finnis leaves tenuous the connection between protecting the basic

human good of community and an absolute prohibition on direct lying (while allowing for

indirect lying). Finnis primarily argues that to engage in duplicity is to affirm, to some extent,

the views of the wicked.

> Those who lie to the Gestapo enter…into the Nazis' politics of manipulation.
> Those who instead refuse to make any communication which would violate their
> own duties of non-disclosure, and who remain silent or state a truth about
> themselves but not about the victim's whereabouts, by their silence or their
> (strictly limited) truth-telling affirm the human dignity of everyone concerned,
> including even the Nazis…The good consequences of such an affirmation (and of
> refusing to join and promote the culture of the liars) cannot be estimated, but
> should not be overlooked when considering the bad consequences—equally
> incalculable though more palpable and affecting—risked in rejecting the option of
> lying.[102]

But the results of not lying to the Gestapo were rarely as incalculable as he here presents

them. It was usually torment and death for oneself and those one was protecting. The individual

and his neighbors would suffer, and the basic good of community, the concrete community the

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[102] Ibid, 160.

victims lived in, would be harmed. But these concrete responsibilities were to be abandoned if they necessitated lies that interfered with "affirming the human dignity of…Nazis." As for the potential good consequences Finnis mentions, they would indeed be harder to calculate, but most would seem to accrue in the next world (hardly a natural law argument accessible to all rational persons of goodwill). Of course, one cannot know for sure that one's moral example would not bear fruit in this world as well, but that the outcomes of the different courses cannot be precisely calculated does not mean that the probabilities cannot be compared. When he wishes to assert an exceptionless moral standard, Finnis often seems to try to create a sort of invincible ignorance whereby one deliberately avoids considering the likely consequences of one's actions (or one's inaction). The antipathy of the new natural lawyers toward anything that smacks of consequentialism leads to an insistence on personal moral purity that, when caught between a rock of moral absolutism and the hard place of circumstance, cushions the rock with a layer of deliberate ignorance. Finnis' adherence to a perfect standard of personal purity and his appeal to the inscrutability of the future have become a quasi-religious submission to duty and trust in an implicit Providence.

In the end, Finnis insists on martyrdom as an aspect of the natural law. To be sure, in the case of refusing to lie to the Gestapo, his approach would call it being a martyr to "Truth" rather than a martyr for Christ. But for him, it is better to be shot by the Gestapo than to lie. It is better for others to be shot by the Gestapo than to lie. Necessity and responsibility are no defenses against the charge of breaking the absolutes of the natural law. The most important concern is to keep oneself morally pure, regardless of consequences. That this approach ultimately rests on

theology is half-acknowledged by Finnis and his collaborators, who have frequent recourse to Christianity when demanding martyrdom.

Indeed, Finnis makes explicit appeals to martyrdom in service to God as part of the natural law. "The martyrs of every age have acted in the consciousness that this world, too, has an architect.…They have accepted that to respect the moral limits proposed by the creator as implicit in his creative wisdom is, therefore, supremely intelligent and reasonable—is to do all that in this life we can do towards enhancing good and lessening evil, on the whole and in the long run."[103] This reoccurring theme within the new natural law is necessitated by the uncompromising nature of its exceptionless moral norms. Thus, Finnis writes that in hard cases, "the moral absolutes call for a refusal to dishonor the basic human good directly at stake in our choice; they call us to leave providence to settle the 'balance' of human goods, a balance which we would merely deceive ourselves if we supposed we could truly see and settle for ourselves."[104] Not only is a total summing up of the goods and bads resulting from a decision impossible, but according to Finnis, such weighing up, even in a self-consciously finite and admittedly fallible way, amounts to a usurpation of God's role. The duty of man in such cases is to keep the commandments (or the exceptionless moral norms identified by the new natural law method), the rest is not our business, but God's.[105]

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[103] Finnis, *Moral Absolutes*, 106.

[104] Ibid, 12.

[105] Germain Grisez's conception of integral communal fulfillment in the eschatological kingdom of God develops this idea further. He writes that with the hope for it, "the normative force of the moral *ought* increases tremendously. One is less tempted to do evil to achieve and/or protect human goods. Moreover, one is motivated not only to avoid sin, but to do good in dealing with others. One is freed to make worthwhile efforts that may well fail, knowing that anything good begun well will somehow be stored up in the kingdom, so that failure in the present age will not be lasting loss. Indeed, one is freed from living for what the present age's future might bring. For nothing one does—nothing hard one must do and no suffering one must undergo—is merely for the present age's future. Rather, all of it is for the far more important future of the age to come. And in that age, the real meaning

Finnis emphasizes this point in the closing of his work on nuclear deterrence, where he and his collaborators specifically appeal to Christians and to the final end of man: "Stringent moral precepts which can seem senseless in the this-worldly predicament of an individual or community thus can make sense when human life is understood in its most far-reaching and proper perspective: its relationship to a heavenly life and community."[106] He acknowledges that both new natural law adherents and Christians (if they are not one and the same at this point) will be failures if they operate in the politics of this world, but they should console themselves with the prospect of heavenly rewards. "The Christian way, if followed to the end, is sure to lead to suffering, and likely to lead to disaster in this world, as it did for Jesus. But any loss required at present by perfect fidelity to the requirements of morality is no waste, but rather the wisest investment."[107] One can only follow the moral law and trust in God for the rest, believing that, "if one faithfully refuses to do evil that good may come, God will bring about the greater good and permit only the lesser evil. Moral purism? Let right be done though the heavens fall? Perhaps. At the heart of what some dismiss as moral purism lies the great truth that, in one's choices, moral rightness is more important than any other worldly good."[108]

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and value of everything one did, in the Spirit of the Lord and in accord with His command, to promote and protect human goods in the present age will be gloriously manifest." (Germain Grisez, "Natural Law and the Transcendent Source of Human Fulfillment" in *Reason, Morality, and Law: The Philosophy of John Finnis*, ed. Robert George, Oxford, Oxford University Press, 2013. 455-456).

[106] Finnis et al, *Nuclear Deterrence*, 372.

[107] Ibid, 377.

[108] Ibid, 382. Elsewhere, Finnis backs away from identifying with this "though the heavens fall" attitude, writing, "Does the Christian belief in moral absolutes replicate the Stoic slogan, 'Fiat justitia, ruat coeleum' ('Let right be done, though the heavens fall')? By no means. The Stoic cosmology did not, in fact, allow for any collapse of the heavens. Christian understanding of the divine plan envisages that the heavens *will* someday fall. But not that they will fall because right is done. This world's need for re-creation stems not from the doing of justice and right, but from sin. And the Christian faith proposes that doing the right is redemptive: that, indeed, it sets the stage for, the new heavens and the new earth." (Finnis, *Moral Absolutes*, 105-106).

This may be stirring preaching, but Finnis has drifted far from that which the new natural law purports to provide: an account of the natural law based in experience which can command the assent of all rational people of goodwill. Instead, the new natural law goes to extremes to try to vindicate traditional Catholic positions, while at the same time engaging in extensive casuistry to create desired loopholes in the exceptionless moral norms it presumes to have demonstrated. For example, according to the new natural law, a man may save himself and others from the Nazis through deliberate deception, provided be is clever enough to do so without telling a direct lie. And so, by the lights of the new natural law, the clever man will be preserved with a clear conscience, while a duller fellow (who lacks the ability to prevaricate artfully), must either lie and be damned, or be a martyr.[109]

Concepts of martyrdom are hardly exclusive to Christianity, or even to religion (see the example of Socrates), but the extent to which Finnis takes it far outstrips the common view that there are some things worth dying for, or some things so bad it is better to die than to do them. The only thing Finnis is not willing to martyr is a conscience, which must always keep pure through stringent adherence to exceptionless moral norms, even when the Nazis are coming for the children. To the ordinary rational person of goodwill, it must seem that if this is the natural law, then the natural law is an ass.

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[109] Again, I note that these examples, involving extreme situations like those faced under Nazi conquest, are provided by the new natural lawyers themselves.

Jean Porter: Reclaiming Aquinas

"They constantly try to escape

From the darkness outside and within

By dreaming of systems so perfect that no one will need to be good."

-T. S. Eliot

Modern Natural Law: Failure and Faction

It has been the ambition of the new natural law theory to provide a compelling experiential foundation for natural law, thereby providing a self-evident basis from which moral principles may be derived. In presenting their theory, which they claim to be inspired by and generally compatible with Aquinas, John Finnis and other new natural lawyers rely on self-evident first principles directing the pursuit and protection of basic human goods. After further analysis via "modes of responsibility" and an ideal of "integral fulfillment" they claim to arrive at exceptionless moral norms that should serve as a basis for politically recognized human rights. Thus, they have sought to resolve an issue described by Jürgen Habermas, who noted the "particularly ambivalent position" of human rights in modern Western democracies,

> On the one side, the guarantee of fundamental rights is the recognized foundation of constitutionality, of an order in terms of which the exercise of authority, the use of force, and the distribution of power must legitimate themselves. On the other side, Natural Law itself is devoid of any and every convincing philosophical justification. To be sure, the teachers and practitioners of law actually do have recourse to the tradition of Natural Law, whether of the Christian or the rationalistic persuasion; not only are the systems to which they appeal controversial, but they have lost their credibility in the pluralism of the attempts to

justify them, and in general they have remained far below the level of contemporary philosophy.[1]

Natural law and natural rights, in Habermas' view, are the underpinnings of our political and legal system, but they have been vitiated by repeated philosophical challenges. Responding to such charges, the new natural law theory has attempted to provide philosophical legitimacy for a conception of natural law and natural rights that could then be practically applied in jurisprudence. Through a rational analysis of self-evident truths,[2] the new natural law was designed to provide a basis for public morality that is neither sectarian nor dependent upon culture or tradition.[3]

However, the new natural law has failed to fulfill its aims and has become entangled in a host of difficulties. It does not provide a public morality grounded in self-evident first principles and therefore demonstrable to all rational people of goodwill—or if it has, there are very few people with enough rationality and goodwill to be persuaded by it. Thus, the question arises: could another attempt at a philosophical foundation for natural law succeed in securing this goal, or is Habermas right to dismiss such projects as philosophically untenable? Or, to contemplate another option, is the discovery and formulation of universal moral precepts derived from self-evident first principles the wrong goal for a natural law theory?

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[1] Jürgen Habermas, "Natural Law and Revolution" in *Theory and Practice*, trans. John Viertel, (Boston: Beacon, 1974), 113.

[2] These are not the same self-evident truths that Jefferson famously proclaimed in the opening to the Declaration of Independence—while many agree that there are self-evident truths, there is little agreement, alas, over exactly what they are.

[3] One of the key practical differences between the new natural law theorists and more traditional Thomists, it seems to me, is that the former believe that the results of Catholic moral teaching may be publicly vindicated without any recourse to theology, while the latter often believe that some basic acceptance of Catholic (or least Christian) doctrine is necessary (i.e. God's existence and friendship with Him as the ultimate end of human beings). To be sure, these views are often described in terms of natural theology, rather than as matters of Catholic dogma. Regardless, today both the new and the old natural law seem to be fundamentally apologetic projects, motivated by a desire to vindicate Catholic moral teaching and provide it as a foundation for public morality.

The Catholic theologian Jean Porter has strongly argued for the latter, principally in two books, *Natural and Divine Law* and *Nature as Reason*.[4] She has developed an interpretation of Aquinas and the scholastics that abandons the attempt to rationally establish a set of universal moral precepts from self-evident principles. She does not disavow the natural law as a means of illuminating moral truth, but she considers its operation as very different from that of the new natural law theory. One important contrast with the new natural law theory is that Porter retains a theologically-informed ontology as an important part of the natural law; another is that she is more sensitive to the importance of the virtues in the apprehension of the natural law.

She has considered and rejected the new natural law theory, at times sparring with its advocates, who she believes take too rationalist of an approach to the natural law. In the forward to her book *Natural and Divine Law*, the new natural law theory is described by Nicholas Wolterstorff as presenting "natural law theory as a mode of ethical inquiry which is independent both of all comprehensive religious and philosophical perspectives, and of all concrete moral communities."[5] Presumably, Porter concurs with this view, and it is not likely to be disputed by the new natural law theorists themselves, who consider it meritorious to have dispensed with any such dependencies. For her part, she declares that the "approach to the natural law that emphasizes its rational character finds its most comprehensive expression in the 'new theory of

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[4] I have chosen to focus on these works for two reasons. First, they provide the most extended and complete account of Porter's approach to the natural law and her interpretation of Aquinas and the medieval scholastics. Second, any competent evaluation of the differing interpretation of Aquinas offered by Porter, the new natural law theorists, neo-Thomists and others would be far beyond the scope of this dissertation. I have neither intention nor hope of finally settling the centuries-long debate over how to understand Aquinas, and shall therefore present Porter's work as a plausible interpretation without attempting to vindicate it myself. For examples of critiques of *Nature as Reason* and *Natural and Divine* Law, see the exchange on the former between Martin Rhonheimer and Porter in Studies in Christian Ethics 19.3, 2006, and the review of the latter by Janet E. Smith, "Reclaiming or Rewriting the Tradition?" in the American Catholic Philosophical Quarterly, Vol. 75, No. 4, 2001.

[5] Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics*, (Grand Rapids, MI: Eerdmans, 1999), 11. Hereafter cited as *Natural and Divine Law*.

the natural law' developed by John Finnis, Germain Grisez, and their followers."[6] This is not

meant as a compliment. Porter rejects the new natural law theory, stating flatly in *Nature as*

Reason that "we do not reason about practical matters in the way that Finnis and Grisez suggest

we do."[7] The sort of rationality that is emphasized by the new natural law is not representative

of how practical reason functions in moral inquiry, and it should not, she believes, be taken as

representative of the natural law.[8] Furthermore, she is skeptical of the ability of practical reason,

separated from a speculative theology or ontology, to adequately ground moral norms.

Considering the new natural law method and its claim to derive specific exceptionless

moral norms from self-evident first principles, Porter writes that, "It is one thing to say that we

are naturally oriented toward certain desiderata, and this orientation provides a natural starting

point for practical reflection and moral action." However, she considers it much less plausible to

"say that we have a rational grasp of certain basic goods, elemental enough to be regarded

plausibly as self-evident to all and yet provided with enough content to provide an immediate

basis for practical reflection."[9] She argues that even if Aquinas thought that practical reason

begins from first principles, particularly that good is to be sought and evil avoided, "these

principles are too general to yield practical conclusions by themselves. Reason, like nature,

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[6] Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law*, (Grand Rapids, MI: Eerdmans, 2005), 37. Hereafter cited as *Nature as Reason*.

[7] Ibid, 129.

[8] Debates between Porter and proponents of the new natural law have occurred sporadically over several decades. For an early example, see J. Porter, "Basic Goods and the Human Good in Recent Catholic Moral Theology" 47 *The Thomist* (1993)**,** and a response by Robert George and Gerard Bradley which contends the Porter had misunderstood the new natural law theory (Robert George and Gerard Bradley, "The New Natural Law Theory: A Reply to Jean Porter" 39 Am. J. Juris. 303 1994). An important part of George and Bradley's response is the argument that Porter does not properly understand the new natural law. For example, they argue that while Porter presented the new natural law theory as holding the basic good themselves to be self-evident, it is rather the first principles directing one to pursue, protect, and promote basic goods that are self-evident. This seems to me to be pedantic and beside the point—a distinction without a significant difference.

[9] Porter, *Nature as Reason*, 128.

underdetermines the moral conclusions that are supposed to flow from it."[10] She does not deny

that there may be self-evident first principles of practical reason, but she does not believe they

can produce moral norms with the specificity the new natural law claims. Such principles will

be so general as to allow a variety of legitimate variations in implementing them. Thus, the

problem of moral disagreement does not arise for her in the acute way it does for the new natural

theory (whether recognized by its proponents or not).

However, as Porter intimates, there is nothing particularly objectionable in the new

natural law method as way of opening moral inquiry if it is stripped of its ambition to provide

such specific moral prohibitions. Identifying human goods and using them as a starting point for

moral reflection and dialogue is reasonable and potentially fruitful. But when this method is

treated not only as a way (among others) to enter into moral reflection and discussion, but as a

means of ascertaining dispositive proofs for universal moral norms, it collapses under the

burden.

In contrast to the new natural law theory's ambitious goals, and its interpretation of

Aquinas, Porter holds that the medieval understanding of natural law, "does not provide us with

a system of ethical norms which is both detailed enough to be practical and compelling to all

rational and well-disposed persons. However, there are good reasons to doubt whether any

moral theory can provide us with such a system."[11] Not only does Porter doubt the viability of

such a system of specific moral norms derived from self-evident first principles, she contends

that Aquinas and other medieval natural law thinkers had no intention of providing one. The

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[10] Ibid, 127.
[11] Ibid, 5.

perceived necessity for such a system is a product of modernity, not of the medieval situation and concerns.

The Medieval Natural Law

According to Porter, the scholastics did not view the construction of a system of universally applicable and rationally demonstrable moral precepts as their purpose. "The medieval scholastics did not attempt the one task that their immediate successors regarded as centrally important—that is to say, they did not attempt to derive a comprehensive set of moral precepts from one or a few first principles, regarded as compelling to all rational persons."[12] While we are used to thinking of the natural law in this way, Porter asserts that such an approach is a modern one, reflecting the intellectual preoccupations of early modernity. As the basis for religious, political and moral consensus disintegrated, and as Europeans increasingly encountered cultures with very different moral norms, there was perceived to be an increased need for a moral system that was demonstrable without appeals to any authority or tradition other than reason and self-evident principles. This led to increased separation between the modern natural law approach and that of the medieval scholastics, who, she argues,

> identified the natural law in its primary sense with a natural capacity for moral judgment, or the very general principles though which this capacity operates. Hence, in the transition from the later Middle Ages to modernity, the tradition of the natural law was transformed from a theologically grounded interpretation of human morality into a philosophical framework for deriving, or at least testing and supplementing, determinate moral norms.[13]

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[12] Ibid, 24.

[13] Ibid, 28. When I refer to the modern natural law in this chapter, it is this common factor that I have in mind. From natural rights theorists like Locke to many neo-scholastics and their heirs to the new natural law, this ambition

All too often this shift in the understanding of natural law is ignored and it is presumed that the medieval natural lawyers had similar concerns and goals to those of modern natural law thinkers, which has resulted in the modern approach being read into medieval natural law theory. Porter believes that most current defenders of the natural law, including the new natural law theorists, are inclined to sympathize with the ambitions of the modern natural law and natural rights theorists. She states that "most contemporary natural law theorists would agree that it is possible to establish a natural law morality through rational reflection alone, without any necessary reference to particular religious or other traditional beliefs."[14] She sees this determination to establish a natural law independent of theology or any teaching authority as the product of a broader dedication to "purifying reason from the contingencies of history and particular cultural practices…this commitment was expressed through ongoing efforts to detach the natural law from the matrix of particular beliefs and practices—especially, in this case, the theological beliefs and practices—with which it had historically been associated."[15] At the dawn of the modern age, as religious authority was fragmented, questioned and even denied, and moral diversity multiplied, there was an apparent need for a neutral justification for moral principles and, increasingly, for human rights, which seemed to provide the basis for a public and political morality.[16]

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has remained relatively constant, whatever else they disagree about. Under this definition, even many who would consider themselves proponents of a classical, traditional or Thomistic natural law are instead defined as followers of the modern natural law approach.

[14] Ibid, 28-29.

[15] Ibid, 1.

[16] The development of the human rights tradition from the medieval natural law tradition has produced much scholarly debate, from those who see a significant break between the medieval and the moderns, to those, like Brian Tierney, who emphasize the continuity between them. Whether the shift was gradual or radical does not concern me here; I only presume that there was indeed a shift from, say, Aquinas to Grotius, and a marked shift between Aquinas and someone like Locke.

Crucial to this changing view of the natural law and its purpose was a change in the understanding of moral knowledge, which flowed from a reconsideration of knowledge in general. Mechanics, mathematics and the beginnings of modern science had captured the philosophic imagination, leading modern natural law theories to "reflect an ideal of a scientific morality which makes use of the methodologies of mathematics and the sciences to establish clear and certain moral conclusions." There was a great faith in the human ability to develop comprehensive systems of knowledge for all fields of natural philosophy and human life. Morality was to be a science. In contrast to this modern emphasis on scientific methodology and morality, Porter writes that "the medieval scholastics identified the natural law with capacities for moral discernment, or with the very general principles through which these capacities operate. They did not expect to be able to derive certain and comprehensive systems of moral rules from these starting points." Thus, it is not from the scholastics that most current natural law approaches are descended, but from the early modern natural lawyers, who "believed that the project of deriving a complete, definite, and certain system of moral norms is not only feasible, but an appropriate and necessary goal."[17] For many it seemed that moral philosophy could and should strive for the apparent precision, rationality, and universality of geometry and (later) Newtonian physics.

The continuing influence of this framework is still on display today, as natural law theorists regularly deploy their own technical language to debate (frequently absurd) hypothetical test cases in the apparent belief that this is the way to moral understanding and true moral knowledge. But, for example, has anyone ever changed their view on abortion based on

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[17] Porter, *Nature as Reason*, 61.

the arguments philosophers make over the famous "violinist" hypothetical? Such endless logomachy justly makes moral philosophers into ridiculous figures—as if they and their moral systems were computer programs into which one could enter data and then receive a correct answer so long as the programming is correct. However, they wrangle endlessly over the programming in order that it may spit out the answer they desire, thereby casting doubt upon the integrity of the entire enterprise.

Based on the distinctions between the modern and medieval conceptions of the nature and ambitions of the natural law, Porter differentiates her approach from the various modern natural law theories. She rejects their ambitions for a natural law theory and method and instead views her project as a recovery of the medieval conception of natural law, which she believes to have been obscured. She explains that her project "will not provide a basis for deriving moral norms from indubitable first principles. It will, however, provide a framework for analyzing, critiquing, and developing norms and practices and defending innovations within a context of practical concerns."[18] That this conception of the natural law cannot fulfill modern ambitions does not discredit it nor mean that it cannot serve as a means for practical moral reasoning. Thus, Porter approves what she takes to be the natural law approach of the medieval scholastics, arguing that Aquinas and his contemporaries

> were right to insist on the distinctively theological significance of the natural law,
> as indicated by scriptural and doctrinal perspectives on nature. They were right to
> ground their accounts of the natural law in a robust conception of nature,
> including prerational components of human existence as well as human reason.
> And they were right to identify the natural law in its primary sense with

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[18] Ibid, 45-46.

fundamental capabilities for moral discernment and action, rather than moral rules.[19]

This last point, that the scholastics saw the natural law primarily as a capability for moral judgments and actions, is perhaps the greatest difference Porter perceives between the scholastic and modern understandings of natural law. While there are disputes between modern natural law proponents over the role and legitimacy of theology, ontology and teleology in the natural law, there is near-unanimity in regarding the natural law primarily as a set of determinate moral rules, or as a way for deriving such rules from first principles. In contrast, Porter believes that the scholastic approach to the natural law was not so preoccupied with rationally demonstrable moral rules. This is not to say that the scholastic understanding of the natural law cannot yield specific moral rules, but they will not be derived from self-evident first principles accessible to all rational persons. Rather they will necessarily be embedded within a certain theological and/or philosophical context, one that will not be shared or self-evident to all rational persons.

Thus, there is a theological component to this understanding of the natural law. According to Porter, the scholastics thought the natural law to be "fundamentally a capacity or power to distinguish between good and evil," which "is intrinsic to the character of the human soul as made in the Image of God," and therefore cannot be totally eradicated, even under the effects of sin. This understanding of the natural law does not preclude it from producing moral rules, like the "Golden Rule or the two great commandments of love of God and neighbor; these in turn yield the more specific norms of the Decalogue, which can be further specified."[20] Such rules, however, will not have the character wished for by modern natural law and natural rights

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[19] Ibid, 6.
[20] Ibid, 13-14.

theorists, and they will allow for a good deal of variation on account of circumstance as well as human sinfulness.

The limitations of the scholastic natural law as a means of arriving at rationally demonstrable, specific moral norms were emphasized again by Porter in her response to Martin Rhonheimer's critique of *Nature as Reason*. She argues that if we confine ourselves to general and abstract moral norms, then "claims for a universal ethic are very persuasive." However, she denies that individuals or (especially) societies "can live and function at this level of generality…this need for specification, with its attendant variability at the level of practice, is a communal necessity."[21] There might be universal (or near universal) agreement that one should not kill unjustly, but such a statement is almost devoid of content without the addition of culturally-specific norms and examples. The scholastics, in her account, were rightly not very interested in providing a rationally demonstrable moral system that was both universal and capable of enough specificity to be practical in governing everyday life, whether for the individual or society as a whole.

Furthermore, Porter argues that there is a difference between the scholastics' actual understanding of how human nature figured into their method and that which is commonly attributed to them. The medieval scholastic conception of human nature was not, she finds, fixed and normative in the way it is often assumed to be, for it was not just ontological but also theological, and it was this "theological conception of human nature that enabled them to distinguish between those aspects of our nature that are normative, and those that are not."[22] Thus, nature in the sense of sheer physical facticity, whether with regard to animal or human

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[21] Jean Porter, "A Response to Martin Rhonheimer" in *Studies in Christian Ethics* 19.3 (2006) 379-395.
[22] Porter, *Natural and Divine Law*, 17.

instincts and behavior or to something else, was not in itself normative, but needed to be incorporated within a larger context that considered the complete nature of the human person. For example, the scholastics did not, as is sometimes thought, derive moral standards for human sexuality simply from examining factors such as animal sexual behavior, human anatomy and human sexual desire. Any such analysis would have been hopelessly confusing, and Porter argues that they did not attempt it. Though they did make observations regarding human and animal behavior, they incorporated them within a broader view of human nature that included everything from culture to theology.

This comprehensive view of human nature sought to include and harmonize a variety of what the scholastics took to be authoritative sources. Thus, the natural law theory of the medieval scholastics did not attempt "to derive moral truths from fixed starting points provided by reason or by observations of the natural world." Rather, their understanding of the natural law began from "traditional definitions drawn from both Christian and classical authorities, and it was developed through reflection on the diverse and unorganized laws, customs, and moral beliefs of their own society."[23] Their understanding of human nature never sought to define it in terms stripped of all cultural contexts, nor did they envision a reason devoid of religious and cultural influence.

Given this wider view in which human nature and reason were interpreted and incorporated into the natural law, it should be noted that the scholastic understanding of law differs from the dominant modern view. Porter writes that "we usually think of a law as an explicitly formulated rule or a set of such rules, which may or may not express an underlying

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[23] Ibid, 34.

rationale." In contrast, while the scholastics were aware of such a view, they tended "to speak of law as an intrinsic principle of order, which is expressed in judgments and actions without being reduced to them. Correlatively, they prefer to speak of the natural law as a principle of judgment and action rather than a collection of specific moral rules."[24] This distinction reinforces the different primary understandings of natural law: as a set of particular moral rules on the modern side; as a principle of order or capability for judgment on the part of the medieval scholastics.

Additionally, Porter argues that even their methodology contributed to the distinctively scholastic natural law approach in an underappreciated way. Their practice of disputation institutionalized "a preference for Aristotelian dialectic as the preferred mode of argumentation, rather than logical deduction from rationally self-evident premises."[25] They were not striving to set forth a self-evident system of moral rules and their approach represented that. Aquinas did not write a treatise on natural law, setting forth a final and complete system, but instead asked and answered questions on the subject as best as he could within the context of a larger project. The scholastic method, mindset and presumptions produced a view of the natural law very different from that of most modern natural law theorists, despite the attempts of many of those same theorists to claim the mantle of Aquinas.

Another crucial difference between the medieval and many modern understandings of natural law is in their differing conceptions of nature itself. For the former, nature is reasonable, while for the latter, it is often considered in contrast to reason. Porter credits (or blames) modern romanticism with leading us to think of nature and reason as necessarily contrasting, and argues that while the scholastics knew of such a contrast, their understanding of nature "generally

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[24] Ibid, 90.
[25] Ibid, 44.

emphasized the continuities between nature and reason…theologians in the first half of the twelfth century frequently equated nature and reason, since they saw the orderly processes of nature as expressions of the reason of God."[26] Nature, for the scholastics, had an intelligible order, a conviction rooted in their theological understanding of it as a creation of God. This view has been retained by some modern natural law scholars (in particular, by those endorsing a more classical natural law), but many have rejected it, seeing in nature something alien to reason, which reason must bring under control. These different conceptions of the relationship between nature and reason illuminate what Porter considers an especially

> fundamental difference between the 'new natural law' of Grisez and Finnis and the scholastic concept of the nature law…That is, Grisez and Finnis share in the modern view that nature, understood in terms of whatever is pre- or non-rational, stands in contrast to reason…No scholastic would interpret reason in such a way as to drive a wedge between the pre-rational aspects of our nature and rationality. As we have already seen, they always presuppose an essential continuity between what is natural and what is rational, since on their view nature is itself an intelligible expression of divine reason.[27]

The new natural lawyers in particular are convinced by the consensus that followed Hume and Kant with regard to the "is/ought distinction," and are determined to avoid any admission that nature, however understood, may be in some way normative. In contrast, the medieval natural lawyers saw continuity between nature and reason, and this continuity runs through human nature, where the scholastics saw divine reason at work both in attributes human share with animals and with those rational capabilities that are unique to human persons. Thus,

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[26] Ibid, 85.
[27] Ibid, 93. The neo-Thomist tradition and its heirs today tend to concur with the medieval natural law thinkers on this point, at least, though their modes of analysis and discourse are very different.

interpretation of what is natural for humans is necessarily complex, drawing in factors from biological instinct to cultural expression, with no single aspect being determinate. Because of this rich understanding of human nature, the scholastics sought to harmonize these different aspects and the disparate authorities which had been handed down to them, inclined to see in each legitimate expressions of the natural law and human reason.

Bringing Ontology Back

Porter adheres to the scholastic belief in the intelligibility of nature—with which is it imbued as a divine creation—and adopts a kind of philosophic realism: "I presuppose that we are able to attain genuine, albeit imperfect, knowledge of the world around us, and to formulate and express that knowledge through concepts which adequately correspond to the kinds of things they represent."[28] Thus, her interpretation of the medieval natural law includes elements of ontology—in contrast to the new natural law theorists, who have tried to excise any fundamental role for ontology in their interpretation of Aquinas. However, though these appeals to ontology are important to Porter, they are not dispositive in the way that some neo-scholastics have thought they should be. In her view, "it makes sense to speak of a concept of human nature, even though we do not have, and should not expect to have, a fully developed and comprehensive such concept."[29] Indeed, she declares, "it is not difficult to set forth a cogent concept of human nature, so long as we do not hold ourselves to the unattainable standard of a complete, fully articulated and nonrevisable concept."[30] Our natures are not entirely opaque to us, and we are able to attain limited but true knowledge of ourselves. Such knowledge allows us

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[28] Porter, *Nature as Reason*, 57-58.
[29] Ibid, 108.
[30] Ibid, 141.

to evaluate human goods, ends and happiness, not with the certainty of a mathematical

calculation, but nonetheless with practical wisdom and insight. Contra the new natural law

theory, we can engage in correct moral reasoning based on this knowledge of human nature;

contra other modern natural law thinkers, this reasoning need not rest on a definite and

dispositive philosophy of nature.

The scholastic view of nature rested on the theological assumption that nature was a

divine creation; consequently, Porter observes, they held that "anything that can be said to be

natural is *prima facie* good." However, she notes the importance of context for this view, which

was "their assumption that natural processes are directed toward good ends, and are intelligible

in terms of those ends." This presumptive goodness and intelligibility allows for harmony

between two views of the natural law "one that emphasizes the intrinsic value of the pre-rational,

and another that places more stress on the law-giving character of reason. Because the pre-

rational components of human nature are intelligible, they are amenable to rational analysis and

prudential reflection."[31] The scholastic analysis of human nature begins neither with animal

facticity nor with disembodied reason. Rather, it considers both the biological reality of human

embodiment and our capacities for reason as it seeks to harmonize the various aspects of human

nature into an intelligible order.

Consequently, Porter argues that the scholastic consideration of what is natural as a

ground for what is moral is a good deal more nuanced and subtle than it is often given credit for.

She challenges the common belief that they sought to "derive moral conclusions directly from an

observation of animal behavior," for while "their emphasis on the continuities between animal

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[31] Porter, *Natural and Divine Law*, 97.

and human behavior might seem to support this assumption," they were "well aware of the dangers of this approach."[32] The scholastic conception of human nature was a good deal richer than such crude comparisons of human and animal behavior comprehend. While cognizant of the continuity in biological natures between humans and animals, and therefore of the similarities of many inclinations, the scholastics understood that there are great differences between how humans and animals experience even the most elementary inclinations. Porter explains that in their view,

> Normal adults experience these inclinations in and through the mediation of some
> kind of rational reflection, and this experience is further qualified and shaped by
> the cultural forms through which the inclination is expressed. In this way, even
> our most basic inclinations are inextricably bound up with the exigencies of life as
> rational and social creatures, and we cannot adequately interpret them unless we
> see them within the context of human life considered as a whole.[33]

Normal adult human beings never experience anything as simple as a desire for food or an inclination to mate. Rather, such desires are always bound up with a variety of other aspects of human life and experience and imagination. Thus, moral analysis of these inclinations cannot take place without recognition of their incorporation within the rest of human life, and this will involve everything from culture to language to philosophical and theological outlooks. Porter explains that as the scholastics developed their concept of the natural law, "basic human inclinations, needs, and desires were placed within wider contexts set by theological and philosophical considerations…they also provided an experiential foundation for developing and modifying those considerations." Furthermore, she argues that throughout this process, no

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[32] Ibid, 83.
[33] Porter, *Nature as Reason*, 75.

particular aspect "carries all the interpretative, much less moral, weight."[34] While most modern

natural law approaches seek a single self-evident starting point from which moral reflection and

philosophy may begin, the scholastics sought to harmonize a variety of different sources and

possible starting points, none of which were considered to be singly determinate. According to

Porter, they identified,

> nature, reason, and Scripture as three mutually interpreting sources for moral
> norms. This way of proceeding may appear to be circular, and so it is, but not in a
> vicious sense. The scholastics begin with assumptions about nature and the moral
> order that are derived from many sources, including both Scripture and the
> tradition of philosophical reflection. In the process of articulating those
> assumptions and subjecting them to rational critique, they find themselves
> confronted with inconsistencies or difficulties, which are sometimes corrected by
> adjusting their constructive arguments, and sometimes by revising their
> interpretations of Scripture. Always, they attempt to preserve the overall
> harmony of their sources.[35]

This presumption of harmony allowed the scholastics to incorporate Christian

perspectives, rooted in Scripture and theology, in ways that many modern natural law theorists

are reluctant to emulate. This is not, as might mistakenly be assumed, due to the scholastics

being unaware of non-Christian religions, philosophies and moralities, nor because they saw and

sought no common ground with them. Aquinas in particular was constantly engaged with non-

Christian sources and working to integrate their insights into his project and to respond to the

challenges they posed to the received Christian perspective. However, the scholastics did not

attempt what many modern natural law theorists consider indispensable—a natural law theory

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[34] Ibid, 78-79.
[35] Porter, *Natural and Divine Law*, 140.

that is autonomous from any cultural or theological presuppositions. The scholastic

understanding of the natural law served, among other things, to explain the possession of moral

understanding among non-Christians. While it did not thereby provide a strictly neutral and

rational arbitrator between different religions, philosophies, and moral systems, it did provide a

framework for moral dialogue among Christians and between Christians and non-Christians. By

considering the cultural and moral heritage and practices of non-Christians as possible

expressions of the natural law, the scholastic view provides possibilities for dialogue.

Insofar as the scholastic approach emphasized that the goodness and intelligibility of

nature (including human nature broadly understood) flows from it being a creation of God, it also

avoided difficulties that modern natural law theorists often face in integrating natural law and

Christian revelation, nature and grace. Porter comments that just as for the scholastics "the

visible, natural world is an expression of God's wisdom and goodness…so human morality,

considered as part of the natural world, is also an expression of divine wisdom and goodness."[36]

The human capability for moral reasoning and judgment, and the consequent expressions of

morality it produces in every human culture, are gifts of God's divine wisdom. While this

bestowal may be distorted by human sinfulness, it is not totally effaced, and remains as a general

gift of God's grace. And so, as Porter observes, they saw "no incongruity in affirming the

rational character of the natural law while at the same time interpreting it in terms of a

distinctively Christian theology." In the same way, they generally "affirm that the natural law is

in some sense the common possession of the human race, but again, this does not imply for them

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[36] Ibid, 100.

that it should be understood in non-theological terms."[37]   Again, the scholastics did not primarily see the natural law as a specific set of moral norms and rules universally accessible to human reason (or as the first principles from which such specific moral norms could be reliably derived), but as a capacity for moral insight and judgment. This allowed them to understand it theologically, without limiting its reach to those who shared their theological views. A person or culture need not possess and understand a full theological account of their capacity for moral judgment in order to exercise that capacity.

The rejection of this theologically-based view of the natural law (while retaining Aquinas in particular as an authority) by modern natural law theorists has tended to distort and even maim the scholastic natural law theory, which "presupposes a particular scripturally grounded account of what is normative in human nature." Abstracting a "'purely rational' account from that concept will result in a fragmentary and unpersuasive account of the natural law."[38] This explains many of the difficulties that have befallen scholars who sought to present a rational account of a Thomistic natural law system. To take one example, Aquinas did not write a *Treatise on Law, Morality, and Politics*. Though such an abridgment may be of great utility to both students and scholars, it may easily lead one astray, as it removes Aquinas' comments from their proper context. There is little reason to believe that he sought to provide a natural law theory as a comprehensive, rationally independent system of morality, and it ought always to be born in mind that his comments on the natural law were integrated into a larger theological project.

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[37] Ibid, 123.
[38] Ibid, 141.

These theological underpinning provided the medieval conceptions of natural law with its confidence even though it did not have what modern natural law theories considered indispensable—self-evident first principles that provide a basis for rationally demonstrable specific moral norms. Likewise, though it lacked a dispositive ontology, this was not the fatal handicap that neo-scholastics might think it. Porter reminds us that our biological knowledge of other creatures is, "necessarily provisional, incomplete, and partially implicit." We should not expect "our knowledge of ourselves to escape these limitations—and by the same token, there is no reason to deny that our beliefs about ourselves, partial and limited though they are, nonetheless offer at least the foundations for true knowledge of human nature."[39] This true (but incomplete and always under revision) knowledge of human nature is not the sole starting point for moral reflection. It is one approach from which the subject may be entered upon, and within the scholastic methodology it will both refer to and be referred to by theological commitments, scripture, custom, philosophical authority and other sources of knowledge. There is, according to Porter's reconstruction of the medieval natural law, no self-evident starting point from which, nor any certain methodology by which, moral truths may be discovered and proven.

As a result, her interpretation of the natural law does not claim to be rationally compelling to all persons, or to provide final formulations for absolute and universal moral rules. While Thomism does "identify morally significant constants in human nature," she does not believe it possible to "establish a determinate yet universally compelling moral code on the basis of these constants." However, this does not preclude

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[39] Porter, *Nature as Reason*, 116.

the possibility of arguing for their moral significance with reasonable expectation that others will find our arguments persuasive. This possibility does not presuppose that we can step outside the parameters of our own socially situated moralities, or our traditions of reflection on those moralities. We can arrive at moral judgments from within our own particular context of beliefs and practices, while hoping that these might prove persuasive to others in quite different cultural contexts. The fact remains that we cannot arrive at judgments which *must* be rationally compelling to all persons of good will, or even judgments that all persons would endorse under ideal circumstances. Nonetheless, this fact does not at all rule out the possibility that we might actually persuade others, here and now.[40]

The goals of Porter's understanding of the natural law are more modest than those claimed by many other natural law approaches. She makes no claims to universal proofs or methodological certainty, hoping instead only for dialogue and persuasion. While the theological commitments of the medieval natural law may seem to constrain it compared to the grander ambitions of modern natural law theories, this objection only holds if such ambitions may be fulfilled. If they are unattainable, then the medieval natural law, as Porter sees it, provides a real, though limited, platform for moral dialogue both with others in our culture and with those outside of it.

Happiness, Virtue and Intention

The method of analysis emphasized by Aquinas, which gives happiness (understood in terms of the exercise of the virtues) a prominent place in the natural law, may further encourage dialogue regarding moral principles and practices. Happiness is not a self-evident principle, but

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[40] Ibid, 340.

it serves very well as a way of exploring the natural law, insofar as it is both sought for its own sake and, in Aquinas' view, incorporates the practice of the virtues within it. And so, having established that the medieval natural law thinkers considered no particular source as a sole starting point and no method as dispositive, but rather tried to harmonize the various sources they considered authoritative, Porter turns her attention to this way of analysis, arguing that happiness, "provides a framework within which to integrate two dimensions of human existence, namely, human nature comprehensively understood and the distinctively human character of natural existence, that is to say, human reason."[41] Happiness, and the exercise of the virtues by which it is constituted, partakes of both human nature and human reason, for the fullness of human nature will include the proper exercise of reason.

This happiness is not that of the beatific vision, but terrestrial happiness, and must integrate human nature in all its aspects, from the animal to the social to the rational. Unlike the happiness of the beatific vision, it will never be complete, but it does provide a non-theological basis for discussion and evaluation of moral truths, and therefore a point of entry into dialogue with those who do not share Christian theological assumptions. In this way happiness is similar to the role of the basic goods in the new natural law theory (and perhaps also the ideal of integral fulfillment), insofar as it is something sought for its own sake. New natural law theorists like Finnis and Grisez would argue that their system is indeed the proper interpretation and development of Aquinas, an assertion disputed by Porter, who argues that Aquinas and the scholastics never developed nor sought a rationalistic, universally compelling system like the new natural law, and that happiness certainly does not provide one.

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[41] Ibid, 143.

Her interpretation may be bolstered by noting that for Aquinas, happiness is intimately connected to the virtues, which are inseparable from that which is necessary and good for a proper human life on this earth.   Porter finds that terrestrial "happiness is the proximate origin for the norms of the natural law." This happiness is to be

> understood in both its natural and graced forms as equivalent to the practice of the virtues. The virtues, in turn, are dispositions perfecting our capacities for knowledge and love, and these are exercised throughout the whole range of activities necessary to sustaining human life. Thus, considered as normative ideals, they stem from and are ineliminably shaped by the natural inclinations and the needs of the human organism. Hence, our paradigms for virtuous behavior, together with the reflective ideals grounded in those paradigms, represent the point of connection between well-being and the norms of the natural law.[42]

These inclinations, needs and capacities are not identical to those of animals (though there are insights to be drawn from such comparisons) but must also include human dimensions such as society, reason, culture and religion. This suits the scholastic determination to reconcile apparent contradictions between the different authorities they looked to and to harmonize them into a whole. Each expression of human nature and human good is to be accounted for, each source of moral truth attended to, each authority given its due. Likewise, the more the virtues are exercised throughout the whole of a life, the more it expresses the ideal of happiness.

This approach to the virtues exposes significant differences between this viewpoint and that of the new natural law. Despite Finnis' apparently increased appreciation for the virtues, the new natural law lacks a well-developed understanding of them, or a clear incorporation of them into its methodology. This highlights the overall methodological differences between that

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[42] Ibid, 162-163.

approach and Porter's, with the new natural lawyers being convinced that self-evident first principles direct one to the pursuit, promotion and protection of basic goods that are sought by all rational action. This supposed self-evidence allowed the new natural law approach to declare that it could, through the exercise of practical reason, demonstrate universal and specific moral norms, an achievement Porter believes beyond the reach of any natural law theory, and which she believes the scholastics did not attempt.

Aquinas and the scholastics were well aware of what Finnis has too little emphasized (and has yet to effectively integrate into the rest of his theory): practical reason is greatly dependent upon the virtues and therefore upon the right quality of the will. Without the virtues one's reasoning is likely to lead one astray and the development and practice of the virtues is bound up with the will. Without the right orientation of the will and the practice of the virtues, reason is easily misled. Porter explains that,

> will and reason do not operate in isolation from one another. Just as the will
> depends on reason to present it with its objects, so reason (together with every
> other human power) is only activated through the will, which moves the other
> powers to action. What this means, practically, is that reason and will are always
> in a process of dynamic interaction…Reason and will operate together in a more
> or less unified fashion, which is given shape and direction by the agent's overall
> beliefs about what constitutes the good, in general and especially for himself, and
> by the overall disposition of his will…The agent's persistent dispositions of
> intellect, will, and passions—his virtues, in other words, or perhaps his vices—
> together with his overall beliefs, desires, and commitments as shaped by his

particular history and circumstances, all come together to inform the exercise of will and reason at any given point in time.[43]

The will and the virtues are inextricable from moral reasoning, and so the apprehension of moral truth, in this view, is contingent upon many factors besides reason, from culture and creed to virtue and will. In particular, will, while analytically separable from reason, is in practice inseparable when it comes to perceiving moral truth and acting upon it. The way to moral truth is not found through reason operating upon self-evident first principles so much as through the sort of person one is. And this is governed less by universal principles than by culture, creed and a good will.

Questions regarding intention and the object(s) of an action necessarily flow from this emphasis on will. What does right willing consist of? In Porter's understanding of Thomism, the objects of actions must be understood not only in subjective terms (what the acting agent self-reports as the motivation and object of an act), but in a more communal fashion. She writes that "to determine the natural object of an act, we need to evaluate it from the perspective of the way of life characteristic of the human person…Evaluations at this level will be normative," not in a moral sense, but rather "in the broader teleological sense determined by reference to the well-being, understood as the proper and normal functioning, of the human animal."[44] The object of an action is understood through its context within culture, community and ways of life; it is through a grasp of these that we are able to isolate actions and their objects for analysis. Thus, Porter argues that the relevant casual relations may be identified, "through our grasp of the kinds of activities characteristic of a distinctively human way of life. We can identify an act of

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[43] Ibid, 259-260
[44] Ibid, 282.

giving aid, or communicating, or killing, because we grasp the point of these kinds of activities in terms of our species-specific way of life."[45] We are thereby able to identify both particular actions for analysis and the ends of those actions—without being dependent upon the subjective account we may be given by the actor as to what his or her intention and object were.[46] This does not eliminate the dangers of self-deception, flawed justification and grotesque contortions of casuistry, for such will always be with us. However, by making reference to the standards and patterns of ordinary life we may hope to better evaluate actions, intentions and ends.

Such an evaluation is necessarily social. Instead of situating ends and intentions within a purely physical casual chain, or the interiority of subjective intent, we may consider them in the interpersonal and communicative context of ordinary life. Human understanding of human actions is rooted in culture and community, and is, indeed, all but unimaginable outside of them. Porter writes that, "Patterned social interaction is our species-specific way of life. We pursue, attain, and enjoy the basic components of animal well-being—food and drink, shelter, security, mating and reproduction, protection while ill or infirm—in and through structured interaction with our fellows." Survival in complete isolation may be possible, but "it is almost impossible to regard such a life as a life of well-being…for the human person, even basic well-being presupposes the development and expression of distinctively rational capacities, and these likewise presuppose social forms of existence."[47] We understand our lives and our actions through interpersonal existence. Language in particular—the very means by which we

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[45] Ibid, 300.

[46] Porter offers an extended critique of Grisez' approach to intention in Jean Porter, ""Direct" and "indirect" in Grisez's moral theory" in Theological Studies, Vol.57, Issue 4, Dec 1996. In her opinion, he has departed from the more traditional Catholic interpretation and application of the principle of double effect, but fails to provide a coherent alternative. For a more positive discussion of Aquinas and the will, see Jean Porter, "Dispositions of the Will" in Philosophia (2013) 41:289–300.

[47] Porter, *Nature as Reason*, 212.

formulate, discuss and debate matters of intention— is dependent upon society and culture. It is inescapably from these social, communal and communicative ways of life that we learn to identify forms of the good, the virtues and the good life.

Moral understanding and its instantiation through the practice of the virtues are mutually reinforcing, and both are embedded within social contexts. Within this context we learn how happiness (which is the life of the virtues) will normally appear, and "it is through reflection on this paradigm that we grasp some sense of the overall aims and the point of this way of life." This understanding will, Porter hopes, also enable us to recognize alternate (but valid) forms of happiness and the practice of the virtues. However, we must not expect "a comprehensive formula or theory, in terms of which nonstandard candidates can be completely and infallibly evaluated. The most we can hope to develop in this regard, once again, is a kind of practical wisdom, which enables us to judge more or less reliably in these matters."[48] This practical wisdom will integrate the virtues, and will be embedded within a specific cultural context. Furthermore, it will involve moral rules, but cannot be reduced to them. Moral rules— communicative expressions meant to encapsulate and convey expectation, experience, and insight—are invaluable for moral education, instruction, and guidance. However, they are never able to fully address the unique circumstances of each situation, and so require interpretation, which necessitates practical wisdom.

There is, in fact, mutual reinforcement between well-formulated moral rules and the use of practical wisdom. The opposition that is sometimes perceived between them is only present if we expect more from rules than they can provide, or seek to apply them without regard to their

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[48] Ibid, 223.

limitations. Regarding the connection between moral rules and right judgment, Porter argues that "the dichotomy between prudence and rule-governed behavior is not persuasive. The prudent person applies moral rules through a process of judgment rather than employing a decision procedure similar to that of a mathematician."[49] She concludes that rules expressed in ordinary language can be applied no other way than through prudence. The formulation of moral rules is an important tool for moral reflection, teaching, and communication, but it must be understood in the appropriate terms. It is not a quasi-scientific or mathematical process, nor able to proceed confidently from first principles as if practical morality were an Aristotelian completed science (though at times it may provisionally anticipate such first principles).

What is needed is not a better formulation of moral rules, but men and woman who are better able to act rightly in applying them. Thus, Porter writes that, "What distinguishes the prudent from the imprudent person is not the fact that one does not need moral rules whereas the other does," rather, it is that "the prudent person is capable of an intelligent grasp and application of the moral rules whereas the imprudent person lacks this capacity." This allows for a good deal of creativity on the part of the prudent person, for in order "to exercise prudent judgment, it is necessary to discern which out of an indefinite range of acts would count as genuine acts of virtue."[50] There is, as the new natural lawyers eventually discovered, no way to reduce this necessary moral creativity to rules, however well formulated. For the new natural lawyers this creativity has been expressed through the vague ideal of integral fulfillment, but this has been belied by the extensive casuistry employed elsewhere (for example, with regard to ways to perform an abortion to save the mother's life—without admitting to performing an abortion to

[49] Ibid, 318.
[50] Ibid, 319.

save the mother's life). What is needed in such extreme cases is not further parsing of the rules,

but virtuous, prudent men and women. Such people will be able to go beyond the mere attempt

to mechanically follow the rules and will instead creatively instantiate them through right

judgment and action.

History and Community in the Natural Law

This creativity Porter identifies, along with the variety of starting points and authorities

for scholastic natural law reflection, allow for much more diversity in expressions of the natural

law than is generally thought. As the scholastics did not consider the natural law to be a

universal set of moral norms derived from self-evident first principles, they did not attempt to

rationally derive a natural law purified from contingent social customs and expressions. Rather,

"the scholastics were convinced that social norms do stem from human nature…in a way that is

at least sometimes open to analysis and morally instructive. Hence, when they reflected on

specific moral norms in the light of the natural law, they almost always took received norms and

practices as their starting point."[51] These could then be analyzed with regard to the ends they

serve and the instincts they arise from. Norms and customs, as they actually exist, were, for the

scholastics, at least potentially (indeed, perhaps likely) expressions of the natural law. Though

the natural law might be obscured by sinfulness, the scholastics thought its influence was still

discernable in the customs and laws of concrete communities and cultures.

This interpretation of the scholastic position helps Porter respond to a couple possible

criticisms. First, regarding the Christian context within which the scholastics kept their natural

law approach, she observes that it, "will only appear confused or arational if we assume that

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[51] Ibid, 19.

rational inquiry must be purified of all historical and cultural contingencies. But as is well known, this assumption has been called into question from a number of perspectives." Secondly, this viewpoint may then be better able to respond to more radical critiques, for as Porter argues, "we need not adopt the deep skepticism of some postmodernists in order to defend the possibility that rational inquiry can *only* take place from within some context of culturally specific practices, mores, and traditions."[52] This is, of course a disagreement with such postmodern skepticism, but it is in a much better position to engage with it than those who insist that the natural law must be cleansed of all such "historical and cultural contingencies." By granting the legitimacy of postmodern critiques of Enlightenment rationality, but without rejecting all concepts of truth or rationality, Porter's presentation of natural law is more likely to provide an opportunity for fruitful dialogue.

Such engagement does not lead Porter's position into relativism, in part because, as she puts it, the "exigencies of human life which give rise to the virtues, and which give family and communal life in some form a central place in all societies, also provide sufficient content to ideals of virtue to enable them to be recognized across a broad range of cultural expressions."[53] The common threads of virtue and the natural law can be identified throughout different times and places without presuming that they are reducible by reason to a single universal formulation or set of precepts. Furthermore, the theological foundation of the scholastic natural law provides a bulwark against relativism. That human reason cannot construct a universal and specific set of moral norms derived from self-evident first principles does not mean that God has not provided for true moral knowledge or that all such knowledge is obscured by human sinfulness.

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[52] Ibid, 29. Italics in original.
[53] Ibid, 229.

This understanding also illustrates how the scholastics were able to integrate their theological perspective into an understanding of the natural law that recognized its instantiations in cultures very different from their own. Porter explains that a "scriptural and theological perspective on the natural law is not inconsistent with affirming its universality—properly understood. Admittedly, such a perspective is inconsistent with a view according to which the natural law comprises a universally accessible set of determinate moral rules."[54] The natural law understood as an explanation for human moral capabilities and communication, rather than a set of universal moral norms (or a universal method of reasoning to arriving at moral norms), permitted the scholastics to both hold to their particular perspectives and commitments while also perceiving the natural law's manifestations among those with very different cultures and customs. According to the scholastics, the natural law was an expression of God's general grace, allowing even those in non-Christian cultures to make true moral judgments.

Thus, the foundation was laid for the scholastics to understand a variety of cultural practices as legitimate, rather than as necessarily sinful deviations from a single ideal culture. Though specific customs and laws might be sinful, Porter explains that the scholastics did not assume "the sinfulness of those ways of life different from their own. This may seem like a modest concession, but it is nonetheless important in principle. By acknowledging the legitimacy of diverse human practices, the scholastics affirm that human diversity is intelligible, as an expression of an underlying nature, and for that very reason, it is good in principle."[55] For the scholastics, cultural practices different from their own were not necessarily any less legitimate instantiations of the natural law. Even those practices which they held as less good, or

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[54] Ibid, 326.
[55] Porter, *Natural and Divine Law*, 177.

even sinful, could usually still be understood in terms of the natural law, albeit as defective or

sinfully obscured expressions of it.[56]

There is also, for us, a great benefit in this scholastic approach. Porter argues that it

provides a way to accept what is valid in modern and postmodern critiques of truth and morality

without accepting complete moral relativism. Nor does the dependence upon culture and

community of virtue and the instantiation and apprehension of the natural law prevent just

criticism of what is wrong in a society, for, "Moral critique does not presuppose an ability to

move outside one's intellectual and moral tradition."[57] There is no neutral point outside all

culture and tradition from which to evaluate them. However, a culture will usually carry within

it (by virtue of the natural law) the possibilities for moral reform and renewal. If not, it may

hope to encounter another tradition that can share insight that will overcome difficulties within it.

Thus, in encounters between different cultures the idea of the natural law provides a resource that

emphasizes commonalities and encourages recognition of a common humanity. Porter argues

that this scholastic recognition of "conventional elements" within the "precepts of the natural

law" offers

> a point of entry for us, who are very conscious of the extent to which morality is a
> social construction. Yet their concept of the natural law also implies that there are
> practical and normative constraints on the social construction of morality.
> Correlatively, it implies that the status of morality as a human construct need not

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[56] For example, the scholastics were able to conclude that polygamous marriages (practiced by both Biblical patriarchs and the scholastics' Muslim contemporaries) were valid, though not as good as the monogamous ideal. Likewise, though they condemned fornication, they nonetheless understood it as a wrongful indulgence of a legitimate human desire.

[57] Porter, *Nature as Reason*, 355.

imply sheer moral relativism. For this reason, the scholastic concept of the natural law suggests a way to respond to contemporary challenges.[58]

The scholastic approach to the natural law, as understood by Porter, thereby provides a way to engage challenges from various schools of historicism, relativism and critical theory, without summarily dismissing them as Finnis (among others) has done. Despite their conflicts with Christian theology and natural law philosophy, these challenges contain genuine and important insights about the limitations of human knowledge and philosophic systems. At their best, they remind us of the finitude and fallibility of all human reasoning. Thus, much of their criticisms of natural law are in response to the conviction of modern natural law theorists that moral truth has to be derived from self-evident first principles and must be independent of culture and creed.

To Porter's great credit, she has shown that this emphasis on self-evident first principles leading to universal moral norms is not necessarily the correct interpretation of Aquinas and the scholastics. I believe she is much less successful in her attempts to reconcile her own liberal Catholic tendencies (particularly on sexual issues) with the scholastic natural law tradition. She herself admits the difficulty of the attempt, though she does not abandon it. However, I do not believe that the success or (more likely, in my opinion) failure of that application of her approach compromises her work on understanding the view of the natural law held by Aquinas and the scholastics. She helps chart a Thomistic approach to the natural law that pays full heed to the historicity of human reasoning and knowledge. Much of the philosophical foundation for her

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[58] Porter, *Natural and Divine Law*, 307-308.

work is owed to Alasdair MacIntyre, though there are points on which they disagree, and so it is

to his work that I now turn.

MacIntyre and Moral Understanding

"Individuals aren't naturally paid-up members of the human race, except biologically. They need to be bounced around by the Brownian motion of society, which is a mechanism by which human beings constantly remind one another that they are…well…human beings."[1]

-Terry Pratchett

Porter on MacIntyre

Is there a defensible philosophical approach consonant with the natural law tradition as articulated by Jean Porter? Alasdair MacIntyre, a Thomistic-Aristotelian and an advocate for the natural law, has made such an account. Beginning with *After Virtue*, MacIntyre has engaged in an evolving philosophical endeavor in the Thomistic-Aristotelian tradition. While MacIntyre is not a dedicated natural law theorist constructing a complete system of natural law in the way that Finnis and his allies have, this is beneficial here. He does not claim to provide a complete moral system that will persuade all rational people everywhere, believing that to be an impossible goal. Porter, who has relied a good deal on MacIntyre's philosophical project in developing her own account of the natural law, writes that he "does not deny that there are some standards of rationality that can be applied in any social or cultural context—for example, the fundamental laws of logic—but on his view these are not sufficient by themselves to resolve the kinds of substantive conflicts that have emerged in debates over competing ideals of justice."[2] His approach is more sensitive than the new natural law to the historical contingencies and exigencies of life, especially as regards community and tradition. The natural law is not, in his view, what modern natural law theorists believe it to be.

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[1] Terry Pratchett, *Men at Arms*, (New York: Harper Prism, 1993), 4.
[2] Jean Porter, "Tradition in the Recent Work of Alasdair MacIntyre" in *Alasdair MacIntyre*, ed. Mark C. Murphy (Cambridge: Cambridge University Press, 2003), 44.

Porter generally approves of MacIntyre's project and the two of them have at times

engaged each other directly, exploring their agreements and differences. She notes that he

provides an alternative to the dispute between Enlightenment ideals of rationality on one side and

relativism on the other. Indeed, the latter is simply an inversion that has arisen due to the failures

of the former. By postulating a mistaken view of rationality and truth, the Enlightenment set the

stage for relativism to arise when it was found that the Enlightenment standards were impossible

to meet. The failure of the Enlightenment conception of truth seemed to call into question the

very possibility of truth. Porter finds that the appeal of

> relativism and perspectivism derives from the fact that these are inversions of the
> Enlightenment ideal of a universally perspicuous standard of rationality and truth.
> Since this cannot be attained (as MacIntyre himself would agree), the only
> alternative, it is said, is some form of relativism or perspectivism. On the
> contrary, MacIntyre responds, there is a third alternative, namely, the possibility
> that the development of traditions, both internally and in relation to one another,
> can itself be considered a genuinely rational process, which, if it goes well, moves
> in the direction of an ever-fuller grasp of reality.[3]

This view of tradition as a rational alternative to the extremes of Enlightenment

rationality and postmodern relativism fits well with Porter's interpretation of Aquinas. Rejecting

the Enlightenment conception of reason is not the same as rejecting reason. Indeed, if the

Enlightenment view of reason is untenable, then rejecting it will be necessary to preserve the

defensibility of any real rationality. And it is here that MacIntyre's work may be deployed on

behalf of an understanding of the natural law that is mindful of the development of rationality

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[3] Porter, *Nature as Reason*, 63.

and truth within traditions of moral inquiry, and that avoids the modern reliance on ahistorical rationality.

In addition to his defense of the rationality of traditions, Porter has found MacIntyre's work useful in the development of her ideas of ontology, where she observes that his theory, "suggests an account of the way in which we can come close to attaining adequate concepts of kinds of living creatures, even though our access to these creatures will always be mediated through a framework of socially specific perceptions and beliefs."[4] This may also be applied to ourselves. While we are capable of a good deal of self-knowledge regarding ourselves, our culture, and the human species, this knowledge is never independent of our own existence and its contingency and finitude. There is no point of universal rationality from which we may survey ourselves in order to fully grasp our own nature.

We are capable of knowing something about our own nature, though not in the fully universalized and foundational way that some natural law theorists have thought. Nature is neither opaque nor transparent to us. We see as through a glass dimly. Perhaps later we shall see face to face. This is a matter for faith, but faith does not overcome all our creaturely limitations now. Our understandings of nature, including our own nature, may be more or less reasonable and true, but never fully so. Furthermore, we can never be entirely sure of the degree of reason and truth we have attained or may attain, for one of the conditions of our finitude is the inability to fully delineate our finitude.

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[4] Ibid, 109.

Becoming Independent and Rational

Recognizing these limitations of human reason, MacIntyre rejects the Enlightenment dream of a universal standard of rationality, available to all and independent of cultural particularities. Consequently, he holds that an important part of moral philosophy lies in understanding how a person develops such rationality as is available within our finitude. Thus, while the new natural law theory begins with basic human goods (to which we are directed by self-evident first principles) and proceeds by way of "modes of responsibility" and "integral human/communal fulfillment" to universal moral norms, MacIntyre's approach holds that generalized and articulated moral knowledge can arise only as a reflection upon prior practice within a community and its tradition of moral reflection. Distinct and identifiable pre-moral basic human goods do not exist in the wild, but only within the museum of philosophy, where they can be found stuffed and posed inside presentation cases. Any articulation of basic goods is itself culturally conditioned—only a culture with a developed intellectual, anthropological and sociological practice could identify them across their different cultural and linguistic instantiations and formulations. There is no sterile state in which the basic goods of the new natural lawyers can be analyzed without cultural contamination, and even if there were, the analysts themselves would not be free of their own cultural prejudices.

It is because of the importance of language and culture in shaping human reason that MacIntyre diverges from the usual practice in moral philosophy, which presupposes "the existence of mature independent practical reasoners whose social relationships are the

relationships of the adult world."[5] Instead, in order to understand how we become and are

sustained as independent practical reasoners, we must consider our development from infancy

and childhood, when we are decidedly not independent practical reasoners. Human beings are

not born philosophers, rather, our language, worldview, methods of reasoning and so forth are all

imparted to us, mostly as a matter of course in ordinary life, not as a conscious program of

philosophical pedagogy. We become rational, independent practical reasoners only through

habituation in the virtues and instruction in a tradition of moral inquiry.

Because of this understanding of how human rationality is developed in and through

culture and community, MacIntyre is critical of the new natural law theory. He finds that "it

does not understand human individuals as essentially parts of larger wholes—of the family and

of political community, for example—wholes apart from membership in which the human

individual is incomplete."[6] His critique might be disputed by the new natural lawyers, perhaps

because of the development of the concept of integral human/communal fulfillment within their

theory. However, methodologically they continue to downplay the importance of a community

of moral inquiry (even though they themselves constitute just such a community), relying instead

on individual reasoning from self-evident first principles.[7] In particular, they insist that the first

principles of practical reason are universally accessible and independent of culture and tradition,

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[5] Alasdair MacIntyre, *Dependent, Rational Animals: Why Human Beings Need the Virtues*, (Chicago: Open Court, 2012), 81. Hereafter cited as *Dependent Rational Animals*.

[6] Alasdair MacIntyre, "Natural Law in Advanced Modernity" in *Common Truths: New Perspectives on Natural Law*, ed. Edward B. McLean (Wilmington, DE: ISI Books, 2000), 105.

[7] As noted previously, some of Finnis' recent writing shows a much greater appreciation for the role of the virtues in moral and philosophical inquiry. However, these statements need much fuller incorporation within the new natural law theory, and so far remain outliers, though I hope that such insight become more prominent within the new natural law approach.

and ignore how children become adults who are competent in moral inquiry—a process which is decidedly not independent of culture and tradition.

Not only does Aristotle's famous observation still apply—one who can live without society must be either a beast or a god—but so does his underlying understanding that competent moral reasoners do not develop apart from society and a community of moral inquiry. The Enlightenment and its offspring, MacIntyre charges, ignored this truth, treating rationality as arising from what is essentially a first-person singular perspective. Both skepticism and the search for a solid epistemological foundation in order to refute skepticism have an individualistic cast to them. The Enlightenment's horror of tradition and authority (or at least the immediate traditions and authorities preceding it) led it to search for principles available to individuals regardless of culture or tradition—indeed, principles by which the individual could stand above and judge cultures and traditions. Thus, it needed a means of verifying epistemological reliability for individuals, regardless of culture and tradition.

To the Thomist, MacIntyre argues, such modern epistemological projects and debates will appear beside the point, for "if the Thomist is faithful to the intentions of Aristotle and Aquinas, he or she will not be engaged, except perhaps incidentally, in an epistemological enterprise."[8] Rather, such an enterprise will appear misguided. Neither skepticism nor the attempts to rebut it take account of the communal nature of philosophic and moral inquiry. Far too often, the existence of mature independent practical reasoners is taken for granted.

Thus, the problem, according MacIntyre, is that such attempts are first-person singular ones. He describes the approach thusly, "How can *I*, so the epistemologist enquires, be assured

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[8] Alasdair MacIntyre, *First Principles, Final Ends, and Contemporary Philosophical Issues*, (Milwaukee: Marquette University Press, 2011), 11.

that *my* beliefs, *my* perceptions, *my* judgments connect with reality external to them, so that *I* can have justified certitude regarding their truth and error?" A skeptic, therefore, is just an epistemologist with negative results. In contrast, MacIntyre argues that "the Thomist, if he or she follows Aristotle and Aquinas, constructs an account both of approaches to and of the achievement of knowledge from a third-person point of view. My mind or rather my soul is only one among many."[9] An account of the self has to be incorporated within this recognition that my self is but one person among many others. Consequently, in the Thomist's view, the individualist Cartesian project of removing all doubt by initially doubting all is folly. True knowledge does not begin by stripping the mind of all presuppositions or ignoring the foreground of knowledge, but by acknowledging our place within history, culture and community.

No one independently reasons his or her way to an understanding of right and wrong. Rather, moral knowledge is instilled and developed over time in concrete circumstances and a particular culture. Therefore, in MacIntyre's view, the new natural law theory is far too abstract in its methodology and remains imprisoned by untenable Enlightenment assumptions. Like many other modern natural law theories, it ascribes to Aristotle and Aquinas belief in "necessarily true first principles which any truly rational person is able to evaluate as true." This sort of Thomism, he charges, finds the "rational superiority of Aquinas' overall system of thought…in its argumentative ability to encounter modern rivals on *their* chosen ground for debate and to exhibit the rational superiority of its claims concerning first principles to theirs."[10]

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[9] Ibid, 12.

[10] Alasdair MacIntyre, *Whose Justice, Which Rationality?*, (Notre Dame, IN: University of Notre Dame Press, 2008), 175-176. Hereafter cited as *Whose Justice, Which Rationality?*

However, he believes that these debates have actually ended with natural law theories, at best, merely dug in as another faction in the interminable logomachy of modern academic philosophy. No side has been able to demonstrate the superiority of its first principles satisfactorily enough to end debate, as the new natural law theorists have come to realize.

Even though Finnis often rejects elements of the Enlightenment and modern thought, his rationalistic approach to Thomism and the natural law is itself a prisoner of the Enlightenment. Through a zeal for seeking to ground moral agreement in rational assent to self-evident first principles, he assumes its rationalistic errors, which MacIntyre diagnoses. "It is a Cartesian error, fostered by a misunderstanding of Euclidean geometry, to suppose that first by an initial act of apprehension we can comprehend the full meaning of the premises of a deductive system and then only secondly proceed to enquire what follows from them." For MacIntyre, moral understanding proceeds in precisely the opposite way, for "it is only insofar as we understand what follows from those premises that we understand the premises themselves. If and as we begin from the premises, our initial apprehension will characteristically be partial and incomplete, increasing as we understand what it is that these premises do and do not entail."[11]

Consequently, it is a mistake to abstract the moral rules of the natural law from the context in which they are discovered through reflection on practice and the exercise of the virtues. Stripped of their cultural context (though such stripping can never be complete, as even the most abstract natural law theorists still speak in the tongues of men, not angels), connection to virtue and ideas of a properly human life, such supposedly universal moral rules are apt to become indefensible and unintelligible. Even the negative prohibitions of the natural law are

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[11] Ibid, 174-175.

only comprehensible within the context of virtue and the community that inculcates and is

protected by the virtues. MacIntyre argues that,

> one cannot understand the exercise of the virtues except in terms of their role in
> constituting the type of life in which alone the human *telos* is to be achieved. The
> rules which are the negative precepts of the natural law thus do no more than set
> limits to that type of life and in so doing only partially define the kind of goodness
> to be aimed at. Detach them from their place in defining and constituting a whole
> way of life and they become nothing but a set of arbitrary prohibitions, as they too
> often became in later periods.[12]

Without the context of a community and way of life, virtues and moral rules are likely to

seem arbitrary and unjustifiable. Indeed, MacIntyre believes that this is precisely what happened

to the standards and concepts of Thomism. They became artifacts or relics as the false

alternatives that modernity presents obscured the necessary connection between natural law,

virtue and particular communities. Modern philosophies have tended to presume the truth either

of relativism or of universally accessible and applicable first principles that are independent of

culture and creed. MacIntyre observes that they assert that "*Either* reason is thus impersonal,

universal, and disinterested *or* it is the unwitting representative of particular interests, masking

their drive to power by its false pretensions to neutrality and disinterestedness." He points out

that this modern dichotomy conceals a third possibility, which is that "reason can only move

towards being genuinely universal and impersonal insofar as it is neither neutral nor

disinterested, that membership in a particular type of moral community, one from which

fundamental dissent has to be excluded, is a condition for genuinely rational inquiry, and more

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[12] Alasdair MacIntyre, *Three Rival Versions of Moral Inquiry: Encyclopaedia, Genealogy, and Tradition*, (Notre Dame, IN: University of Notre Dame Press, 2008), 139. Hereafter cited as *Three Rival Version of Moral Enquiry*.

especially for moral and theological enquiry."[13] He identifies this viewpoint with that of Plato,

in particular with that presented in *The Republic* and the *Gorgias*. From the standpoint of those

works, "the enquirer has to learn how to make him or herself into a particular kind of person if he

or she is to move towards a knowledge of the truth about his or her good and about *the* human

good." MacIntyre believes that this transformation is that of "making oneself into an apprentice

to a craft, the craft in this case of philosophical enquiry."[14] Truly rational philosophical and

moral inquiry does not begin by imagining away our particularities in order to reach some

neutral standpoint of universal reason. Rather, it proceeds by transforming one's mind and

character through membership in a community and tradition of philosophic inquiry.

Such membership will involve an "apprenticeship," for human beings are not born as

fully rational, independent reasoners nor do they invariably develop into such. It is only through

patient instruction and the formation of virtuous habits that they are able to grow in moral

inquiry and practice. Moral inquiry, then, in both its theoretical and practical components,

"requires therefore not just a craft but a virtue-guided craft."[15] Not only is there a need for

instruction in intellectual methods and virtues, but many intellectual propositions will be opaque

without the practical experience and virtues that they articulate. Contrary to Enlightenment

models, this development of both intellectual and practical virtues does not proceed according to

a self-evident program accessible to all rational persons. Thus, to guide us in the craft of moral

inquiry, we will need a teacher from whom we will have to learn and "initially accept on the

basis of his or her authority within the community of a craft precisely what intellectual and moral

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[13] Ibid, 59-60.
[14] Ibid, 60-61.
[15] Ibid, 63.

habits it is which we must cultivate and acquire if we are to become effective self-moved

participants in such enquiry. Hence there emerges a conception of rational teaching authority

internal to the practice of the craft of moral enquiry."[16] The path to independent rationality

begins with dependence and instruction, not reasoning from self-evident first principles. Indeed,

the identification of supposedly self-evident first principles is usually a product of an advanced

philosophical tradition—though, of course, laymen and novices may parrot the principles

identified by such a tradition.

A corollary of this is that those outside a community and its moral instruction may be

unable to understand the rationality that justifies its moral instruction, a point MacIntyre makes

in a discussion of Aristotle: "for those who have not yet been educated into the virtues the life of

the virtues will necessarily seem to lack rational justification; the rational justification of the life

of virtue within the community of the *polis* is available only to those who already participate

more or less fully in that life."[17] It has been said that virtue is its own reward, but it may also be

its own explanation. Understanding is often contingent upon experience, and the development of

such experience proceeds on a variety of levels, from deliberate instruction in philosophical

precepts to the unconscious mimesis of ordinary life. One without such experience and

instruction will find it difficult, if not impossible, to comprehend the rationality of a

community's practices, virtues, and beliefs.

This necessity for instruction applies to a variety of rational pursuits, from moral

reasoning to learning how to interpret a philosophical text properly. Formation precedes

understanding; one must be instructed before one can evaluate that instruction. With regard to

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[16] Ibid, 63.
[17] MacIntyre, *Whose Justice, Which Rationality?*, 110.

the prerequisites for the skill of interpreting a philosophical text (a skill of great importance to philosophy), MacIntyre argues that,

> the intending reader has to have inculcated into him or herself certain attitudes and dispositions, certain virtues, before he or she can know why these are to be accounted virtues. So a prerational reordering of the self has to occur before the reader can have an adequate standard by which to judge what is a good reason and what is not. And this reordering requires obedient trust, not only in the authority of this particular teacher, but in that of the whole tradition of interpretative commentary into which that teacher had had earlier him or herself to be initiated through his or her reordering and conversion.[18]

Thus, the correct evaluation of a text necessitates that one be adequately instructed and molded by the tradition of which that text is itself a part. Not only is it necessary to be competent with the language, the mind of the reader will have to be sufficiently developed in order to engage with the text. A child might be competent to read T.S. Eliot's poetry, or *The Brothers Karamazov*, or *Also Sprach Zarathustra*, or *The Gorgias* or any number of other literary and philosophic masterworks, insofar as the child can make out each word, and perhaps even each sentence. However, much more is required to understand these works in any meaningful sense. The mind of the reader, if the reading is to be worthwhile, must have been formed beforehand through extensive tutelage, and such instruction can never be free from tradition and cultural prejudice. One cannot come to a philosophical text as a blank slate, for the instruction that enables one to read it with any real comprehension will also prejudice the interpretation and response to it.

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[18] MacIntyre, *Three Rival Version of Moral Enquiry*, 82-83.

And so it is with moral inquiry as well. One cannot become capable of the task of moral inquiry without being instructed, both deliberately and through a general formation by one's culture and traditions, in ways that will influence and direct that moral inquiry.

This may seem to leave moral inquiry trapped. If one cannot reason adequately about moral truths without first going through a process of formation in a particular moral tradition, then how can one critique the tradition one is raised in or rationally choose between competing traditions? Robert George, that indefatigable champion of the new natural law theory, emphasizes this point, accusing MacIntyre of being evasive when he confronts the problem. The solution, George argues, would be for MacIntyre to be a more "authentic" Thomist, and concede that "certain fundamental practical truths are available to anyone, regardless of his cultural or intellectual heritage, allegiances, or commitments. These truths find various modes of expression in different cultures and traditions, but are nevertheless captured in sound practical judgments that may be formed by any thinking person."[19] Compared to MacIntyre, the new natural lawyers have undertaken little anthropological comparison of these "various modes of expression" in different cultures and languages, but they are confident that behind them all certain self-evident truths may be found.

Such self-evident truths, George believes, include the new natural law theory's first principles of practical reason, which direct us toward basic human goods. In his opinion, "no particular self-understanding is required to understand and affirm the sets of basic practical principles, which, according to Thomists, on the one hand underlie all coherent practical

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[19] George, *In Defense of Natural Law*, 254.

thinking, and on the other distinguish fully reasonable from defective practical judgments."[20] There are no cultural prerequisites for the intellectual apprehension of the first principles identified by the new natural law.

One might expect, then, that the new natural lawyers would have enthusiastically undertaken comparative analyses of various cultural and philosophical self-understandings and presuppositions. If they could show that the first principles of practical reason identified by their theory are expressed so universally it would be strong evidence in their favor. However, the new natural lawyers have generally neglected such investigations into the diverse cultural experiences of what they label the basic human goods. Additionally, they do not have a satisfactory explanation for why some persons have denied that certain basic goods identified by the new natural lawyers are in fact such. While the new natural lawyers like to argue that self-evident is not the same as obvious, this explanation only gets them so far, given the number of skilled philosophers who have had the first principles explained to them (often at great length) by the new natural lawyers and nonetheless still reject them. And so the new natural lawyers face the classic predicament for those who claim self-evidence for their theories: are all opposing philosophers either wicked or obtuse?

The new natural lawyers have generally paid little attention to this problem, but it is one that MacIntyre has addressed directly, particularly as it involves the commitment of the Roman Catholic magisterium to the natural law. He gives the objection its full strength, observing that "if the precepts of the natural law are indeed precepts established by reason, we should expect to find agreement in assenting to them among rational agents. But this is not what we find." Nor is

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[20] Ibid, 254.

this disagreement confined to the ignorant and irrational, for many "intelligent, perceptive, and insightful agents either reject what Catholics take to be particular precepts of the natural law or accept them only in some very different version, or, more radically still, reject the very conception of a natural law. And these disagreements seem to be intractable." It would seem that either the Catholic account of the natural law is wrong, "or else it is possible for some theses to be rationally vindicated without thereby being able to secure the assent of all rational agents."[21] MacIntyre champions the second option, arguing the Thomism is indeed able to explain why it is rejected by rational persons of apparent goodwill.

This is the argument that MacIntyre attempts, and he notes that the need to provide such an explanation for moral disagreement is not confined to natural law adherents, but that others, such as Kantians and utilitarians also face the same difficulty, that of how they can "claim the authority of reason in support of their views *and* yet be unable to convince others who are, it seems, not only quite as intelligent, perceptive, and insightful as they are, but also quite as philosophically skillful and informed."[22] This then is the challenge: to explain how one's view, or the view of one's tradition, is rationally superior to others and yet may be rejected by those who are clearly rational, adequately informed and philosophically skilled, and are not obviously maliciously motivated to reject the truth.

MacIntyre's response to this challenge has occupied him since *After Virtue*, and has evolved over the decades, though still retaining its coherence. His current response begins by claiming that rational inquiry itself requires putting into practice the precepts of the natural law,

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[21] Alasdair MacIntyre, "Intractable Moral Disagreements" in *Intractable Disputes about the Natural Law: Alasdair MacIntyre and Critics*, ed. Lawrence S. Cunningham, (Notre Dame, IN: University of Notre Dame Press, 2009), 1-2.

[22] Ibid, 2-3.

even if they are unacknowledged as such. We will have to be truthful and trustworthy to those whom we are reasoning with, respecting their lives, liberties and property. As he puts it, "we will only be able to enquire together with such others in a way that accords with the canons of rationality, if both we and they treat as binding upon us a set of rules that turn out to be just those enjoined by the natural law. How then do failures to arrive at agreement on those precepts occur? They occur…because of a variety of failures in practical rationality,"[23] failures that he believes can be explained within a Thomistic framework. Some such failures will indeed be the results of sin, but others will result from less morally culpable errors. And while the traditions of rational inquiry that develop from such errors may not be disprovable by premises they share with their opponents, they may find themselves to be less adequate than rival traditions are at addressing various difficulties.

According to MacIntyre, such failures are often the result of inadequately reckoning with the history of the ideas in play. Far too often concepts and formulations have been treated as standalone propositions—available for evaluation independent of culture and creed—when they needed to be considered as parts of a larger whole. Regarding the development of modern moral systems, he writes that Enlightenment philosophers

> did not recognize that the moral rules which provided them with their subject
> matter had both the form and content that they had only because they were
> *survivals* from an earlier period and that they are fully intelligible only as
> survivals. They took themselves to be saying what moral rules were and always

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[23] Ibid, 3.

had been, as though theirs was a timeless conceptual investigation. But was they were in fact doing was inventing new moralities.[24]

He identifies utilitarianism as the most important of these new moralities, and while he considers it rationally inferior to a Thomistic account, it has developed in such a way that it cannot be demonstrably disproven by premises shared by both Thomists and utilitarians. Dialogue between the two traditions will be further complicated by the many Thomistic concepts, such as happiness and virtue, which are rootless—and therefore vulnerable to utilitarian critique—when stripped away from the entirety of the Thomistic worldview. Thus, from MacIntyre's perspective, the development of moral systems out of the shattered remnants of the Thomistic consensus was flawed but not irrational, particularly given the discredited Aristotelian biology that Thomism had included. And the subsequent difficulties these modern approaches have encountered are, MacIntyre believes, understandable, even predictable, from a Thomistic point of view, but are insufficient to constitute an absolute refutation.

Consequently, MacIntyre finds that at times one tradition may justly be able to claim superiority over a rival "in respect of both rational justification and truth…Yet it is also important to recognize that the adherents of a particular defeated tradition may in fact fail to recognize when and how their tradition has by its own standards"[25] failed to resolve or make progress against persistent difficulties. Even intelligent, rational and philosophically acute proponents of such a defeated tradition may continue to look for the means to resolve such problems from within, rather than from the resources of a rival approach. Thus, MacIntyre argues that "it is possible to establish that one moral standpoint may be rationally superior to

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[24] Ibid, 41.
[25] Ibid, 35.

others without securing the assent of highly intelligent, perceptive, and thoughtful adherents of those other points of view."[26] Adherents of a rationally superior tradition may not have enough common ground with an opposing tradition to disprove it on premises both traditions accept, and may therefore find that the inferior tradition remains persuasive to those committed to resolving its difficulties with internal resources rather than looking for alternatives elsewhere. Thus, moral disagreement may continue, despite one tradition's superiority, and despite the persistent adherents of a defeated tradition being neither especially stupid nor egregiously wicked.

And so, rather than ignoring the problem of moral disagreement, or being shaken by it, MacIntyre believes that "Aquinas's account of the precepts of the natural law, far from being inconsistent with the facts of moral disagreement, provide the best starting-point for the explanation of these facts."[27] The practices necessary to moral inquiry, practices that MacIntyre believes are dictated by the natural law, may find theoretical different justifications in rival systems. While their manifestations may be universal necessities for rational inquiry, they do not constitute a set of self-evident first principles persuasive to all. People, even sophisticated philosophers, may act upon them in the practice of rational inquiry without adherence to their particular formulations.

This view diverges from that of the new natural lawyers who seem to believe that the first principles of their theory are self-evident and accessible to all as rational formulations. In contrast, MacIntyre concludes that "the outcome of my arguments is notably at odds with what some Thomistic writers have claimed and many others have presupposed, namely that Thomists have resources that should enable them to refute their opponents in ways that are or should be

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[26] Ibid, 4.
[27] Ibid, 26.

compelling to *any* rational individual, whatever her or his standpoint. This I am committed to denying."[28] While MacIntyre holds Thomism to be rationally superior to its rivals, and believes that superiority can be rationally vindicated, this does not lead him to expect that all rational persons will be persuaded by it. Such persons may inhabit incompatible intellectual traditions that have not yet been reduced to incoherence or faced with apparently perpetual aporias. Even those confronted with such problems may still search for solutions from within their own tradition.

As he does not claim to present self-evident first principles accessible and persuasive to all persons, regardless of culture or language, MacIntyre does not face the difficulties that many other Thomistic writers have with explaining moral disagreement. Rather, in his view, the quest for objective truths available and demonstrable to anyone anywhere is chimerical and a distraction from the real work of moral philosophy, which must proceed from within the historicity of human existence. There is no point at which philosophy can dispense with or be free from cultural, personal and linguistic influences. Indeed, supposedly universal and objective truths are in fact articulated in particular linguistic formulations within a particular philosophic tradition in a particular historical context. As he expresses it,

> what a particular doctrine claims is always a matter of how precisely it was in fact
> advanced, of the linguistic particularities of its formulation…Doctrines, theses,
> and arguments all have to be understood in terms of historical context. It does
> not, of course, follow that the same doctrine or the same arguments may not
> reappear in different contexts. Nor does it follow that claims to timeless truth are
> not being made. It is rather that such claims are being made for doctrines whose
> formulation is itself time-bound and that the concept of timelessness is itself a

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[28] Ibid, 51.

concept with a history, one which in certain types of context is not at all the same concept that it is in others.[29]

As this passage observes, all claims to timeless truth are embedded within contingency. Such contingency encompasses factors ranging from language, to culture, to tradition, to the personal history and psychology of the philosopher making claims to truth. However, according to MacIntyre, recognizing this does not preclude the possibility of moral truth, but only clears away the erroneous Enlightenment conception of it as impersonal and universally accessible in objective formulations. A proper understanding of truth will have to account for it being apprehended and communicated within man's historical existence. Thus, he argues that the Enlightenment has obscured what must be recovered, which is "a conception of rational enquiry as embodied in a tradition, a conception according to which the standards of rational justification themselves emerge from and are part of a history in which they are vindicated by the way they transcend the limitations of and provide remedies for the defects of their predecessors within the history of that same tradition."[30] Philosophical traditions that adhere to Enlightenment ideals of objective truth will remain entangled by the difficulties that have beset such approaches for centuries. MacIntyre argues that neither the Enlightenment approach, nor its skeptical and relativistic challengers, can be vindicated. Only by making peace with the contingencies, historicity and finitude of philosophic endeavors can the concept of truth be vindicated.

Natural Law and Community

Recognizing that moral inquiry is necessarily located within specific traditions will change one's view of how contemporary philosophical efforts are undertaken. Such a tradition

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[29] MacIntyre, *Whose Justice, Which Rationality?*, 9.
[30] Ibid, 7.

of inquiry will require for its cultivation something quite different from the modern community of academic moral philosophers. MacIntyre has made this point repeatedly, and has been consistently critical of much of academic analytic philosophy, arguing that it is disconnected from social existence, distorted when it attempts to apply itself to social reality, and that it utterly neglects the necessity of virtue for both practical and philosophic rationality.[31] Instead of relying solely on intellectual prowess and procedure as a way to reach moral truth, more attention must be paid to the preconditions of effective practical reasoning and the apprehension of moral truth.

Such preconditions include the exercise of the virtues (and not merely the intellectual virtues) for it is the person whose character is shaped by them who will most likely be able to reason aright on moral questions. This may be seen in MacIntyre's treatment of Aristotle's conception of practical rationality and its instantiation through the *phronimos*, the practically intelligent human being who is able to choose rightly in particular circumstances. MacIntyre writes that the "*phronimos* has in the act of practical judgment no external criterion to guide her or him. Indeed practical knowledge of what criteria are relevant in this particular situation requires *phronesis*. The good human being *is* the standard of right judgment, passion, and action." This imposes limits on those who may engage in moral philosophy, for only the good person will be "in a position to make justified true theoretical judgments about the nature of moral practice. The construction and evaluation of sound moral theories…require more than intellectual virtues. They require a particular kind of initiation into and participation in a

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[31] For one example see Alasdair MacIntyre, "Moral philosophy and contemporary social practice" in *The Tasks of Philosophy: Selected Essays, Volume I*, (Cambridge: Cambridge University Press, 2006).

particular kind of moral and political practice."[32] There is thus a strong connection between the practice of virtue in one's life and the ability to engage in sound moral philosophy. The *phronimos* may be competent to begin a systematic exploration of moral knowledge, but he does not become so through initially apprehending self-evident first principles and reasoning from them. Rather, his competence is grounded in virtue and experience, which then enable him both to judge rightly in particular circumstances and to begin a systematic philosophical investigation of moral truth.

Judged from MacIntyre's Aristotelian perspective, the Enlightenment approach to moral reasoning is entirely backward. It is not through reasoning about and then implementing abstract, theoretical standards that we learn what is good, but rather through the development of virtue and doing what is good that we are able to formulate general, theoretical standards. Through instruction and experience a person develops from dependence to autonomy in practical moral reasoning, and only then possesses the insight to adequately engage in theoretical moral reflection. Thus, in MacIntyre's view instruction in moral philosophy necessitates not merely intellectual exercises but also character formation (a view of education that is anathema to the practice of the modern academy). He draws a contrast between the view of Aquinas and that of "modern accounts of scientific progress," arguing that "while for the latter scientific progress consists exclusively in the development of more and more adequate theories, through a process of rejection, revision, and conceptual invention, for the former it is a matter not only of thus

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[32] Alasdair MacIntyre, *Ethics and Politics: Selected Essays, Volume 2*, (Cambridge: Cambridge University Press, 2006), 4. Hereafter cited as *Ethics and Politics*.

perfecting our theories, our sciences, but also of the perfecting of the minds of the enquirers."[33] The intellectual virtues are not only for intellectuals, though they especially need them, even within the modern sciences. The questions philosophers address are the same, though more technically expressed, as those of ordinary men and women, and the philosopher who hopes to live and reason well can no more do without the virtues in his life than an ordinary person can.

This need for virtue and experience also underscores the inadequacy of moral rules for guiding behavior. Though the formulation of rules may be useful and even indispensable as part of moral education and communication, MacIntyre concludes that it is insufficient as a guide for moral practice. No rule can fully capture and express what is right to do in a particular situation. Thus there is the necessity for *phronesis*, which MacIntyre defines as the virtue of those who know how to do what is good, indeed what is best, in particular situations and who are disposed by their character traits to do it." How then do we know what is best? He answers that there are no easy answers to be found in rules.

> There is no set of rules to invoke, nothing therefore that corresponds to Kantian maxims or to the rules of a rule-utilitarian…what precludes answering this question by applying a rule or a set of rules is that part of the agent's task is to select, from a multiplicity of potentially relevant considerations… those that are actually relevant to the agent's immediate choice of action…Insofar as appeal to some particular rule is on occasion among the relevant considerations in identifying such differences, the judgment that it is relevant cannot itself be derived from any rule.[34]

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[33] Alasdair MacIntyre, *The Tasks of Philosophy: Selected Essays, Volume 1*, (Cambridge: Cambridge University Press, 2006), 186. Hereafter cited as *The Tasks of Philosophy*.
[34] MacIntyre, *Ethics and Politics*, 28.

Since rules are never able to encompass all potentially relevant considerations there is always a need for practical wisdom in interpreting and applying them—and always the potential for someone with ill-will to find a way to exploit them, or for a pig-headed person to follow a rule in way that is clearly contrary to its purpose. The inadequacy of rules is as much an everyday occurrence as is their utility and it is expressed in common phrases such as those contrasting the spirit and the letter of the law, or in the case of a truculent but clever child seeking a loophole in the commands of a parent or teacher. Whether at the everyday or the philosophical level, we do not reason our way to specific actions by deriving moral rules from first principles and then scrupulously following said rules. The proper application of rules always requires practical wisdom and virtue.

Consequently, when it comes to deliberation on a course of action, MacIntyre argues that, contrary to approaches like that of the new natural law, it is not that "the agent who deliberates well does so by first constructing a piece of practical reasoning and then acting on it. It is rather that the action itself gives expression to the conclusion of a piece of practical reasoning." We cannot set the intuitive grasp of the particulars of a situation against the argument that explains and justifies that grasp and the action it precipitates. Rather, MacIntyre declares that:

> Our grasp of the universal arises out of our grasp of the particular…What Aristotle thereby makes clear is that any attempt to contrast a conception of the agent as having an intuitive grasp of what it is that is to be done and why with a conception of the agent as arguing from premises to a practical conclusion, and even more any attempt to present these as in opposition to one another, is a mistake. *What* the rational agent grasps intuitively in acting as she or he does can

only be articulated in the form of an argument and it is only through evaluating that argument that we can evaluate the agent's judgment and action.[35]

The formulation of a piece of moral reasoning is thus an attempt to communicate truths already known, or to evaluate what are held to be such truths. Moral apprehension often precedes moral formulation. Formal moral reasoning is not, as the new natural lawyers, neo-scholastics, and Enlightenment thinkers all would have it, the way to know moral truths in the first place. The derivation of universal specific moral precepts from self-evident first principles accessible to all rational person of goodwill is a hopeless endeavor. It distracts from the proper tasks of philosophy and provides a convenient foil for skeptics. Instead of seeking self-evident truths and universal reason divested of all particulars, moral philosophers ought to begin with the moral truths of their own culture. From there one may continue, through imagination and dialogue, to explore other traditions as well, a practice that is of particular importance when one's own tradition is ensnared in apparently insuperable difficulties. Yet at no point will one achieve a perspective outside or free from tradition, culture and particularity. Nor will we ever be able to declare our inquiries complete.

There is always the potential for hitherto underappreciated or unknown factors to come into play, or for a better articulation to be made. MacIntyre has observed that "*we* are never in a position to claim that now we possess the truth or now we are fully rational. The most that we can claim is that this is the best account which anyone has been able to give so far" while

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[35] Ibid 29.

acknowledging that our understanding of what makes for a "best account" is always subject to change.[36]

And so, even as he has become a more thoroughgoing Thomist over the years, MacIntyre has not come to view Thomism as a closed system containing the principles from which all answers may be derived. Instead, he has retained the recognition that for us, the discussion is never over, a point he illustrates by turning to Aquinas' disputative style, noting that, "It is crucial that, just as in a disputation there is always the possibility of something more to say, so Aquinas's discussions of particular problems always leave open the possibility of the discovery of one more argument, of some hitherto unexpected formulation…which entail a conclusion at odds with the conclusion that had up to this point prevailed."[37] For MacIntyre, Thomism is a tradition, not a system (and an intellectual tradition is in many ways an extended argument or discussion). And since inquiry is never at an end, at no point can the *phronimos* be discarded, as his character both enables further fruitful inquiry and provides a guide to practical action. At no point will a system of philosophical precepts and moral rules be sufficient and able to dispense with the man or woman of good character and judgment.

Moreover, *phronesis* is social and political because it cannot be separated from the context of community and of that community's practices and traditions of moral inquiry. It cannot be encapsulated in a set of tradition-independent precepts. Consequently, as a Thomist, MacIntyre argues that a culture's tradition of moral inquiry will contain within itself the seeds of the natural law, which is found as much through the practice of moral action and inquiry as through theoretical reflection and articulation. Indeed, the practice (though not necessarily the

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[36] MacIntyre, *The Tasks of Philosophy*, 5-6.
[37] Ibid, 130.

theoretical articulation) of the first precepts of the natural law are in fact the prerequisites for any

rational and moral inquiry. This is so, for the "human relationships through which alone anyone

can hope to learn the nature of their good are themselves defined in practice as well as in theory

by the standards set by the natural law. So the natural law is discovered not only as one of the

primary objects of practical enquiry but as the presupposition of any effective practical

enquiry."[38] Thus, even moral disagreement can pay tribute to the natural law, for the natural law

is expressed in the necessities of the moral inquiry attempting to resolve the disagreement.

Those honestly engaged in exploring and (perhaps) resolving moral disagreements will need to

abide by the precepts of the natural law, even if they are not theoretically articulated as such. As

MacIntyre explains,

> A precondition of rationality in shared enquiry is mutual commitment to precepts
> that forbid us to endanger gratuitously each other's life, liberty or property. And
> the scope of those precepts must extend to all those from whom we may at any
> time in our enquiry—and it is a lifelong enquiry—need to learn…If I am to
> engage with you in shared rational enquiry, we must both be assured that we can
> expect the other to speak the truth, as she or he understands it. There must be no
> deceptive or intentionally misleading speech. And each of us must be able to rely
> upon commitments made by the others.[39]

These requirements safeguard moral inquiry by protecting those undertaking it and

ensuring their goodwill and honesty. They are, as it were, the natural law requirements for the

process of moral inquiry, and are indeed universally required for the practice of moral inquiry.

However, they are not the product of abstract rationality calculating from first principles, but

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[38] MacIntyre, *Whose Justice, Which Rationality?*, 180.
[39] Macintyre, *Ethics and Politics*, 78-79.

rather emerge as concrete requirements of pursuing both knowledge and the practice of the good within a particular community and the concrete circumstances of life. Moral norms against murder, theft, deception, and so on are found as the preconditions for community and joint rational inquiry, regardless of their theoretical expression and justification (or lack thereof). And given the possibility of engagement with the strangers one encounters, they thereby provide for a potentially unlimited and universal application.

MacIntyre's approach thus integrates the experiential realities of life into the universality of the natural law in a far more convincing way than the new natural law's ostensibly self-evident first principles. The precepts to which we are directed by the natural law are apprehended in the practice of the life of virtue and moral inquiry within a particular community, and are practically necessary for inquiry between members of different cultures and traditions. Indeed, it may be said that on this point the practice of modern universities is significantly better than its theory (of which MacIntyre has been quite critical). The theoretical explanations offered by universities for the haphazard promulgation of disparate viewpoints by professors are often incoherent. However, the natural law, as identified by MacIntyre with the preconditions for rational inquiry, may be seen in its practice, as those who are unable to agree upon the basis for morality nonetheless behave in ways that accord with the precepts of the natural law that make rational inquiry possible. Professors advocating radically divergent moral philosophies nonetheless peacefully coexist (the squabbles of academic life notwithstanding).

Thus, MacIntyre's approach may open the way for a return of moral absolutes, not as universally accessible precepts demonstrable from first principles, but as realized by the virtuous man or woman whose character is incompatible with certain acts. The motivating power of

virtue is far greater than that of theoretical demonstrations of absolute moral prohibitions, and is far harder to lead astray through casuistry. The virtuous person will never do certain deeds not because clever reasoning from first principles shows them to be always and everywhere wrong, but because doing them would be incompatible with the life of virtue.

Considering the examples of martyrdom, so dear to Finnis and the new natural lawyers, for a virtuous man or woman death is better than betraying one's character or one's principles. The moral norms which might compel martyrdom are not those derived from self-evident first principles, but those which have been internalized through practice to the point where betraying them would mean no longer being oneself. And so, a woman might choose to die rather than renounce her faith, and thereby in her death bear witness to her faith. But this example contains not only the negative formulations the new natural law theory would provide (never lie; never betray your religion), indeed, if the examples of many martyrs are considered, this would likely constitute but a small part of her considerations. She is likely to be far more concerned with the positive, which is bearing witness to the glory of God. Thus, even in cases where one confronted with coercion tells the truth out of a sense of duty, the duty is not to tell the truth to those who threaten her, but to defy them with the truth. The truth of one's religious convictions is owed not to the judge and executioner, but to God, and it is in witness to this loyalty to God that the martyr will proclaim her faith in the face of death. The community that matters most in such a case is the community between God and the faithful.

Therefore, while such exceptionless norms may be articulated as philosophical postulates, their truth will be demonstrable only to those who accepted the teaching authority of those proclaiming the moral norm, or those in whom the virtues are developed enough to understand

the truth thus proclaimed in a personal way. For the latter, the norm in its negative formulation

is likely no longer necessary, having instead been replaced by the desire to attain or protect a

particular good. Without such acceptance of authority or personal experience the philosophical

postulates will fall upon barren soil, regardless of how self-evident their proponents think they

are. The new natural law theory deploys such formulations—that goods are protected and

promoted by the exceptionless norms of the new natural law—but it neglects the preconditions

for understanding such protection and promotion of human goods, instead simply presuming

their self-evidence to all rational persons.

Reintegrating Responsibility

MacIntyre's emphasis on the concrete realization of moral truth within communities and

traditions further prepares the way for a reconsideration of what the precepts of the natural law

require in the extreme situations that Finnis and other new natural lawyers discuss, such as being

questioned by the Gestapo regarding the whereabouts of hidden Jews. According to Finnis,

one's first responsibility in such cases is to the Gestapo agent, whose basic good of community

must be protected and not acted against by direct deception. For, Finnis argues, regardless of

one's "prior commitment to some project, community or institution…no such prior commitment

or project is itself *required* by reason…No project or commitment, therefore, can afford

sufficient reason for overriding that intermediate principle of practical reasonableness which

requires each person's well-being, in each of its basic aspects, to be respected—i.e., not chosen

directly against—in every act."[40] Thus, the new natural lawyers believe, one's responsibility to

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[40] Finnis, *Fundamentals of Ethics*, 126. Italics in original.

never lie, not even to the Gestapo, trumps all responsibility to protect one's children, one's friends, other innocents entrusted to one's care and so on.

However, MacIntyre's anchoring of the requirements of practical reason within particular historical contexts results in different injunctions than those provided by the new natural lawyers. He argues that the new natural lawyers, by removing practical reasoning from its social context, have put the question wrongly. He observes that it is "insufficiently often remarked that deliberation is by its very nature a social activity, that the central deliberative questions are not of the form 'What should *I* do here and now?' and 'How should *I* live?' but of the form 'What should *We* do here and now?' and 'How should *We* live?'"[41] Questions of how one should live or what one should do invariably implicate questions of how we—as members of a community— should live and what we should do. Moral inquiry and deliberation are social. Very rarely, if ever, will any person face a moral choice that is entirely detached from their moral responsibilities to the community of which they are part.

This perspective is brought to bear when MacIntyre considers lying, which Finnis has declared to be always and everywhere wrong (though he allows one to deceive in a good cause, if it can be done without telling a direct untruth). In contrast to Finnis, who reaches his conclusion by determining that direct lying always constitutes a direct act against a basic human good, MacIntyre artfully considers Kant and Mill in a pair of essays that explore the question of lying. By giving a fuller consideration to the circumstances and the relationships involved in a situation where lying seems necessary to protect some good, MacIntyre believes that it is possible to account for the concerns of both Kant and Mill.

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[41] MacIntyre, *Ethics and Politics*, 72.

MacIntyre first considers Mill's discussion of the importance of truthfulness in a community of rational inquiry, observing that "because the moral life is one for which truth is a supreme value, [the exceptionless requirement of truthfulness] binds the members of the moral community as rational persons…It is a norm defining the relationship of the members of those types of communities to each other." However, this is not an abstract obligation but arises from one's responsibilities as part of an existing community. Consequently, the question must be asked, "what if someone constitutes herself or himself a deliberate enemy of the moral community?"[42] What moral norms govern one's interaction with such an enemy, whose goal is the destruction of a concrete community of moral instruction and inquiry? Does the requirement for truthfulness which binds members of that community in their internal relations also apply to external enemies who seek to obliterate those relationships? Does responsibility for preserving real communities and relationships permit one to lie to, or even to kill, aggressors against that community?

In response to these questions, MacIntyre gives two examples that show extreme instances of cases where persons have protected those they were responsible for by lying and killing: that of a Dutch mother entrusted with a Jewish child during World War Two and a Massachusetts mother whose infant was threatened by a violent former lover. The Dutch mother lied to the Nazis to save the Jewish child; the American woman shot the man who threatened her baby. In both cases MacIntyre approves of these actions, even though they violate what many take to be universal moral norms (prohibitions against lying and taking human life). In his view, one's responsibilities are determined by the particulars of a situation, and come before adherence

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[42] Ibid, 121.

to abstract formulations of moral principles. Nor is this confined to the extreme cases such as facing Nazis, for "the experience of being constrained in one's moral judgment by the features of a particular case, prior to and independently of any subsequent universalizability, is not that uncommon."[43] While not everyone will face Nazis or similarly vicious evil, conflict between abstract moral formulations and concrete responsibility is a regular feature of human life.

Consequently, MacIntyre claims that the reformulation of moral principles to deal with such cases must have a "very different starting point from that from which Kant set out. Instead of first asking 'By what principles am I, as a rational person, bound?' we have first to ask 'By what principles are we, as actually or potentially rational persons, bound in our relationships?' We begin, that is, from within the social relationships in which we find ourselves."[44] It is through such relationships, not through abstract theorizing from self-evident first principles, that we discover and achieve various concrete goods. We must, of course, bear in mind the moral fallibility of those relationships and practices, but we cannot leap outside of our existence to a neutral universal viewpoint of disembodied rationality. Doing such is impossible, and the attempt will obscure what morality requires here and now.

Therefore, MacIntyre's analysis begins from those existing relationships and responsibilities. It is within and to protect these relationships and the requirements of a community of moral inquiry and practice that the precepts of the natural law against killing and lying emerge. And so, with regard to lying he asserts that "the evil of lying then consists in its capacity for corrupting and destroying the integrity of rational relationships. To understand this is to be able to relate the evil of lying to other evils. For it is a salient characteristic of moral

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[43] Ibid, 135.
[44] Ibid, 136.

evils in general that they are destructive of rational relationships." Strangers should not be

considered threats merely because they are outside of those relationships, and to think so is itself

corrupting of those relationships. However, in cases of aggression "against those who are bound

to each other by some particular relationship, then it is always someone's responsibility to do

whatever is necessary, so far as they can, to defend the relationship against that aggression.

Whose responsibility this is will depend upon the nature of the relationship. What their

responsibility requires them to do will depend upon the nature of the aggression." Those who

have grown toward rational autonomy within these relationships must recognize the dependence

of others, especially that of children. MacIntyre casts this recognition and responsibility in terms

of duty, arguing that both the Dutch housewife and the Massachusetts mother "did what duty

required of them. Theirs were relationships in which each had assumed responsibility for the life

and well-being of the dependent child, and in each of which therefore that child was entitled to

trust the mother to do what was necessary for its effective protection."[45] He adds that those in

such a situation must consider whether the proposed action will be effective, and whether it goes

beyond what is necessary in harming the aggressor (which would make one an unjust aggressor

oneself). With regard to lying, MacIntyre concludes that, "the Dutch housewife's lie and all

other lies of just the same kind were and are justified."[46] The question then is of the typology of

such lies, and how to formulate a rule that justifies them. He does not formulate it as a rule with

an exception, for he believes that this mistakes the matter. Rather, he declares that,

> The rule that we need is one designed to protect truthfulness in relationships, and
> the justified lies told to frustrate aggressors serve one and the same purpose and

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[45] Ibid, 138.
[46] Ibid, 139.

are justified in one and the same way as that part of the rule that enjoins truthfulness in relationships. The Massachusetts mother and the Dutch housewife upheld in their exceptional circumstances just what the normal rational truthful person upholds in her or his everyday life. The rule is therefore better stated as "Uphold truthfulness in all your actions by being unqualifiedly truthful in all your relationships and by lying to aggressors only in order to protect those truthful relationships against aggressors, and even then only when lying is the lest harm that can afford an effective defense against aggression." This rule is one to be followed, whatever the consequences, and it is a rule for all rational persons, as persons in relationships.[47]

This reformulation is produced not from abstract first principles, but from the requirements of actual relationships in concrete communities and the development of rational moral inquiry within them. It, and others like it, may, MacIntyre believes, be justly be described as the requirements of the natural law, though they will always remain open to further refinement and reformulation. Like the new natural law, they seek to preserve, protect, and promote basic human goods; unlike the new natural law, they do this by protecting them as they actually exist, instead of in some abstract form. The relationship of the Dutch mother to the Nazis is such that such rational moral inquiry and practice is impossible between them. The Nazis' questions are an extension of their unjust aggression and attempts to destroy basic human goods in their instantiations. If, under threat of death herself, she were to give up the location of the Jewish child, it would no more be a vindication of truth telling than a robbery victim telling a mugger "sure, you can take my wallet" is a vindication of generosity That coerced agreement is void is well-recognized both in law and culture. Just as a coerced contract, gift or marriage is void, so

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[47] Ibid, 139.

too the responsibility to tell the truth cannot apply when one is confronted with those who seek a truth (such as the location of hidden Jews) only in order to destroy the community and relationships that make truth-telling worthwhile. In this example the good of community with the Gestapo is entirely hypothetical, while the good of community with those one lies to protect from the Gestapo is real. The new natural lawyers perceive that the value of truth telling is relational, but abstract this concrete concern into a universal prohibition on lying (though not on all deception) instead of considering its role in concrete situations and how it functions in them to protect actualized basic human goods. MacIntyre's perspective corrects this over-reliance on abstract analysis at the expense of real relationships and communities. The natural law is not a suicide pact.

Rethinking Universality: Porter Contra MacIntyre

MacIntyre's emphasis on the concrete communities involved in moral inquiry and the development of a moral tradition reintroduces the question of how one can detect and critique the flaws of one's own community and tradition. Are cultures and traditions of rational and moral inquiry incommensurable? How, if there is no neutral and universal standard of rationality accessible and persuasive to all rational persons, can differences between cultures, philosophies and moral practices be judged? Can the natural law function without such a concept? MacIntyre has devoted a large portion of his work to answering such questions and exploring how moral inquiry can avoid being trapped within the culture and tradition is has developed in. He argues that while we cannot achieve any culture or tradition-neutral vantage point from which to choose between cultures and traditions, we are nonetheless capable of moving toward a more adequate understanding of their merits and faults. Furthermore, cultures and traditions need not be

(indeed, they rarely are) entirely closed. Therefore, there is always the possibility for fruitful investigation and dialogue between them. And, as a Thomist, MacIntyre believes that the natural law will in some way be at work in all traditions of moral inquiry, in practice if not in theory. Indeed, the practices necessary for a community of rational and moral inquiry to flourish are expressions of the first precepts of the natural law, even if that community does not theoretically articulate them in natural law terms. No significant tradition of moral or philosophical inquiry can be developed without the community undertaking it having committed to standards of truthfulness and protection for its members. MacIntyre argues that these practices are the universal requirements of practical reason.

It is on this point that disagreements between MacIntyre and Jean Porter become acute. MacIntyre has come to believe that these requirements for moral inquiry are in fact the precepts of the natural law (though not always recognized as such), and that they are both universal and specific enough to provide moral guidance in concrete situations. These precepts, which are "the preconditions for practical enquiry *are* the precepts of the natural law." Because they are the first principles of practical reason, they cannot be demonstrated by theoretical arguments, however, "What theoretical argument can aspire to show is that they *are* so presupposed and that practice which does not presuppose them fails in rationality."[48] MacIntyre believes that these requirements are universal insofar as they are necessary for any rational inquiry to be successful, and that they may be rationally vindicated, insofar as they are at least defensible, though not necessarily compelling, to all rational persons. Indeed, they will be presupposed by the very

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[48] Alasdair MacIntyre, "Intractable Moral Disagreements" in *Intractable Disputes about the Natural Law: Alasdair MacIntyre and Critics*, ed. Lawrence S. Cunningham, (Notre Dame, IN: University of Notre Dame Press, 2009), 24.

parties that are engaged in debating their merits. However, their formulations may still not be compelling to all rational persons.

Despite a broad sympathy for MacIntyre's project, Porter is critical of this identification of the first principles of the natural law with the prerequisites for rational inquiry. Most fundamentally, she is skeptical that "the natural law as Aquinas understands it is tantamount to, or can be made to yield, normative precepts that are both specific enough to be put into practice and valid and binding in all times and places."[49] In her view of Aquinas, the natural law can either be specific or universal, but not both at the same time. To be sure, she believes that universal morality is easy to defend if it is articulated generally enough. However, she is critical of how MacIntyre defends "the universality of the natural law understood at a fairly specific level."[50] Porter disagree with his view that the requirements of rational and moral inquiry, which are also the first precepts of the natural law, are both universal and specific enough to guide practice.

And so, confronting this claim that the preconditions for rational inquiry are in fact the precepts of the natural law, and are both universal and specific, Porter argues that MacIntyre's case either

> proves too little, or too much. If MacIntyre is simply claiming that deliberation
> presupposes some degree of security and predictability, then it would seem that he
> has at most established the need for some framework of shared expectations and
> restraints—but not necessarily the framework set out by the specific natural law
> precepts that he cites. It he wants to claim that deliberation requires complete

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[49] Jean Porter, "Does the Natural Law Provide a Universally Valid Morality?" in *Intractable Disputes about the Natural Law: Alasdair MacIntyre and Critics*, ed. Lawrence S. Cunningham, (Notre Dame, IN: University of Notre Dame Press, 2009), 55.

[50] Ibid, 58.

security and full mutual equality, he has set himself a very high barrier indeed—
first, to show that these are indeed conditions for shared deliberation, and
secondly, that these conditions can be secured, through these specific natural law
precepts or any others.[51]

In her view, MacIntyre is either being too general to provide specific guidance, or he is
claiming far more for the natural law than he has demonstrated. In either case, she does not think
that MacIntyre's view is that of Aquinas, who she argues would be ambivalent regarding
"whether the natural law comprises a universally valid and accessible law. The first principles of
the natural law are accessible to all rational persons, because they are among the constitutive
structures of the rational soul." However, in her interpretation, "they are too general to yield
concrete norms for conduct, taken by themselves."[52] Without additional context and a larger
interpretive framework (which will necessarily be metaphysical and even theological) they are
too vague to be of much practical use. Indeed, Porter argues that this extends even to the
Decalogue, whose precepts, "are as they stand too general to be put into practice. They must
first be further specified by a lawgiver…in the light of an overarching purpose which gives them
both coherence and specificity."[53] She believes that without additional context, commands such
as "thou shalt not murder" and "thou shalt not bear false witness" are insufficient to direct action
in concrete circumstances.

Consequently, Porter asserts that the "precepts of the natural law fall along a spectrum of
generality and rational certainty," from the general and self-evident first principle (do good and
avoid evil), to "direct and generally accessible applications of this principle comprising the

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[51] Ibid, 74-75.
[52] Ibid, 85.
[53] Ibid, 75.

precepts of the Decalogue, and then further to more specific applications, leading finally to determinations of correct action in particular instances of choice."[54] However, in her opinion, the specification of these general principles that is needed to apply them to particular circumstances cannot be done without reliance on metaphysical and theological assumptions. Practical reason, whether understood as culturally-dependent or independent, is insufficient for this task without presuming a metaphysical or theological framework.

The moves necessary to proceed from "do god and avoid evil" or even "do not murder" to specific moral guidance in specific circumstances will be dependent upon metaphysical and theological views that are themselves debatable and not self-evident or persuasive to all. Thus, Porter argues that the "concrete precepts of the natural law…and their comprehensive unity seen from the standpoint of the purposes of those specifications, must be defended—and defended in terms of a contentious metaphysical theory, developed within an overarching theological context."[55] Christians, in particular, she believes, will need to reference their theological commitments in trying to specify the concrete requirements of the natural law.

While Porter now grants a little more credit than she formerly did to practical reasoning operating independently of theology, she still claims that "the natural law cannot adequately be understood outside a theological context…any adequate account of such [practical] norms must rest on a more comprehensive philosophical, scientific, or theological account."[56] On this, at least, Porter is aligned with many classical natural law theorists, who insist upon a metaphysical and theological ground for the natural law. MacIntyre, in contrast, sides on this point with the

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[54] Ibid, 86-87.
[55] Ibid, 73.
[56] Ibid, 90.

new natural lawyers and defends the sufficiency of practical reason, independent of any broad

metaphysical or theological framework, for the provision of specific moral norms.

MacIntyre responds to Porter's criticism by noting their basic disagreement, and

observing that if she only meant that "the natural law does not provide a morality that all rational

agents, whatever their cultural or social background, are able to acknowledge as authoritative,

she and I would not be in disagreement. But she means significantly more."[57] He elaborates,

noting that in "her impressive book *Nature as Reason*…she made it clear that underlying her

view of the indeterminacy of the precepts of the natural law is a thesis about the limitations of

practical rationality, no matter how understood."[58] Porter questions the sufficiency of practical

reason as a guide to moral insight independent of theology. Consequently, she does not have any

difficulty in explaining the existence of moral disagreement, for while these limitations of reason

do not explain all moral disagreement, they do make it unsurprising in light of theological and

metaphysical divisions.   MacIntyre, however, believes that

> the occurrence of moral disagreement requires a different kind of explanation,
> since I am committed to holding that, if the requirements of practical reason are
> rightly understood, then practical rationality provides everything that is required
> for the moral life, independent of any theological ethics. Practical reason not only
> provides us with good reason to act in accordance with the precepts of the natural
> law, but also guides us in how to apply it. To be a rational agent is to be directed
> towards one's good, and we cannot achieve our individual goods without also

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[57] Alasdair MacIntyre, "From Answers to Questions" in *Intractable Disputes about the Natural Law: Alasdair MacIntyre and Critics*, ed. Lawrence S. Cunningham, (Notre Dame, IN: University of Notre Dame Press, 2009), 314.
[58] Ibid, 315.

directing ourselves towards the achievement of those common goods that we share with others.[59]

This practical rationality, MacIntyre reiterates, requires rational deliberation with others, which requires practices that conform to the precepts of the natural law. These practices are both universally necessary for rational inquiry and capable of formulation in ways specific enough to guide action. They may not always be recognized or formulated in such a way, but they will be present in practice in every tradition and culture of inquiry. Furthermore, MacIntyre argues that in practice the precepts cannot be construed in radically incompatible ways. Additionally, a mature tradition of inquiry may be able to express some insights in universal terms that have a degree of independence from tradition.

> Porter seems to believe that what she calls general moral concepts, such as the concepts of murder, are open-texted to such a degree that they are open to development and to application in different and incompatible ways, between which there may be no grounds for rational decision, apart, that is, from the moral and other commitments of some particular community, derived from its particular tradition. Yet, if we examine, for example, how the concept of murder has in fact been developed and applied through a series of arguments within more than one social and moral tradition, this seems to be false. For we are able to arrive at sound conclusions that are as tradition- independent as the primary precepts. The action of killing someone else is a paradigmatic example of not treating that individual as a rational agent, as someone with whom one needs to be able to deliberate about our common good.[60]

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[59] Ibid, 315.
[60] Ibid, 320.

However, MacIntyre immediately qualifies this point by noting again the protective responsibilities necessitated by a community of rational and moral inquiry, observing that, in a case of self-defense against an attacker, "if I can only preserve my own life of the life of someone else, by killing that other individual… then it is not I but the other who has ruled out this possibility"[61] for shared inquiry and community. Such action is not murder. The practical communal necessities that give rise to the precepts of the natural law also ensure that exigent circumstances such as self-defense are taken into account. Lying to agents of the Gestapo, for example, is permissible because they have constituted themselves as enemies of concrete communities wherein rational and moral inquiry may be undertaken. Deploying lethal force against a violent attacker is not murder.

While definitions of murder have indeed varied across cultures, what they have differed on are the exceptions and the marginal cases, not the central feature of protecting the lives of community members against unjust aggression. MacIntyre is right that, "murder is not open-texted in the way and to the extent that Porter suggests."[62] While "thou shalt not murder" does indeed need context—linguistic, cultural, and perhaps even metaphysical—it is not open to any and all interpretations. When spoken into a specific cultural context it does indeed provide guidance in specific instances. This is not to say that there will not be difficult and borderline cases, but there will be many that fall immediately and obviously under the commandment. Murder will not always and everywhere be defined or punished entirely in the same ways. However, any community of rational and moral inquiry will need, in practice if not in theory, prohibitions that protect the lives of its members from wanton attacks, and these will indeed need

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[61] Ibid, 320.
[62] Ibid, 321.

to be specific enough to guide action in concrete circumstances. Such prohibitions will not be rationally derived from self-evident first principles, but will be practical instantiations of the natural law's first principles, regardless of whether they are recognized as such.

MacIntyre seems to get the better of Porter in this dispute. Although Porter is likely correct that particular articulations of concepts such as murder will draw from a culture's metaphysical and theoretical views, this does not seem to preclude significant practical overlap. Cultures with vastly different theological and metaphysical commitments have nonetheless all had similar concepts of murder. These may be seen as articulations of an underlying universality, which requires that any successful community protect its members. Of course, some communities are much more restrictive in who is accounted as a member of the community worthy of such protection. Indeed, some communities effectively constitute themselves in opposition to all others, and afford little, if any protection to strangers. Such closure is itself a failure of practical reason, and will produce deleterious results when such a community faces problems that its internal resources are insufficient to address.

Traditions and Cultures: Conflict and Dialogue

In considering how cultures may be judged against each other, MacIntyre has argued that one way in which cultures can serve to correct one another is through the practice of a common craft. Such practice offers a standard against which parts of one's own culture may be judged. Thus, confronting the question of cultural imprisonment, he asks to what standards we may appeal against "the particular cultural and social order which we happen to inhabit and whose language we speak?" He answers, "To those of some practice or practices which have grown up within that order and developed to some significant degree its or their independent evaluative

standards."[63] Such practices, which he defines as systematic human activities with goods

internal to themselves, may be undertaken in different cultures and thereby attain some

autonomy from any particular culture. They can provide a cross-cultural standard of adequacy

and judgment.

     As an example, he considers color and the practice of painting, where, through the craft

of painting, members of one culture might realize that their linguistic and cultural understanding

of color is less adequate than that of another culture. Likewise, members of a culture without a

tradition of painting, who sought to take up painting, would likely need to learn the linguistic and

conceptual color scheme of another culture in which the craft has been practiced. Though such a

practice is necessarily influenced by culture (one need only look at how the subject matter of

Western painting have changed over the centuries for confirmation of this), it will also have

standards that are products of the practice itself, not the culture.

     Thus, practices can indeed provide a means of evaluating the adequacy of cultures,

insofar as cultures promote or inhibit the goods and standards of a practice. In MacIntyre's view,

this provides both a rebuttal to relativism and a way in which cultures may be evaluated. Indeed,

it is a mark of a culture's superiority to be able to identify and seek remedies for its own

inadequacies. He argues that,

> It is perhaps in the capacity to recognize the poverties and defects of one's own
> culture and to move, so far as is possible, toward remedying it, without in the
> process discarding that culture in its integrity, that the greatness of a social and
> cultural order is shown. Relativism about social and cultural orders thus fails,
> insofar as the standards provided by practices, such as the practice of painting,

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[63] MacIntyre, *The Tasks of Philosophy*, 46.

can be brought to bear upon their evaluation. The language-in-use of some social and cultural orders *are* more adequate than those of some others in this of that respect; the vocabularies of color of some social and cultural orders are more adequate than those of some others in respect of the tasks of color discrimination set by the practice of painting.[64]

While a practice such as painting provides a less controversial example of one culture's adequacy over another, moral and philosophic inquiry is also a practice at which some cultures are more advanced and adequate than others. However, as MacIntyre notes, one part of their superiority is found in their ability to identify and correct defects within themselves, often by using intellectual resources developed by another culture or community of moral and philosophic inquiry. Thus, it is important that the divisions between different cultures and traditions can sometimes be bridged through dialogue, investigation and imagination.

Members of one culture can live amidst another, learn each other's languages and practices, attempt to imaginatively enter into each other's worldview and thus learn to see their own native culture as it appears to another culture. Most will gain only partial understanding of each other, but some may be able to become at home in both their native culture and another. Philosophically they will be able to both understand their own tradition and enter into the self-understanding of another tradition, even to the point of seeing their own native tradition and culture from this rival standpoint. MacIntyre confronts the question of how someone may acquire this ability to perceive one's "own standpoint from some external and rival vantage point," and replies that

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[64] Ibid, 50.

through the exercise of philosophical and moral imagination someone may on occasion be able to learn what it would be to think, feel, and act from the standpoint of some alternative and rival standpoint, acquiring in so doing an ability to understand her or his own tradition in the perspective afforded by the rival...The exercise of this imaginative ability to understand one's own fundamental moral positions from some external and alien point of view is then yet another characteristic necessary for those engaged in enquiry who, beginning within some particular moral standpoint, aspire first to identify and then to overcome its limitations.[65]

By understanding more than one tradition on its own terms, a person may become partially tradition-independent without ever attaining a neutral perspective of universal rationality. One may thus find that difficulties and problems of one's own tradition are better understood and explained by other traditions, which may perhaps also offer solutions. This is possible, MacIntyre argues, because despite their differences, cultures share common concerns, especially that of representing the order of being. He argues that Thomistic realism understands "all cultures as embodying complex attempts to apprehend and represent the order of things, to engage with things as they are rather than as they merely appear to be…Cultures are on this view projects, projects whose strikingly different and often incompatible modes of activity and presentation" may disguise shared philosophical and theological concerns. "For every culture is an attempt to make the natural and social world habitable by making it intelligible and in such attempts there is always an appeal, characteristically implicit and unspelled out, to standards of truth and goodness, to standards by which this set of beliefs is judged more adequate that that

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[65] Ibid, 72.

and this way of life better than that."[66] Cultures will have different levels of success or failure in these attempts, but, if MacIntyre is correct, their shared quest for and appeal (implicit or explicit) to "standards of truth and goodness" that are not identical to current cultural practices and norms provides a means of overcoming apparent incommensurability. And the Thomist will see the natural law at work in this, not as a set of self-evident principles or precepts, but as the human capacity for moral inquiry and truth-seeking, informed by the requirements for such in concrete communities.

This capability for exchange and engagement becomes extremely important when one culture or tradition encounters apparently unsurmountable difficulties, and finds that its own resources are insufficient to resolve some problems. In such cases, a tradition of inquiry that is able to successfully engage with rivals may be able to find resources in them that it lacked on its own, and by adopting them, correct its own errors. MacIntyre observes that "another characteristic necessary for any enquiry which is designed to transcend the limitations of its own standpoint-dependent starting-point is a systematic investigation and elaboration of what is most problematic and poses most difficulty for that particular moral standpoint."[67] Success or failure, progress or incoherence, vindicate (or not) such a standpoint and enquiry. In such cases, individuals may be able to draw from cultures and traditions other than their own in order to remedy the defects of their own tradition. This new perspective will not only better address the difficulties that had appeared insolvable in one's native culture, but will also explain how they arose given the perspective of that culture. And so, in extreme cases, those who have turned to

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[66] Ibid, 193.
[67] Ibid, 71.

other cultures and traditions for solutions to the difficulties besetting their own may even conclude that much of their own tradition needs to be jettisoned, and convert to another.

This willingness to face the aporias of one's own culture and tradition, and to seek out and contemplate alternatives from another tradition, is itself one of the traits necessary for a superior tradition. Thus, MacIntyre asserts that, "the only rational way for the adherent of any tradition to approach intellectually, culturally, and linguistically alien rivals is one that allows for the possibility that in one or more areas the other may be rationally superior to it in respect precisely of that in the alien tradition which it cannot as yet comprehend." He takes this even further, arguing that "Only those whose tradition allows for the possibility of its hegemony being put in question can have rational warrant for asserting such a hegemony. And only those traditions whose adherents recognize the possibility of untranslatability into their own language-in-use are able to reckon adequately with that possibility."[68] Only a tradition that is put at risk can be vindicated. Only a tradition that forthrightly faces its own limitations and difficulties and considers the alternatives offered by rival traditions can justly claim superior adequacy to its rivals.

Thus, in all cases, honest and continuing moral and philosophical inquiry necessitates that one put one's own views (and not just one's own, but also one's culture and tradition) at risk of being found inadequate. Yet there is not, as some would have it, any universally accessible and self-evident standard of rationality or set of principles from which one can proceed or to which one can appeal. Moral inquiry must proceed from within cultures and traditions, and in conversation and dialogue with other cultures and traditions. The universal standard for all such

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[68] MacIntyre, *Whose Justice, Which Rationality?*, 388.

inquiry is the honest quest for truth, as one can find it within finite and historical existence. The natural law may be discovered not only through moral inquiry, but also in the preconditions for it. Only to those who have already committed to shared moral inquiry will principles such as truthfulness and non-maleficence, which are necessary within the community of that moral inquiry, be self-evident. And, as MacIntyre has noted, since such inquiry is open-ended and lifelong, it will also extend to encompass those outside of the current community of inquiry.

MacIntyre has thus provided a Thomistic account of moral knowledge that, unlike the new natural law theory, integrates the contingency and finitude of human knowledge into its approach. While his philosophical views diverge from Jean Porter's theological program in some important ways, their projects are generally complementary. In his view the moral knowledge of the natural law is not the product of derivations from universally accessible, self-evident first principles, but is developed within, and as the preconditions for, traditions of moral inquiry and practice within concrete communities. It is exemplified not it philosophical formulations but in the good man or woman, who knows what is right in concrete circumstances.

True moral knowledge is apprehended and articulated within the finitude of human existence, and through dialogue. As MacIntyre observes, "It is no trivial matter that all claims to knowledge are the claims of some particular person, developed out of the claims of other particular persons. Knowledge is possessed only in and through participation in a history of dialectical encounters."[69] While he has provided a framework for understanding how such encounters take place between traditions, there is much left to be explained. For a fuller account

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[69] MacIntyre, *Three Rival Version of Moral Enquiry*, 202.

of such dialectical encounters, and a defense of truth and universality within human finitude and

historical particularity, I now turn to Hans-Georg Gadamer.

Gadamer: Truth and Finitude

"Who am I? How did I come into the world; why was I not asked, why was I not informed of

the rules and regulations…How did I come to be involved in this great enterprise called

actuality? Why should I be involved in it? Am I not free to decide? Am I to be forced to be part

of it? Where is the manager, I would like to make a complaint! Is there no manager? To whom

then shall I make my complaint?[1]

-Soren Kierkegaard

Rehabilitating Prejudice

The approaches Alasdair MacIntyre and Jean Porter take to the natural law raise a crucial

question: can moral reasoning and its conclusions be defended as true without absolute, objective

moral rules or a method of deriving them from unchanging, universal first principles? Although

it was developed outside of the natural law tradition, the hermeneutical approach of Hans-Georg

Gadamer provides an affirmative answer that may be compatible with the natural law tradition,

and from which the natural law tradition has much to learn. His hermeneutical philosophy shows

the limits of human knowledge and reason that a natural law approach will have to accept. Such

acceptance will allow the natural law tradition to avoid arrogant entanglement in impossible

pursuits, while still defending the possibility of true moral knowledge.

MacIntyre has acknowledged a great debt to Gadamer, despite disappointment that

Gadamer dismissed much of the Thomistic intellectual tradition. He writes that although

"Gadamer has discussed particular theses of Aquinas with his characteristic sympathy and

accuracy, he has never entered into dialogue with a distinctively Thomistic Aristotelianism."

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[1] Soren Kierkegaard, *Repetition* and *Philosophical Crumbs*, trans. M. G. Piety, (Oxford: Oxford University Press, 2009), 60.

However, Macintyre finds that this omission is unsurprising because "modern Thomism only exhibited an awareness of the importance of the historical turn and the hermeneutic turn in philosophy relatively late in its history. And Thomistic Aristotelians have still perhaps not taken adequate measure of the implications of these turns." Consequently, MacIntyre believes that Gadamer's work has importance for Thomism, for while Thomists have too often believed "that to acknowledge the historically conditioned character of philosophical—or for that matter of scientific or historical—inquiry is to make a certain kind of relativism inescapable," Gadamer's *Truth and Method* has shown that "this is not so."[2] In this, his masterwork, Gadamer vindicated a historical conception of human truth against the claims of scientism on the one hand and relativism on the other. This accomplishment provides a means to reconsider the natural law in order to better account for the historicity of human existence and the linguistic contingency of all formulations of moral principles. Not only is this approach broadly compatible with MacIntyre's own (indeed, it may have inspired much of it), but it also harmonizes well with Porter's interpretation of the scholastics as primarily understanding the natural law as a power of moral judgment. In particular, Gadamer's emphasis on *phronesis*, the practical wisdom of the person of mature judgment, may provide opportunities for natural law thinkers to rediscover an appreciation for virtue, which has all too often been neglected by modern natural law theories.

One important point of comparison between MacIntyre and Gadamer is the latter's controversial rehabilitation of prejudice and tradition, which undoubtedly influenced MacIntyre's project. Prejudice and tradition, Gadamer claimed, are conditions of existence that we cannot escape, and to attempt to do so will distort our reasoning. Thus, he wrote that it "is not so much

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[2] Alasdair MacIntyre, "On Not Having the Last Word: Thoughts on Our Debts to Gadamer" in *Gadamer's Century*, ed. Jeff Malpas, Ulrich Arnswald, Jens Kertscher, (Cambridge, MA: MIT Press, 2002), 157-158.

our judgments as our prejudices that constitute our being…Prejudices are not necessarily

unjustified, and erroneous, so that they inevitably distort the truth. In fact, the historicity of our

existence entails that prejudices, in the literal sense of the word, constitute the initial directedness

of our whole ability to experience."[3] Inquiry never begins with a blank slate. Rather, it always

begins from within some prejudices, even when it is engaged in interrogating other prejudices.

Therefore, experience stripped of all prejudice, that is, pre-judgment, would be meaningless, for

we interpret experience through our pre-judgments. For a human, to know without prejudice

would be to know nothing.

Thus, there is no point of unprejudiced observation from which we can begin an inquiry.

As Gadamer explained, "Pure seeing and pure hearing are dogmatic abstractions that artificially

reduce phenomena. Perception always includes meaning."[4] Whether it is a work of art, a tree or

a text, there is no perception without prejudice. Even when we encounter something new and

alien to us, we will begin by trying to categorize it as best as we can within our pre-existing

conceptual schemes, even if these are restricted to basic physical attributes such as color, size,

texture, and the like (and these will be interpreted within the frameworks of our culture and

language—for instance, various languages and cultures process colors differently, to say nothing

of individual variations in color perception). Understanding can never reach a point outside or

independent of culture and language, and therefore understanding can never fully shed its

contingency.

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[3] Hans-Georg Gadamer, "The Universality of the Hermeneutical Problem" in *Philosophical Hermeneutics*, trans. and ed. David E. Linge, (Berkley: University of California Press, 2008), 9.
[4] Hans-Georg Gadamer, *Truth and Method*, 2nd revised edited and translated by Joel Weinsheimer and Donald G. Marshall, (New York: Continuum, 2006), 80. Hereafter cited as *Truth and Method*.

And so, as with MacIntyre's approach, Gadamer's rehabilitation of prejudice invoked the concept of proper teaching authority. Because it is impossible to discard all prejudices and presuppositions, and thereby to have a neutral and universal standard of rationally accessible to all, Gadamer asserted that "Acknowledging authority is always connected with the idea that what the authority says is not irrational and arbitrary but can, in principle, be discovered to be true. This is the essence of the authority claimed by the teacher, the superior, the expert. The prejudices that they implant are legitimized by the person who presents them."[5] Teaching authority is also justified because there is no way to learn without being influenced by tradition and prejudice. It is impossible to start from some stance of absolute neutrality, and thence to reason to truth. And children and students must, at least initially, accept the prejudices and traditions that are given them by their culture and their teachers. Someone who never accepted anything from tradition or on authority could never know anything at all. However, this does not mean that all prejudices are equally valid, or that there are no ways to judge between them.

Prejudices may be scrutinized within an expanding horizon of experience, knowledge and reason, but there is no point, even in principle, which human persons may reach that is free from all prejudgment. Georgia Warnke explains the criteria Gadamer envisioned for this evaluation of prejudices, which allow for distinctions to be made between arbitrary, distorting prejudices and justifiable, illuminating prejudices.   She notes first that for Gadamer making distinctions and judgments (regarding a text, for instance) requires "openness to the possible truth of the object under study. It is essential to grant to the text that one is studying a certain normative authority, for it is only by doing so that one can test the adequacy of one's views about either the text of the

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[5] Ibid, 281.

issues on which it focuses."[6] In order to evaluate a prejudice, we likewise must initially concede

the possibility of its claim to truth. But this does not entail a permanent submission to that with

which one is engaged, whether a text or a moral viewpoint, for as Warnke elaborates,

"Gadamer's point is not that one always adopts the views of one's object in understanding it at

all. His argument is rather that an *openness* to the *possible* truth of the object is the condition of

understanding."[7] And, in order to adequately consider it one must provisionally allow the

authority of the truth claim of the text, tradition, or object one is considering. Though this grant

may later be revoked, genuine openness to the claims of the other with whom one is engaged in

dialogue (and this other need not be a particular person, for it can also be a text, a belief, a work

of art, etc…) requires that they be considered with goodwill, and thus at least provisionally

considered to potentially be true. This is especially true with regard to the traditions and

prejudices that have formed one's own judgments, as they are the inescapable starting point for

any inquiry.

Gadamer's sanguine acceptance of tradition and prejudice as inescapable conditions of

our understanding has been harshly attacked. Such an approach, with its emphasis on the

possibility of understanding and the potential rationality of tradition, has been criticized by

Derrida and other deconstructionists, who, as Gadamer found in his encounters with Derrida, are

skeptical of the possibility of such goodwill, and instead inclined to see a will to domination

lurking behind all attempts at understanding.[8] Gadamer has also been criticized, most

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[6] Warnke, *Gadamer: Hermeneutics, Tradition and Reason*, (Stanford: Stanford University Press, 1987), 87. Hereafter cited as *Gadamer: Hermeneutics, Tradition and Reason*.
[7] Ibid, 89. Emphasis in original.
[8] For an account of this, see Jean Grondin, *Hans-Georg Gadamer: A Biography*, (New Haven: Yale University Press, 2003), 325-328. Hereafter cited as *Hans-Georg Gadamer: A Biography*.

prominently by Habermas, for ostensible (and ostensibly damning) conservative tendencies, rather than embracing the supposedly emancipatory critiques of ideology. In the afterword to *Truth and Method*, Gadamer responded by declaring, "I agree with Habermas that a hermeneutic fore-understanding is always in play and that it therefore requires reflexive enlightenment. But that is as far as I go with 'critical rationality' because I consider perfect enlightenment illusory."[9] He believed that no matter how much critique one engages in, or how thoroughly one interrogates one's prejudices, emancipation from prejudice will remain either incomplete (if one evaluates accurately) or illusory (if one deceives oneself into believing one has finally reached an enlightened rationality free from prejudice).[10]

Furthermore, Gadamer's view of tradition is not nearly as static as his critics have often described it. Rather, he found that tradition always has "an element of freedom and of history itself. Even the most genuine and pure tradition does not persist because of the inertia of what once existed. It needs to be affirmed, embraced, cultivated." The preservation of a tradition may be a rational choice, and it "is as much a freely chosen action as are revolution and renewal."[11] While tradition and prejudice initially must be accepted by those raised within them, the choice to continue them is a genuine decision. Indeed, as he put it in the afterward to *Truth and Method*, tradition is in fact a creative endeavor, for it "is not the vindication of what has come down from the past but the further creation of moral and social life; it depends on being made

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[9] Gadamer, *Truth and Method*, 559.

[10] In the initial encounters between Habermas and Gadamer, the latter clearly had the stronger case. Even in his later work, shaped by his encounters with Gadamer, Habermas retained more than a whiff of Enlightenment about him. And his view of the criterion for truth being the ideal of unconstrained communication seems to be a secularized version of Christian understanding of the absolute mind of God, a concept that Gadamer rejected as a model for finite, human understanding. For fuller accounts of these encounters between Habermas and Gadamer, see Grondin, *Hans-Georg Gadamer: A Biography*, 308-309 and Warnke, *Gadamer: Hermeneutics, Tradition and Reason*, 111-115. 129-134.

[11] Gadamer, *Truth and Method*, 282-283.

conscious and freely carried on." Thus, Gadamer acknowledged both human freedom and finitude, and argued that it is blindness to the latter that "leads one to accept the Enlightenment's abstract motto and to disparage all authority."[12] The Enlightenment vision of a universal rationality leading to emancipation from all tradition and prejudice turns out to be simply one more prejudice—one with potentially dangerous practical consequences. Contrary to what some of his radical critics have contended, Gadamer's approach does not necessarily lead to political conservatism, though neither does it reject it out of hand. Recognizing human finitude and the incapacity of humans to reach a neutral vantage point of universal rationality is a political position only insofar as it rejects political visions that rely upon an impossible vision of rationality or an absolute (and absolutizing) consciousness or rationality attainable within history.

Among the consequences of accepting Gadamer's arguments is that certain methods of seeking truth become untenable, including Enlightenment projects or those seeking to ground all truth in scientific methodology. This is, according to Gadamer, not a defeat for reason, but a rescuing that returns reason to its proper place. As he saw it, abandoning the Enlightenment's demand that all prejudice be overcome in the name of reason

> opens the way to an appropriate understanding of the finitude which dominates
> not only our humanity but also our historical consciousness. Does being situated
> within traditions really mean being subject to prejudices and limited in one's
> freedom? Is not, rather, all human existence, even the freest, limited and qualified
> in various ways? If this is true, the idea of an absolute reason is not a possibility
> for historical humanity. Reason exists for us only in concrete, historical terms—

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[12] Ibid, 574.

i.e., it is not its own master but remains constantly dependent on the given circumstances in which it operates.[13]

Reason, according to Gadamer, therefore cannot be abstracted away from the historical and finite reality in which humans experience it. This recognition of the finitude and contingency of reason is not a denial of reason, but a vindication of its proper place and the inseparability of human reason from human existence, which is finite and historical. Prejudices may be limiting, but man is limited and so his reasoning will inescapably be guided by some sort of prejudice. The question is not how to reach a point of absolute rationality, uncontaminated by prejudice, but how to incorporate man's finite and historical existence (and hence the inescapability of prejudice) into our understanding of truth.

Thus, as Georgia Warnke observes, Gadamer "denies that there can ever be one correct or absolutely exhaustive way of understanding either oneself or one's culture." Furthermore, in his view, "any understanding necessarily ignores certain features of a text, culture or situation in its very focus on and clarification of others."[14] Just as we can only see a landscape from one perspective at a time, and moving will change or even occlude what we previously saw, so too will examining one aspect of Plato or Shakespeare, for example, necessarily ignore or even obscure other important aspects. In consequence of these limitations on all human perspectives, Warnke notes that for Gadamer "the rationality of the tradition cannot be measured against an ideal of either absolute knowledge, complete enlightenment or constraint-free consensus; it is to be evaluated instead within a practical context, as that degree of knowledge, enlightenment and

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[13] Ibid, 277.
[14] Warnke, *Gadamer: Hermeneutics, Tradition and Reason*, 130.

openness of which we are capable at a given time."[15] This is a constant theme within Gadamer's

work: we cannot step outside of our existence to attain an absolute perspective from which we

could objectively evaluate any and everything.

It is because of this situated-ness of our existence within historical contingency that

Gadamer argued that if "we want to do justice to man's finite, historical mode of being, it is

necessary to…acknowledge the fact that there are legitimate prejudices. Thus we can formulate

the fundamental epistemological question for a truly historical hermeneutics as follows: what is

the ground of legitimacy of prejudices?"[16] Gadamer asserted that we cannot ground our

prejudices in an unbiased, objective God's-eye view, for that perspective is unattainable by

human beings. Nor can reflection and critique proceed to a point of freeing man from

prejudice—the evaluation of prejudice must proceed from within man's being as constituted by

prejudices, history and language. Truth is and must be found through reflection and participation

in existence, not in an objective observational point outside of it.

This theme of the finitude of human existence is obviously influenced by Heidegger, and

throughout his long career Gadamer indeed drew upon his great teacher. But, becoming more

confident later in life, he ventured to challenge his master, with Heidegger eventually leaving the

field of hermeneutics to his student. Gadamer's project was both a continuation and a correction

of Heidegger. And so, in *Truth and Method*, Gadamer argued that "Heidegger's temporal

analysis of Dasein has, I think, shown convincingly that understanding is not just one of the

various possible behaviors of the subject but the mode of being of Dasein itself." This view,

which sees understanding as a fundamental way of being, is what Gadamer meant by

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[15] Ibid, 130.

[16] Gadamer, *Truth and Method*, 278.

hermeneutics and its scope, for it "denotes the basic being-in-motion of Dasein that constitutes its finitude and historicity, and hence embrace the whole of its experience of the world."[17] Hermeneutics, as Gadamer understood it, is something we are always already engaged in. Human understanding is always already operating within an existence into which it has been thrust.

Thus, Gadamer rejected hermeneutic methods that were meant to provide objective knowledge through the technical application of a method. Instead of following these prior hermeneutical approaches, he extended the field of hermeneutics to the entirety of human knowing while simultaneously abandoning its pretensions to objectivity. There is no objective method to be employed or standpoint to be found, rather, we are always already engaged in interpretation. Jean Grondin observes that the provocativeness of *Truth and Method* is found in, "its argument that the theory of understanding can never finally succeed in definitively getting a grasp on its 'object.'" The book's basic thesis, as Grondin sees it, is that "we always come too late when we try to completely conceptualize and methodize what we actually understand. Understanding can never really be grounded because it is itself the ground, the floor, on which we are already always standing."[18] Consequently, understanding itself should be understood as an event that occurs during participation in existence, rather than an outside evaluation.

Horizons and Language

Hermeneutics, then, as Gadamer presented it, is not an objective method—certainly not a method comparable to that which has been developed by the natural sciences. Rather, it is concerned with what humans know but cannot objectively demonstrate according to universal

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[17] Ibid, xxvii.
[18] Grondin, *Hans-Georg Gadamer: A Biography*, 284.

standards of rationality. Thus, he declared that hermeneutics "is concerned with knowledge and with truth. In understanding tradition not only are texts understood, but insights are acquired and truths known." The sort of knowledge and truth uncovered here are those of the so-called "human sciences" which "are connected to modes of experience that lie outside science: with the experiences of philosophy, or art, and of history itself. These are all modes of experience in which a truth is communicated that cannot be verified by the methodological means proper to science."[19] These truths are not known from the outside, as when we observe something that is alien to us, but from within; they are illuminated by our own experiences.

There is, Gadamer reiterated, no vantage point outside of our own historically-conditioned humanity. "We always find ourselves within a situation, and throwing light on it is a task that is never entirely finished." This applies to the hermeneutic situation of trying to understand a tradition, including that of understanding those traditions we are constituted by. Illumination "can never be completely achieved; yet the fact that it cannot be completed is due not to a deficiency in reflection but to the essence of the historical being that we are. *To be historically means that knowledge of oneself can never be complete*."[20] At no point can the investigation of ourselves or others through the "human sciences" be declared complete, with our findings conclusively collected into a set of postulates or formulated into final and absolute propositions. The expression that produces understanding today may become opaque tomorrow. And yet, Gadamer averred, this does not discount the capability of the human sciences to ascertain truth within the historicity of man's existence.

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[19] Gadamer, *Truth and Method*, xx-xxi.
[20] Ibid, 301. Italics in original.

It is within the condition of finitude that reason must operate and truth must be found. Gadamer argued that to do so we must give up the illusory pursuit of unbiased rationality. We must look for truth not through a method yielding objective results, or through derivations from universal first principles, but in the encounters of concrete existence, for "understanding is not a method which the inquiring consciousness applies to an object it chooses and so turns it into objective knowledge; rather, being situated within an event of tradition, a process of handing down, is a prior condition of understanding. *Understanding proves to be an event*."[21] And thus understanding will always need to be renewed, for human temporality prevents it from resting, once and for all, upon the realization of a timeless truth. Each instance of understanding becomes, not obsolete but incomplete once the moment that brought it forth has passed. And so there is a need for new instants of understanding as one encounters new situations.

At this point Gadamer's well-known image of the horizon comes into play. The horizon of one's experiences, prejudices, language and history is not fixed, but is constantly changing, especially through encounters with the others (past and present) with whom we share existence. Both the isolated individual and the closed culture are abstractions that fail to represent the truth of human existence, truth and understanding. As Gadamer explained through his famous metaphor,

> The historical movement of human life consists in the fact that it is never
> absolutely bound to any one standpoint, and hence can never have a truly closed
> horizon. The horizon is, rather, something into which we move and that moves
> with us...the horizon of the past, out of which all human life lives and which
> exists in the form of tradition, is always in motion…Everything contained in

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[21] Ibid, 308. Italics in original

historical consciousness is in fact embraced by a single historical horizon. Our own past and that other past toward which our historical consciousness is directed help to shape this moving horizon out of which human life always lives and which determines it as heritage and tradition. Understanding tradition undoubtedly requires a historical horizon, then. But it is not the case that we acquire this horizon by transposing ourselves into a historical situation. Rather, we must always already have a horizon in order to be able to transpose ourselves into a situation…The concept of "horizon" suggests itself because it expresses the superior breadth of vision that the person who is trying to understand must have. To acquire a horizon means that one learns to look beyond what is close at hand—not in order to look away from it but to see it better, within a larger whole and in truer proportion.[22]

This description of understanding does not entail leaping outside the world of our historical existence, but in expanding it and learning to see it more clearly while residing within it. While we are constrained by tradition and prejudice, we are not imprisoned within them. If they were a prison, then there could be no escape: existence itself would forge our fetters. However, for Gadamer human freedom persists even though truth can only be understood from within tradition and prejudice, for our pre-judgments constitute us and therefore are the ground of our understanding and apprehension. They may be constantly under investigation and even revision, but they cannot be left behind, and so human freedom is both limited and real, for our historical situation establishes the conditions in which our freedom operates.

Thus, Gadamer observed that "the horizon of the present is continually in the process of being formed because we are continually having to test all our prejudices. An important part of this testing occurs in encountering the past and in understanding the tradition from which we

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[22] Ibid, 303-304.

come." Consequently, our present horizon is inextricably tied to the past, for there "is no more an isolated horizon of the present in itself than there are historical horizons which have to be acquired. *Rather, understanding is always the fusion of these horizons supposedly existing by themselves.*"[23] Understanding incorporates both past and present, as the former helps illuminate the later in the moment of the apprehension of truth. Implicit in this is the integration of understanding in a communal and cooperative context. My past is never just my past, but it intertwined with others; my understanding is never just my own, but is achieved through the cooperative medium that is language.

As a consequence of this, understanding, while an event for the individual, is never an individual achievement, but always part of a communal context, that of language. Our existence is neither objective nor subjective, but rather inter-subjective. Even one who speaks to himself speaks in the form of a dialogue, imagining a partner or at least an audience. Similarly, even an argument is cooperative, as it presumes a shared ground of understanding and insofar as genuine argument seeks understanding and possible agreement. The truths reached in such understanding will not be absolutely objective, but such truths are not possible for humans within our historical existence, and the pursuit of them is a chimera that distracts us from the real truths we can apprehend.

What sort of truth did Gadamer defend, then, if he rejected objective, universal truths propositionally expressed? Jens Kertscher believes that Gadamer substituted for "the objectivist idea of transparent, fully determined, and objective meanings," a "reference to truth…that replaces the idea of objective linguistic meaning." Thus, for Gadamer "the centrality of truth is

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[23] Ibid, 305. Italics in original.

evident in the fact that the point of reference to which all meaning and understanding must be related consists, in every case, in the need to arrive at an agreement on a subject matter that is placed before the dialogue partners." This, Kertscher concludes, is how the "famous concept of the fusion of horizons should be understood."[24] The striving for truth in the moment of understanding provides a unity between dialogue partners that is compatible with their finitude, and does not seek to leap outside of it to an infinite, absolute perspective expressed in universal and objective propositions. To be sure, this shared striving for truth in dialogue presumes a goodwill that is all too often absent, though, Gadamer insisted, not impossible to attain.

This emphasis on the realization of truth achieved between partners in dialogue within history has practical implications, some of which may be seen by returning to the question of whether lying is ever permissible. Considering again MacIntyre's example of the Dutch mother lying to save a Jewish child entrusted to her care, we now can see a further vindication of his conclusion that such lies are justified. Dialogue, shared understanding, the fusion of horizons— these cannot be shared with one who seeks to destroy the community and trust where truth finds its place.

The Nazi in this example seeks only an isolated portion of the truth (the facts of the child's existence and location) in order to annihilate the interpersonal context that constitutes the ground from which moral truth can emerge. It is not a simple disagreement, which still presumes, or at least holds open, the possibility of eventually reaching common understanding. Instead of accepting even the possibility of a fusion of horizons, of an expansion of understanding, it is an attempt to obliterate that which does not fit into one's horizon. It is the

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[24] Jens Kertscher, "Gadamer's Ontology of Language Reconsidered" in *Gadamer's Century*, ed. Jeff Malpas, Ulrich Arnswald, Jens Kertscher, (Cambridge, MA: MIT Press, 2002), 146-147.

opposite of attempting to reach shared understanding, and when faced with such malevolence, one is released from the obligations that a genuine attempt at shared understanding would place one under. Such situations represent an extreme example, though one not outside Gadamer's horizon, as he survived the Nazis largely by keeping his head down—he was not heroic in resistance, but neither did he disgrace himself as Heidegger did.

In happier situations where partners in dialogue genuinely seek understanding, the fusion of horizons proceeds from within language, which is the medium of thought and inter-subjectivity. Gadamer stated unequivocally that "the fusion of horizons that takes place in understanding is actually the achievement of language." He acknowledges that this may seem opaque to us, for "what language is belongs among the most mysterious questions that man ponders. Language is so uncannily near our thinking, and when it functions it is so little an object that it seems to conceal its own being from us." However, he was certain that "we can entrust ourselves to what we are investigating to guide us safely in the quest. In other words we are endeavoring to approach the mystery of language from the conversation that we ourselves are."[25] Our very existence is dialogue—we constantly carry on a conversation with ourselves even when others are not present, and this conversation always draws upon our shared existence with others. Language opens us to the communication of truth but does not deny the limited and historical nature of our being. To cut oneself off from this, to turn the dialogue of intersubjective existence into a monologue is to damage one's humanity at an essential point.

Truth therefore must be understood historically, for we do not have access to universal and timeless formulations of truth. Attempts to formulate truth always arise from a particular

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[25] Gadamer, *Truth and Method*, 370.

tradition whose horizon remains in motion and whose forms of linguistic expression are never finally settled. Language is something given to us, and yet it also provides a realm of freedom. Thus, Gadamer explained, though understanding is "language bound…this assertion need not lead us into any kind of linguistic relativism. It is indeed true that we live within a language, but language is not a system of signals that we send off with the aid of a telegraphic key when we enter the office or transmission station." Such an image does not accurately describe speaking, "for it does not have the infinity of the act that is linguistically creative and world experiencing. While we live wholly within a language, the fact that we do so does not constitute linguistic relativism because there is absolutely no captivity within a language – not even within our native language."[26] Language is a place of creativity as well as that which is given to us. We are not prisoners within language, but may say with Heidegger that it is the House of Being—a view that contrasts with that of certain postmodernists for whom language is a prison that we cannot escape from—and from within which we can only show our defiance by sticking our fingers through the barred windows by means of inversions, subversions and transgressions. In contrast to such rage against our finitude, the works of philosophers and poets may show how language can be renewed and its horizons expanded without leaping outside our historical existence.

  Gadamer rejected attempts to assert one's arbitrary will against that which constitutes us. Instead, we ought to accept that our limited, historical, and communicative existence entails abiding within a world that is not of our creation and yet not devoid of our creativity. Also, while we will always be constituted by tradition and a social inheritance, including that of our language, this inheritance is neither a solitary nor a sterile one, but involves us in conversation

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[26] Hans-Georg Gadamer, "The Universality of the Hermeneutical Problem" in *Philosophical Hermeneutics*, translated by David E. Linge, (Berkeley: University of California Press, 2008), 15-16.

and understanding with others, understanding which is capable of constant improvement and expansion. Gadamer wrote that an essential "feature of the being of language seems to me to be its I-lessness. Whoever speaks a language that no one else understands does not speak. To speak means to speak to someone…To that extent speaking does not belong in the sphere of the "I" but in the sphere of the "We."[27] Language invariably includes others. Before any explicit agreement language is already there as a common ground that belongs to both parties of the conversation. Even at the first halting attempts to learn a new language there are the beginnings of a new shared understanding. Thus, Gadamer put into question common formulations regarding the "I and Thou" of conversation, reminding us that in truth the "I" and the "Thou" are not separated and isolated from each other, but already presume a great deal of common ground.

> We say, for instance, that understanding and misunderstanding take place between I and thou. But the formulation 'I and thou' already betrays an enormous alienation. There is nothing like an 'I and thou' at all—there is neither the I nor the thou as isolated, substantial realities. I may say 'thou' and I may refer to myself over against a 'thou' but a common understanding always precedes these situations. We all know that to say 'thou' to someone presupposes a deep common accord. Something enduring is already present when this word is spoken.[28]

The encounter between "I" and "Thou" can only occur within horizons that have already come to overlap. Thus, Gadamer noted that while "we say that we 'conduct' a conversation…the more genuine a conversation is, the less its conduct lies within the will of

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[27] Hans-Georg Gadamer, "Man and Language" in *Philosophical Hermeneutics*, translated by David E. Linge, (Berkeley: University of California Press, 2008), 65.
[28] Hans-Georg Gadamer, "The Universality of the Hermeneutical Problem" in *Philosophical Hermeneutics*, translated by David E. Linge, (Berkeley: University of California Press, 2008), 7.

either partner. Thus a genuine conversation is never the one that we wanted to conduct." It is more accurate, he continued, to say that we fall into or become involved in conversation, for "the way one word follows another, with the conversation taking its own twists and reaching its own conclusion, may well be conducted in some way, but the partners conversing are far less the leaders of it than the led."[29] Genuine conversation is thus open to truth, not as dogmatic formulations, nor as subjective expressions of personal will, but as experience encountered in the inter-subjective meeting of horizons.

Likewise, language is not a set of symbols that can be used to explain the world in objective terms. Rather, as Gadamer stated, it always involves interpretation; it is both conditioned and creative. To discover is to interpret, and to interpret is to create. Thus, it has a freedom that defies objective formulation without abandoning truth, and this freedom allows it to be the medium in which truth is conveyed and encountered within history and contingency. At the same time, this historicity of language means that although linguistic formulations of truths are invaluable and indispensable, they are never objective or final.

Just as one cannot leave existence in order to critique it from an outside perspective (e.g. from the timeless viewpoint of absolute reason), so one is also incapable of leaving language. We are reminded that "All thinking about language is already once again drawn back into language. We can only think in a language, and just this residing of our thinking in a language is the profound enigma that language presents to thought."[30] We cannot see through language or get behind it. To attempt to objectively grasp the world is, in fact, the height to arrogance and

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[29] Gadamer, *Truth and Method*, 385.

[30] Hans-Georg Gadamer, "Man and Language" in *Philosophical Hermeneutics*, translated by David E. Linge, (Berkeley: University of California Press, 2008), 62.

folly, a point Gadamer made with startling vehemence. He asserted that we cannot grasp the

world-in-itself or being-in-itself, and thereby oppose them to our perspectives and the aspects

they see, "as if the right view from some possible position outside the human, linguistic world

could discover it in its being-in-itself." Indeed, Gadamer averred that someone "who opposes

'being-in-itself' to these 'aspects' must think either theologically—in which case the 'being-in-

itself' is not for him but only for God—or he will think like Lucifer, like one who wants to prove

his own divinity by the fact that the whole world has to obey him."[31] There is something

diabolic about the declaration that one has achieved an absolute perspective and is capable of

grasping the essence of being. We must accept the limitations of our finitude if we are to attain

truth within our historical human situation, otherwise our claims to truth risk attempting to usurp

the divine perspective. The conflation of our own, finite perspective with the absolute

perspective of God can have terrible consequences when those in power presume to have

attained absolute, objective truth—and then seek to impose it upon their subjects.

Gadamer concluded *Truth and Method* by defending truth in the human domains of

philosophy, art, literature, ethics, etc. as knowable to humans. However, such truth is revealed

through dialogue, language and experience within our historical existence, not through timeless,

universal truths outside of it or through ostensibly objective formulations patterned after the

model and method of the physical sciences.   The assurance of truth cannot be that promised by

an objective methodology. Rather, he wrote that

> Someone who understands is always already drawn into an event through which
> meaning asserts itself…In understanding we are drawn into an event of truth and
> arrive, as it were, too late, if we want to know what we are supposed to believe.

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[31] Gadamer, *Truth and Method*, 444-445.

Thus there is undoubtedly no understanding that is free of all prejudices, however much the will of our knowledge must be directed toward escaping their thrall. Throughout our investigation it has emerged that the certainty achieved by using scientific methods does not suffice to guarantee truth. This especially applies to the human sciences, but it does not mean that they are less scientific; on the contrary, it justifies the claim to special humane significance that they have always made. The fact that in such knowledge the knower's own being comes into play certainly shows the limits of method, but not of science. Rather, what the tool of method does not achieve must—and really can—be achieved by a discipline of questioning and inquiring, a discipline that guarantees truth.[32]

The methods of modern science cannot be emulated to verify all knowledge, but what the "objectivity" of such quasi-scientific methods has failed to provide can be found through dialogic inquiry and openness to truth, understood as experience and encounter, not objective propositions. Truth is neither objective nor illusory, for it is not an object of our knowledge but a way of being and an event within our historical existence. Propositions are not independent bearers of truth, but only present truth insofar as they speak into a particular historical situation.

The Hermeneutics of Moral Knowledge

Moral truths are among those realized through dialogue and hermeneutical inquiry, for they cannot be objectively derived from self-evident first principles by a universal reason. Indeed, as Gadamer's study of Plato and Aristotle shows, philosophy, including moral philosophy, is less a method than a way of life. All methodology is open to exploitation, and so Gadamer argued that "for Plato the dialectician does not possess some superior art, which he employs in *self*-justification…instead, he seeks real justification. Hence he does not possess an

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[32] Ibid, 484.

art that he uses whenever he desires. Dialectic is not so much a *techne*—that is, an ability and knowledge—as a way of being. It is a disposition…that distinguishes the genuine philosopher from the sophist."[33] However, such real justification is not to be found in a crude Platonism that measures anything and everything by its conformity to the realm of ideas. In Gadamer's reading Plato was much more subtle and sophisticated than that.

Thus, Gadamer saw in both Plato and Aristotle an active connection between dialogue in moral inquiry, moral action and the particulars of the moment of choice. As he explained, "what results from this dialogue, the ideal of a life harmonized right, is—precisely as the result of this dialogue—a *logos* (statement in words), which directs us to an *eregon* (deed), to choosing what is right in the moment of choice."[34] This knowledge is not objective nor universally accessible and demonstrable, because moral philosophy is not an objective science. Rather, Gadamer declared that "moral knowledge, as Aristotle describes it, is clearly not objective knowledge-i.e., the knower is not standing over against a situation that he merely observes; he is directly confronted with what he sees. It is something that he has to do."[35] Likewise, Gadamer emphasized the dialogic nature of Plato's works, rather than a doctrine of unchanging, universal truths and ideas. In his view, neither Plato nor Aristotle considered ethics to be an objective, scientific study capable of reaching conclusions rationally demonstrable to all.

Gadamer argued that it is the quest for such objective moral conclusions, and the fear of relativism's triumph if it should fail, that has led to some thinkers to respond to the modern "overstimulation" of our historical consciousness, "by invoking the eternal orders of nature and

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[33] Hans-Georg Gadamer, *The Idea of the Good in Platonic-Aristotelian Philosophy*, trans. P. Christopher Smith. (New Haven: Yale University Press, 1986), 38-39. Hereafter cited as *The Idea of the Good*.
[34] Ibid, 121.
[35] Gadamer, *Truth and Method*, 312.

appealing to human nature to legitimize the idea of natural law." Gadamer was skeptical of this sort of natural law approach, and asserted that we are not imprisoned within the givenness of history and tradition but are instead opened to truth within them. Therefore, he warned that "reflection on what truth is in the human sciences must not try to reflect itself out of the tradition whose binding force it has recognized."[36] We do not have direct access to eternal verities of human nature and the natural law; whatever access there may be is mediated through our history, tradition, and language. Thus, in his view, any natural law approach that cannot incorporate the finitude and historicity of human knowing within its account of moral knowledge is suspect. And because, as MacIntyre noted, natural law accounts have traditionally been themselves suspicious of such considerations, regarding them as relativistic, Gadamer found little to engage with in the mainstream natural law tradition.

Gadamer's treatment of natural law was brief and scattered throughout his work. His views on the subject were, at best, ambiguous, with Aristotle's comments on the natural law (or "natural right" or "right by nature") drawing the most approbation and those natural law approaches that claim rational objectivity the most disapproval. He observed that "for Aristotle the idea of natural law has only a critical function. No dogmatic use can be made of it—i.e., we cannot invest particular laws with the dignity and inviolability of natural law."[37] We might say the same about the various formulations that seek to express the natural law. They are invaluable as part of dialogue and moral instruction, but only so long as they recognize that they are never final. The natural law, instantiated in the human capacity for moral knowledge and insight, can always provide a critical service (including necessary criticism of our traditions and prejudices),

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[36] Ibid, xxiii.
[37] Ibid, 317.

but its positive capabilities are always limited by the inability to achieve an objective and comprehensive formulation of moral truth and responsibilities that will be universally applicable. However valuable moral formulations may be, they are incomplete until instantiated by the person of practical wisdom and virtue.

Gadamer held that Aristotle's view of the natural law was "highly subtle and certainly not to be equated with the later natural-law tradition," which Gadamer found troublesome. He thought that Aristotle's distinction between what is naturally right and what is legally right was "not simply that between the unchangeability of natural law and the changeability of positive law," for an "absolutely unchangeable law" would be limited to the gods. In contrast to this, "among men not only statutory law but also natural law is changeable. For Aristotle, this changeability is wholly compatible with the fact that it is 'natural law' for there are things that do not admit of regulation by mere human convention because the 'nature of the thing' constantly asserts itself." But since "the nature of the thing still allows some room for play, natural law is still changeable."[38] The world, including the moral world, is not indefinitely malleable to arbitrary human will, but neither can we rest upon a final formulation of a given moral order that needs only to be precisely applied. Rather, the tasks of moral insight are always being renewed, as new situations demand action from us. The natural law, as understood by a finite mind and expressed in propositions, is changeable because human knowledge is finite, and our knowledge of moral truths in general will always be contingent and incomplete.

Aristotle's understanding of natural right was important for Gadamer, who believed it revealed something crucial about Aristotle's treatment of moral norms and ideals, which are "not

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[38] Ibid, 316-317.

just arbitrary ideals conditioned by convention…despite all the variety of moral ideas in the most

different times and peoples, in this sphere there is still something like the nature of the thing."

But this is not to say that such natures (bravery is offered as an example) are absolutely fixed, for

"Aristotle affirms as true of the teacher of ethics precisely what is true, in his view, of all men:

that he too is always already involved in a moral and political context and acquires his image of

the thing from that standpoint." The guiding principles described by the teacher of ethics are, to

an extent, unteachable, for they are "valid only as schemata. They are concretized only in the

concrete situation of the person acting. Thus they are not norms to be found in the stars, nor do

they have an unchanging place in a natural moral universe, so that all that would be necessary

would be to perceive them." Yet, Gadamer added, these principles are not just conventional,

"but really do correspond to the nature of the thing—except that the latter is always itself

determined in each case by the use the moral consciousness makes of them."[39] The nature of

things is neither completely opaque nor transparent to us, but is rather revealed, partially and

contingently, in the moment of understanding. Likewise, what the natural law demands will be

revealed in the moment of moral insight and action, but only partially and contingently insofar as

a universal understanding of it is concerned. While these instances of illumination (and later

reflection and discussion regarding them) will be insufficient to provide a complete system

adequate to all moral decisions, they may be sufficient for the moment.

In *Hermeneutics and Historicism*, presented in 1965 and included in later editions of

Truth and Method, Gadamer reiterated that Aristotle "ascribed an exclusively critical function to

the idea of natural law rather than a positive, dogmatic one. It has always been felt to be

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[39] Ibid, 317-318.

shocking (when it was not denied outright, by misinterpreting Aristotle's text) that he distinguishes between conventional and natural law, yet goes on to claim that natural law can be changed." According to Gadamer's reading of Aristotle, "even what is just by nature is changeable," though this changeability of what is just by nature is different from the changeability of statutory laws. And so, he argued that "Aristotle seeks not to detract from this view but to explain how to distinguish what is naturally just in the unstable human world (in contrast to that of the gods)."[40] Because the nature of the human world includes contingency and change, what is naturally just will also be subject to some changes based on contingencies. Except within an eternal, unchanging realm, no formulation or set of moral propositions can capture the whole of natural justice in all circumstances.

It was from this viewpoint that Gadamer confronted the work of Leo Strauss, the influential advocate for an unchanging classical natural right, which he considered superior to modern philosophy and political theory. Gadamer wrote that Strauss' "whole impressive and learned life's work is devoted to the task of reviving this quarrel in a more radical sense—i.e., confronting modern historical self-consciousness with the clear rightness of classical philosophy." Gadamer noted that in *Natural Right and History*, his best known work, Strauss went "back to the antithesis of the modern historical worldview, namely natural law; the purpose of his book is, in fact, to exhibit the Greek classics of philosophy, Plato and Aristotle, as the true founders of natural law."[41] Strauss, in Gadamer's view, rejected later developments of the natural law tradition, whether Stoic, medieval or Enlightenment. This might seem to suggest agreement between the two, for Gadamer also preferred the natural law as presented in Aristotle.

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[40] Ibid, 518-519.
[41] Ibid, 529.

However, Gadamer's interpretation of Aristotle (and Plato) was very different from that of Strauss, who was inclined to accuse Gadamer of being a relativist—a charge Gadamer denied regularly in his work, though he did not belabor the point in his correspondence with Strauss, a silence Strauss mistakenly took as Gadamer conceding the point.

Crucial to Strauss' project was an understanding of interpretation that requires one to "understand an author as he understood himself," a task Gadamer believed to be impossible. He argued that Strauss "underestimates the difficulties of understanding, because he ignores what might be called the dialectic of the statement," and thought this was illustrated by Strauss' defense of "the ideal of 'objective interpretation'" which held that "the author, at any rate, understood what he said in only one way, 'assuming he was not confused.'" Gadamer did not believe that this distinction "between 'clear' and 'confused' is as obvious as Strauss assumed," and asked whether he does not thereby "share the point of view of full historical enlightenment and miss the real hermeneutic problem?"[42] In Gadamer's understanding there cannot be a single authoritative interpretation or understanding within the flux of human existence in history (not even that which the author may have intended), though this does not authorize the raw imposition of will in interpretation either. Rather, whether in understanding a philosophical text or a moral question, one must always be responsive to the truth as it is revealed in the moment.

Gadamer found in Aristotle's treatment of ethics and moral knowledge a model for hermeneutics as a whole, a point that is further illuminated by his discussion of legal hermeneutics, itself a classic field of hermeneutical study. This subject reflects back upon the question of moral knowledge and illustrates how the natural law could be understood in light of

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[42] Ibid, 531.

Gadamer's philosophical hermeneutics. Legal hermeneutics, Gadamer explained, reminds "us

what the real procedure of the human sciences is. Here we have the model for the relationship

between past and present that we are seeking. The judge who adapts the transmitted law to the

needs of the present is undoubtedly seeking to perform a practical task, but his interpretation of

the law is by no means merely for that reason an arbitrary revision."[43] Applying this to the

natural law, we can say that those who perform the practical task of formulating the rules and

formulas used to communicate and express the natural law are not necessarily acting arbitrarily.

Thus, the exponent of the natural law need not make any claim to be above or outside of

it as if it were an object or objective formula one could study. Rather, what is needed is

openness of moral apprehension that recognizes that the natural law must be creatively

instantiated in the situation at hand. This is not arbitrary or capriciously governed by subjective

will, but is part of the nature of the natural law, just as it is for human law, where, Gadamer

noted, the "work of interpretation is to concretize the law in each specific case." While the judge

must therefore creatively supplement the law, he is still "subject to the law in the same way as is

every other member of the community. It is part of the idea of a rule of law that the judge's

judgment does not proceed from an arbitrary and unpredictable decision, but from the just

weighing up of the whole."[44] The just application of the law requires the man or woman of

practical wisdom and sound judgment. It cannot be performed merely by rote, and yet neither is

it subject to domination by one's whims and will. It is a similar task that is before all of us in

moral inquiry and practice. Moral action is demanded of us and we are answerable to moral

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[43] Ibid, 324.
[44] Ibid, 325-326.

truths independent of our subjective will, yet the task of ascertaining what it is cannot be performed for us by objective formulas or prohibitions.

Gadamer's connection between the model of legal hermeneutics and that of moral knowledge is reinforced by his treatment of legal and theological hermeneutics in *Truth and Method*. He wrote that in both "there is an essential tension between the fixed text—the law or the gospel—on the one hand and, on the other, the sense arrived at by applying it at the concrete moment of interpretation, either in judgment or in preaching." He explained that neither the law nor the gospel exists "in order to be understood historically," but rather to be concretized in application, legal and salvific, respectively. Each, "if it is to be understood properly—i.e., according to the claim it makes—must be understood at every moment, in every concrete situation, in a new and different way. Understanding here is always application."[45] Likewise, the understanding of moral truth is not primarily a matter of intellectual repetition and agreement with general formulations of moral truth (though this may be very useful) but of apprehending and then acting upon moral truth in the moment of moral choice.

As a result of this understanding of moral knowledge, Gadamer interpreted Aristotle so as to call into question the assumption held by many (including the new natural lawyers) that practical reasoning primarily consists of selecting a means to a preordained end. Our analysis of situations and their moral implications is rarely so simple, and thus, "moral knowledge can never be knowable in advance like knowledge that can be taught. The relation between means and ends here is not such that one can know the right means in advance, and that is because the right end is not a mere object of knowledge either." We cannot, according to Gadamer's account of

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[45] Ibid, 307-308.

Aristotle, have "anterior certainty concerning what the good life is directed toward as a whole."

Rather, "the end toward which our life as a whole tends and its elaboration in the moral

principles of action described in Aristotle's Ethics cannot be the object of a knowledge that can

be taught."[46] Gadamer concluded that ethics, like the natural law, cannot be used dogmatically.

Moral truth can never be fully encapsulated within formulations that can be applied by rote to

automatically arrive at the right course of action in a particular situation. Knowledge of what is

right is not always something worked out beforehand, like solving an algebraic equation, and

then put into practice. Rather, it develops as one is already engaged in right action, and we often

only come to perceive our ends insofar as we are already engaged in pursuing them through the

practice of virtue.

Thus, however useful general expressions of moral knowledge may be, the full

apprehension of true moral knowledge is always dependent upon "knowledge of the particular

situation." And this knowledge, Gadamer noted, goes beyond a simple perception, akin to sight,

of what is self-evident, but always involves a good deal more. He explained that "although it is

necessary to see what a situation is asking of us, this seeing does not mean that we perceive in

the situation what is visible as such, but that we learn to see it as the situation of action and hence

in the light of what is right… so also in moral deliberation, seeing what is immediately to be

done is not a mere seeing but *nous*."[47] The apprehension of moral truth is not a simple seeing,

nor is moral deliberation simply the logical parsing and processing of propositions. Thus, the

practical reason required for moral insight and inquiry is much more comprehensive than a

narrow reasoning about means and ends. What is apprehended in the moment of moral insight is

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[46] Ibid, 318.
[47] Ibid, 319.

not simply how a prior conceptual knowledge of moral truth can be applied to a particular situation. Rather, it involves the entire faculties of the human mind and character.

Contingency and Adequacy

Shortly after the publication of *Truth and* Method, Gadamer produced a short essay, *On the Possibility of a Philosophical Ethics*, which provides one of his most explicit discussions of moral knowledge and clarifies points that were left underdeveloped or even inchoate in *Truth and Method*. In the essay, Gadamer emphasized the insufficiency of ostensibly objective rules and, as he so often did in discussing ethics, returned to the Greeks. He first questioned the distinction between "philosophical ethics" or a "moral philosophy" on the one hand and "practical ethics" on the other, noting that in antiquity this distinction was not as sharp as it seems now, and that practice and theory were not necessarily considered in opposition to each other, for "Aristotle gave expression to what was basically already implicit in the Socratic and Platonic doctrine about the knowledge of virtue—namely that we do not just want to know what virtue is, but to know it in order to become good." Nor is this close connection between theory and application restricted to the domain of virtue and moral knowledge, for, in Gadamer's view, "it belongs to the ancient concept of knowledge generally that the transition to praxis is inherent in it: knowledge is not an aggregate of anonymous truths, but a human comportment…Even *theoria* does not stand in absolute opposition to praxis, but is itself the highest praxis."[48] Theory, in Gadamer's understanding of the Greeks, is not simply something one does but also a way of being, and therefore practical in a way that modern academic philosophy often is not.

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[48] Hans-Georg Gadamer, "On the Possibility of a Philosophical Ethics" in *The Gadamer Reader: A Bouquet of the Later Writings*, ed. Richard E. Palmer, (Evanston, IL: Northwestern University Press, 2007), 277.

This interpretation of Greek thought guided Gadamer's exploration of moral philosophy; theory, in his view, is not remote and impractical but is instead closely tied to practice; indeed, it is a form of practice itself. Thus, it can never leave behind the concrete circumstances of life and the finitude of human existence in history. We theorize in order to act, and theorizing itself is a form of action. From Gadamer's perspective, theoretical philosophy is too often inclined to allow concepts and propositions to take on a life of their own, divorced from the experiential realities that gave rise to them.

The influence of this emphasis on the actually existing human person who theorizes and acts may also be seen in Gadamer's response to Kant. While Gadamer admired Kant's destruction of many of the illusions of the Enlightenment and its conceited opinion of its moral insights, he nonetheless rejected Kant's deontological response, both for its emphasis on formulating moral insights in terms of a universal law and for the vitiating reduction of the moral life to duty. Duty is incapable of encompassing all that is morally worthwhile, such as love. As he put it, "Kant's fatal revision of the Christian commandment that we love one another into a duty to perform tasks of practical charity speaks volumes in this respect. Love, even viewed in moral terms, is something nobler than the charitable acts that duty requires."[49] The impersonal and universalizing approach of Kant's deontology was mean to protect against the perceived contamination of mixed motives, but in Gadamer's view this was both futile and harmful. Human beings are incapable of such a detached, universal perspective, and the attempt to achieve such will lead us astray as it rebels against our finitude. Gadamer observed that "the

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[49] Ibid, 283.

fundamental idea of an *a priori* value system essentially calls for…an infinite subject."[50] But

such a God's-eye perspective is denied us in our finite historical existence, and to appropriate it,

to seek to see things as God does, is an extreme act of pride.

This rejection of an absolute viewpoint reveals a potentially significant conflict between

Gadamer's perspective and the Thomistic realism that MacIntyre has adopted. According to

MacIntyre, Thomism relies upon a presumption of a divine viewpoint to defend its contention

that the mind can become adequate to the objects it considers. As he has noted, Thomism holds

that, "What is fundamental to our conception of truth then is the notion of a type of relationship

that may hold or fail to hold between a mind and those subject matters about which it passes

judgment." Not only does the mind progress by replacing false with true judgments, but in doing

so it "moves towards a final and completed grasp of the truth concerning the place of the objects

about which it judges in the overall order of things."[51] According to the Thomistic tradition,

such an absolute standpoint is the final end of inquiry and would represent the Truth.

Thus, for the Thomist, the possibility of an adequacy of the mind to its subject matter

depends upon an intelligible order of being. And so, MacIntyre writes that it "is a metaphysical

presupposition of this view of truth that there is an order of things and that this order exists

independently of the human mind."[52] And because of this independent order, it is the case that

on Aquinas' theory, "the mind cannot dispense with the conception of an absolute standpoint, a

divine standpoint, that from which things would be viewed as they truly are."[53] The divine mind,

according to this view, is adequate for all of creation, and the adequacy of human minds to an

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[50] Ibid, 284.
[51] MacIntyre, *The Tasks of Philosophy*, 207.
[52] Ibid, 206.
[53] Ibid, 211.

object is judged based on how closely they approximate the divine perspective in their understanding of the intelligible order of creation.

And so MacIntyre argues that from a Thomistic point of view, the possibility of such an absolute standpoint "renders intelligible the notion of a directed movement of our enquiries towards an ultimate end. For if we lacked any conception of such an absolute standpoint, we might well conclude that there is no such thing as a final terminus for enquiry concerning any particular subject matter."[54] For Gadamer, this would not be an objection. He emphasized the incomplete nature of all inquiry and of philosophical inquiry in particular. The results of inquiry may be adequate for the needs of the moment, but they can never within this life attain a final and absolute adequacy. Even the best formulations of the present will need to be reinterpreted to be understood by future generations, who will then have to reapply them.

However, from the Thomistic point of view, the mind is fulfilling its own *telos* in its progress towards a final perspective. Like the objects it contemplates, it is directed to its own end and flourishing in the order of being. With regard to this teleological directedness, MacIntyre observes that, "It is sometimes said contemptuously by those who are deeply skeptical about the notions of natural kinds and essential natures that the use of these notions presupposes the possibility of there being a God's eye view of things." But MacIntyre argues that for a Thomist the idea of a "God's-eye" perspective actually "embodies a deep insight concerning the nature of explanation and understanding."[55] According to this Thomistic account, the divine viewpoint is the final criterion of truth and both the measure and guarantee for human knowledge.

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[54] Ibid, 208.
[55] Ibid, 191.

The mind's *telos* is directed toward an end—the ascent of the mind and heart to God. This is the fulfillment of all human desire for happiness, and includes recognizing God as truth and the source of all truth. MacIntyre claims that if we detach "Aquinas's teleological account of truth from this larger teleological setting…it will appear to many of our contemporaries… as no more than one more highly contestable theory of truth and moreover one all the less acceptable in virtue of its metaphysical entanglements."[56] This account of Thomism acknowledges its dependence upon theology, teleology and metaphysics (or, more accurately, that it is a systematic account of theology, teleology, and metaphysics), and it is such an account that Gadamer never engaged to any significant degree. Indeed, Gadamer found it difficult to take some of its metaphysics seriously.

Thus, there is a significant and perhaps irreconcilable difference between the classic understanding of the Thomistic tradition and the philosophical hermeneutics of Gadamer, and this extends to the analysis of moral truth. Referencing Aquinas' gloss on Aristotle, MacIntyre claims that it is the traditional Thomistic position that "we judge how things truly are when we think of them as they are thought of by God."[57] But, Gadamer averred, such a perspective is unreachable for humans. And despite the comment just quoted, MacIntyre too has often attested to the provisional nature of all human knowledge, and it is not clear that Thomism need deny it. Any final intellectual consummation, where one understands as God does, will only be for the redeemed in heaven, if even for them. It is impossible for any human in this life to consider things as they are thought of by God, a truth of which Gadamer was well aware and which MacIntyre would do well to consistently remember.

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[56] Ibid, 212.
[57] Ibid, 210.

This inescapable incompleteness of human knowledge may be illustrated by considering the example of my two dogs, who, from amidst a pile of blankets, are watching me type this. There are many perspectives from which I or someone else could view them: that of a veterinarian considering their health, that of a dog trainer regarding their behavior and obedience, that of a sociologist studying the roles of canines in society, that of a breeder evaluating them as examples of their breed. And, of course there is also my immediate consideration of them as companions and dependents—the personal knowledge and relationship I have of and with them. None of these views are objectively wrong, but none of them, nor any combination of them (impossible anyway, as I cannot consider them from all of these perspectives at the same time), will allow me to attain a God's-eye perspective on my dogs, and view them as God would. Whatever perspective the divine mind might have of dogs in general, and my dogs in particular, is denied to me. Furthermore, the divine mind, if it sees everything in its fullness, would have no need of general ideas about dogs. Rather, it is finite, limited human minds that at times need to deploy general ideas due to an inability to comprehend everything in its full particularity. General ideas are often very useful, but it is, as Gadamer knew, illusory to presume that such concepts represent the true being or essence of things. They are shortcuts and abbreviations necessitated by the finitude of the human mind; God presumably sees every dog in its full and unique particularity.

It is clear that Gadamer's insistence upon the historical horizon of being and understanding thoroughly repudiates any reliance upon a God's-eye perspective. As he noted in a letter to Leo Strauss, "What I believe to have understood through Heidegger (and what I can testify to from my protestant background) is, above all, that philosophy must learn to do without

the idea of an infinite intellect."[58] Gadamer had only a protestant background, not a protestant

faith, but he had taken to heart Kierkegaard's lessons about the futility of trying to construct an

absolute system. An infinite intellect needs no such system, and finite humans are incapable of

constructing it, for absolute understanding is beyond our ken.

In *Truth and Method*, Gadamer declared that medieval thought was wrong to hold that a

word is "simply the perfection of the 'species.'" Nor is it the case that, "When a being is

represented in the thinking mind," this is a "reflection of a pregiven order of being, the true

nature of which is apparent to an infinite mind (that of the Creator)." However, Gadamer went

further, and also rejected the modern view of a word as "an instrument, like the language of

mathematics, that can construct an objectified universe of beings that can be put at our disposal

by calculation. No more than an infinite mind can an infinite will surpass the experience of being

that is proportionate to our finitude."[59] Thus, Gadamer's critique of the Enlightenment is linked

to his rejection of much medieval thought. We can neither subordinate the world to our will nor

presume to understand it as the divine mind would. Rather, we must accept our finitude, both of

knowledge and of will.

This raises significant questions. Does Gadamer's rejection of medieval viewpoints

irreparably separate his project from Thomism, or can Thomistic realism, with its understanding

of the mind's adequacy to its objects, do without establishing the divine perspective as the

criterion of truth toward which human understanding must strive? And if so, what will be the

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[58] Hans-Georg Gadamer, "Correspondence Concerning *Warheit und Methode*: Leo Strauss and Hans-George Gadamer." The Independent Journal of Philosophy. trans. George Elliott Tucker. vol. II (1978), 5-12. Page 10. I would add that the Catholic Church's adoption of Thomistic-Aristotelian metaphysics, particularly as regards important doctrines like transubstantiation, erects significant barriers to reconsidering the natural law for many Catholic natural law theorists.

[59] Gadamer, *Truth and Method*, 454.

standard of truth by which different claims to truth are judged, and how can the respective

superiority or inferiority of conflicting truth claims be known and demonstrated? Furthermore,

to what extent does Gadamer's skepticism regarding metaphysics preclude common ground?

Contrasting his work with Gadamer's, MacIntyre seems to suggest that the problem is

persistent, observing that where he has "tried to suggest that hermeneutic inquiry remains

incomplete until it has recognized its metaphysical presuppositions, Gadamer has stressed the

incompleteness and therefore the one-sidedness of even what he takes to be the best work in any

metaphysical mode."[60] MacIntyre finds that this arises in part because of a crucial dispute over

"the relationship in which metaphysical, including dialectical, modes of thought stand to

hermeneutics." This, he argues, arises from disagreement "about the relationship between the

language of metaphysics and the natural languages." In his view, natural languages "can become

adequate to the tasks of metaphysical inquiry."[61] Through development by philosophers, poets

and others, MacIntyre believes that languages may indeed become adequate for use in

metaphysics and that terms may be developed that are sufficient for its subject matter.

Gadamer, while a less ferocious critic of metaphysics than Heidegger or (especially)

Derrida, preferred the metaphysics of the Greeks to the later Latin and medieval developments.

He found Greek discussion of metaphysics (and the language used for it) closer to experience

and less confident in its ability to conceptualize the ineffable. Gadamer, as MacIntyre noted,

always stressed the limitations of human knowledge within the domain of metaphysics.

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[60] Alasdair MacIntyre, "On Not Having the Last Word: Thoughts on Our Debts to Gadamer" in *Gadamer's Century*, ed. Jeff Malpas, Ulrich Arnswald, Jens Kertscher, (Cambridge, MA: MIT Press, 2002), 169. Interestingly, while MacIntyre here insists on the importance of metaphysics to a philosophical hermeneutics, in his exchanges with Jean Porter he thought practical reason sufficient to provide moral guidance.

[61] Alasdair MacIntyre, "On Not Having the Last Word: Thoughts on Our Debts to Gadamer" in *Gadamer's Century*, ed. Jeff Malpas, Ulrich Arnswald, Jens Kertscher, (Cambridge, MA: MIT Press, 2002), 170-171.

Meanwhile, MacIntyre, at least in his later, more Thomistic work, sometimes seems to embrace a full-blown science of metaphysics in the broader Thomistic tradition that is alien to Gadamer.

While these disagreements cannot be ignored, I believe a rapprochement on some points may begin by distinguishing between different ways of understanding the adequacy of the mind to its objects. Gadamer seems to be on strong ground arguing that it is impossible for a human mind to attain the adequacy to its object that would be possible for the infinite divine mind. Such a perspective is beyond us, and attempting it may indeed be diabolical arrogance. However, there may still be a human adequacy of mind to object, which is sufficient and suitable for us, acting and understanding in a particular place and time, but that is categorically different from the adequacy that the divine mind would have. The *telos* of human inquiry is not the absolute adequacy of the divine mind, but in the progressively increased adequacy for the successive moments when it is needed for understanding and action.

There may be an absolute adequacy of the divine mind, and a contingent adequacy of the finite human mind. This contingent adequacy would not understand as God does, even in part. Rather, it would be an understanding that is sufficient for human life within history and our finitude. We do not see things truly when we see them as they are known to the mind of God; rather, we see them truly when our mind is adequate to the revealing of their truth in the moment. Such a realization is intimated by MacIntyre when, in defending the possibility of a correspondence theory of truth, he emphasizes the importance of recognizing that each assertion is made by a particular person in particular circumstances. He argues that "a first step towards an adequate conception of truth as correspondence is to remind ourselves that it is not sentences as such that are truth-bearers, but asserted sentences, sentences used by a particular speaker to

make a particular assertion on a particular occasion."[62] MacIntyre declares that the truth of a

sentence cannot be adequately evaluated without considering the relationship of the speaker to

that about which he or she is speaking. Context, which is to say, particulars, matters. Far from

detracting from the truth of a statement, it is the particularities of the situation in which it is made

that allow for the possibility of truth. Whether the statement is "my dog Pippin has black and tan

fur" or "Génitum, non factum, consubstantiálem Patri," its truth is not general but particular.

These words, in *this* language, spoken or written by *this* person, heard or read by *that* person are

what is true or not, because of their adequacy or inadequacy within their particular context.

Through his project, MacIntyre has shown that Thomism need not seek to leap outside of

history to a God's-eye perspective, or apprehend eternal natures (though at times he seems to slip

into more traditional Thomistic views on the subject). Rather, the Thomistic tradition may have

within itself the resources to engage with and incorporate the insights of modern and postmodern

philosophers. While work remains to be done, there is reason to hope that the Thomist tradition

will come to incorporate a better understanding of human finitude and limitation, and of the

necessary distinctions between the absolute adequacy of the divine mind and that limited,

historical adequacy that is possible for human minds. In doing so, there are few better resources

for Thomists to learn from than Gadamer, and in conversation with his work they may provide

applications of his theory to areas where he did not fully develop it, such as natural law. His

defense of truth, including moral truth, within the finite, historical bounds of human existence

provides an important alternative to both relativism and metaphysical reliance upon the human

apprehension and conceptualization of eternal, essential natures. Gadamer did not develop a

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[62] MacIntyre, *The Tasks of Philosophy*, 200.

natural law theory, but the seeds are there for an approach that may correct many deficiencies in current natural law approaches.

Phronesis

One point of congruence between Thomism and Gadamer's work may be found in their mutual reliance on Aristotle, though Gadamer's interpretation of the Philosopher often emphasizes other aspects of his writings than most Thomists do. Nonetheless, *phronesis*, practical wisdom and reason, is of particular importance to both. In his essay on philosophical ethics, Gadamer advised following Aristotle, who founded philosophical ethics by "correcting the 'intellectualism' of Socrates and Plato without sacrificing its essential insights." Aristotle, Gadamer explained, made it explicit that virtue "does not consists merely in knowledge, for the possibility of knowing depends, to the contrary, on what a person is like, and the being of each one is formed beforehand through his or her education and way of life." [63] Virtue is more than simply intellectual assent to precepts, but depends on how one's character has been formed. Furthermore, without virtue, moral insight will be limited, and thus moral knowledge is to a significant extent dependent upon preconditions that have shaped one's character—preconditions over which one often has no control. But while this contingency is inescapable, it is not debilitating for the apprehension of true moral knowledge, for a realm of freedom remains within human contingency. The idea that moral knowledge is invalid, or at least suspect, unless it is expressed in universal laws, accessible to a universal reason, ignores the true experience of moral knowledge.

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[63] Gadamer, "On the Possibility of a Philosophical Ethics" in *The Gadamer Reader: A Bouquet of the Later Writings*, ed. Richard E. Palmer, (Evanston, IL: Northwestern University Press, 2007), 284.

And so Gadamer returned to Aristotle, who teaches us of the close connection between apprehending moral knowledge and character. Aristotle's "analysis of phronesis recognizes that moral knowledge is a way of moral being itself…Moral knowledge discerns what needs to be done, what a situation requires; and it discerns what is doable on the basis of a conviction that the concrete situation is related to what is considered right and proper in general." [64] As Aristotle understood, propositions and formulations, however well-crafted, are of little use without the character and wisdom needed to instantiate them. Indeed, such codifications are but attempts to communicate the true moral knowledge already possessed by the good man or woman. As Gadamer explained, the expression "right and proper in general" is not a diffuse term for a universal precept, drawn from some heavenly statute book, but an orientation of the character of a person—of the will (to apply an anachronistic term). Generic expressions of moral truth are vague because they must be so. When Aristotle wrote of what is "fitting" or "proper" or "right" it was not because he lacked the imagination for a better formulation of general moral rules, but because he recognized that an attempt at such formulations could distort the nature of moral knowledge. Too much focus on the proposition occludes the experience and personal knowledge the proposition is meant to convey.

This is where the importance of virtue becomes clear. For those with the proper character and moral experience and wisdom, a vague formula will often suffice. But for those lacking practical wisdom and a well-formed character, no rule, however specific, may be sufficient. No proposition or set of propositions can effectively and objectively encapsulate all moral truth. Thus, Gadamer warned that,

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[64] Ibid, 284.

It is a mistake for people to take Aristotle's emphasis on this universal formula for concretization and turn it into pseudo-objectivity…This is precisely the meaning of the doctrine of the "mean" that Aristotle develops: that all conceptual definitions of traditional virtues possess at best a schematic or typical correctness...This means, however, that philosophical ethics finds itself in the same situation as everyone else. That which we consider right, which we affirm or reject, follows from our general ideas about what is good and right. It achieves its real determinacy, nevertheless, only from the concrete reality of the case. This is not a case of applying a universal rule. Just the opposite: it is the real thing we are concerned with, and for this the generic forms of the virtues and the structure of the "mean" that Aristotle points out in them offer only a vague schema.[65]

This understanding of moral knowledge—which emphasizes that it is most fully realized in the concrete instance of moral deliberation and action, rather than in intellectual assent to general moral formulations—provides an alternative to that generally held by Thomistic natural law theorists. Gadamer declared that general, ostensibly universal formulations are not the pure form of true moral knowledge, and this is why Aristotle intentionally kept his formulations vague. Furthermore, *phronesis* does not just deliberate or calculate how best to achieve a pre-determined end, for the determination of what end is to be sought is itself part of *phronesis*. Gadamer argued that, "it is certainly not true, as sometimes appears to be the case in Aristotle, that *phronesis* has to do with finding the right measure to a pre-given end. This concrete moral deliberation defines the 'purpose' for the first time by making it concrete—that is, by defining what 'should be done.'[66] The end of one's action is not so easily separated from the means. Practical reason does not typically begin with a set end and then deliberate over different means

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[65] Ibid, 285.
[66] Ibid, 286.

to it. Rather, means and ends unfold together in a more dynamic fashion. And thus while general moral statements are an indispensable tool for the communication of moral truth between persons, and especially in instructing children, they should not be mistaken for the essence of moral truth itself, which is always embedded and apprehended within the particulars of a situation.

And the situation in which one has to act morally is never encountered entirely alone, because the moral resources, patterns, habits and virtues of an individual are always communal in their genesis. As Gadamer put it, "insofar as the whole of our being depends upon capabilities, possibilities, and circumstances that are not simply given over into our hands," both the practice and well-being we seek, "comprehend more than we ourselves are. Our actions are situated within the horizons of the polis, and thus our choice of what is to be done spreads out into the whole of our external social being. Ethics proves to be a part of politics."[67] Moral philosophy is not a solitary affair, in which the philosopher pursues the timeless formulation of transcendent truth, but a communal endeavor, in which the philosopher's insights will be dependent both on the culture around him and what sort of man he is. Consequently, not only is the fullness of the good life dependent upon friendship, so too is moral philosophy, for it is a joint enterprise. There is universality in moral truth that can be illuminated through shared reflection, experience and communication, but it can never be fully encapsulated, expressed or formulated.

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[67] Ibid, 286.

In Gadamer's view, far from compromising the integrity of moral philosophy, this conditional nature vindicates it. It is here that Aristotle's "sense for the multiply conditioned" provides

> an answer to the question that has been plaguing us: namely, how a philosophical ethics, a human doctrine of the human, is possible, without requiring a superhuman self-transcendence. The moral philosophical deliberation that is implicit in the practice of philosophical ethics is not a theory that must be made practically applicable. It is not at all a knowing in general, a knowing at a distance, which would in fact conceal what the concrete situation calls for…the universal, the generic, that can be expressed only in a philosophical inquiry dedicated to conceptual universality is in fact not essentially different from what guides the usual, completely untheoretical sense of norms present in every deliberation on moral practice. Most important, it is not different from this untheoretical deliberation in that it includes that same task of application to given circumstances that obtains for all moral knowledge.[68]

If Gadamer is correct that philosophical ethics, rightly understood, is always already practical in application, then a proper philosophical ethics can neither claim a special station above the world, nor retreat from it into an ivory tower (or, we might add, a city in speech). Rather, it is intensely practical, for as Gadamer observed, "The philosophical practice of ethics too has a moral relevance, and that is not a hybrid 'academic' claim divorced from 'life,' but rather a necessary consequence of the fact that it is always situated within circumstances that condition it." Thus, it is not for everyone, "but only for those whose education in society and state has brought their own being to a point of such maturity that they are capable of recognizing

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[68] Ibid, 287.

general rules of thumb in concrete perplexities and putting them into practice." [69] Without

sufficient maturity of mind and character, philosophic ethics will be at best empty and abstract

theorizing, at worst it will be a dangerously misleading practice. Gadamer noted that even the

audience at Aristotle's lectures would have needed to overcome the temptation to engage in an

abstract academic pursuit at the expense of real-world engagement.

It is these links to application, everyday moral considerations and concrete circumstances

that make philosophical ethics something best undertaken by the mature person of experience

and insight. This also explains why ordinary persons frequently demonstrate better moral

understanding and judgment than scholars of philosophical ethics. Without the connection to

one's own character, and the instantiation of right reason through actions, philosophical ethics

becomes merely the clever manipulation of symbols and concepts, rather than a way of life. And

there is no necessary connection between skill at such manipulation of concepts and the practice

of virtue. Indeed, without virtue there is a strong likelihood that those with a talent for

manipulating philosophical concepts will exploit it to justify their own wrongdoing.

Furthermore, this emphasis on the practice of philosophical ethics backs Gadamer's claim

that Aristotle, "placed the conditionedness of human life at the center and made it concretizing

the universal, by applying it to the given situation, as the central task of philosophical ethics and

moral conduct alike." [70] It is not our primary task to determine what is always and everywhere

right, but to determine what is right and wrong here and now. Gadamer commented that the

"limitations that necessarily underlie our insight into what is morally right do not have to lead to

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[69] Ibid, 287-288.
[70] Ibid, 288.

that corrupt mixture of motives that Kant exposed."[71] That we are necessarily interested parties in the situations in which we have to act cannot be avoided. The inescapable finitude and contingency of human existence do not necessarily obscure moral truth, but rather provide the potential for it to be known and for moral universality to be instantiated.

And so, according to Gadamer, "even the conditionedness of our insight…represents in general no deficiency and no obstacle… Everyone is undoubtedly dependent on the ideas of their time and world" but this does not, Gadamer averred, legitimate moral skepticism. There are also constants (present, but never fully defined) within the flux of conditions. And so he argued that "Family, society, and state determine the essential constitution of the human being, in that its ethos replenishes itself with varying contents." Although the future forms of humanity and communal life are always somewhat uncertain, "this does not mean that everything is possible, that everything is directed by arbitrariness and caprice and can be determined by the powers that be. There are things that are naturally right. Against the conditionedness of all moral knowledge by moral and political being, Aristotle counterbalances the conviction he shares with Plato that the system of being is powerful enough to set limits to all human confusion."[72] While there can be no comprehensive or final formulation of the nature of human life, nor a conceptual system that fully encompasses it, this does not mean that there are no identifiable constants within it. Moral truth does indeed partake of universality, but while articulations of this universality of moral truth are possible, they will need renewal, refinement and rediscovery within historical existence.

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[71] Ibid, 288.
[72] Ibid, 289.

Thus, the finitude that seems to some to preclude true moral knowledge in fact enables it by setting limits within which man's own limited capacities may fruitfully operate, instead of demanding of him that he become like God, for if knowing the truth meant seeing things as God does, then no human could know the truth. And so Gadamer saw in his interpretation of Aristotle an approach that is capable of avoiding the pitfalls of systems of philosophical ethics that try to evade or overcome the contingency and finitude of human life and knowledge. He explained that "Aristotle's ethics is able to take cognizance of the conditionedness of all human being without having to deny its own conditionedness." Far from putting moral truth into irretrievable skepticism, this recognition strengthens it, for as Gadamer observed, a "philosophical ethics that is not only aware of its own questionableness in this way, but takes that very questionableness as one of its essential contents, seems to me the only kind that is adequate to the unconditionality of the moral."[73] The unconditional demands that moral truth places upon us are best understood as arising from the historicity of our being. Moral clarity arises from the realization that *this* is the right thing to do, *here and now*, in *this* particular circumstance. Extrapolating an ostensibly universal set of moral principles from these instantiations of moral truth may be very useful, even indispensable, for philosophic inquiry and moral instruction, but it can also become a calcified obstruction to genuine moral insight. As an example, consider the casuistry of many natural law theorists, from late scholastics to the new natural lawyers, which tends to become obfuscating rather than illuminating.

Philosophical ethics in this Aristotelian mode are always tied back to practice and therefore to *phronesis*. As Gadamer admitted, "you could quite easily object that my whole

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[73] Ibid, 289.

philosophy is nothing but *phronesis*—but, of course, it *is* nothing but *phronesis*."[74] The practical

wisdom of the mature man or woman who knows what to do in the here and now is paramount.

The fullest expression of moral truth is found not in artfully-crafted propositions of universal

validity but in the right deed at the right time at the right place in the right circumstances. And

these choices, which are more than rote implementation of a predetermined moral rule or ideal,

are then incorporated into one's character and identity and give guidance and consistency in

future decisions, as well as a sense, incomplete but not unreal, of the true universality of the

moral. As Gadamer put it in the afterword to *Truth and Method*,

> Anyone who finds himself in a situation of genuine choice needs a standard of
> excellence to guide reflection in coming to a decision. The result is always
> something more than only correct subordination to the guiding standard. What
> one considers the right decision determines the standard itself, and not only in
> such a way that it becomes the precedent for future decisions but also that the
> commitment to particular goals of action is thereby developed. Here consistency
> ultimately means continuity, which alone gives content to one's identity with
> oneself.[75]

This consistency is more than a matter of mere logical coherence within a set of

propositions, but is one's identity and character. As Gadamer noted, the "grasp and moral

control of the concrete situation require subsuming what is given under the universal—that is,

the goal that one is pursuing so that the right thing may result. Hence it presupposes a direction

of the will-i.e., moral being (*hexis*)."[76] Thus, Gadamer noted that *phronesis* is more than general

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[74] Hans-Georg Gadamer, *A Century of Philosophy: A Conversation with Riccardo Dottori*, trans. Rod Coltman and Sigrid Koepke, (New York: Continuum, 2006), 54. Hereafter cited as *A Century of Philosophy*.
[75] Gadamer, *Truth and Method*, 572.
[76] Ibid, 19-20.

cleverness, but involves the whole character and the virtues, as well as a proper orientation of the will. Consistency with oneself is also a point that MacIntyre has addressed, showing how genealogical approaches struggle with the problem of maintaining an identity and narrative of self. And, of course, we can go back to Plato's masterful portrayal of how the wicked are at war with themselves and thereby made wretched.

However, seeking coherence and peace with oneself through dedication to a set of propositions can be dangerous, particularly if it manifests a desire for control through one's manipulation of concepts. As Gadamer's biographer Jean Grondin explains, for Gadamer "taking part in meaning is more fundamental than being in control. Thus Gadamer takes a highly critical position concerning the dominance of the 'proposition' in Western logic. The pure proposition designates something abstract in that it is decoupled from the speech situation, from person-to-person interaction, from need and necessity."[77] Propositions are only bearers of truth insofar as they are spoken by and to particular individuals in particular circumstances who are able to understand, interpret and apply them in moments of moral apprehension, decision and action. They have their meaning and truth because they are embedded in a particular context that gives them significance and content.

Gadamer's emphasis on the realization of the moral within the historicity of human being does not lead to relativism, and he steadily denied that he was a relativist. He affirmed the existence of real goodness, truth and beauty, though denying that they can be permanently, completely and accurately described and defined by a set of philosophical propositions. In moments of insight and action, we realize the good, the true and the beautiful far more

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[77] Grondin, *Hans-Georg Gadamer: A Biography*, 289.

completely than in any articulation of a philosophical or ethical system, but moral inquiry and investigation still strives for a fuller insight that will then be realized in the next moment of moral decision and action. As he put it, "from the standpoint of the philosophy of finitude, it's possible for us to acquire historical consciousness again without falling prey to historical relativism, exactly to the extent that we recognize the limits of all knowledge, which is bounded precisely by its own historical situation."[78] The foundation of moral truth is not intellectual but experiential, and therefore particular and historical. Gadamer's account of this is superior to that of much of the natural law tradition, which has too often relied upon metaphysical presuppositions and proofs as if they could be dispositive, or upon close reasoning from propositions expressing purportedly self-evident first principles. However, the natural law tradition nonetheless contains a good deal of hard-won moral insight that need not be discounted. Our task is not that of providing or apprehending universal and timeless moral formulations, but first to do what is right here and now, and second, to engage in dialogue with others about what we find to be right. It is to think, act, and speak within our world.

And our world is never ours alone, and so Gadamer reminded us that there is also the possibility of encountering not only our own historical finitude, but also the others with whom we exist. He explained that "the genuine meaning of our finitude or our 'thrownness' consists in the fact that we become aware, not only of our being historically conditioned, but especially of our being conditioned by the other….it becomes clear to us how difficult it is to do justice to the demands of the other or even simply to become aware of them. The only way not to succumb to

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[78] Gadamer, *A Century of Philosophy*, 29.

our finitude is to open ourselves to the other, to listen to the 'thou' who stands before us."[79] This does not provide us with an infinite, absolute perspective, nor lift us outside of history and contingency, but it does keep our finitude from being imprisoning.

Dialogue, Ethics and Rhetoric

Reflecting upon this relation with those with whom we share existence, toward the end of his long life Gadamer showed an increased appreciation for the role of rhetoric as a counterpart to hermeneutics. Hermeneutics seeks understanding of the other; rhetoric, as Gadamer came to understand it, seeks to make oneself understood by the other. Since moral truths cannot be absolutely proven as if they were mathematical postulates, rhetoric has a vital role to play in moral investigation and instruction.

In a series of conversations with Riccardo Dottori, Gadamer complained that in contrast to this view, rhetoric has come to be seen as, "nothing but the will to power." What needs to be recaptured, he argued, is the realization that "whenever anyone sets out to persuade, he himself also believes in what he is trying to persuade the other person of. Without this, then, rhetoric is empty rhetoric or, as we say, 'hollow rhetoric.'"[80] However, this "hollow rhetoric," which is cynical, manipulative and dishonest, must be differentiated from the honest rhetoric that seeks to persuade the other of what one genuinely believes, or to present a problem for investigation. Of course, such rhetoric may be unconsciously self-serving and distorted in various ways, but there is the possibility that these flaws will be corrected when discovered, in contrast to a rhetoric that deliberately obscures the truth.

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[79] Ibid, 29.
[80] Ibid, 65.

Rhetoric and persuasion, if undertaken in good faith, presume difference, but also that

there is truth to be found in dialogue. As Gadamer explained, entering a dialogue assumes that

there is a difference of views, but the "desire to persuade someone is not a renunciation of the

truth as such. Rather, if I hold something to be true, then I try to persuade the other of it—but

the presupposition for this is that I do hold something to be true. The Sophist who completely

denies this loses precisely that basis that is the real basis of dialogue." When he was then asked

whether entering dialogue means to renounce truth claims, Gadamer answered, "No, not at all.

On the contrary, it presupposes this truth claim, be it my truth claim or his. For if I also admit

that the other can persuade me, what is it that he is supposed to be persuading me of if not what

is true?"[81] The rhetoric involved in mutual attempts at persuasion in dialogue is not the "hollow

rhetoric" of the will to power, or of the cynical Sophist who seeks to manipulate for personal

gain. Rather, it is a necessary part of moral inquiry and dialogue.

This is so because much of what is morally true is unprovable. In his study of the

Greeks, Gadamer concluded that they believed that only mathematical truths were absolutely

provable. Everything else, even physics, was the domain of rhetoric.[82] One cannot prove with

mathematical rigor what the right course of action is, or what is good and what is bad. One can

only seek to persuade the other of the truth of such matters (in which case one must also remain

open to persuasion) or else resort to coercion. As Gadamer understood it, rather than rhetoric

being about persuasion for untruth, "it's a question only of getting someone to understand our

point of view or our opinion and communicating it to that person—just without being able to

prove it. But to achieve this we need to put ourselves in the place of the other, and that means

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[81] Ibid, 49.
[82] Ibid, 67.

being genuinely considerate of the other without desiring to wage war on him."[83] Honest

rhetoric seeks to persuade, not to dominate or coerce, and in order to persuade the other we must

also seek to understand the other. Gadamer believed that rhetoric is

> really a matter of being able to speak to others, and this means that we must
> appeal to their emotions and their passions…not in order to deceive others, or to
> profit by it personally, but instead to allow what is true to appear and to reveal
> what we ourselves are persuaded by and what, otherwise (through the usual
> methods of proof), could not appear as such. This is why Aristotle calls the
> domain of rhetoric *eikos*—for it is a question of a truth that could appear only in
> our speech…There is no absolute guarantee that it would be true, not guarantee of
> objective proof. But this is what we have before us in the everyday situation of
> communication, where we do have to defend our *raisons*, our good reasons—not
> in the sense that we want to foist ourselves on the other, but only in the sense that
> we should make clear to the other what we believe to be right and what we can
> show our good reasons for, reasons that are just not as evident to the other
> person.[84]

Moral truths, for instance, cannot be objectively demonstrated so as to compel the assent

of any rational person, but this does not mean either that they are unreal or that there can be no

rational persuasion regarding them. Rather, moral persuasion (as distinct from moral instruction,

wherein the hearer defers to the teaching authority) takes place in the domain of rhetoric rather

than that of objective proof. And so, complementing his previous rehabilitation of prejudice,

Gadamer undertook a rehabilitation of rhetoric. It is in dialogue that the attempt to persuade can

allow the truth to appear. Consequently, Gadamer argued that with regard to ethics, "Rhetoric is

the starting point. The whole of ethics is rhetoric, and the idea that *phronesis* is rhetoric already

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[83] Ibid, 56.
[84] Ibid, 51-52.

occurs in Aristotle. *Phronesis* cannot be gauged with a scientific concept like mathematics; it's something quite different—it's rhetoric."[85] This may seem counter-intuitive to those who are accustomed to thinking of rhetoric in general in terms of the "hollow rhetoric" Gadamer condemned, which is the sheer will to power that persuades the other not of what one holds to be true, but of what is to one's advantage.

However, because of the more positive connotation Gadamer gave to rhetoric, the identification of rhetoric with *phronesis* makes more sense, though it may still seem overstated. Rhetoric in dialogue devoted to truth (and thus open to being persuaded as well as to persuading) does not seek to dominate the other, but to share a moment of truth that cannot be proven in the fashion of mathematics, but which is nonetheless truth. Thus, honest rhetoric, by its very nature, is also open to persuasion as it seeks to persuade. Jean Grondin summed it up well, writing of Gadamer that "the soul of hermeneutics, he always emphasized in his last years, consists in the possibility that the other might be right. Philosophy begins and ends in the Socratic admission of one's own ignorance."[86] Rhetoric in this spirit becomes part of dialogue, as one seeks to understand one's interlocutor as well as to persuade.

What place does rhetoric leave then for ethics and the I-and-thou of action and life as well as dialogue? Gadamer claimed that "the place for this relationship is, in fact, *phronesis*— wisdom or reasonableness. *Phronesis*, or reasonableness, is nothing other than the conscious side of action, practical knowing."[87] Moral deliberation is rightly oriented toward action and

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[85] Ibid, 53.
[86] Grondin, *Hans-Georg Gadamer: A Biography*, 317.
[87] Gadamer, *A Century of Philosophy*, 54.

practice, and must therefore take into account the other, both as encountered in dialogue and in deed. And this then ties back to rhetoric, for Gadamer explained that Aristotle had

> a much broader conception of rhetoric, one that coincides with the entire breadth
> of practical knowledge, that is, with *phronesis*. This is also why ethics belongs in
> there. And I see a development of rhetoric into ethics insofar as the concepts that
> constitute the foundations of rhetoric are worked out further in the *Ethics*—
> namely, genuine communication through speech, conversation, sympathetic
> insight into the other, consensus, and, finally, respect for the other.[88]

In such situations, truth may be revealed suddenly from concealment. This truth may have been possessed or apprehended by none of the partners in dialogue before it began, but it nonetheless makes an appearance in the shared quest for truth. Gadamer offered this illustration of the moment of insight: "when we engage in a dialogue, what I think or what the other thinks is completely relative to that moment when, all of a sudden, a spark suspends a misunderstanding and makes possible a clear acceptance of what becomes visible in that instant."[89] In such moments, the truth shines forth for those who are open to it, and may illuminate a dialogue in which neither partner entered with the truth of the matter.

Thus, honest rhetoric always remains open to an illumination of truth beyond that which the speaker understood when beginning. As Gadamer wrote in the afterword to *Truth and Method*, hermeneutics and rhetoric share "the realm of arguments that are convincing (which is not the same as logically compelling). It is the realm of practice and humanity in general…The arts of rhetoric and argumentation (and their silent analogue, thoughtful deliberation with oneself) are at home here." And because it is part of this human realm, appeals to feelings or

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[88] Ibid, 58.
[89] Ibid, 46.

emotion are not out of place nor necessarily unreasonable in rhetoric. Gadamer thought it,

"frighteningly unreal when people like Habermas ascribe to rhetoric a compulsory quality that

one must reject in favor of unconstrained, rational dialogue." Human beings are not calculating

machines governed by a strict set of logical rules, nor do we learn or know in such a way. And

so, Gadamer observed that "only a narrow view of rhetoric sees it as mere technique or even a

mere instrument for social manipulation. It is in truth an essential aspect of all reasonable

behavior."[90] Our decision-making, our reasoning, our apprehension of truth—all of these

involve much more than simple (or even complex) logical deduction. The character of Callicles

illustrates the limits of logic and rationality in moral dialogue—one who is entirely unwilling to

be persuaded cannot be compelled by reason. And thus, rhetoric has a role to play as the

counterpart to hermeneutics, for both the attempt to persuade and the attempt to understand and

interpret are needed in the search for truth.

Reconsidering the Natural Law

Gadamer's discussion of moral truth was often incomplete or preliminary compared to

the richness of his development of hermeneutics.[91] Nonetheless, it offers insights that the natural

law tradition would benefit from incorporating. In particular, Gadamer's emphasis on moral

truth as apprehended within history, and especially through dialogue, provides a valuable

corrective to those natural law theories that have emphasized reasoning from universal, timeless

truths. In particular, his work may be very useful in confronting difficulties faced by natural law

theories with regard to significant and deep-rooted moral disagreement, especially between

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[90] Gadamer, *Truth and Method*, 571.

[91] Significant areas in need of development include: resolving the relationship between *phronesis* as rhetoric and as knowledge directing practical action; a fuller conception of the will and the imagination and their connection to moral knowledge; and the nature of moral universality understood within the finite horizon of history.

cultures. The potential for Gadamer's work to be used in addressing such disagreements has

been noted by several commentators. For example, Ulrich Arnswald wrote that out of all of

Gadamer's many philosophical achievements, "his single most important insight may turn out to

be a conceptual scheme that allows us to overcome cultural conflicts as well as clashes of

different forms of life."[92] Those who pay heed to Gadamer will not simply abandon their moral

views, nor dismiss them as merely their own idiosyncratic perspective, bequeathed to them by

the vagaries of contingency. But neither will they insist that their view is the Truth, timeless,

universal and equally accessible to all rational persons. Instead, they will enter into dialogue, as

much as is possible (though there will always be some who cannot be reasoned with and must

simply be resisted when necessary), and seek to persuade while at the same time opening

themselves to the possibility of persuasion by seeking to understand.

Charles Taylor too has commented on the value of Gadamer's work for engagement

between different moral and intellectual traditions. He notes that when it comes to

understanding other cultures and times the possibility of relativism seems ever present, and that

the Western idea of objectivity seems "hard to combine with that of fundamental conceptual

differences between cultures." However, Taylor argues that Western social scientists do not give

enough consideration to the possibility that their "whole model of science is wrong and

inappropriate. Here Gadamer has made a tremendous contribution…He has in fact proposed a

new and different model, which is much more fruitful, and shows promise of carrying us beyond

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[92] Ulrich Arnswald, "On the Certainty of Uncertainty: Language Games and Forms of Life in Gadamer and Wittgenstein" in *Gadamer's Century*, ed. Jeff Malpas, Ulrich Arnswald, Jens Kertscher, (Cambridge, MA: MIT Press, 2002), 35.

the dilemma of ethnocentrism and relativism."[93] The last is of particular importance in

persuading natural law adherents to consider the merits of Gadamer's project, for they often, like

Finnis, consider relativism to be a great enemy. But Taylor reassures his readers that "Gadamer

is anything but a 'relativist' in the usual sense of today's polemics,"[94] and Gadamer himself

resolutely denied that he was a relativist.

However, Gadamer was not a natural law thinker and did not present a theory of the

natural law. Furthermore, a theory of the natural law cannot easily be derived from his thought,

in part because he was critical of the natural law tradition beyond Aristotle. Nor does he provide

an answer to all the problems that the natural law tradition must grapple with. Nonetheless, his

insights regarding the nature of truth as it is accessible to humans within their finite, historical

existence may prove very useful in helping natural law theorists address problems that have

bedeviled them. Among the fundamental difficulties that have beset some ambitious natural law

approaches is that of providing universal, timeless moral principles that are rationally compelling

to all reasonable persons of goodwill. In these endeavors, many natural law theorists, whether

neo-Thomists or new natural lawyers, have seemingly failed.

From a perspective informed by Gadamer, this is to be expected because such a goal is

chimerical. Such natural law theorists have set themselves up to fail because they have

misunderstood what truth is for humans within their historical, finite existence. This mistake

extends to the nature of moral truth, where, relying on ostensibly self-evident first principles,

they have futilely attempted to demonstrate in a manner akin to that of mathematics and the

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[93] Charles Taylor, "Understanding the Other: A Gademerian View on Conceptual Schemes" in *Gadamer's Century*, ed. Jeff Malpas, Ulrich Arnswald, Jens Kertscher, (Cambridge, MA: MIT Press, 2002), 279.

[94] Charles Taylor, "Understanding the Other: A Gademerian View on Conceptual Schemes" in *Gadamer's Century*, ed. Jeff Malpas, Ulrich Arnswald, Jens Kertscher, (Cambridge, MA: MIT Press, 2002), 283.

modern natural sciences. If Gadamer is correct, then a successful natural law theory cannot be understood as a set of universal, specific moral propositions, nor as a means for deriving such from first principles rationally accessible to all. Thus, there is a need for natural law theory to be developed in ways that give appropriate attention to the contingency and finitude of human existence and the conditional natural of all moral propositions. Such a self-understanding of the natural law may, as Jean Porter has advocated, consider itself more as an explanation for moral reasoning and conduct than as a code of determinate rules. It will consequently consider theory to be closely tied to practice, and the moral reasoning of ordinary people to be different only in degree, not in kind, from that of moral philosophers. Consequently, practical reason will need to be understood differently than natural law theorists have been wont to think of it. It is not mere logical deduction from self-evident first principles or deliberation about the means to an end. Thus, it will need either to be understood more expansively, or else understood as acting in concert with other faculties of the human mind and character.

Such a historically-conscious approach to the natural law will hold out the possibility of persuasion, but only by putting itself at risk, for it must be willing to consider the theoretical explanations of other traditions and their reasoning on matters of practical moral disagreement. A fruitful encounter between two traditions proceeds through dialogue, in which each opens itself not only to the critique of the other, but also to the solutions the other may proffer to difficulties it has encountered. As this dialogue and inquiry proceed, they will be guarded by and bear testament to the content of the natural law, as MacIntyre observes in his exploration of the requirements of shared moral inquiry. We can only engage in inquiry with each other about

what is good if we have already begun to be good: respecting the lives, property, integrity and so forth of those with whom we are engaged in moral inquiry and dialogue.

Observing the convergence between Gadamer and MacIntyre on the openness and lack of dogmatism necessary to any philosophic enquiry, Georgia Warnke notes that they both define rationality "as a willingness to admit the existence of better options. The awareness that one's knowledge is always open to refutation or modification from the vantage point of another perspective is not a basis for suspending confidence in the idea of reason but rather represents the very possibility of rational progress."[95] If this is the case, then the natural law is not, and never can be, a final set of formulations or a fixed set of principles that can be articulated. Rather, it is better described, as Porter argued in her exploration of the scholastics, as the human capacity for moral insight and apprehension in the historical moment.

This is not to say that the natural law is without content, only that all investigations and formulations of this content, even the best, are contingent and subject to revision. A historically-conscious approach to the natural law would allow for a variety of natural law methods, without presuming for any of them the capability to reach final and objective truth expressed in dogmatic formulations. For instance, the new natural law method, with its consideration of basic human goods, may be very useful as a means of investigating, formulating and persuading others about moral truths—provided that it does not insist upon its methods and conclusions being final and dispositive. Alternatively (or additionally) ontological approaches to the natural law would not be out of bounds, if they understood themselves to be one means among many of moral inquiry, discussion and instruction. There is no final and definitive way of arriving at moral truth, no

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[95] Warnke, *Gadamer: Hermeneutics, Tradition and Reason*, 173.

foundation that is universally accessible and demonstrable; nor is there an universal standard of self-evident rationality that can be appealed to.

This realization opens the natural law tradition to understand itself as part of the search for, and expression of, truth within man's historical and finite existence. Therefore, it will constantly be seeking new partners in dialogue, partners who are encountered in an expanding horizon. As Macintyre has put it, "self-questioning becomes an inescapable feature of our reflective lives when we commit ourselves to philosophical dialogue with others…dialogue returns us to our condition as reflective questioning and self-questioning animals, rather than as those helplessly in the grip of their own particular beliefs."[96] Such dialogue, he notes, exposes inadequate self-examination of one's beliefs and forces one to consider alternative perspectives. Indeed, it is an essential characteristic of human beings, who are "moral and metaphysical questioners and self-questioners, beings inescapably engaged in practical enquiry and often compelled into theoretical enquiry too."[97] Our being is dialogic. We are always in conversation, even when alone, for even our thoughts are expressed in a language shared with others, indeed, imparted to us by them. Dasein is a conversation. Thus, there is no single dispositive natural law method or set of principles, only the commitment to the dialogue of the natural law. The natural law cannot be definitively defined, but it is nonetheless always already present as the ground of moral discourse and as that of moral instruction, which we can neither escape nor do without.

Such discourse is capable of encompassing all the varieties of natural law that have been proposed: the ontological, the teleological, that of basic goods, that of intrinsic evils, that of

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[96] MacIntyre, *The Tasks of Philosophy*, 140.
[97] Ibid, 192.

structures of consciousness. All sources of moral knowledge and insight can be can be given

their due within the practice of honest rhetoric and hermeneutics—persuasion and

interpretation—seeking the illuminating moment of understanding. None is definitive, for that

would be to appropriate the perspective of God, and assume the adequacy of an infinite mind.

Our adequacy can only serve for the moment of illumination, after which we are again thrust

back into the world and its moral conversation. There is a truth that is beyond the whims of

human will or the contingencies of historical existence, but it is best known not through

ostensibly universal formulations or propositions, but personally, in the moment of moral insight.

Such an understanding opens possibilities for shared dialogue between traditions and cultures. It

is neither dogmatic nor relativist; one who adopts it will seek to persuade while remaining open

to the possibility of a superior understanding that may be revealed in the course of dialogue.

Edmund Burke: Imagination and the Natural Law

"HUMANS NEED FANTASY TO BE HUMAN. TO BE THE PLACE WHERE THE FALLING ANGEL MEETS THE

RISING APE." [1]

-Death

The life and thought of Edmund Burke illustrate how the preceding theoretical reflections

on the natural law may be instantiated in practice. Born in Ireland, Burke became one of the

preeminent figures in British political history, despite spending nearly his entire career in

opposition. As a leading figure among the Rockingham Whigs, Burke was crucial in the

development of modern party politics, and he remains one of the greatest rhetoricians in British

history. His gifts were such that Conor Cruise O'Brien reports that "Burke was the only man of

whom Samuel Johnson stood in awe."[2] While he is best known for his unwavering hostility to

the French Revolution, he engaged many critical subjects during his years in politics, including

the American War for Independence (he urged conciliation with the colonists), and British

misrule in India, which he addressed in part by impeaching the Governor-General of India,

Warren Hastings, though he failed to secure a conviction. The demands of politics kept Burke

from producing any mature dedicated theoretical works (and of his youthful works, the best is on

aesthetics, not political philosophy), yet his writings and speeches continue to be studied and

considered by many as outstripping the specifically philosophical works of his contemporaries in

wisdom and insight.

That Burke was to some extent a natural law thinker is now an unexceptional statement.

But while many scholars acknowledge a natural law component to Burke's thought, little

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[1] Terry Pratchett, *Hogfather*, (New York: Harper Prism, 1996), 276.
[2] Conor Cruise O'Brien, *Edmund Burke*, (London: Vintage, 1997), 21.

attention has been given to how he may have reimagined the natural law tradition. Instead, the focus is usually on his fidelity to or deviations from the natural law approaches of other, more theoretically prominent, thinkers. However, in both word and deed, Burke provided a corrective to the excessive rationalism often found within the natural law tradition. His appeals to the natural law never envisioned it as an ideal moral code or set of principles, accessible through a universal reason. Rather, for Burke the natural law was revealed in the concrete manifestations of moral truth and action. In particular, Burke exemplifies Gadamer's case for the role of rhetoric in ethics and moral knowledge, both as a master of moral rhetoric and because he denied that there was any singular set of standards or principles that were self-evident and rationally accessible to all. Additionally he provides a unique emphasis on the role of imagination in apprehending the natural law, a role that is insufficiently explored by both MacIntyre and Gadamer.

Although Burke remains a focus of extensive academic research and popular study, he has been little noted by the other thinkers I have examined. The new natural lawyers have effectively ignored him, as has (unsurprisingly, given her scholastics focus) Jean Porter. MacIntyre has been harshly critical of Burke over the years, but he has never essayed an extensive treatment of him. He has acknowledged that many readers find his animosity toward Burke puzzling, but has refused to change his opinion, despite various attempts to persuade him.[3] MacIntyre's primary accusation seems to be that Burke traded his Irish patrimony for a mess of English peerage— precisely the opposite conclusion from that reached by notable Burke biographer Connor Cruise O'Brien, who presents Burke as always rooted in Ireland. Finally,

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[3] For a good rebuttal of MacIntyre's view of Burke, see Mark T. Mitchell, "Michael Polanyi, Alasdair MacIntyre, and the Role of Tradition" in *Humanitas*, Volume XIX, Nos. 1 and 2, 2006, pages 97-125.

Gadamer paid Burke's critique of the Enlightenment only perfunctory attention and did not explicitly draw upon Burke or explore his thought.[4]

Many of the themes of Burke's work are echoed by Gadamer and, despite his protestations to the contrary, MacIntyre. Burke famously defended tradition and custom as better moral guides than abstract rationalism. He saw the natural law as manifest in history, comprehensible to man through the exercise of practical reason and the moral imagination, which he understood as communicative and communally informed. Burke's insistence upon the realization of the natural law in historical existence presumes that man cannot leap outside of history to grasp a final formulation of the natural law. Instead we must continually find the moral course within concrete life, guided by the moral wisdom gleaned from the interplay of the experiences of human existence, none of which can be enshrined as solely determinate.

Discovering Burke as a Natural Law Thinker

The identification of Burke with the natural law is, historically speaking, relatively recent. Burke's opposition to the natural rights theories of the French Revolution was long used to classify him as a utilitarian who was hostile to the natural law. His antipathy, expressed emphatically in his famous *Reflections on the Revolution in France*, to the rationalistic theories and metaphysic rights of the revolutionaries and their intellectual apologists was seen as incompatible with belief in the natural law. Only in the mid-twentieth century was there significant scholarly recognition of Burke's reliance on the natural law tradition. Born in America, this recognition was part of a broader revival of both natural law theory and conservative political thought (neither of which was always well-received in academic circles).

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[4] Gadamer, *Truth and Method*, 275.

In particular, Russell Kirk's *The Conservative Mind*, Peter Stanlis' *Edmund Burke and the Natural Law* and Francis Canavan's *The Political Reason of Edmund Burke* shattered the portrait of Burke as a rhetorically-flamboyant utilitarian and demonstrated that his thought was grounded by belief in the divinely instituted order of the natural law. While these works had their flaws and detractors, they nonetheless successfully established the respectability of viewing Burke as part of the natural law tradition.[5]

In the first of these works, *The Conservative Mind* (1953), Russell Kirk presented Burke as a follower of the natural law tradition, declaring that Burke "enunciates the doctrine of the *jus naturale*, the law of the universe, the creation of the Divine mind, of which the laws of man are only imperfect manifestations."[6] In this interpretation of Burke, human laws and institutions are meant to reflect the order and goodness of God and His eternal law, which man defies at his peril. Consequently, Kirk found that "Burke declared that men do not make laws, they merely ratify or distort the laws of God."[7] Contrary to what many prior scholars of Burke had thought, Kirk argued that for Burke the standard by which human laws are to be judged is not their apparent utility, but their conformity with the natural law. Furthermore, Kirk explained that Burke's attachment to religion was not rooted in its social utility. Rather, he argued that "Burke does not approve religion because it is a bulwark of order, instead he says that mundane order is derived from, and remains a part of, Divine order."[8] The portrait that emerges of Burke in Kirk's study is not that of a conservative utilitarian but of a natural law thinker, albeit one whose

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[5] Some conservatives were included among the detractors. Richard Weaver, for instance, considered Burke neither a conservative nor a natural law thinker. See Richard Weaver, *The Ethics of Rhetoric*. South Bend, IN: Regnery/Gateway, 1953.

[6] Russell Kirk, *The Conservative Mind: From Burke to Santayana*, (Chicago: Regnery, 1953), 32. Hereafter cited as *The Conservative Mind*.

[7] Ibid, 43.

[8] Ibid, 28.

greatest influence was the classical tradition of Cicero rather than the scholastic tradition of

Aquinas. The materials upon which Kirk drew in his study of Burke were not newly discovered,

but by taking Burke's statements about religion and the natural law seriously, instead of

dismissing them as a rhetorical veneer covering his utilitarian convictions, Kirk was able to

represent Burke in a new light.

However insightful Kirk's explication of Burke may have been, his study of Burke was

but one chapter of many in *The Conservative Mind*, which left plenty of material for Peter

Stanlis' *Edmund Burke and the Natural Law*. That volume paid special attention to the natural

law as expressed in Burke's best-known work, *Reflections on the Revolution in France*, which

had often been read as evidence of his utilitarianism. For Stanlis, *Reflections on the Revolution*

in France "was the center of perhaps the greatest debate ever carried on in English over first

principles in politics, and a careful reading of the *Reflections* will reveal that Burke took his

stand on the ground of Aristotle, Cicero, St. Thomas Aquinas, and the traditional conception of

the Natural Law."[9] This formulation illustrates a commonality among the mid-century efforts to

locate Burke within the natural law tradition, which was identifying him as closely as possible

with what was then taken to be natural law orthodoxy. While this approach successfully

spotlighted a part of Burke's thought that had been overlooked, it was prone to overlooking

Burke's unique qualities and contributions to the natural law tradition, which were often

downplayed in order to establish his natural law credentials.

There is certainly evidence to back the claim that Burke indeed stood in the natural law

tradition. In the *Reflections*, Burke wrote of the people's exercise of power, "which to be

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[9] Peter J. Stanlis, *Edmund Burke and the Natural Law*, (New Brunswick: Transaction, 2003), 71. Hereafter cited as *Edmund Burke and the Natural Law*.

legitimate must be according to the eternal, immutable law, in which will and reason are the same."[10] He also turned social contract theory upon its head by declaring that society is indeed a contract, but not of the sort that social contract theorists thought, no different in kind than that for coffee or calico. Rather, he proclaimed that it "is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those are living, those who are dead, and those who are to be born."[11] Burke explicitly connected this social development, which binds people together in partnership through time, with the divine mind and will. He concluded that these intergenerational contracts of human societies, by which a nation or a people are bound together in the development and pursuit of a common good, are themselves bound to the law of God,

> Each contract of each particular state is but a clause in the great primeval contract
> of eternal society, linking the lower with the higher natures, connecting the visible
> and invisible world, according to a fixed compact sanctioned by the inviolable
> oath which holds all physical and all moral natures, each in their appointed place.
> This law is not subject to the will of those, who by an obligation above them, and
> infinitely superior, are bound to submit their will to that law.[12]

Burke's inversion of the standard social contract theories of the time leads, in the end, to the natural law. Far from being a voluntary agreement among autonomous individuals, the social contract is actually based upon the subordination of man and his will to the divine will of God, which is united with His perfect reason. The necessity of subordinating human will to law is a

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[10] Burke, Edmund. *Reflections on the Revolution in France* in *The Harvard Classics, V. 24: Burke*, (New York: P.F. Collier and Son, 1909), 242. Hereafter cited as *Reflections*.
[11] Burke, *Reflections*, 244-245.
[12] Ibid, 245.

constant theme in Burke, and one where he commonly has recourse to the natural law. Thus,

even in the *Reflections*, which those labeling Burke a utilitarian most often cited as their

evidence, the case for Burke's adherence to natural law theory is clear. Human law, according to

Burke, ought to be in accord with the natural law, which is not subject to human will, but instead

should shape human wills.

Francis Canavan came to a similar conclusion in his study of Burke's idea of political

reason, writing that, "Burke clearly took the postulates of his moral theory from a natural-law

doctrine,"[13] and that "Burke held the supremacy of the natural moral law over every human

authority."[14] Canavan, who (unsurprisingly for a Jesuit at the time) was particularly intent upon

illuminating the Thomistic elements of Burke's thought, did not discover any new sources in

reaching his conclusions. Rather, like the other mid-century natural law interpreters of Burke, he

considered Burke's apparently utilitarian statements in light of his declared belief in the natural

law rather than the reverse. The evidence of Burke's natural law beliefs was always there, but it

was ignored by those who presumed his utilitarianism.

Finally, though Leo Strauss was much more critical of Burke than Kirk, Stanlis or

Canavan were, his *Natural Right and History* also separated Burke from both modern

utilitarianism and modern natural rights theorists. Strauss' condemnation of most modern

philosophy in favor of classical philosophy made a partial exception for Burke, who, he argued,

attempted a last-minute "return to the premodern conception of natural right…Burke sided with

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[13] Francis Canavan, *The Political Reason of Edmund Burke*, (Durham, N.C.: Duke University Press, 1960), 17. Hereafter cited as *Political Reason*.
[14] Ibid, 85.

Cicero and with Suarez against Hobbes and against Rousseau."[15] To be sure, Strauss admitted,

the practically-minded Burke "did not hesitate to use the language of modern natural right

whenever that could assist him in persuading his modern audience…But he may be said to

integrate these notions into a classical or Thomistic framework."[16] This analysis is generally

correct, for Burke often differentiated between the popular use of these terms and his own use of

them, as illustrated by his expanded notion of society as a contract, or his image of "metaphysic

rights entering into common life," being bent and refracted "like rays of light which pierce into a

dense medium."[17] Burke's view of the rights of man or the social contract was more profound

and subtle than the often simplistic formulas of his age. And while he sometimes appropriated

the expressions of his time, he incorporated them within a more sophisticated philosophical

heritage.

The efforts of Kirk, Stanlis, Canavan and others made it difficult to deny that Burke was

influenced by the natural law tradition and often expressed himself in natural law terms. These

studies were not the final word on Burke, but after them it was difficult to ignore the natural law

elements present in Burke's thought or to subsume them under Burke's presumed utilitarianism.

However, there remains debate over the extent of this influence on Burke and his use of it.

Christopher Insole argues that calling anyone from Burke's era a "natural law thinker" does not

mean very much, because the "tendency of thinkers in this period to express normative or

pragmatic commitments in terms of what conforms to the 'laws of nature' is so pervasive that it

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[15] Leo Strauss, *Natural Right and History*, (Chicago: University of Chicago Press, 1971), 294-295. While Strauss' reading of Burke is significantly flawed, it is nonetheless much more sophisticated and nuanced than that of many of his present acolytes.
[16] Ibid, 296.
[17] Burke, *Reflections*, 209.

serves more to obscure profound differences than to illumine genuinely common commitments or intellectual genealogies."[18] This is undoubtedly true, with writers as diverse as Rousseau, Paine, and Burke all at times appealing to nature as normative. Insole concludes that "Burke is not a natural law thinker, if by that we mean one who places this category at the center of his though; rather, Burke draws – strategically and sparingly – upon the natural law tradition."[19] This comment goes too far, though understandably so. The natural law tradition is more important to understanding Burke's thought than Insole grants. However, it is often difficult, between the promiscuous use of natural law and natural rights theories by Burke's contemporaries and the attempts by some modern scholars to present Burke as an orthodox Thomistic (or neo-Thomist) natural law thinker, to appreciate the distinct contributions that Burke made within the natural law tradition. Burke was part of the classical natural law tradition, but he can also be seen as developing that heritage to address modern, and perhaps even postmodern, philosophical problems. An exploration of Burke's writings and speeches will provide both theoretical insight and a practical example of a natural law approach that is compatible with the historicity and finitude of human existence.

Burke and his Contemporaries

Distinguishing Burke's understanding of natural law from that dominant among his contemporaries helps illuminate the unique contributions Burke offered to the natural law tradition. It also explains why he was for so long considered an enemy of the natural law. With regard to the latter, Stanlis noted that since, "Buckle's *The History of Civilization in England*,

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[18] Christopher Insole, "Burke and the Natural Law" in *The Cambridge Companion to Edmund Burke*, edited by David Dwan and Christopher J. Insole, (Cambridge: Cambridge University Press, 2012), 117.
[19] Ibid, 123.

which appeared in 1857-1861, until the present it has been the almost universal conviction of utilitarian and positivist scholars that Burke had a strong contempt for the Natural Law and that the ultimate basis of his political philosophy was to be found in a conservative utilitarianism."[20] For these scholars, the natural law was identified with modern theories about the rights of man, the state of nature and social contract theory. Since Burke did not accept these philosophical views, especially as articulated by the advocates for the French Revolution, and instead appealed to history and tradition, he was assigned a place among the utilitarians.

Stanlis claimed that this misidentification arose because of a "failure to distinguish between the traditional interpretations of Natural Law and claims made under revolutionary 'natural rights.' This in turn led positivist scholars to neglect totally the Natural Law tradition in the political thought of Burke, who was well known as an avowed enemy of 'natural rights.'"[21] It was this careless conflation of the entire natural law tradition with modern natural rights theories that led to Burke being mislabeled for so long. Although various scholars have explored the elements of continuity between the medieval and scholastic natural law tradition and modern natural rights—Brian Tierney is a prominent example—there was nonetheless an undeniable and significant shift during the emergence of modern natural rights, one that has already been noted above in the discussion of Jean Porter's work. In particular, modern natural rights were presumed to be self-evident (or quickly derived from self-evident first principles) and emphasize the individual's claims much more strongly than older theories did. Stanlis critically described the change from classical and scholastic natural law to modern natural rights theories, writing that

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[20] Stanlis, *Edmund Burke and the Natural Law*, xxxiii.
[21] Ibid, 5.

the revolutionary Hobbist theory of 'natural rights' was centered in the private will or ego of each individual, and was not limited by the social duties and ethical norms of Natural Law. It remained for Locke and his eighteenth century disciples to complete the destruction of the classical and Scholastic Natural Law by converting it from a bulwark for liberty and justice as an inheritance of constitutional law, to a revolutionary doctrine of liberty and equality as an abstract, inherent, "natural rights."[22]

Burke did not reject the natural law as such, but the modern theories of natural rights that had developed into a distinct philosophical tradition separate from that of the classical and medieval natural law. It was scholars who carelessly failed to make this distinction (perhaps because, opposing both classical natural law and modern natural right, they did not see much point in such demarcations) who declared Burke a thoroughgoing foe of the natural law. And so they ignored the *Reflection's* repeated appeals to the normativity of nature, and the centrality of his appeals to the "Law of Nature" during the impeachment of Hastings. Unable to reconcile such concepts with Burke's emphasis on utility and apparent hostility toward metaphysics, they presumed them to be nothing but rhetorical window-dressing.

However, once the distinction between modern natural right and the older natural law tradition is recognized, Burke can be identified as an heir to the latter. In Insole's opinion, Burke's view of natural law was thoroughly in the classic vein that began with Aristotle, and was perhaps most closely tied to that of Cicero, whom Burke greatly admired. Insole argues that, "drawing on Cicero, Burke attaches himself to a conception of natural law as constituted by the teleological structure of a divinely framed universe, in conformity to which human beings need

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[22] Ibid, 19.

to orient themselves."[23] This conformity is not only a moral imperative, but also a practical one, for the natural law directs men to their good, which is achieved cooperatively with each other in society.

In the *Reflections* Burke links man's nature, given by God, and the institutions of civil society that enable that nature to fulfill its potential, writing that without "civil society man could not by any possibility arrive at the perfection of which his nature is capable, nor even make a remote and faint approach to it…He who gave our nature to be perfected by our virtue willed also the necessary means of its perfection. He willed, therefore, the state. He willed its connection with the source and original archetype of all perfection."[24] Thus, Burke declares that there is a connection between the natural law and that which is of efficacy or utility, insofar as adherence to the natural law enables human society and order, and all the excellence and happiness that can be attained therein. However, Burke never proposed that human goods (and evils) can be reduced to a common currency and tallied up, and the utility of the natural law cannot be reduced to the sort of simplistic calculations of good and bad attempted by the utilitarians Burke was misidentified with.

Far from separating civil society from man's nature and his rights, Burke followed the classical natural law tradition and held that civil society and government were the means of fulfilling and securing them. Insole argues that understanding Burke's reliance on classical views of natural law (especially Cicero) helps to "cut through some unhelpful dichotomies that have at times plagued the debates around Burke and natural law….Burke's interest in utility,

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[23]Christopher Insole, "Burke and the Natural Law" in *The Cambridge Companion to Edmund Burke*, edited by David Dwan and Christopher J. Insole, (Cambridge: Cambridge University Press, 2012), 121.
[24] Burke, *Reflections*, 246.

history, tradition, custom, or necessity…can be understood by an author such as Cicero as aspects of the natural law, and of its mediation in history."[25] By taking such subjects into consideration, Burke was not opposing the natural law tradition, but following in the footsteps of one of its great classical exponents. While Burke's view of the natural law (or natural rights) diverged from that of his contemporaries, this was because he was often more faithful to the classical natural law tradition than they were.

Burke was a foe of the natural rights theorists of his time, but he does not belong in the camp of their utilitarian critics. One important point of difference between Burke and the latter was that, as David Dwan notes, Burke believed that various goods are indeed incommensurable. "What makes political calculation difficult for Burke, is that there are plural values – or what he calls 'differences of good' – which are not reducible to a common currency, except that on the most abstract basis they are all deemed 'good.'"[26] Thus, while for Burke the natural law (or natural rights) cannot be reduced to a few simple, readily accessible precepts or self-evident first principles, neither can the greatest good be readily calculated by a common measure. On this last point, at least, Burke agrees with the new natural lawyers, who resist any such reduction of all human goods to one common, calculable currency. Regarding this subject, Dwan adds that natural law and utility need not be seen as opposed, for "Burke was arguably part of a long tradition in which both were compatible and even co-dependent ideas…Thus, from Burke's teleological perspective, human being were naturally oriented to pursue the good and the

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[25] Christopher Insole, "Burke and the Natural Law" in *The Cambridge Companion to Edmund Burke*, edited by David Dwan and Christopher J. Insole, (Cambridge: Cambridge University Press, 2012), 122.
[26] David Dwan, "Burke and Utility" in *The Cambridge Companion to Edmund Burke*, edited by David Dwan and Christopher J. Insole, (Cambridge: Cambridge University Press, 2012), 135.

happiness this yielded."[27] Such happiness, he concludes, is dependent upon nature, particularly

human nature. Thus, in Burke's view, the natural law directs us toward our good, and

contravening it will harm human goods. Burke rejected both the simplistic metaphysical

accounts of the rights of man and the arrogance of those who presumed to easily calculate

relative goods and evils.

Neither a simple utilitarianism nor a simple theory of natural rights represents Burke's

views. However, those who failed to recognize the distinctions between the classical natural law

tradition and the natural rights theories of the French Revolution and its apologists saw nothing

beyond a hollow rhetorical ploy in Burke's avowal that, "far am I from denying in theory, full as

far is my heart from withholding in practice, (if I were of power to give or to withhold,) the *real*

rights of men. In denying their false claims of right, I do not mean to injure those which are real,

and are such as their pretended rights would totally destroy. If civil society be made for the

advantage of man, all the advantages for which it is made become his right."[28] At most this was

taken as evidence of Burke's positivist approach to rights. Yet Burke certainly did not mean that

men possess no rights other than those that are legally enacted, as his efforts on behalf of the

peoples of India show. Rather, he denied that establishing natural rights could consist of rigidly

applying a few simple principles, based on the abstraction of an asocial state of nature, to the

complexities of human society. The real rights of man are dependent upon his social and

political nature and existence, rather than antithetical to it.

Burke's opposition to the theorists of the French Revolution was founded on the same

principles he had expressed to his constituents in Bristol fifteen years before, when he wrote that

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[27] Ibid, 138.
[28] Burke, *Reflections*, 207.

unlike "those propositions in geometry and metaphysics which admit no medium, but must be true or false in all their latitude, social and civil freedom, like all other things in common life, are variously mixed and modified, enjoyed in very different degrees, and shaped into an infinite diversity of forms, according to the temper and circumstances of every community."[29] The true rights of man, the real liberty he is entitled to, must be rooted in man's actual existence as a social and political being, rather than metaphysical speculation into an imagined state of nature. Claims of rights, or of wrongs, must be based upon man's real nature, which is social and historical, not the tales told by dreamy philosophers (tales whose morals often turn nightmarish when applied to reality).

And so Burke wondered, in response to the French Revolution, "how can any man claim, under the conventions of civil society, rights which do not so much as suppose its existence,—rights which are absolutely repugnant to it?...Men cannot enjoy the rights of an uncivil and of a civil state together." Whatever simple, metaphysically perfect rights may exist for man in a state of nature (which is actually a state of asocial isolation alien to man), they are ruinous when forced upon the civil society man actually exists in. Indeed, men may be said to have a natural right to government, for it "is a contrivance of human wisdom to provide for human wants. Men have a right that these wants should be provided for by this wisdom."[30] The rights of man in society are of good government and justice, suited to his actual existence and needs, not the abstractions derived from an imaginary "state of nature."

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[29]Edmund Burke, *Edmund Burke: Selected Writings and Speeches*, ed. Peter Stanlis, (Washington, D.C.: Regnery Gateway, 1997), 243. Hereafter cited as *Selected Writings and Speeches*.
[30] Burke, *Reflections*, 207-208.

And so, while Burke accepted a normative role for nature, his view of that role was very different from that of his contemporaries. Regardless of whether they opposed or favored it, they tended to understand the natural law to be a set of precepts or first principles, self-evident and accessible to all through reason. The desire to model the natural law on geometry, mathematics and mechanics was pervasive. With regard to this model of moral and philosophical reasoning, Insole observes that Burke was "on a clear collision course with early modern thinkers such as Hobbes, Grotius, and Pufendorf, who aspire to model natural law on geometry, deriving certain truths from self-evident axiomatic principles."[31] In Burke's view, this would be a dangerous simplification of the natural law, as it misunderstands the nature of moral truth, which cannot be realized by logical deduction from self-evident first principles.

This was in contrast to the thinkers of the Enlightenment who, as Stanlis put it, "believed in common that essential laws governing in both physical nature and in human affairs were few, simple, clear, and verifiable by discursive reason and science. Behind this common conviction was their faith in the unity and autonomy of abstract speculative reason as the supreme faculty in man for arriving at truth in all fields of knowledge."[32] Burke argued that nothing in government or society was so simple and easy, and that the real rights of man under the natural law must take account of the intricacies of human existence. He held that "the pretended rights of these theorists are all extremes: and in proportion as they are metaphysically true, they are morally and politically false. The rights or men are in a sort of *middle*, incapable of definition, but not

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[31] Christopher Insole, "Burke and the Natural Law" in *The Cambridge Companion to Edmund Burke*, edited by David Dwan and Christopher J. Insole, (Cambridge: Cambridge University Press, 2012), 122.

[32] Peter J. Stanlis, *Edmund Burke: The Enlightenment and Revolution*, (New Brunswick: Transaction, 1991), 116.

impossible to be discerned."[33] By attacking the "rights of man" derived from the arbitrary will

of individuals in an imagined state of nature Burke was also defending the natural law, more

traditionally understood. What was needed was not a government by metaphysicians certain of

their reasoning, but government by prudent, virtuous statesmen who were capable of discerning

the rights of men in the complexity of society and administering justice within it.

Thus, while both Burke and his Jacobin opponents believed that the natural law ought to

be expressed in positive law, they had diametrically opposed understandings of what this

required. The differences between Burke's view of natural law and the natural rights theorists of

the French Revolution are many, but they are grounded in very different views of reason and

human limitation. The Jacobins embraced Enlightenment rationalist optimism rather than the

more tempered views of classical natural law, views that Burke explicitly articulated and

developed. The Enlightenment held that the natural law (or natural rights) was easily perceived

by the speculative reason of the individual—geometry was its model. Furthermore, this

Enlightenment perspective was inclined to believe that man was infinitely perfectible, and that

society was artificial and therefore easily rearranged—ensuring that the establishment of natural

rights in positive law would be easy once the obstacles of the old regime and customs were

removed.

Burke's understanding of natural law was far from this confidence in the rightness of

individual reason and its easy apprehension of natural rights and their ready application to the

political and social realms. To his mind, the establishment of the natural law in positive law and

custom could not be a matter of implementing mathematical models of morality. Human reason

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[33] Burke, *Reflections*, 210.

is limited, human circumstances complex and human goodness fallible. Kirk traces this view to

Burke's Christianity, "which the men of the Enlightenment violently rejected."[34] Kirk found in

Burke's thought acceptance that "We must leave much to Providence; to presume to perfect man

and society by a neat 'rational' scheme is a monstrous act of *hubris*."[35] Burke saw the arrogance

of thinking that one has apprehended the whole of morality through one's private reason and that

one knows how to implement it in society. Human relations are complex; those of government

even more so. Understanding them requires more than a simple account of the "rights of man"

drawn from an imaginary "state of nature." And so, as Stanlis observed,

> To Burke the fulfillment of man's natural rights is set by the limits of man's
> fallible nature and the variety of circumstances found in every civil society; the
> Natural Law itself decrees that men recognize the variety of conditions under
> which life exists. Since man in every state is by nature a political animal, the real
> natural rights of man are a matter of practical political reason, and are to be found
> only within the objectives and conventions of civil society.[36]

Therefore there cannot be any final or absolute formulation of the rights of man, for the

rights due to man are to some degree dependent upon circumstance. In contrast to the views of

the revolutionary theorists who believed that the natural rights of man required set political

expressions, Stanlis explains that the traditional understanding of natural law "left much room

for infinite variations of circumstances and was therefore capable of absorbing the constantly

changing conditions of civil society."[37] The natural law does not provide a rigid plan or model

of government to be unvaryingly instituted in ever nation; rather, the different circumstances of

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[34] Russell Kirk, *Edmund Burke: A Genius Reconsidered*, (Wilmington, DE: ISI, 1997), 165.
[35] Ibid, 165.
[36] Stanlis, *Edmund Burke and the Natural Law*, 77-78.
[37] Ibid, 24.

each nation and people require adaptation of the natural law to match the realities of concrete human life. During the impeachment of Hastings Burke repeatedly tied together the "Law of Nations" and the "Law of Nature." While general patterns can certainly be drawn from the best each culture and tradition has to offer, there will be legitimate variation in the forms the natural law takes in diverse circumstances. This is not due to its imperfection, but is in fact its practical perfection, as it adapts to provide for the needs of justice in many different conditions. Thus, for Burke the positive laws of nations are, at their best, an expression of the natural law; they are a practical means of its implementation and adaptation to concrete human circumstances and a source of its discovery and promulgation.

Burke's Natural Law: Tradition and Communication

Burke's views may be differentiated not only from those of his contemporaries, but also from other aspects of the classical natural law tradition. Having established Burke within the broader natural law tradition, scholarship is able to move beyond philosophical taxonomy to understanding his contribution to natural law theory. Without understanding Burke's unique understanding of the natural law, identifying him only as a natural law thinker may still mischaracterize much of his thought. While Burke certainly was influenced by the classical natural law tradition and describing him in such terms is more accurate than calling him a utilitarian, it does not convey the distinct nature of his views. Burke did not merely reiterate the views of Cicero and the classical natural law tradition; he expanded and refined them to emphasize the role of history and tradition in the apprehension and application of the natural law.

Consequently, the natural law school of interpreting Burke has endured justified criticism, even from those generally sympathetic to it. For example, William Byrne notes that

this "approach to Burke was to a great degree a reaction and rebuttal to such (self-described) 'modern' understandings of Burke." But while Byrne approves of countering these "modern" utilitarian approaches to Burke, he argues that "if understood in the usual way the natural law interpretation is also problematic and cannot be accepted in a strict form. The more rigorously such a model is applied to Burke, the less appropriate it seems and the less useful it becomes for developing an understanding of his thought."[38] Just as Burke was misunderstood by those who saw the natural law only through the lens of modern theories of natural rights, so too he will be misunderstood if seen from a strict neo-scholastic perspective or through a similar dogmatic approach to the classical natural law. Thus, while the first task of a natural law interpretation of Burke was to differentiate him from both the utilitarians and the natural rights theorists of his time, the second must be to articulate that in his natural law thinking that makes him distinct and original within the natural law tradition—in particular his treatments of tradition, history, communication and imagination.

Of the various mid-century scholars who drew attention to the natural law's role in Burke's thought, it was Peter Stanlis who most accurately observed Burke's distinctiveness, noting that, "More than perhaps any other Natural Law thinker Burke insisted upon the concrete realization of man's natural rights in civil society."[39] Burke rejected the view that the natural law, existing in an abstract rational and propositional purity, is grudgingly modified by the necessities of concrete manifestation. Rather, the natural law is incarnated in each concrete

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[38] William F. Byrne, *Edmund Burke for Our Time: Moral Imagination, Meaning, and Politics*, (Dekalb, IL: Northern Illinois University Press, 2011), 11-12. Hereafter cited as *Burke for Our Time*.

[39] Stanlis, *Edmund Burke and the Natural Law*, 76.

instantiation of the good. The metaphysical perfection that abstract formulations of it seem to

have is an actual defect. Thus, Burke declared that he could not praise or blame

> anything which relates to human actions and human concerns on a simple view of
> the object, as it stands stripped of every relation, in all the nakedness and solitude
> of metaphysical abstraction. Circumstances (which with some gentlemen pass for
> nothing) give in reality to every political principle its distinguishing color and
> discriminating effect. The circumstances are what render every civil and political
> scheme beneficial or noxious to mankind.[40]

Whatever existence the abstract "rights of man" proclaimed by the French Revolution

might have in the metaphysical realm was irrelevant. They were, Burke proclaimed, "false" and

"pretended rights" when applied to the real world. As Stanlis put it, Burke "never regarded

Natural Law merely as an abstract moral code, immediately perceived by private reason, but as

the most imperative law of the spiritual side of man's common nature, permeating every good act

of individuals, civil institutions, races, and nations."[41] The natural law is a not a metaphysical

statute book which man must apprehend through deracinated reason and apply through casuistry;

it is immanent and known through practical wisdom and experience. All the clever metaphysics

that the revolutionary theorists could muster meant nothing unless they could be instantiated for

the concrete benefit of real people, and so Burke contrasted the wisdom of the ancients to the

revolutionaries, observing that,

> The legislators who framed the ancient republics knew that their business was too
> arduous to be accomplished with no better apparatus than the metaphysics of an
> undergraduate and the mathematics and arithmetic of an exciseman. They had to
> do with men, and they were obliged to study human nature. They had to do with

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[40] Burke, *Reflections*, 156.
[41] Stanlis, *Edmund Burke and the Natural Law*, 87.

citizens, and they were obliged to study the effects of those habits which are communicated by the circumstances of civil life. They were sensible that the operation of this second nature on the first produced a new combination,— and thence arose many diversities amongst men.[42]

Unlike the revolutionaries, who relied upon an abstract ideal of man's nature, these classical examples recognized that part of man's nature is his innate sociability and thus that a discussion of human nature must take into account man's social existence. Burke despised those, such as the revolutionaries, who trusted their private speculations to provide a sure guide to implementing the rights of man and remaking a government. However much they might chatter about rights, they lacked the sagacity to provide for them when it mattered. They needed to spend less time in clever philosophizing and more studying mankind and his social institutions, instead of condemning them wholesale for failing to meet the standards sprung from their personal theorizing.

Therefore Burke asked what the use was of "discussing a man's abstract right to food or medicine? The question is upon the method of procuring and administering them. In that deliberation I shall always advise to call in the aid of the farmer and the physician, rather than the professor of metaphysics." The science of political construction, renovation, and reform is, he added, "like every other experimental science, not to be taught a priori. Nor is it a short experience that can instruct us in that practical science."[43] Regardless of how skilled the metaphysician may be at manipulating concepts and formulating expressions of rights and the

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[42] Burke, *Reflections*, 332.
[43] Ibid, 209.

natural law, it is nothing if they do not address the practical (including the moral) needs of humans as they actually exist.

Because of the diversity in the circumstances where the natural law is manifested and discovered, all formulations of it are incomplete and subject to revision. Men may and do discourse about their experiences of natural law using linguistic symbols analyzed by reason, and Burke understood the vital importance of this discussion, when properly carried out. However, the communicative quest to explain and share the experience of natural law has too often been mistaken for the means of discovering the natural law itself. Too often philosophers have become enamored of their concepts and symbols to the point of forgetting the lived experiences they represent.

While the linguistic symbols of moral discourse (the rights of man, the inviolable dignity of the human person, etc…) may convey a good deal of truth, they can never contain it all within themselves. They rely on constant interpretation, clarification, restatement—all the hermeneutic tools of both ordinary life and scholarly study. To be intelligible the symbols of natural law rely upon what is brought to them. Propositional truths are necessarily provisional truths, as they take their meaning from the world in which they are spoken and heard, or written and read. They are incapable by themselves of encompassing truth. By way of analogy, an ordinary juror would be tied in knots trying to construct a definition of murder that a good debater couldn't wiggle out of, yet that ordinary juror usually knows murder when he sees it—his moral and practical knowledge outstrips his ability to express it in unassailable propositions.

Burke's apprehension of this truth, long before the advent of modern philosophical hermeneutics, has sometimes provoked opprobrium among his admirers, especially among those

of a Thomistic bent. For example, Canavan criticized Burke for insufficiently appreciating "the autonomy of speculative reason in its own sphere or its priority to practical reason…To the extent that he subordinated speculation even in the properly theoretical order to practical norms, Burke weakened the foundations of his own thought."[44] This critique is unsurprising given the influence neo-Thomism exerted on natural law thought in the 20th century, but it fails to adequately consider whether the natural law tradition has anything to learn from Burke, and whether Burke might have given expression to something overlooked by much of the Thomistic heritage. To his credit, Canavan wrote elsewhere that "Burke saw much more clearly than the rationalists of his day that political reason operates within a tradition, which it may criticize and correct, but from which it cannot disassociate itself."[45] What Burke knew (but Canavan missed) was that this relation of reason to tradition applies to more than political or practical reason, for there is likewise no way for speculative reason to leap outside of history. It too must operate from within experience, and it has no immutable symbols to express itself with as it speaks within time and finitude. Speculative reason can provide no universal, eternal formulations of truth, for those propositions always rely upon historical circumstances to be understood.

It is because of his emphasis on the limited capabilities of individual reason that tradition looms large in Burke's understanding of man's capacity to know the natural law. Since there is neither a universal formulation of the good that may be discovered by reason nor any self-evident first principles of moral reasoning, Burke was deferential to the wisdom of the past, declaring that "We know that we have made no discoveries, and we think that no discoveries are to be made, in morality...We are afraid to put men to live and trade each on his own private stock

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[44] Canavan, *Political Reason*, 52-53.
[45] Ibid, 79.

of reason; because we suspect that this stock in each man is small, and that the individuals would do better to avail themselves of the general bank and capital of nations and of ages."[46] The experience of any individual person is limited, and human beings cannot escape their historical (and historically conditioned) existence in order to access a timeless realm of eternal verities, such as the metaphysical speculators whom Burke scorned thought they had found.

Burke predicted that the attempt to establish an ahistorical starting point for reason will fail, and may be thoroughly destructive in its futility when applied to practical politics. Truth must be known historically, there is no point at which we can entirely leave our traditions, prejudices, language and culture. Indeed, as Kirk puts it, "so far as we can delineate the features of natural justice, Burke suggests, it is the experience of mankind which supplies our knowledge of Divine law; and the experience of the species is taught to us not only through history, but through myth and fable, custom and prejudice."[47] Kirk argues that in Burke's view, we know the Divine mind and will through "the prejudices and traditions which millenniums of human experience with Divine means and judgments have implanted in the mind of the species."[48] Man, as a social being, cannot exist outside of tradition, and though tradition is not infallible, regarding it with humility is the proper response given the grave limits of private reason, and the extent to which we are always shaped by tradition. We are instructed both consciously and unconsciously by these legacies of the past, though we also shape them in return as we partake of them.

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[46] Burke, *Reflections*, 234-235.
[47] Kirk, *The Conservative Mind*, 44.
[48] Ibid, 26.

This insight into the extent to which reason is dependent on culture and tradition

illuminates that Burke, while following in the classical tradition of natural law philosophy, also

had some qualities that were almost postmodern, which can be seen in his challenges to the

claims of modern rationality, especially as they applied to political affairs. Iain Hampsher-Monk

explains that Burke was never opposed to reason *per se*, but rather to

> the arrogance of individual, *a priori*, deductive reason. His claim – a claim that
> has, until recently in Anglophone philosophy, been buried beneath a resolutely
> individual-centered cognitive tradition – is that political reason, and indeed
> knowledge itself, is socially constructed, collectively accumulated and held in
> suitably developed social institutions (establishments and corporations), practices
> (such as representation and consultation), and the dispositions they foster (most
> prominently, compromise). History, properly conducted, is the process by which
> such reason is accumulated, and a historically developed constitution is the
> repository of that reason.[49]

For Burke, traditions, customs, manners and prejudices are the expressions of the

experience and knowledge of the past, and while potentially erroneous, they contain much

wisdom. If this interpretation is correct, then Burke was, ironically, well ahead of the

philosophers of his day who styled themselves as the intellectual *avant-garde*. He recognized

the folly of trying to construct a political system based upon abstract rationalism and ostensibly

self-evident first principles. Consequently, Hampsher-Monk observes that for Burke the proper

relationship between theory and practice "is the *reverse* of that claimed by the revolutionaries.

Theory is to be *derived from* established practice rather than imposed on it."[50] It is foolish to try

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[49] Iain Hampsher-Monk, "Reflections on the Revolution in France" in *The Cambridge Companion to Edmund Burke*, edited by David Dwan and Christopher J. Insole, (Cambridge: Cambridge University Press, 2012), 200.
[50] Ibid, 201.

to establish a government based upon private speculation rather than the hard-won practical wisdom gleaned from experience.

Human knowledge, particularly in the political realm with which Burke was concerned, comes from experience, not abstract ideals. Thus, the legitimacy of prescription, Hampsher-Monk argues, exists for Burke because, "Humans are primarily creatures of habit. Settled societies *socialize* their members into predictable patterns of behavior and allegiance. These may well not be underpinned by – or certainly held as – a readily available rational argument."[51] People must be able to act without always undertaking a full and rational inquiry, otherwise they will be paralyzed under the impossible burden of providing rational proof for the rightness of every act. Furthermore, even the most rational argument invariably rests upon many presumptions which cannot themselves be addressed during the argument. In the *Reflections*, Burke explains that in contrast to the revolutionary theorists,

> Many of our men of speculation, instead of exploding general prejudices, employ their sagacity to discover the latent wisdom which prevails in them. If they find what they seek, (and they seldom fail,) they think it more wise to continue the prejudice, with the reason involved, than to cast away the coat of prejudice, and to leave nothing but the naked reason; because prejudice, with its reason, has a motive to give action to that reason…Prejudice is of ready application in the emergency; it previously engages the mind in a steady course of wisdom and virtue, and does not leave the man hesitating in the moment of decision, skeptical, puzzled, and unresolved. Prejudice renders a man's virtue his habit, and not a series of unconnected acts. Through just prejudice, his duty becomes a part of his nature.[52]

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[51] Ibid, 201.
[52] Burke, *Reflections*, 235.

Those who fancy themselves unprejudiced (in the sense which Burke, or Gadamer, used the term) are perhaps the most likely to be unreflectively ruled by prejudice, for they will see neither the point of the prejudices of others nor the genealogy of their own views. They will still be prejudiced, but will be oblivious to it. Burke suggests that those who are most keenly attuned to their prejudices are best positioned to reform them when needed. It is because of his respect for the past that Burke was such a persistent voice for reform during his political career. His antipathy to the French Revolution was not based on opposition to all change in government, but to the arrogant imposition of private will and reason upon the political realm.

Burke's understanding of moral and political progress was more subtle than that of his opponents. He implicitly suggested a dialogic method of moral discovery, both for individuals and for cultures. The individual learns morality from the social world surrounding him, not as a passive absorption, but interactively. The culture, meanwhile, is constantly engaged in conversing about and testing the moral norms and formulations it inculcates. Reason is engaged in these processes, but not the abstract, speculative individual reason Burke's adversaries were so fond of. Rather, the reason of the individual is shaped by and participates in the reason embodied in tradition, custom, manners and prejudice, but it is also capable of thereby identifying contradictions, errors and deviations from that which is best within a tradition and culture.[53] Reason, whether that of the philosopher or the ordinary man of affairs, never attains a transcendent perspective above history.

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[53] Habermas' (generally dismissive) view of the value of tradition and of his engagement with Gadamer is too much of a tangent to adequately discuss here. However, such promises to be a fruitful avenue of inquiry. For instance, though Habermas denies the possibility, tradition and custom may often be as close as persons may come to his ideal of dialogic consensus. The problem with Habermas' model is that it is always counterfactual, relying on an idea of communication free from pressures of life. Habermas insists that this ideal is nonetheless implicit in all

Thus, for all his reliance on tradition and custom, Burke did not recommend blindly following what history has thrown up; he knew the wickedness of which history is a record. In his impeachment of Hastings he repeatedly denied that precedent is an excuse for criminal deeds. That there were crimes in the history of the rule of India no more excused Hastings than the crimes of past British rulers would excuse current ones, or the existence of previous robberies and murders excuses common criminals. Furthermore, in the *Reflections* he declared that in history "a great volume is unrolled for our instruction, drawing the materials of future wisdom from the past errors and infirmities of mankind…History consists, for the greater part, of the miseries brought upon the world by pride, ambition, avarice, revenge, lust, sedition, hypocrisy, ungoverned zeal, and all the train of disorderly appetites."[54] The wisdom of tradition and custom has often been dearly bought through prior suffering; many men will have no other teacher than bitter experience. It would be a mistake, though, to presume that history's crimes and horrors proceeded mostly from moral ignorance. The glimmers of the moral law may always be seen by those willing to look. Hastings, in his rule of India, could have risen to what was best in the British and Indian traditions and cultures, instead of sinking to that which was worst. It was not the case that Hastings had no better examples before him than tyrannies and oppression; rather, he chose to follow them because they suited him more than the better aspects of British and Indian law, custom and culture.

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communication. A Burkean perspective (in brief) is that the complications and pressures of life cannot be ignored, even in theory, and that while they can obscure, they can also clarify. Thus, they ought not to be so quickly dismissed from a model of communicative action.

[54] Burke, *Reflections*, 289.

For similar reasons, Burke reproved the French revolutionaries who sought to radically create society and law anew, and who cast out the patrimony that could have guided them to effective moral knowledge and action.

> Your privileges, though discontinued, were not lost to memory. Your constitution, it is true, whilst you were out of possession, suffered waste and dilapidation; but you possessed in some parts the walls, and, in all, the foundations of a noble and venerable castle. You might have repaired those walls, you might have built on those old foundations…you had the elements of a constitution very nearly as good as could be wished.[55]

The materials necessary for prudential reform and repair to the existing government and to secure the real rights of man were present in France, but were being destroyed by those who were determined to erect an entirely new structure, rather than make use of the better precedents of the past. Similarly, when Governor-General Warren Hastings and his defenders insisted that the tradition of India was Oriental despotism, and that Hastings must therefore be excused his crimes, Burke responded by studying the laws and literature of the East, and showing the presence of the natural law there. As Stanlis explains, "Burke read widely in Oriental jurisprudence. He read the *Koran*, the *Shasta*, and the *Heyada*; he quoted Tamerlane's *Institutes*…he used Joseph White's translation of the *Institutes of Timor* (Oxford 1783) and Jean Baptiste Tavernier's *Travels into Persia and the East Indies*."[56] Burke concluded that these condemned Hastings just as much as British law did. He announced, "I would as willingly have him tried by the law of the Koran, or the Institutes of Tamerlane, as on the common law or

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[55] Ibid, 183.
[56] Stanlis, *Edmund Burke and the Natural Law*, 64.

statute law of this kingdom."[57] Crimes and abuses there might be, whether in France, India, or Britain, but Burke averred that the natural law was discernable in the tradition and customs of the people—sometimes clear and sometimes dim, but always available in some measure to those seeking it.

Burke illuminates how, far from beginning with abstract, universal theories of the rights of man, or the first principles of natural law, moral and political knowledge develops from the particular and the near at hand. Burke believed that, "To be attached to the subdivision, to love the little platoons we belong to in society, is the first principle (the germ as it were) of public affection. It is the first link in the series by which we proceed towards a love to our country, and to mankind."[58] As we learn from the expressions, instantiations, and formulations of the good in our immediate experience, we will be better able to discern the good in the greater scale of politics and nations. But even in those, it is still historically and particularly expressed. There is no ahistorical foundation from which moral and political theory may reliably begin. We are always already engaged in the practice of that which we are trying to explain and understand, and are inescapably shaped and influenced by that practice and the prejudices we have learned in it. Therefore, Burke saw no conflict between the particular and the natural law, rather, the latter can be known through the former.

Moral Imagination and Manners

Burke's reliance on tradition, history and custom as sources of moral and political knowledge may appear to produce a significant difficulty. If, as Burke suggests, humans are incapable of achieving a vantage point outside of history or a final formulation of the truth, how

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[57] Stanlis, *Selected Writings and Speeches*, 481.
[58] Burke, *Reflections*, 195.

is man within history to sift through history to determine what is right and wrong? How can

moral claims and arguments be vindicated; upon what does their veracity rest? The traditions

and patterns of the past may serve as guides, but Burke conceded that they are imperfect ones.

Tradition and positive law may promulgate the natural law, but the static of wickedness and folly

is in that signal as well. By what criteria can men separate the wheat from the weeds in the field

of history's examples? Burke scholars of the natural law school have tended to resort to classic

Thomistic arguments on this subject, but these do not really express Burke's view and practice.

To winnow through history and tradition for the natural law, Burke relied not only on reason

(whether classified as practical or speculative) but also on the imagination and its capacity for

apprehending moral truth that then informs reason.

The insistence on the role of the imagination in moral knowledge is one of Burke's most

distinctive and significant contributions to the natural law tradition. The moral imagination (a

term that has been widely used since Burke) is discussed in the famous passage on Marie

Antoinette where Burke, mourning her disgrace, recalls once seeing her at Versailles. After

praising her, Burke describes her fall and declares that he never dreamt that such might happen,

"in a nation of gallant men, in a nation of men of honor, and of cavaliers. I thought ten thousand

swords must have leaped from their scabbards to avenge even a look that threatened her with

insult."[59] And yet the queen had not only been insulted, but threatened, imprisoned and

effectively deposed by the citizens of this nation of "men of honor" and "cavaliers," leading

Burke to lament that "The age of chivalry is gone. That of sophists, economists, and calculators,

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[59] Ibid, 224.

has succeeded; and the glory of Europe is extinguished forever."[60] Even many of Burke's

admirers have regarded this passage and the following eulogy of chivalry as sentimental

nonsense expressed in embarrassingly purple prose. But, understood within its place in Burke's

beliefs and rhetorical approach, it is not a maudlin indulgence in overwrought rhetoric; rather, it

contains a valuable insight regarding the function of imagination in the moral life: both in the

apprehension and the communication of moral truth.

Burke feared that destroying the inherited system of mores and manners that constituted

the chivalric heritage would remove a necessary and irreplaceable support of civil society and

politics. As Hampsher-Monk notes, he was concerned about the effects upon society of losing

the imaginative framework bequeathed to it and that had shaped its mores and customs.

> The revolution's deepest threat was to the moral sensibilities and manners
> supplied to commercial society by an antecedent feudalism – which if lost could
> never be restored. His defense of chivalry – most extravagantly expressed in his
> "purple passage" on Marie Antoinette…is thus not mere conservative nostalgia or
> foolish gallantry…for it is part of a proto-functional theory of the relationship
> between a society's mores and its institutions. A commercial society needs, but
> does not itself generate, a sense of honour and trust; *that* comes from feudal
> society.[61]

It is certain that Burke was not a romantic ignoramus regarding the nature of life in the

age of chivalry. He was well aware of the privations and brutality that often marked the time, for

as Stanlis points out, "No one who has read Burke's account of Britain in the Middle Ages can

possibly be under the delusion, so common to his critics, that he regarded the dim past as an

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[60] Ibid, 224.

[61] Iain Hampsher-Monk, "Reflections on the Revolution in France" in *The Cambridge Companion to Edmund Burke*, edited by David Dwan and Christopher J. Insole, (Cambridge: Cambridge University Press, 2012), 203.

heroic age of high romance."[62] Burke was not besotted with tales of King Arthur or Roland.

Rather Burke, as J.G.A. Pocock notes in his introduction to the *Reflections*, was following a

school of historical thought at the time, in which "'Chivalry' was not a mere emotive term, but

the name of a complex historical phenomenon," that was understood as marking the transition

from barbarism to modern civilization; it "showed the knightly class moving out of brutal

warrior courage, acquiring a code of manners, and systematizing a sense of responsibility toward

others, notably women."[63] Manners, mores, and customs, which were shaped by an imaginative

vision that they then shaped in their turn, lifted knights above being mere well-equipped brigands

and marauders.

Chivalry, which was both a set of practices and an imaginative vision, put a check upon

the rapacity and ambition of knights and nobles and the cruelty of war. It was a civilizing

restraint upon brute force. Chivalry had "given its character to modern Europe,"[64] and Burke

thought its loss likely to be great. It had produced "that generous loyalty to rank and sex, that

proud submission, that dignified obedience, that subordination of the heart, which kept alive,

even in servitude itself, the spirit of an exalted freedom."[65] Burke's opponents saw this as

nothing but a pleasing veneer over the realities of oppression and injustice, an excuse for the

privileged and powerful to justify their position. Burke, however, was skeptical of the promises

of revolutionary equality, and argued that chivalry had likely done as much to mitigate the

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[62] Stanlis, *Edmund Burke and the Natural Law*, 198.
[63] J.G.A. Pocock in Edmund Burke, *Reflections on the Revolution in France*, edited by J.G.A. Pocock, (Indianapolis: Hackett, 1987), xxxii.
[64] Burke, *Reflections*, 224.
[65] Ibid, 224.

harshness of power as the rational equality of the revolutionaries would. While chivalry did not

erase social and political distinctions, it

> had produced a noble equality, and handed it down through all the gradations of
> social life. It was this opinion which mitigated kings into companions, and raised
> private men to be fellows with kings. Without force or opposition, it subdued the
> fierceness of pride and power; it obliged sovereigns to submit to the soft collar of
> social esteem, compelled stern authority to submit to elegance, and gave a
> dominating vanquisher of laws to be subdued by manners.[66]

The manners inculcated by chivalry could do far more to smooth the inevitable and often

necessary gradations of wealth, power and social life than the metaphysical schemes and naked

force of the radicals and revolutionaries. People learned the manners it taught subtly and

followed them almost instinctively. As Canavan put it, "The effective moral code of a society,

the 'controlling power within' of which Burke spoke, is not primarily a matter of reasoned

conviction on the part of most men. It is rather a set of habits: habits of feeling, of thought, and

of action. In Burke's terms, the morals of a nation depend on its opinions and prejudices, and on

its manners."[67] Manners provided habitual practice of minor virtues, and sometimes major ones.

They smoothed social interactions, and provide a common code of conduct that partakes of a

shared imaginative understanding of the world.

Furthermore, the power of the law, which was ultimately the threat of chains and the

gibbet, was softened by the mediation of manners, custom and tradition. Manners can provide a

source of order and restrain the baser passions without resorting to the naked force of the law, for

as Stanlis observes, "Manners and customs achieved locally through natural, imperceptible

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[66] Ibid, 224-225.
[67] Canavan, *Political Reason*, 65.

means the same or better civil order that statutory laws achieved nationally through conscious effort."[68] Manners and customs ensured that obedience was not simply a product of cowering before raw force, nor were rulers able to apply that force in whatever way they wished. The customs of Europe—which chivalry had played so great a part in establishing—restrained sovereign as well as subject, according to Burke.

But the revolutionaries sought to cast all of this down, to the detriment of everyone, not just the powerful. As Burke put this case, "All the pleasing illusions, which made power gentle and obedience liberal, which harmonized the different shades of life, and which, by a bland assimilation, incorporated into politics the sentiments which beautify and soften private society, are to be dissolved by this new conquering empire of light and reason."[69] In this new empire, people will constantly have to make calculations of what is due each person, and they will have to do so without the generous promptings of traditional manners evolved from the customs of chivalry. The imaginative "pleasing illusions" Burke wrote of encouraged people to treat each other better than they otherwise would. These customs were the "decent drapery of life…the superadded ideas, furnished from the wardrobe of a moral imagination, which the heart owns, and the understanding ratifies, as necessary to cover the defects of our naked, shivering nature, and to raise it to a dignity in our own estimation."[70] Chivalry, and the manners it shaped, was a story that people told themselves until it became true. All the moral and philosophical propositions in the world regarding self-evident truths, or liberty, equality and fraternity, could

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[68] Stanlis, *Edmund Burke and the Natural Law*, 223.
[69] Burke, *Reflections*, 225.
[70] Ibid, 225.

not match the formative power of the story and vision of chivalry and the manners it had produced.

And the story of chivalry, with its inclusion of Christian charity, helped protect against the proclivities toward cruelty and disdain in one's judgments of others. Few men, Burke believed, can be scrutinized without finding cause for just opprobrium, nor can the private reason of man be trusted to regularly deal justly with others. The social norms of manners provide a minimal standard of behavior owed to others, regardless of one's private judgment. Likewise, they are a check upon the assertiveness of the individual will, especially when differences of power are present. The revolutionaries thought they could do away with all of this. In their view, according to Burke, "a king is but a man, a queen is but a woman; a woman is but an animal, and an animal not of the highest order. All homage paid to the sex in general as such, and without distinct views, is to be regarded as romance and folly."[71] The rationalistic reductionism of the revolutionaries might begin with the great and powerful, but it would not end there. If followed to the end (and there were many radicals determined to do just that) it would, Burke feared, regard even the weak without charity. The terrible virtue of a Robespierre would have neither kindness nor pity for anyone. Burke thought that the inheritance of chivalry often restrained those with power in their dealings with those who were weaker or less privileged.

However, the revolutionaries sought to eradicate such customs and manners along with the differences of class and rank in which they had become enmeshed. Supposedly irrational customs and manners were to be replaced with rational and equitable rules, a plan that Burke prophesied would go terribly wrong: "On the scheme of this barbarous philosophy…laws are to

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[71] Ibid, 225.

be supported only by their own terrors, and by the concern which each individual may find in them from his own private speculations, or can spare to them from his own private interests. In the groves of *their* academy, at the end of every vista, you see nothing but the gallows."[72] Eventually, Burke prophesied, they would be forced to limit their own principles, but lacking the gentle restraints of manners and tradition, they would turn to tyranny. Their logic would be limited only by their despotism.

Moral Imagination and Narrative

Far from being mere mawkishness, Burke's eulogy of chivalry was based on a sophisticated understanding of the importance of manners to society, one that can be appreciated even by those who question whether the heritage of chivalry was as important as Burke thought. Everyday social decency depends far more upon convention than the revolutionaries knew. In making this point, Burke illustrated the function of the moral imagination, which not only elevates one's sentiments and internal discourse with oneself, but is also crucial to the apprehension of moral truth. As Byrne notes, Burke thought that "the imagination plays a powerful role in our grasp of reality, including, presumably, moral reality. Even if we are incapable of formulation and articulating certain ideas in an explicit conceptual way, we can still make use of those ideas, or their underlying truths, intuitively through the aid of the imagination."[73] The imagination presents an image (and hence an understanding, even if inchoate) of the world that is often far more fundamental to one's identity than propositional truths. Conceptual formulations are, generally speaking, attempts to explain and encapsulate an understanding of the world that is already present in the imagination. While Burke did not

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[72] Ibid, 225-226
[73] Byrne, *Edmund Burke for Our* Time, 54.

philosophically define the imagination or its role, his appeals to it are persistent and integral to his thought, and illustrated through his rhetorical style.

Burke knew that the ideas that change the world are not (primarily) logically persuasive propositions, but visions of the world as it is, could be and ought to be. And so, responding to Paine's gibe that Burke pitied the plumage but ignored the dying bird, Byrne retorts that "the plumage and the bird cannot really be separated. Burke is concerned about 'plumage' because of its powerful effect on the imagination."[74] Indeed, however much they might claim the support of Reason, and self-evident first principles, Burke's opponents were motivated not by logical proofs but by their own imaginative vision of the world. No less than Burke they were concerned with plumage, though they often lacked the insight to see this. In the *Reflections* Burke explicitly appealed to their imaginations, declaring that the revolutionaries had gone wrong in despising their patrimony and presuming to remake their nation. Even if the recent history of France seemed unworthy of imitation and lacking in virtue, the revolutionaries could "have passed them by, and derived your claims from a more early race of ancestors. Under a pious predilection for those ancestors, your imaginations would have realized in them a standard of virtue and wisdom beyond the vulgar practice of the hour; and you would have risen with the example to whose imitation you aspired."[75] Such an imaginary would have produced very different results than those which Burke deplored, and would have been more inclined toward reform than revolution.

The contemporary political philosopher Claes Ryn has devoted much of his attention to the importance of imagination in the moral life, writing that, "At the basis of our outlook on life

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[74] Ibid, 75.
[75] Burke, *Reflections*, 184.

lies an intuitively constituted vision of reality."[76] The imagination may be elevating, as in the moral imagination Burke wrote of, but it may also become nearly diabolical, corrupting the thoughts of even the most powerful thinker. Ryn argues that reason does not operate independently, but is constantly interacting with one's will and imagination. If the latter are perverted, then reason will be as well. "At the root of one-sided or warped theories of life are distorting qualities of imagination, inspired by corresponding qualities of will. With such a defect a thinker is helpless."[77] And such a defect need not take the form of an obviously brutal and vicious vision, for an ostensibly benevolent dream can become a nightmare if it refuses to take cognizance of the realities with which is must reckon. For instance, a purportedly beautiful vision of liberty, equality and fraternity can produce a bloodbath, and be revealed in the end as the self-righteous posturing of the power-hungry.

Burke's chivalrous knight or noble imagined himself in a certain way: he was, or was striving to be, a protector of the weak and a champion of just causes. He thereby became something better than another armed marauder plundering the countryside, or a powerful and oppressive lord. But it can be seen, especially interpreting Burke through the work of Ryn and Byrne, how the diabolical imagination might take root in a knight through a self-indulgent view of chivalry. He might become so enamored of the image of his own nobility that he becomes proud and self-righteous. If he did not return to self-reflection and humility he might begin to act upon the arrogance of a conviction of his own effective infallibility, perhaps doing great evil. So long as he does not question this imaginative self-image, even the most brilliant logic will not save his moral reasoning from being led astray. The human capacity for self-deception persists

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[76] Claes Ryn, *Will, Imagination and Reason*, (New Brunswick: Transaction, 1997), 161.
[77] Ibid, 158.

within the stories we tell ourselves and the visions that enchant us, and these determine who we are far more than the logical propositions we may claim to accept and adhere to.

Although, as has been noted, Alasdair MacIntyre has been a harsh critic of Burke, he has made similar arguments, both with regard to the importance of tradition to rationality as well as of imagination to one's self-understanding. While MacIntyre prefers to speak of narrative rather than imagination, the concepts have similarities, though MacIntyre has not sufficiently explored them. In developing his account of the virtues, MacIntyre writes of the "concomitant concept of selfhood, a concept of self whose unity resides in the unity of a narrative which links birth to life to death as narrative beginning to middle to end."[78] Without narrative and the imaginative vision of the world that drives it, there is no self.

As MacIntyre notes, we cannot do without the stories we tell about ourselves and others. Indeed, we may be said to be the stories we tell ourselves, and narrative is also how we explain the world and the people around us, for, as he puts it, "Narrative history of a certain kind turns out to be the basic and essential genre for the characterization of human actions."[79] We live our lives as unfolding stories told to ourselves (stories we have patterned after those modeled for and told to us), and we also understand the actions of others though the medium of narrative. This view of narrative is similar to that of the imagination expressed by Burke and explored and expanded upon by Ryn and others. What is at issue is a non-rational (though not irrational) understanding of the world that greatly influences how one's reason will operate. In the case of the revolutionaries, one type of imagination, telling itself a narrative of chivalry, would hold

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[78]Alasdair MacIntyre, *After Virtue*, (Notre Dame, IN: University of Notre Dame Press, 1981), 191. Hereafter cited as *After Virtue*.
[79] Ibid, 194.

Marie Antoinette and her honor much dearer than an imagination that was schooled in

Enlightenment thought and expressing a rationalist narrative.

Of course, MacIntyre may not think much of Marie Antoinette's honor either, but he

ought to recognize Burke's concern regarding the destruction of one social imaginary and its

replacement by another with pretensions to pure rationality, pretensions of the sort that

MacIntyre is certainly critical of. However, he has never acknowledged the convergence of his

views with Burke's, instead dismissing Burke as a lackey and apologist for English economic

interests. MacIntyre's leftist background and sympathies undoubtedly influence him here. As

Byrne observes, "MacIntyre's mischaracterization of Burke flows from a misunderstanding of

'Burkean conservatism,' which in turn flows from a failure to appreciate Burke's moral-

imaginative approach to epistemology and ethics."[80] But while MacIntyre himself refuses to

acknowledge it, the similarities between his thought and that of Burke remain apparent, and

MacIntyre might have much to learn by reconsidering his view of Burke.

Further parallels may be seen with regard to how both Burke and MacIntyre recognize

the formative role of society and culture on the imagination. Man is not simply a free agent in

what he imagines and the narratives he tells. For as MacIntyre explains,

> Man is in his actions and practice, as well as in his fictions, essentially a story-
> telling animal. He is not essentially, but becomes through his history, a teller of
> stories that aspire to truth. But the key question for men is not about their own
> authorship; I can only answer the question "What am I to do?" if I can answer the
> prior question "Of what story of stories do I find myself a part?" We enter human
> society, that is, with one of more imputed characters—roles into which we have
> been drafted—and we have to learn what they are in order to be able to

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[80] Byrne, *Edmund Burke for Our Time*, 93.

understand how others respond to us and how our responses to them are apt to be construed.[81]

Culture and tradition inescapably shape our understanding of ourselves and the world around us. The imaginations and narratives of men are given content and form by the societies into which they are born. In Burke's view, Europe's narrative of chivalry extended far beyond knights, and the manners introduced by it reached from king to commoner. While there were flaws within the chivalric construction, cold rationalism could not replace the imaginative moral vision it provided. Manners, the thousand restraints that soften daily interactions, cannot be constructed *ex nihilo*, and so the moral imagination looks to custom, tradition and the wisdom of the past, and seeks for the natural law therein. The apprehension of the natural law, then, cannot consist simply of rational analysis and logical calculation, for these turn out to be dependent upon human imagination, including the stories humans tell themselves.

The Complexity of Moral Knowledge

This reliance on the imagination for the apprehension and application of the natural law may seem merely to complete a potentially vicious circle. Accepting that there is no final formulation of an abstract natural law derived from self-evident first principles, Burke looked to history and tradition for manifestations of the natural law. But since history and tradition contain much that is wrong or wicked, a criterion beyond tradition was needed, and the moral imagination was offered as providing it. However, the moral imagination itself turns out to be dependent upon history and tradition, and the imagination itself is subject to moral perversion. And while there is at least one more factor in Burke's understanding of morality, which may be

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[81] MacIntyre, *After Virtue*, 201.

described as sentiment or feeling, it too provides no dispositive criterion for moral judgment. For those determined to find an incontrovertible ground for moral reasoning, this will be unsatisfying. However, for those willing to accept that there is no single, demonstrable ground for the natural law, it will provide further evidence that the natural law is present in all aspects of human moral life and experience. In one sense the natural law has no foundation, in another everything is its foundation, for it is present in all aspects of life. Thus, while Burke appealed to moral sentiments and feelings, he did not attempt to establish a comprehensive theory of moral knowledge rooted in them. Rather, they are one more aspect of human experience in which moral truth may be discovered, and the natural law revealed.

Throughout his life Burke referenced moral sentiments as natural and God-given. In a couple of notable examples, he appealed to them to justify his sympathy for the humiliated French king and queen, and to defend the Indians who had resisted the British and their puppet rulers. Noting that some Indians had been driven to sell their children as slaves, he declared that such a violation of natural sentiment could only come about in any broad way through the cruelest of oppression, which deserved to be resisted. As Byrne elaborates, "Feelings, for Burke, contain information, often very valuable information. They are essentially expressions of judgments we have made on a subconscious level. They are not always more accurate that the sort of judgments that we more readily identify with the deliberate employment of 'reason,' but they often are."[82] Feelings are expressions of our views, commitments, and imaginative understanding of the world. While they are not the sole source of knowledge about the natural

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[82] Byrne, *Edmund Burke for Our Time*, 71.

law, and Burke did not endorse a sentimental theory of morality, they nonetheless provide insight into moral truth, for they are tied to the inclinations and nature of man.

This is not to say that all sentiment is trustworthy or that it is entirely innate and uninfluenced by social norms. Rather, moral sentiment is another component of the complex interplay by which mankind can know and promulgate the natural law. Man encounters the natural law communicatively and in practice through history and tradition, he envisions life in keeping with (or in defiance of) it through the imagination, and he senses it intuitively through moral sentiment. Between these there is a constant interplay and checking. A perverse imagination may be reined in by tradition, or a foul tradition corrected by the experience of proper moral sentiments that cannot be repressed even by an immoral culture. The natural law is active through all human moral experience; it is not an abstract discovery of speculative reason, but is incarnated in each good act and act of moral imagination and insight. Burke identified nature and what is natural to man with many different aspects of experience, but he always rejected ontologies born of metaphysical abstraction.

Rather than placing his trust in speculative reason and its metaphysical schemes and definitions, Burke thought that the immanent world is shot through with the transcendent law of God, which is made partially manifest in human law. During the impeachment of Hastings he declared that there is "one law for all, namely that law which governs all law, the law of our Creator, the law of humanity, justice, equity—the Law of Nature and of Nations. So far as any laws fortify this primeval law, and give it more precision, more energy, more effect by their declarations, such laws enter into the sanctuary, and participate in the sacredness of its

character."[83] And not only laws enjoy such participation, but so also do customs, traditions, manners, imaginative narratives and sentiments. The natural law permeates man's existence, which is historical, conditioned and finite, rather than having its being in universal principles accessible to speculative reason.

To Burke the manifestations of the natural law were unceasing, as was the task of apprehending and communicating them. And because of the role that sentiment and imagination play in moral knowledge, Burke, like Gadamer, recognized the importance of rhetoric in the moral life. Persuasion regarding what is morally right is rarely, if ever, just a matter of logical consistency and clear postulates. And this is due not to a failure of humans to be thoroughly rational, but because moral reasoning involves the whole person, not merely a reason that manipulates linguistic symbols consistently and correctly. The language of moral dialogue is the living language of rhetorical persuasion, not the antiseptic language of metaphysics and analytic philosophy.

Burke recognized the limits of individual human reason, and therefore emphasized the communicative aspects of natural law, seeing in this category not only tracts and treatises, but also traditions and tales. More than any other natural law thinker Burke saw the importance of the corporate reasoning of tradition and custom. He told the revolutionaries that all of their "sophisters cannot produce anything better adapted to preserve a rational and manly freedom than the course that we have pursued, who have chosen our nature rather than our speculations."[84] This nature, for Burke, was not that offered by a metaphysician declaiming about human ontology, or discovering universal human rights derived from self-evident first

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[83] Burke, *Selected Writings and Speeches*, 489.
[84] Burke, *Reflections*, 183.

principles. Rather, it was historical, finite, social, communicative, imaginative and possessed of moral sentiments and feelings.

Burke presented, even if often inchoately, an understanding of natural law that can stand unshaken by the advents of historicism and hermeneutics, and which is well-suited to answering the relativism that has often been expressed within these philosophical trends. It acknowledges the validity of their points regarding the limitations and historicity of human knowledge, and the conditioned nature of human persons, but does not abandon the possibility of truth, goodness and beauty. The natural law, as Burke expressed it, is discovered not through abstract rational speculation and the logical parsing of postulates, but through experience, reflection, imagination and the instantiations of the good as encountered within human existence.

And so, without proclaiming the natural law to be found in self-evident principle or final formulas fixed in immutable symbols, Burke set it against the arbitrary wills of men. The complex interaction among tradition, reason, imagination and moral sentiment is a demonstration of the suffusion of the mundane world with the natural law, not an invitation to throw up one's hands in despair of sorting morality out and then indulge one's will. Burke was well aware of the human propensity for wicked, willful self-assertion, and recognized how little rational arguments and logical postulates can avail against a corrupt will and imagination. Indeed, the reliance on metaphysical abstractions is often a sign that something is wrong. At the end of his life, Burke scourged those philosophers who place their speculations above the concrete world and its moral imperatives, writing that, "Nothing can be conceived more hard than the heart of a thoroughgoing metaphysician. It comes nearer to the cold malignancy of a wicked spirit than to the frailty and passion of a man. It is like that of the principle of evil himself, incorporeal, pure,

unmixed, dephlegmated, defecated evil."[85] Such men will sacrifice any concrete good to the

idols of their philosophic imaginations, which are ultimately revealed as dominated by the lustful

will to power.

Perhaps nothing in Burke's explicit appeals to the natural law was as consistently

expressed as the opposition between it and arbitrary human will. In the 1765 *Tract Against the*

Popery Laws, Burke declared, contra Hobbes, that even the whole of the people cannot legislate

"a law prejudicial to the whole community, even though the delinquents in making such an act

should be themselves the chief sufferers by it; because it would be against the principle of a

superior law, which is not in the power of any community, or of the whole race of man, to

alter—I mean the will of Him who gave us our nature, and in giving impressed an invariable law

upon it."[86] Burke sets the natural law against the human will to power, arguing that we must

accept our place in the order of being. In Burke's mind, to declare a right to tyrannize is

rebellion against God, whether that declaration comes from king, parliament or even the people,

were they to demand their own oppression. Appealing to Cicero and Philo, Burke asserted, "All

human laws are, properly speaking, only declaratory; they may alter the mode and application,

but have no power over the substance of original justice"[87] Authority and process give legal

ratification to law, but to hold that any office of government or procedural punctiliousness

sanctions the exercise of arbitrary power is to defy God and set one's self above Him. Humans

do not choose what is just, they only discover and attempt to adhere to it. To claim arbitrary

power is to deny the natural law and its restraints. And so, in one of the most marked

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[85] Edmund Burke, *Letter to a Noble Lord* in the Harvard Classics, *V. 24: Burke*, (New York: P.F. Collier and Son, 1909), 433.
[86] Burke, *Selected Writings and Speeches*, 257.
[87] Ibid, 258.

consistencies of his political career, Burke always insisted that such claims to absolute or arbitrary power were iniquitous or insane.

In the impeachment of Hastings, Burke made this point with great force, disdaining the "*geographical morality*, by which the duties of men, in public and in private situations, are not to be governed by their relation to the great Governor of the Universe, or by their relation to mankind, but by climate, degrees of longitude, parallels, not of life, but of latitudes: as if, when you have crossed the equinoctial, all the virtues die."[88] The natural law is incapable of final and perfect definition, and is instantiated in a variety of circumstances, but it does not admit a total moral relativism. Against those who excused the crimes of Hastings in India on the grounds that oriental tyranny was the government India was accustomed to, Burke declared that arbitrary despotism was not the constitution of India. Hastings, his cronies, and his defenders looked to the worst in India's history in order to find excuses, rather than modeling their behavior on what was best in the traditions of India. Having studied the laws, traditions and religions of the East, Burke believed that the natural law was evident there, just as in the British Isles, and he proclaimed that arbitrary power of any sort is antithetical to the natural law in all of its expressions. Burke exclaimed against Hastings:

> *He* have arbitrary power! My Lords, the East India Company have not arbitrary power to give him; the king has no arbitrary power to give him; your Lordships have not; nor the Commons; nor the whole legislature. We have no arbitrary power to give, because arbitrary power is a thing which neither any man can hold nor any man can give. No man can lawfully govern himself according to his own will; much less can one person be governed by the will of another. We are all born in subjection, all born equally, high and low, governors and governed, in

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[88] Ibid, 476.

subjection to one great, immutable, pre-existent law, prior to all our devices, and
prior to all our contrivances, paramount to all our ideas, and all our sensations,
antecedent to our very existence, by which we are knit and connected in the
eternal frame of the universe, out of which we cannot stir.[89]

Human wills and human rulers are subject to the natural law. In Burke's view the
revolutionaries had gone wrong by reducing the natural law to propositions and principles
encompassed by their speculative reason and metaphysics, but Hastings simply denied its
existence altogether. However, the natural law must not succumb to either the *hubris* of the
mind or of the will. And so, reiterating his belief that not even willing surrender can obviate the
natural law and the requirements of justice, Burke added that, "all dominion of man over man is
the effect of the Divine disposition, it is bound by the eternal laws of Him that gave it, with
which no human authority can dispense.[90] Those who hold earthly power act in trust. Burke
accepted the Christian belief that God is the ultimate dispenser of thrones and dominations, and
that those who are given them will be held to account for their conduct.

Burke always condemned the attempted assumption of arbitrary power by "the feeble will
of a man, who, by a blasphemous, absurd, and petulant usurpation, would place his own feeble,
contemptible, ridiculous will in the place of the Divine wisdom and justice."[91] The natural law
may be obscure or difficult to define at times; it is often difficult to follow even when it is
known. But these are not excuses for arrogantly abandoning it and placing oneself and one's
selfish will as the arbiter of right and wrong. Burke asserted that there is "eternal enmity"
between law and arbitrary power, and that to claim such power is always wrong: "It is a

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[89] Ibid, 477-478.
[90] Ibid, 478.
[91] Ibid, 478.

contradiction in terms, it is blasphemy in religion, it is wickedness in politics, to say that any

man can have arbitrary power."[92] Such rebellion is, in the end, futile, and man would do best to

acknowledge his limitations in an existence he did not create and cannot rule. Burke declares

that earthly judges "are guided and governed by the eternal laws of justice, to which we are all

subject. We may bite our chains if we will, but we shall be made to know ourselves, and be

taught that man is born to be governed by law; and he that will substitute *will* in the place of it is

an enemy to GOD."[93] All human sovereigns are bound by the natural law. To assert one's

arbitrary will against the divine order that governs the cosmos is, Burke proclaims, to set oneself

against God, to follow in the footsteps of Lucifer. Burke was not a theologian, nor even an

amateur dabbler in the field (in contrast to many of his philosophical opponents, such as

Rousseau and Paine). As an Irishman with many Catholic connections (his father had converted

from Catholicism in order to escape the disabilities imposed upon Irish Catholics), discretion on

the topic was often the wise course. His Christianity was orthodox with an ecumenical tendency,

but he did not publicly direct his intellect toward its exploration or explication. Nonetheless, he

was comfortable ascribing God as the source of the natural law, and declaring that asserting

one's will against it was wicked and blasphemous. While he did not articulate a view of the will

operating rightly, it seems he would have expressed himself on the matter in traditional Christian

terms.

In 1794, with the end of the impeachment of Hastings in sight, and while fully engaged in

the struggle against the armed doctrine of the French Revolution, Burke again denounced

arbitrary power and proclaimed the supremacy of the natural law. "Arbitrary power is treason in

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[92] Ibid, 479.
[93] Ibid, 479.

the law…We deny…that there exists in all the human race a power to make the government of any state dependent upon individual will."[94] To be sure, there have been tyrants and despots who have tried to exercise arbitrary power, but this no more excused Hastings than the existence of prior crimes excuses the ordinary criminal. Burke condemned Hastings by the natural law, which had been violated in its historical expressions in both Britain and India.

For Burke, the natural law is not a heavenly statute book accessible by reason (whether speculative or practical); it is universal in its jurisdiction but instantiated and known in particulars; it is implacably opposed to arbitrary will and power; and while Burke was a devout Christian and credited God with its authorship, like Aquinas he did not believe the Christian revelation was necessary to know it. According to Kirk, Burke believed that relying "upon Divine Inspiration certainly will not suffice for the ordinary courses of life; one cannot expect the supernatural universe to manage the routine concerns of the natural universe."[95] Instead, Kirk argued, Burke held that God had provided man with wisdom learned through experience, tradition, and memory. Certainly Burke did not expect pillars of fire or burning bushes to point the way in ordinary life. However, Burke believed that the divine natural law suffused the routine concerns of the natural universe. It is made known through tradition, imagination, reason and sentiment, all engaged in a complex interpretive interaction.

Burke's view of the natural law resists any reduction of its complexity. Burke does not deny that reason has a place in apprehending the natural law, but it is a reason that is dialogic, historical and recognizes its dependence on moral sentiments and imagination. There can never be a final formulation of the natural law and attempting to provide one will provoke endless

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[94] Ibid, 488.
[95] Kirk, *The Conservative Mind*, 33.

casuist wrangling, allowing the injunctions of the natural law in concrete circumstances to slip past. Broad generalities are necessary communicative tools for human discussion of the natural law, but, as Tocqueville's great offhand aphorism put it, God has no need of general principles. The fundamental form of the natural law is not found in postulates or propositions, nor is it self-evident first principles; rather, it is right moral knowledge and action in the moment.

Natural Law and the Statesman

While Burke's statements on the natural law are scattered throughout his work, and some of his views on the subject are inchoate, he offers valuable insight to the natural law tradition. In particular, he emphasized the naturalness of man's social state, and therefore of the traditions and customs from which men learn so much of the natural law. Far from being in tension with the laws of nature, man's social existence (and its traditions, manners and relations) is the condition in which he can fulfill his own nature. Following Aristotle, who said that a man able to live without society must not be a man, but rather a monster or a god, Burke observed that art and artifice are man's nature. Stanlis explains that since "man was born without his own consent into a historically developed civil society, his 'artificial' or 'positive' institutions were as 'natural' to him as forests and prairies were to wild animals."[96] And the institutions of civil society exist for man's benefit, though such benefits are often difficult to calculate and to balance against each other.

Burke argued that "the rights of men in governments are their advantages; and these are often in balances between differences of good; in compromises sometimes between good and evil, and sometimes between evil and evil. Political reason is a computing principle: adding,

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[96] Stanlis, *Edmund Burke and the Natural Law*, 131.

subtracting, multiplying, and dividing, morally, and not metaphysically or mathematically, true moral denominations."[97] Such reasoning consists of neither utilitarian calculations that presume all goods are reducible to one currency, nor the abstract calculations of moral metaphysicians intent upon implementing their abstract speculations in society. What is necessary is the *phronimos*, the man of mature judgment and practical wisdom, whose knowledge can never be reduced to a set of rules or propositions.

Thus, unlike the new natural lawyers, Burke's is a natural law approach to politics that does not deny or shy away from the hard choices of concrete life. It is not impotent when it is needed the most, nor need it engage in convoluted casuistry to justify what needs to be done. All goods do not always run together, and a natural law theory that does not acknowledge this will find itself caught in endless traps as it seeks to navigate the treacherous moral ground of life (especially political life) as it is. And so Burke insists that the natural law is not attuned to man in the abstract nor to man in some imaginary state of nature, but to man in his concrete existence within society. While reason is indeed part of the apprehension and explanation of the natural law, it is not reason of the abstract, speculative sort that Burke denounced, and which has too often been associated with the natural law. Rather, it is the reason of historically-conscious philosophy and the practical moral reasoning of *phronesis*.

Indeed, integrating Burke's distinct contributions within the larger natural law tradition will likely require reconsideration of what is meant by practical reason. Given the dependence of logical analysis and even analytic philosophy on virtue, will, imagination and other supposedly non-rational factors, it seems that practical reason is either insufficient to determine moral truth,

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[97] Burke, *Reflections*, 210.

or else must be greatly expanded conceptually. Consider, for example, how new natural lawyers, when arguing over some analogy that illustrates a claim, respond to counter-arguments by changing or further specifying the analogy—what is in dispute is not so much the validity of logical analysis as it is the hypothetical scenario used to imaginatively illustrate a moral point. If this is practical reason, then practical reason is something much broader than it is generally taken to be, something more akin to *phronesis*. This is an issue that the natural law tradition will have to address—how to describe the relationship between imagination, will, moral sentiment and practical reason in the apprehension of moral truth.

This further brings into focus the distinctiveness of Burke's approach to natural law, which he suggests suffuses man's existence and attributes. Man is social; the natural law awaits him in the particular traditions and history into which he is born. He is a storyteller (especially an autobiographical one) and a visionary; the natural law meets him in the moral imagination. He is emotional and intuitive; the natural law is present in moral sentiments. He is rational and communicative; the natural law is formulated and discussed using language and symbols in dialogue and interpretation. The natural law is everywhere present in life, but no single aspect or encounter with it can be made dispositive, universally demonstrable through reason. Thus, persuasion and communication—rhetoric, of which Burke was a master—is an integral part of the natural law and the moral life. The images modernity presents of the natural law tend to be drawn from physics or jurisprudence, but the natural law is perhaps best expressed in and by the person of the statesman. The statesman, with his wisdom and practical knowledge, apprehends the right action in the particular, not the abstract. With his rhetoric, he appeals not only to reason

but also to the will and the imagination. He knows that moral knowledge and motivation are more likely imparted by tales and images than a progression of logical postulates.

Edmund Burke was a statesman who illustrated the natural law in both word and deed, and he provides a natural law framework that avoids difficulties that have plagued other natural law theories. He did not attempt the impossible task of proclaiming universal, self-evident principles from which moral rules may be infallibly derived. He did not despair of apprehending the natural law or disavow its existence and exalt arbitrary human will (which is to say, the will of the powerful) in its place. He rejected both the arrogance of the rationalist mind and that of the will to power. He always set himself against these, whether expressed by the East India Company, the French revolutionaries, or the British king and Parliament. The natural law, Burke held, exists, and is known to man in his historical existence, coming to presence in every instantiation of the good. It is never finalized or exhausted, but remains infinitely renewable and re-discoverable in new circumstances.

Developing the natural law along Burkean lines allows engagement with modern theories of hermeneutics that acknowledge the inescapable historicity of human knowledge and moral insight. Burke personally exemplifies Gadamer's understanding of moral knowledge and persuasion. He sought moral truth neither in his individual speculative reason, nor in his own will, and he understood the rhetorical, even imaginative, nature of moral persuasion. The natural law, as understood by Burke, is made known to man through a complex interaction of tradition and custom, reason and communication, and moral imagination and insight. The natural law is not the criminal code of the universe, nor is it self-evident first principles of morality capable of guiding all moral choice or establishing universal rules of morality. Rather, it is the living,

historical realization of moral truth within human lives, minds and actions. The Christian

tradition of natural law to which Burke belonged, would add that all of these are informed by the

grace of God, whereby the natural law is spoken into each instantiation of the good.

Conclusion: Natural Law and History

"For God did not send his Son into the world to condemn the world, but in order that the world might be saved through him…And this is the judgment: the light has come into the world, and people loved the darkness rather than the light because their works were evil. For everyone who does wicked things hates the light and does not come to the light, lest his works should be exposed. But whoever does what is true comes to the light, so that it may be clearly seen that his works have been carried out in God."

John 3:17, 19-21

Christian Considerations

Edmund Burke's life and writing illuminate aspects of the apprehension of moral truth that are too often neglected by the natural law tradition, in particular the importance of the imagination to moral insight. However, his appeals to the divine basis of the natural law reintroduce theological questions that have been lightly but repeatedly touched on in the course of this work and that demand at least a brief response. The importance of these questions is increased because natural law theory in its various iterations remains dominated by Christian philosophers and theologians, many of whom use the language of natural law to defend Christian teachings under the guise of a universal rationality.

John Finnis and the new natural lawyers presume that the task of a natural law theory is to articulate a universally binding set of moral propositions, grounded in the imperative to protect and promote the basic human goods that they identify. At the same time, they frequently resort to religious justifications for their positions, in particular those in defense of universal moral prohibitions. In these cases, the strength of their declarations that certain actions are never

to be done regardless of the cost (let not one lie be told, though the heavens fall) seems less an exercise of practical reason than of faith. While they provide secular justifications for their conclusions, they quickly resort to the promise of heavenly rewards to bolster their positions when the likely earthly consequences of their views seem unacceptable. By accepting the ugly earthly consequences of their putatively absolute, universal moral formulations the new natural lawyers undoubtedly believe they are being faithful to both their faith and their philosophy.[1] While a thorough discussion of such theological issues is far beyond the scope of this project, a few preliminary notes may be made. In particular, it must be asked whether the Christian idea of God as the source of natural law demands an attempt to establish a universal, systematic ethics accessible and articulable through reason (with the alternative often assumed to be relativism or nihilism), or whether the Christian understanding of God may actually vitiate such a project. Such theological arguments are not entirely unknown to natural law theorists (new and old) but they have remained on the outskirts of the natural law theorizing.[2]

The writings of Soren Kierkegaard, whose influence on twentieth-century philosophy can hardly be overstated, provide a Christian philosophical counterpoint to those who insist on a universal, systematized ethic as the highest possible expression of moral truth. Responding to the philosophical progeny of Hegel, Kierkegaard's work is one of the preeminent rebuttals of attempts to render Christianity or Christian ethics a universal rational system. His focus on the

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[1] I shall here set aside the charges of opportunistic casuistry I have previously leveled against them regarding their apparent exceptions to the otherwise universal moral rules they advocate.

[2] One recent attempt at a more historically-conscious natural law theory has been made by R. J. Snell in *The Perspective of Love: Natural Law in a New Mode*. Drawing upon the Jesuit theologian Bernard Lonergan, Snell seeks to ground the natural law in the dynamic structures of human consciousness For a fuller evaluation of this book, see "Love and Natural Law" by Nathanael Blake at http://voegelinview.com/love-natural-law-review/. Among the strengths of the book is that it takes seriously Protestant objections to the natural law, objections that I believe a historically-conscious natural law approach will also be well-suited to answer.

personal, existential nature of faith reminds believers that God is not an idea, but a person. The

Christian does not encounter God through the rational perfection of the concept, or the

philosophical/theological system, but personally. Nor does God need to relate to His creation

through a universal system of general ideas, for He is able to comprehend it in the entirety of its

particularity. Gadamer, who like Heidegger read Kierkegaard as a young man, observes that

Kierkegaard bought to light an "inescapable difficulty in the idea of moral philosophy itself."

This problem, which Gadamer also addressed, especially in his discussions of *phronesis*, is that

all intellectual rules and systems are insufficient to determine, let alone motivate, right action in

all possible scenarios. Gadamer explains that

> Kierkegaard showed that all 'knowing at a distance' is insufficient for the
> fundamental moral and religious situation of humankind. Just as the meaning of
> the Christian revelation is to be experienced and accepted as 'contemporaneous',
> so also ethical choice is no matter of theoretical knowledge, but rather the
> brightness, sharpness, and pressure of conscience…Insofar as ethics is understood
> as knowledge of the universal, it is implicated in the moral questionability
> associated with the concept of the universal law…keeping the law is precisely
> what leads to the real sin—which is not just the occasional transgression of the
> law, but that *superbia* that prevents those obeying the law from obeying the
> commandment to love.[3]

Not only is theoretical knowledge of the good insufficient, it can lead to the sin of

intellectual pride, thereby bringing spiritual death. And so, Kierkegaard contested the "classical"

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[3] Gadamer, "On the Possibility of a Philosophical Ethics" in *The Gadamer Reader*: *A Bouquet of the Later Writings*, ed. Richard E. Palmer, (Evanston, IL: Northwestern University Press, 2007), 279. One recent attempt to apply Gadamer's approach to a Christian theory of ethics has been made by Ashley Peter Wilson, in a dissertation for Durham University. See: Wilson, Ashley Peter (2007) Hermeneutics and moral imagination: the implications of Gadamer's truth and method for Christian ethics, Durham theses, Durham University. Available at Durham E-Theses Online: http://etheses.dur.ac.uk/2907

view that the ethical duty of the individual is to conform himself to an absolute, universal standard. This rationalistic approach ignores the role of faith and the individual's personal relationship to the absolute (God). Kierkegaard argued that, "either there is an absolute duty to God, and if so then it is the paradox described, that the single individual as the particular is higher than the universal and as the particular stands in an absolute relation to the absolute – or else faith has never existed."[4] Faith cannot be a mere restatement of the ethical universal as discovered and articulated by reason, for then there would be no need for faith, which is the relationship of the existing individual to the absolute, a relationship that is higher than that of the individual to the universal.

For Kierkegaard, the relationship of faith is interior, one of the soul to the God. The individual stands responsible not before a code of universal ethics, but before God. Far from absolving the individual of responsibility, this lays a heavier burden, for "to exist as the individual is the most terrifying thing of all."[5] One cannot take comfort in strict conformity to the rational system, for no system is sufficient; no set of rules is a sure guide, for as Kierkegaard noted in his *Concluding Unscientific Postscript*, an "existential system cannot be formulated." Such a system could exist only for God. Reality "is a system – for God; but it cannot be a system for any existing spirit."[6] God can comprehend all, but a human cannot. Thus, an adequate system can be constructed only if there are certain universal formulas that can be unerringly discerned and applied to the unending variations of existence. But it is precisely

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[4] *Fear and Trembling*, trans. Alastair Hannay, (London: Penguin, 1985), 108. Hereafter cited as *Fear and Trembling*.
[5] Ibid, 102.
[6] Soren Kierkegaard, *Concluding Unscientific Postscript*, translated by David F. Swenson and Walter Lowrie, (Princeton: Princeton University Press, 1984), 107. Hereafter cited as *Postscript*.

because such formulas do not exist for man that one enters into the relationship of faith and a personal reliance on God.

These limitations should direct persons to seek God, not the universal system, since humans cannot get outside of their own existence to achieve a God's-eye view and are thus incapable of constructing an adequate universal system. As Kierkegaard observes, if "an existing individual were really able to transcend himself, the truth would be for him something final and complete; but where is the point at which he is outside of himself?...Modern philosophy has tried anything and everything in the effort to help the individual to transcend himself objectively, which is a wholly impossible feat."[7] Furthermore, the attempt is not only futile but foolish, for it misunderstands the nature of the absolute. Christianity teaches that God is not a principle but a person, and so the attempt to "bring God to light objectively…is in all eternity impossible, because God is a subject, and therefore exists only for subjectivity in inwardness."[8] The relationship is a personal (hence subjective) one, not an objective one.

Furthermore, God is not only a subject who relates from eternity to the individual in time, but also, through the incarnation, the individual relates to God existing in time. And so, Kierkegaard observes that the "object of faith is hence the reality of the God-man in the sense of his existence…God's reality in existence as a particular individual, the fact that God has existed as an individual human being."[9] The relationship of the existing individual to the absolute thus runs through the particularity of the absolute as an existing individual.

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[7] Ibid, 176.
[8] Ibid, 178.
[9] Ibid, 290.

Nor does God need to rely upon formulas or principles in order to understand existence, for he comprehends it in the entirety of its particularity.

> God is a friend to order; and to that end he is himself present at every point; every instant he is omnipresent…His concept is not like man's, beneath which the particular lies as that which is incommensurable with the concept. His concept comprises everything, and in another sense he has no concept. God does not avail himself of an abbreviation, he grasps (*comprehendit*) actuality itself, all its particulars; for him the single individual does not lie below the concept.[10]

Put simply, God comprehends everything, not through the application of universal principles or ideas but through direct and complete knowledge of its particulars. In contrast, because humans are limited, they necessarily resort to the abbreviations of abstractions and principles in reflection and communication, but when taken as absolute these are movements away from the fullness of the mind of God, not toward it. Thus, the truly ethical is not found in an objectivity expressing itself in ostensibly universal principles. These principles may be useful communicative approximations in some contexts, but they can never capture moral choice in all its fullness and particulars. Humans are incapable of comprehending all the particular factors implicated in even a single moral choice. How could a humanly constructed system manage it for all humanity?

Because of the impossibility of apprehending a universal ethical system, the primary ethical task of man is not to intellectually grasp an ethical system, but to individually live the ethical out in relation to God and one's neighbor. In Kierkegaard's simple formulation, "For the study of the ethical every man is assigned to himself."[11] Rather than considering the ethical as a

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[10] Soren Kierkegaard, *The Sickness unto Death*, trans. Alastair Hannay, (London: Penguin Books, 2004), 154. Hereafter cited as *Sickness*.
[11] Kierkegaard, *Postscript*, 127.

universal set of principles under which particularity is to be subsumed, the ethical is most fully

realized as the individual lives out his particularity before God.[12]

This understanding of the ethical does not mean that there is no place for systematic

study and reasoning in ethics, but it illuminates the dangers and limitations of such efforts.

While systems are a necessary part of human inquiry, providing form and organization, their

limitations must be recognized. As MacIntyre has noted, system-building can "degenerate into a

form of philosophical vice," because philosophers may "fall in love with their own system to

such an extent that they gloss over what they ought to recognize as intractable difficulties or

unanswerable questions. Love of that particular system displaces the love of truth."[13] And this

vice of intellectual pride and self-love is indicative of what Christianity considers the core of

human sinfulness—a corrupt will. In *The Sickness unto Death*, Kierkegaard argues that the real

problem of wrongdoing or wickedness lies not in an insufficiently understood system of

universal ethics but in the deliberate doing of wrong even though the good was perceptible.

A system of ethics can therefore be no refuge from the responsibility of acting before

God. There is no complete moral law whose stipulations include all that man is required to do

and not to do, no final set of principles from which all answers can be derived. But truth is

available from God in the moment. God grants faith and guidance in each instant, not through

universal formulas apprehended by objective rationality. And each moment is indelible and

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[12] Michael Polanyi describes this in secular terms as accepting the responsibility of one's calling. The limitations of one's concrete existence need not lead to relativism, for we may "accept these accidents of personal existence as the concrete opportunities for exercising our personal responsibility." (Polanyi, Michael. *Personal Knowledge: Towards a Post-Critical Philosophy*. Chicago: University of Chicago Press, 1974. 322).

[13] MacIntyre, *The Tasks of Philosophy*, 181.

bears the burden of conscience. Each person is alone before God; all men are individual and transparent in their individuality and in their conscience. Existence, Kierkegaard argues, is

> so arranged, by means of conscience, that the report follows immediately upon each guilt, and that the guilty person is the one who has to write it. But it is written with invisible ink and only becomes properly legible when held up to the light in eternity while eternity does its audit of the consciences. Essentially, everyone arrives at eternity bringing with him the most exact record of every least trifle he has committed.[14]

Sin is before God and primarily a matter of the will, not the understanding. What, Kierkegaard asks, did Socrates overlook with regard to sin? "It is: the will, defiance. Greek intellectuality was too fortunate, too naïve, too aesthetic, too ironic, too – too sinful – to be able to get it into its head that someone would knowingly refrain from doing the good, or knowing what is right, knowingly do what is wrong."[15] Furthermore, the sinfulness of the will consists not only in rejecting what the understanding perceives as right, but also in corrupting the understanding so that it does not want to know what is right. Christianity says "that sin does not consist in man's not having understood what is right, but in his not wanting to understand it, and in his unwillingness to do what is right."[16] Consequently, Kierkegaard concludes, "in Christian eyes, sin lies in the will, not in the knowing; and this corruption of the will affects the individual's consciousness."[17] Thus, the true solution to human sinfulness is not adherence to an objective formulation of morality but a conversion of the will by the grace of God.

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[14] Kierkegaard, *Sickness*, 157.
[15] Ibid, 122.
[16] Ibid, 127.
[17] Ibid, 128.

This reliance on grace may seem to preclude any significant role for the natural law as a means of moral knowledge, and many Protestants follow such reasoning in rejecting the natural law tradition. However, this neglects the potential for grace to operate outside of the Christian revelation and salvific and sanctifying forms. The clearest statements regarding the natural law in the New Testament are made in that Protestant favorite, the epistle to the Romans. While the natural law may operate without the Christian revelation, this does not mean that Christians must consider it capable of operating without grace. There is therefore a need for the natural law tradition to consider the will and its conversion in both Christian and non-Christian terms, a responsibility that has too often been neglected by the new natural lawyers, who have only recently and tentatively considered the role the will plays in the apprehension of moral truth.

For all his philosophical insight, Kierkegaard's reflections sometimes focus on personal conversion and the individual's relationship with God to the point of overlooking other truths. He overestimated the difficulties of communication about moral and spiritual matters, and because he considered the subjective experience of the absolute so personal as to make communication about it extremely difficult, his knight of faith is a lonely soul. Nor did he pay sufficient heed to the truth that private reflection and even communication with God are constituted by language as a social medium. We might feel the inchoate nudge of divine guidance, but language is present as soon as we try to explain it to ourselves or to pray to God about it. And this language is not constituted merely from the subjective self, but has been bequeathed to us as part of our historical existence among other persons.

Kierkegaard's perspective conflicts with many natural law approaches, and this is well within the norm for Protestant thinkers in recent centuries. Among the persistent theological

challenges to the natural law are some, especially from Protestants (Karl Barth is a prominent

example), that question the adequacy of any ethics not rooted in the revelation of Jesus Christ.

Ethical systems, it is claimed, are but vanity—the human intellect's prideful assertion. However,

Dietrich Bonhoeffer, despite being greatly influenced by Barth and familiar with Kierkegaard,

also pointed to other possibilities, particularly in his unfinished but brilliant *Ethics*.

Like Kierkegaard, Bonhoeffer reiterated the insufficiency of any universal system of

ethics. Bonhoeffer found his focus on Christ leading "away from any kind of abstract ethic and

toward an ethic which is entirely concrete. What can and must be said is not what is good once

and for all, but the way in which Christ takes form among us here and now. The attempt to

define that which is good once and for all has…always ended in failure."[18] Such attempts, he

claimed, are either too vague to be of use, or else become ridiculous as they attempt through

extensive casuistry to spell out in advance what is right or wrong in every possibility. Moral

communication, he argued, "cannot be conducted in a vacuum, in the abstract, but only in a

concrete context. Ethical discourse, therefore, is not a system of propositions, which are correct

in themselves, a system which is available for anyone to apply at any time and in any place, but

it is inseparably linked with particular persons, times and places."[19] God does not need, nor does

He provide us with, a divine formula applicable to all situations. Christians are not called to be

more rational and precise casuists, but converts following Christ Jesus, who redeems the world.

Because Bonhoeffer's Christocentric theology emphasized Christ as redeemer drawing

the world to Himself in all its particularity, Bonhoeffer sought in his *Ethics* to reclaim the natural

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[18] Dietrich Bonhoeffer, *Ethics*, trans. Neville Horton Smith, (New York: Touchstone, 1995), 87. Hereafter cited as *Ethics*.
[19] Ibid, 267.

as a category for Protestant theology. He urged that the "concept of the natural…be recovered

on the basis of the gospel."[20] While he provided only the beginnings of such a recovery, some

points are clear. The natural, Bonhoeffer wrote, is "the form of life preserved by God for the

fallen world and directed towards justification, redemption and renewal through Christ."[21] But

while the natural is that which in a sinful world remains good, pointing toward Christ and

eventually drawn in to and redeemed by Him, the unnatural is that which sets itself against the

coming of Christ. This theological conception of the natural would not dismiss the idea of the

natural law, contrary to Barth's unequivocal rejection of it. However, a natural law theory

developed along the lines of Bonhoeffer's theology would be more modest in its aims than most

current theories; keenly aware of its limitations, it would not claim universal demonstrability

through reason.

While Bonhoeffer apparently considered reason to be the means of knowing the content

of the natural, he nonetheless thought it to be significantly limited, arguing that it "is not a divine

principle of knowledge and order in man which is raised above the natural, but is itself a part of

this preserved form of life…Reason, then, is wholly embedded in the natural; it is the conscious

perception of the natural as it, in fact, presents itself."[22] Among the consequences of this

embedding of reason within the natural, is that "the natural can never be something that is

determined by any single part or any single authority within the fallen world."[23] No individual,

institution, or community can entirely delineate what is natural, nor can any philosophical or

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[20] Ibid, 143.
[21] Ibid, 145.
[22] Ibid, 145.
[23] Ibid, 146.

even theological system, though this limitation does not preclude judgment that is adequate for the time being.

What is more, Bonhoeffer's writings were not only theoretical or academic exercises. Even more than Burke, Bonhoeffer provides an example of moral reasoning in action, and the issues he wrote about were those he confronted. Finnis and his allies theorize about what to do in the face of Nazi horrors; Bonhoeffer had to act against them.[24] His martyrdom at the hands of the Nazis after he was implicated in the assassination attempt on Hitler does not in itself vindicate all he wrote, but the example of a good man *in extremis* may be of particular value in learning how to act rightly. Contrary to the new natural lawyers' emphasis on the possibility and imperative of maintaining personal moral purity, Bonhoeffer suggests that the only thing we cannot avoid is guilt. In some situations, even doing nothing is a sin and a violation of one's concrete responsibilities. The responsible man or woman will be willing to incur the guilt of violating abstract principles in order to fulfill concrete responsibilities.

> Jesus took upon Himself the guilt of all men, and for that reason every man who acts responsibly becomes guilty. If any man tries to escape guilt in responsibility he detaches himself from the ultimate reality of human existence, and what is more he cuts himself off from the redeeming mystery of Christ's bearing guilt without sin and he has no share in the divine justification which lies upon this event. He sets his own personal innocence about his responsibility for men, and he is blind to the more irredeemable guilt which he incurs precisely in this; he is blind also to the fact that real innocence shows itself precisely in a man's entering into the fellowship of guilt for the sake of other men. Through Jesus Christ it

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[24] Gadamer, while contemporaneous with Bonhoeffer, did not openly defy the Nazis, though later in life he expressed admiration for the Confessing Church.

becomes an essential part of responsible action that the man who is without sin loves selflessly and for that reason incurs guilt.[25]

Those who would avoid the guilt of responsibility incur the guilt of the self-righteousness and lack of charity shown in their abdication of responsibility. Bonhoeffer, who actually faced the question of whether or not to lie in order to save Jews from Nazis, scorned Kant's "grotesque conclusion" that one should not lie even to save a friend from being murdered, labeled it "self-righteousness" and an "outrageous presumption," and argued that responsibility to the claims of God and neighbor comes before adherence to theoretically articulated principles. To follow Kant (or Finnis) in such a case is to deny the responsibility that we are called to bear like Christ: "If I refuse to incur guilt against the principle of truthfulness for the sake of my friend, if I refuse to tell a robust lie for the sake of my friend, if…I refuse to bear guilt for charity's sake, then my action is in contradiction to my responsibility."[26] This "responsible acceptance of guilt" is in keeping with the example of Christ, who took upon himself the sin of the world.

Guilt cannot be avoided one way or the other, for it is sinful to shield oneself from one's responsibility by appealing to abstract principles. Actions are required and the right choice cannot be determined by universal, rational precepts or self-evident first principles. The right action must be discerned and performed within the murkiness of the world, and while there is much that can help in illuminating it, there is for us no permanent vantage outside the fog of life. "The action of the responsible man is performed in the obligation…to God and to our neighbor as they confront us in Jesus Christ. At the same time it is performed wholly within the domain of

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[25] Bonhoeffer, *Ethics*, 237-238.
[26] Ibid, 241. For an insightful discussion of what Christian truth-telling actually consists of, see his unfinished essay, "What is Meant by 'Telling the Truth'?" contained in the same volume.

relativity." Bonhoeffer wrote that the action of the responsible man takes place "wholly in the twilight which the historical situation spreads over good and evil; it is performed in the midst of the innumerable perspectives in which every given phenomenon appears. It has not to decide simply between right and wrong and between good and evil, but between right and right and between wrong and wrong."[27] No artifice of human reason, no ontological theory or set of first principles, can relive us of the necessity and responsibility of decision and action in this fallen world, with all the uncertainty that entails. We must act ourselves, and evaluate and respond to the acts of others, without the certainty that is sought by a universal rational system.

Bonhoeffer's recognition of the historicity and limitations of all human moral reasoning protects against the criticism of one such as Barth by preserving the role of the revelation of Christ and leaving room for sanctifying grace. There is no presumption that all moral knowledge can be realized by reason constructing an adequate system, so the necessity for grace to perfect nature is not done away with. Yet this dependence on grace does not dismiss the moral insights attained outside of the Christian revelation. From the Christian point of view, they are still expressions of God's general goodness and grace, and their legitimacy is affirmed. God's Spirit is always speaking to man in such searches: the good in tradition, the spark of the moral imagination, the intuitive knowledge given by a moral sentiment, the symbolic communication of moral information and the reasoned analysis of these are all overlaid with the voice of God. The natural law is a dialogue with God unceasingly speaking to man, responding to his questions and needs within every concrete situation. Again, according to Christianity, God is a person, not a proposition.

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[27] Ibid, 245.

God, who is able to speak to each person in each individual case, can presumably express Himself with more precision than any general maxim, and that precision is always true for the instance in which it was expressed. The desire for universality seems to result in mistakenly merging human moral communication with the divine perspective that sees and judges the fullness of each action. The universal will of God is eternally manifest in particulars and is either accepted or rejected in the eternal indelibility of each particular action. These quiet theophanies of everyday life provide a Christian theological explanation for the common experience of moral imperatives pressed upon man from outside himself.

If the Christian understanding of a personal God is accepted, then the grace of the natural law may be understood as being made concrete through divine communication, not through a voice thundering from heaven, but in each concrete apprehension of the good. In all of its manifestations the natural law is the voice of God. In them God speaks to man not through the crashing of an earthquake or the roar of a whirlwind, but with a still, small voice. For the Christian, the fullness of the natural law is seen in the personal nature of God, who is a subject, not an object, and who communicates to men and women not only through commandments but through history, experience, dialogue with other persons and finally the experience of Himself. As Kierkegaard put it, that which is "more concrete than all other understanding, the only absolutely concrete understanding there is, is the understanding by which the individual comprehends himself in comparison with God."[28] Christianity recognizes that God may speak in the quietly whispered theophanies of moral realization in everyday life, even to those who do not acknowledge Him. To acknowledge the natural law tradition's indebtedness to Christianity is

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[28] Kierkegaard, *Postscript*, 420.

not to presume that natural law theories have nothing to say to non-Christians, rather, it may make the Christian natural law theorist a partner in dialogue with non-Christians, instead of a lecturer to them. It provides the Christian with an explanation for the moral knowledge and practices of the non-believer, which the Christian must respect as valid expressions of God's grace, and it reminds the Christian theorist of his or her own limitations. A virtuous non-believer may live a life more in keeping with the natural law, and have better judgment about moral subjects, than the Christian theorist, who ought to remember that his theories about God and the good will not suffice for salvation.

Natural Law and History

These theological reflections both allow for a conclusion of this particular project and illustrate why any final word on the natural law is impossible. They provide a preliminary explanation, drawn from part of the Christian intellectual heritage, for the failure of Christian natural law theories that attempt to emulate the modern Enlightenment project of a universal, rational moral science based on self-evident principles. Christianity need not aver that human reason can rise above its historicity, finitude and contingency to provide an absolute, ahistorical moral perspective. And yet this does not render the attainment of moral knowledge within history impossible, nor obviate the imperative of moral action. As David Walsh has observed, we "cannot step outside the stream of existence in which we find ourselves in order to map the whole. Obligations emerge within our experience, and we are called to respond to them in all the whirling, buzzing confusion of ongoing life."[29] God does not call us to the impossible task of attaining His perspective, or approximating it through the articulation of universal moral laws,

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[29] David Walsh, *The Growth of the Liberal Soul*, (Columbia: University of Missouri Press, 1997), 69.

but to right action in the moment, action in accord with His will for that particular moment. The natural law is not derived from an ahistorical, universal set of principles or postulates or a final ontological account, rather it is the moral promptings man encounters within his historical existence when faced with concrete responsibilities to God and neighbor. While reflection and dialogue on these can produce a systematic account of the content of the natural law, such accounts must always bear in mind their inherent limitations and provisional character.

This historically-conscious understanding illuminates many deficiencies of approaches like the new natural law theory while also pointing toward what could be more fruitfully developed within the natural law tradition. While the experiential turn of the new natural law theory has allowed it to avoid some of the difficulties that have plagued other natural law approaches, its aim of producing objective moral rules that are rationally compelling and universal in application has entangled it in troubles of its own. The new natural lawyers vacillate between demanding mural purity to the point of martyrdom and extensive casuistry that provides exceptions to their otherwise inflexible precepts. It is therefore unsurprising that, despite its claims to be demonstrable to all people of reason and goodwill, the new natural law theory has lacked persuasive power. This failure itself poses a problem for the new natural law theory, insofar as it presumes that, proceeding from universal, self-evident first principles, it should be rationally persuasive to all people of goodwill. Furthermore, it has relied upon the vague ideals of "integral human/communal fulfillment" as catchalls for those aspects of consciousness and moral apprehension (such as a rightly-oriented will and imagination) that do not fit into its notion of practical reason.

Ultimately, these problems are intrinsic to the new natural law theory because of its ambitions. The attempt to provide a universal set of moral norms derived from self-evident first principles that will be rationally persuasive to all people of goodwill is doomed to fail. But that is not the proper goal of a natural law theory, whether old or new. Jean Porter's studies of the scholastics (Aquinas in particular) show that their understanding of the purpose of a natural law theory was very different from this modern ambition. They saw the natural law as an explanation for moral experience and practice outside of Christian revelation, and while they did not consider it devoid of content, they lacked the modern obsession with discovering and articulating this content in an ahistorical, universal fashion. Following this aspect of the natural law tradition, Alasdair MacIntyre has demonstrated how natural law theories need not depend on the modern idea of a universal rationality. The dichotomy between universal reason and relativism is a modern one, resulting from a misunderstanding of both reason and universality. There remains within the natural law tradition the possibility of acknowledging the contingent, particular nature of human moral experience and knowledge (and philosophical formulations thereof) without denying its truth. And Hans-Georg Gadamer has shown that philosophy following Heidegger need not fall into the relativism that many natural law theorists fear, but that it can remain committed to truth even while accepting the finitude of human existence and rationality.

Embracing the historically given and finite nature of our existence allows natural law theory a way forward from the modern morass in which it is sunk. Reclaiming and developing such an approach offers an alternative to both moral relativism and those natural law theories that rely upon ahistorical rationality. A historically-conscious approach to natural law

acknowledges that truth and goodness are real, particular and communicative, and realized within historical circumstance. Particular truths are understood as they are subjectively accessible within our existence or communicatively conveyed in dialogue and instruction. This tradition-sensitive view of natural law does not reject general statements or principles, but it recognizes them as the communicative tools they are, meant to convey truth to individual men and women in their particular circumstances. It does not reify them into everlasting formulas. Truth must always be spoken into particular circumstances, which means it must constantly be renewed, recreated even, by reinterpretation and restatement. The natural law is not a universal methodology of moral inquiry or a timeless set of propositions, but an explanation for the legitimate moral insights that are available without divine revelation.

This understanding also recognizes the role of imagination and feeling in recognizing and instantiating the natural law in particular historical circumstances. As Kierkegaard observed, communication cannot be merely objective, but must incorporate the subjective if it is to spark the imaginative apprehension of the possibility of good becoming instantiated in a particular instance. As he put it, "In existence all the factors must be co-present. In existence thought is by no means higher than imagination and feeling, but coordinate."[30] Imagination constantly interacts with reason, and imagination of the right sort will allow men to envision new instantiations of the good or innovative ways to restrict and ameliorate the bad. Such a moral imagination is not a vehicle for ahistorical flights of fancy, but rather enables us to see possibilities within our circumstances. Although the imagination is susceptible to temptation and corruption it is indispensable to the realization of the good.

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[30] Kierkegaard, *Postscript*, 310.

However, recognizing the importance of the imagination, along with the will, to the apprehension of moral truth places the natural law tradition in a conundrum. Historically, the natural law tradition has emphasized that moral truth is known through practical reason. But it seems that either practical reason on its own is grossly insufficient as a moral guide and dependent upon other faculties such as the will and the imagination for its perception of moral truth, or that practical reason has been covertly credited with containing a great deal that is not traditionally considered rational. This problem is exacerbated by the differences between *phronesis*, *prudentia*, and practical reason, with the first much more comprehensive than the last. If practical reason alone is how the natural law is apprehended, then it is a good deal more encompassing than it is usually portrayed as being. Alternatively, practical reason is, at most, a part of how the natural law is known, with other faculties playing an important, even decisive, role in moral knowledge. If it is solely responsible for the apprehension of the natural law, practical reason must be either over-burdened or overbroad, problems that have become particularly acute in the new natural law theory, which purports to rely exclusively on practical reason for moral inquiry.

Addressing this problem of practical reason is a pressing matter for natural law theories. The most comprehensive treatments have been expressed in traditional Thomistic terms, where all too often the aspects of human consciousness (let alone the sub-conscious) are conceptually reified so that their dynamism is obscured.[31] Meanwhile, the new natural lawyers have been late

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[31] R. J. Snell's *The Perspective of Love* provides a good discussion of this point. His treatment of the will, which relies heavily on Bernard Lonergan, provides an example of the sort of work that natural law theorists need to undertake. In contrast, Finnis' presentation of the will in *Aquinas* presents a very static picture of the relationship between reason and will, with reason apprehending and presenting alternatives for the will to choose from, almost like a patron at a restaurant looking over the menu.

to recognize the problem at all, only recently acknowledging, for example, that a corrupt will can incapacitate reason. Those working within the natural law tradition need to clarify the aspects of human consciousness that interact with reason, presenting a clearer picture of what they are, their interactions, and how they contribute to either the apprehension or the occlusion of moral knowledge. Noting the inadequacies of the new natural law theory (or any other natural law approach) is but a beginning.

Concomitantly, the natural law tradition must take account of the limitations of human reason. Our being is finite, but still partakes of the good, the true, and the beautiful, which do indeed have a universal aspect. For the Christian (and perhaps those of other faiths) the apprehensions of these come from the quiet theophanies of everyday life, and their source and unity is found in God. For those without such faith, they are the *apeiron* that bounds our finite existence. Experiences of the good, and attempts to more fully and consistently instantiate aspects of the good in one's life, are not dependent upon religious conviction. Recognition of the moral grounding of our being can be had without appeal to a personal God, for it is experiential, though a Christian would add that revelation and the relationship it provides to God allow a more complete apprehension.

The communicative aspect of this approach to natural law theory can hardly be overstated. A Christian perspective should recognize the divine communication intrinsic to natural law, which, while hardly unrecognized in the past, has often been misunderstood. Yet too often this communication has been reified or expressed in ostensibly final formulations that ignore the dynamic reality of language and the limits of human reason. For the natural law as I have presented it, there is no final formulation or expression of the absolute, there is only the

conversation that draws us back into the dialogue where truth may be illuminated in the moment. The natural law is less a moral system than an explanation for moral knowledge. In one sense the natural law has no foundation, in another, everything is its foundation. David Walsh has described the situation well, writing that the "only knowledge of order available to us is through our participation within it. The conceit that this imperative can be overstepped and that we can attain a direct and systematic comprehension of all the moral ramifications before us is futile. It is only by undertaking the effort to live more profoundly in accordance with the inchoate sense of order already available to us that we begin to gain a larger understanding of its outlines."[32] We can only learn what is right within historical existence. We can only learn the content of the natural law through our experience and communication within our historical horizon.

The natural law is made manifest in the sense that we have of a moral standard that obedience is owed to—a standard that is universal insofar as it informs all instantiations of the good. Every expression of the good holds out the possibility of expansion—an expansion that if consistent with itself will also direct one toward other instances where the good can also be realized. Wise men and women will be able to discern much about the overall content of this natural law, and formulate these insights into rules and theories that are very useful and even necessary, particularly in the ordinary course of life. But at no point will they be able to stand outside of history and perceive a complete and final formulation of moral truth, nor is there any single starting point for philosophizing about the natural law. One man might learn and articulate a good deal about the natural law from an ontological perspective, while another might do so from consideration of basic human goods. Another might reflect upon the moral traditions

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[32] David Walsh, *The Growth of the Liberal Soul*, (Columbia: University of Missouri Press, 1997), 254.

of his or her culture, and focus on that which most consistently strives for the good. All of these and more are legitimate natural law approaches; none of them is dispositive. All may be deployed in social and political debate; none of them will produce a final set of universal, self-evident truths that provide the criterion for the Good in political practice. There is no single correct methodology or starting point for natural law theorizing, for it partakes of our own limitations and finitude, limitations that do not preclude moral truth from being apprehended and acted upon in the moments of deliberation and decision.

The end of moral reflection is intensely practical—while one may comfortably theorize from a study, armchair or sofa, without implementation in practice it is at best pedantry, at worst distracting and misleading. The goal must always be to better guide oneself and others to perceive and do what is right. Natural law theorists should spend less time in the futile quest to vindicate universally applicable and accessible moral propositions, and instead understand themselves as partaking in a mutual quest for moral understanding within our finite, historical existence. This quest will employ all of human faculties, not just instrumental reason. It will require moral persuasion and practice as well as logical analysis. The ultimate reality of moral truths is expressed not in postulates or principles but in right action in the moment, and the particular moral knowledge that enables it. Although many moral judgments may easily be rendered by drawing from general moral expressions and principles, what is needed in the truly hard cases is not further information for the moral philosopher and his system to process, but the *phronimos* judging rightly in the moments of evaluation, decision and action. Sometimes the moral philosopher should say "I don't know." While theory and academic work have a legitimate role to play in the intellectual development of the natural law tradition, they must

recognize not only their relation to practice, but also their dependence upon it. The content of

the natural law is known not by a transcendent intellectual leap outside of history, but within it.

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