

# Natural Law Theory and the "Is"--"Ought" Problem: A Critique of Four Solutions

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NATURAL LAW THEORY AND  
THE IS—OUGHT PROBLEM:  
A CRITIQUE OF FOUR SOLUTIONS

by

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ABSTRACT  
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This dissertation explores the “Is”—“Ought” problem (IOP) as it relates to natural law theory (NLT). It begins with a brief analysis of the type of “ought” precepts upheld by traditional natural law theorists as well as a consideration of the precise nature of the IOP. Chapter two considers the attempts of Searle and Gewirth at establishing that it is possible validly to derive an “ought” conclusion from “is” premises and asks whether their attempts can be imitated successfully by those who wish to uphold the basic claims of NLT. Chapter three considers whether it is possible to bypass the IOP by beginning with premises concerning the *de facto* desires of human agents. Chapter four consists of an analysis of Geach, Veatch, McInerney, MacIntyre, and Lisska who put forth the solution of returning to the Aristotelian-Thomistic understanding of the *telos*, function, or essence of the human person. In Chapter five the new natural law solution is analyzed; and in Chapter six an overall critique is offered.

The overarching thesis of this dissertation is that—although each solution is in some way problematic—the solution of new natural law theorists is the least problematic if one wishes to implement an “ought” that is moral, prescriptive, non-relativistic, determinate, and related to the common good.

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Shalina Stilley, B.A., M.Th., M.A.

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## CHAPTER I

## INTRODUCTION

*The dilemma is simply this: one must either produce the means by which to proceed from facts to norms, or discontinue the attempt to espouse natural-law philosophy.<sup>1</sup>*

Henry Veatch

One of the most fundamental concepts in ethics is the concept of obligation. Like time, it is a concept which seems simple until one is asked to explicate it. Much of this difficulty is undoubtedly due to the fact that the term Ought is used differently in different contexts and has many different meanings.<sup>2</sup> Even when we try to narrow down the concept of obligation to *moral* obligation, the difficulty does not subside and an often time even worsens. It seems safe to assume that at the core of every major ethical debate, whether it pertains to applied ethics or the theory of ethics, is a debate about what constitutes the moral Ought.<sup>3</sup>

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<sup>1</sup> Henry Veatch, "Natural Law and the 'Is'—'Ought' Question" in *Catholic Lawyer* 26 (1980-1981), 253.

<sup>2</sup> Rather than put the terms "ought" and "is" in quotation marks when appropriate, I will instead capitalize the terms.

<sup>3</sup> For example, in ethical theory, hedonic utilitarians base the Ought on the notion of pleasure and pain, Kantian deontologists base it in the notion of universalizing maxims, and virtue ethicists base it in the notion of character and habits. An example in applied ethics would be the euthanasia debate which is based on the question of whether seeking to alleviate suffering can justify an Ought in regard to terminating patients.



In this dissertation I will provide an analysis of the concept of moral obligation as it is utilized within the context of natural law theory. In so doing, I will discuss the problems inherent in the attempt to derive a moral Ought from factual statements about human nature. Although I will consider the problem from both metaphysical and epistemological perspectives, my primary focus will be on the epistemological aspects of the problem.

### A. The Historical Origins of the Is-Ought Problem

The *locus classicus* of the Is--Ought problem (IOP) is David Hume's *Treatise of Human Nature* wherein he states:

in every system of morality, which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surprised to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, 'tis necessary that . . . a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from the others, which are entirely different from it.<sup>4</sup>

Hume's concern here is not only that it seems impossible to deduce an Ought-statement from an Is-statement but that moral philosophers fail to even attempt to bridge the gap.

Since Hume's recognition of the basic problem, philosophers have continued to look at it from new angles. G.E. Moore's discussion of the 'naturalistic fallacy' in his *Principia Ethica*, for example, is considered to be an elaboration of the IOP. He notes that notion of good conduct is at the heart of ethics and then proceeds to argue that 'good' is a non-natural property which cannot be defined. When we say something is 'good' we

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<sup>4</sup>David Hume, *Treatise of Human Nature* (Buffalo: Prometheus Books, 1992), 469.

are not stating a fact in the way astronomers are stating facts when they say that an object is a star.<sup>5</sup> When we say something is ‘good’ in a moral sense, we are not referring to a natural property at all. ‘Good’, Moore argues, is a simple notion and a non-natural property analogous to yellow. Just as yellow cannot be adequately defined by stating facts about the frequency of wavelengths (since when we use the term ‘yellow’ we may mean something other than merely ‘wavelengths of a specific frequency’) so too it is not possible to define ‘good’ in terms of factual statements about pleasure or anything else. Like yellow, ‘good’ is a simple notion which is irreducible to notions of natural fact.<sup>6</sup> Thus, statements in which ‘good’ figures are not derivable from statements of fact since such statements cannot be analyzed by merely referring to natural properties. Hume claims that you cannot derive an Ought from an Is and Moore develops this by seeking to establish that you cannot derive a Good from statements concerning natural properties.<sup>7</sup>

Some fifty-five years after the publication of *Principia Ethica*, G.E.M Anscombe advises moral philosophers to jettison the emphatic use of the term Ought altogether. Aware of the difficulties inherent in the very notion of an emphatic Ought (i.e., an Ought that is moral and absolute) she also recommends returning to virtue ethics—which does not rely on the notion of such an Ought— until an adequate theory of human psychology

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<sup>5</sup> G.E.Moore, *Principia Ethica*, Revised edition, (Cambridge: Cambridge University Press, 1993).

<sup>6</sup> G.E.Moore, *Principia Ethica*, 62 : “It may be true that all things which are yellow are *also* something else, just as it is true that all things which are yellow produce a certain kind of vibration in the light. And it is a fact that Ethics aims at discovering what are those other properties belonging to all things which are good. But far too many philosophers have thought that when they named those other properties they were actually defining good; that these properties, in fact, were simply not ‘other,’ but absolutely and entirely the same with goodness. This view I propose to call the ‘naturalistic fallacy’ and of it I shall now endeavour to dispose.”

<sup>7</sup> Moore’s claims are, in part, responsible for the fact that normative ethics was considered to be irrelevant in the twentieth century. Cf. Anthony Lisska, *Aquinas’s Theory of Natural Law: An Analytic Reconstruction*, (Oxford: Clarendon Press, 1996): 62.

can be developed. She argues that the emphatic Ought is only useful when utilized in certain contexts—such as within the context of a theory of a divine legislator—and that these contexts no longer exist or are obsolete. Like Hume and Moore, she too realizes that the theoretical issues involved in the notion of an Ought are legion and that a solution must be sought.

Given Hume's and Moore's concerns, if natural law theorists wish to claim that moral obligation and the related notion of moral value are grounded in facts about human nature, they will first need to establish that it is possible to overcome the difficulties inherent in doing so. Moreover, given Anscombe's warnings, if natural lawyers wish to utilize an emphatic Ought, they will again need to establish that it is possible to overcome the difficulties inherent in doing so.<sup>8</sup> In this dissertation I will focus primarily on the former but—since natural law theory generally utilizes an emphatic Ought—I will also touch on issues concerning the latter.

### **B. Why Natural Law Seems to Fall Into the Is—Ought Problem**

Natural law theory, more than any other ethical theory, seems enmeshed in the IOP. This is because unlike other theories it rests on the claim that the Ought in some sense rests on the Is of human nature. In order to make this more explicit, it will be helpful to explore the main claims of natural law and the nature of the IOP in more detail. In this next section, I will explain five essential claims made by virtually all natural law theorists. I will then lay out the precise nature of what I take the real IOP to be. Lastly, I will explain *why* natural law theory seems to illicitly derive an Ought from an Is.

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<sup>8</sup> For example, they will need to establish that it is possible to utilize the notion of an emphatic Ought without relying on a theory—such as the theory of a divine legislator-- that is no longer assumed to be correct.

## 1. The Essential Claims of Natural Law

Although there is some debate regarding how best to define natural law theory, most-- if not all-- ethicists would agree that it entails at least at least the following five claims.<sup>9</sup> The first and most fundamental claim is that there is a relation between human nature and what humans ought to do and ought to avoid. Although other ethical theories may also directly or indirectly hold to this claim, any theory that did not would fail to qualify as theory of natural law. One of the most stark examples of this is St. Thomas's claim that preserving human life belongs to natural law precisely because it is in accordance with human nature.<sup>10</sup>

A second essential claim is that in some way knowledge of human nature enables one to know or determine what ought to be done and avoided. Admittedly, there is much debate regarding what *type* of knowledge is necessary. Some claim that one must have speculative, theoretical, or objective knowledge of human nature in order to arrive at knowledge of the Ought; others, that subjective or connatural knowledge of one's own inclinations is sufficient. H. Veatch, who argues for the former, holds that one must have a *conceptual* understanding of the metaphysical aspects of human nature before one can determine what is good and, in turn, determine what ought to be done and avoided.<sup>11</sup>

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<sup>9</sup> Because Cicero and St. Thomas are held to be clear examples of natural law theorists, in what follows I will primarily draw upon examples from their works.

<sup>10</sup> *ST I-II*, 94, 2: "Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances; that is, every substance seeks the preservation of its own being according to its nature. And by reason of this inclination, whatever is a means of preserving human life and of warding off its obstacles belongs to the natural law."

<sup>11</sup> Henry Veatch, "Natural Law and the 'Is'—'Ought' Question: Queries to Finnis and Grisez", *Catholic Lawyer*: (1980-1981), 261.

J. Maritain, on the other hand, claims that a first-person experience of one's own nature via one's own inner inclinations is sufficient. Maritain states:

The genuine concept of Natural Law is the concept of a law which is natural... insofar as it is *naturally* known, that is, known through inclination or through connaturality, not through conceptual knowledge and by way of reasoning. . . . judgments in which Natural Law are made manifest to practical Reason do not proceed from any conceptual, discursive, rational exercise of reason; they proceed from that *connaturality or congeniality* through which what is consonant with the essential inclinations of human nature is grasped by the intellect as good; what is dissonant, as bad.<sup>12</sup>

Veatch claims that one must have a speculative and discursive understanding of human nature whereas Maritain claims that an experience of one's own inclinations is sufficient.

Yet, regardless of the fact that there is much debate about what kind of knowledge of human nature relates to knowledge of natural law, all natural lawyers agree that there is such knowledge.

The third essential claim is that human positive law is only authentic, just, and binding when it is in harmony with natural law. St. Thomas asserts,

. . . the force of law depends on the extent of its justice. Now in human affairs a thing is said to be just from being right according to the rule of reason. But the first rule of reason is the law of nature. . . . Consequently every human law has just so much of the character of law as it is derived from the law of nature. But if at any point it differs from the law of nature, it is no longer a law but a corruption of law.<sup>13</sup>

It is precisely because St. Thomas holds that human law is just and authentic only if it is derived from the law of nature that he also holds that if human law is not in accord with natural law, it is not binding in conscience.<sup>14</sup> Cicero holds something similar and claims

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<sup>12</sup> Jacques Maritain, *Natural Law: Reflections on Theory and Practice*, William Sweet ed., (South Bend: St. Augustine Press, 1943), 20.

<sup>13</sup> *ST I-II*, 95, 2.

<sup>14</sup> *ST I-II*, 96, 4.

that if law were merely based on the decisions of the senate or the will of the people, and had no basis in a higher law, it would be possible to make even heinous acts legal.<sup>15</sup> It is precisely for this reason that Cicero thinks true law has some other basis.

A fourth essential claim is that the Ought of natural law is universal, unchanging, and non-relativistic. Cicero states,

True law... cannot be contradicted by any other law, and is not liable either to deterioration or abrogation. Neither the senate nor the people can give us any dispensation for not obeying this universal law of justice. ...It is not one thing at Rome, and another at Athens; one thing today and another to-morrow, but in all times and nations this universal law must for ever reign, eternal and imperishable.<sup>16</sup>

This claim is often related to the first claim above. Natural law theorists ordinarily claim that human nature is universal and unchanging, that is, that all humans have the same essence regardless of the time or culture in which they happen to live. Given that the Ought is held to be based in human nature, then, it is no surprise that the Ought is also held to be universal and unchanging. Moreover, given that human nature is said to be universal and unchanging, it is also no surprise that the Ought is said to be non-relativistic. What human beings are morally obligated to do does not stem from culture

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<sup>15</sup> Marcus Tullius Cicero, *On the Laws*, Charles Duce Yonge Trans. (London: H.G. Bohn, 1853), I, 12, 18: "If the will of the people, the decree of the senate, the adjudications of magistrates were sufficient to establish rights, then it might become right to rob, commit adultery, substitute forged wills if such conduct were sanctioned by the votes or decrees of the multitude. . . . This, then, as it appears to me, has been the decision of the wisest philosophers, that law is neither a thing contrived by the genius of man, nor established by the decree of the people, but a certain eternal principle which governs the entire universe...."

<sup>16</sup> Marcus Tullius Cicero, *On the Republic*, Charles Duke Yonge, trans. (London: G.G. Bohn, 183), III, 22.

or subjective and capricious desires but from their very nature. It is for this reason that natural law theory is at odds with cultural and subjective relativism.<sup>17</sup>

A fifth essential claim—which dovetails with the first two-- is that natural law has sanctions in so far as to act in accordance with it leads to flourishing and to act contrary to it leads to a failure to flourish. As Cicero puts it, “...he who does not obey it flies from himself, and does violence to the very nature of man. And by so doing he will endure the severest penalties even if he avoids the other evils which are usually accounted punishments.”<sup>18</sup> This claim is sometimes illustrated by use of an analogy. For instance, if one fails to put oil in one’s car, it will eventually cease to function. This is not because someone capriciously decreed that oil ought to be put in cars but because, given the nature of a car and its physical make-up, if one fails to put oil in one’s car it is a fact that it will eventually cease to run. Analogously, if a person fails to act in accord with her own nature, she will cease to flourish. This is not because someone decreed that humans ought to act in accord with their nature but because, given the nature of the human person, if a person fails to do so she will cease to flourish. Thus, given the nature of the human person, given that there are certain acts which are contrary to human nature, and given the fact that humans like to flourish and dislike the opposite, there is a built-in sanction to act in accordance with one’s nature. In other words, natural lawyers agree that to act in accord with natural law is in some sense to act in accord with human nature

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<sup>17</sup> Regarding the universal nature of natural law see also, *ST I-II*, 94, 4 and 94, 5, wherein St. Thomas claims that the first principles of natural law can never be changed or obliterated.

<sup>18</sup> Marcus Tullius Cicero, *On the Republic*, Charles Duke Yonge, trans. (London: G.G. Bohn, 183), III, 22. Quoted by Kainz, 11.

and leads to flourishing. They also agree that because of this, there are natural sanctions.<sup>19</sup>

In categorizing these claims, the first would be ontological since it is a claim about the existence of a relationship between ethics and facts about human nature; the second would be epistemological since it pertains to how we know natural law; and the third would be jurisprudential since it pertains to the relationship between human or positive law and a higher law.<sup>20</sup> The fourth claim is a specification of the Ought of natural law. The fifth pertains to the sanctions of natural law and is a specification of how natural law relates to human nature. Although each of these claims is approached in a different way by natural lawyers, all natural lawyers accept and often implement them.<sup>21</sup>

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<sup>19</sup> In her book *Immovable Laws, Irresistible Rights*, Christine Pierce quotes Ken Kesey who says, “You don’t put crankcase oil in your power steering system. And when God says, ‘Do not put crankcase oil in your power steering system, ‘he’s not saying ‘if you do, you’ll go to hell, he’s saying, ‘if you do, you’ll blow the seals out of your power steering.’” (47) (see Richard Goldstein, “A Plague on All Our Houses,” *Village Voice, Literary Supplement*, Sept 1986, 17.)

<sup>20</sup>More will be said latter regarding the importance of properly distinguishing epistemological and ontological claims.

<sup>21</sup> Although many natural law theorists discuss natural law within the context of divine law and a divine legislator, belief in God or the supernatural is not an essential component of natural law theory. It is entirely possible for a theory of natural law to be understood without ascribing to a theory of divine law. Moreover, many who speak of natural law within the context of a divine legislator—such as Aquinas and Grotius--do not claim that one must first believe that God or divine law exists in order to understand and accept the claims of natural law. An adequate treatment of this would far surpass the limits of this dissertation and so, in what follows, I will be assuming that it is possible to subscribe to a theory of natural law without believing in a divine legislator.



## 2. The Nature of the Is—Ought Problem in Ethics

In order to assess the extent to which natural law theory is susceptible to the IOP, it will be helpful first to consider the insights of Gewirth regarding the type of Ought which is pertinent to ethics in general. Upon considering his insights I will consider the ways in which they pertain to natural law theory in particular.

In his article *The Is-Ought Problem Resolved*, Gewirth establishes that ethicists need not be concerned with the problem of deriving just any type of Ought but with the problem of deriving a moral, prescriptive, egalitarian, determinate, and categorical Ought. He asserts that “‘oughts’ are moral ones in the sense that they take positive account of the interests of other persons as well as the agent . . . especially as regards the distribution of what is considered to be basic well-being.”<sup>22</sup> He also asserts that moral Oughts may be either negative—in so far as they pertain to what should be avoided—or positive—in so far as they pertain to what should be done. Thus, any Oughts which do not take consideration of the well-being of persons would not be at issue.<sup>23</sup>

By ‘prescriptive,’ Gewirth means that the Ought must “seek to guide or influence actions.”<sup>24</sup> For an Ought to qualify as prescriptive, it must be conjoined to reasons which explain why it is mandatory. Thus, the Ought-statement: “You ought to jump off a cliff” would not qualify whereas the Ought-statement: “You ought to avoid wounding people because it is not conducive to their well-being” would qualify.<sup>25</sup> Likewise, an Ought-

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<sup>22</sup>Allan Gewirth, “The ‘Is-Ought’ Problem Resolved,” *Proceedings and Addresses of the American Philosophical Association* 47 (1974): 35. The emphasis is that of Gewirth. Hereafter this article will be abbreviated *IOPR*.

<sup>23</sup> For example, the following Ought-statements would not be relevant: “It ought to be hot in July,” and “A cup ought to hold water.”

<sup>24</sup> *IOPR*, 35.

<sup>25</sup> Gewirth does not specify whether these “reasons” merely need to provide justification or a general rationale for doing what is mandatory or whether they need to provide the agent with

conclusion that was not derived from a premise which provided reasons why it is mandatory would not qualify whereas one that was derived from such a premise would qualify.

By ‘egalitarian,’ Gewirth means that the Ought must “require that at least basic well-being be distributed equally...between the agent addressed and his potential recipients, or... among members of a society.”<sup>26</sup> In other words, the relevant Ought must pertain to fostering the basic well-being of persons in an equitable fashion. By this standard, an Ought that prescribed egoism would not be they type of Ought which ethicists need to be concerned about.<sup>27</sup>

By ‘determinate,’ he means that “the actions they prescribe have definite contents such that the opposite contents cannot be obtained by the same mode of derivation.”<sup>28</sup> Otherwise stated, if an Ought is determinate, it cannot be derived from facts in such a way that the opposite prescription could also be derived. For example, an Ought that prescribed rescuing a drowning person would only be ‘determinate’ if it also forbade not rescuing a drowning person.<sup>29</sup>

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motivation to do what is mandatory. Since he elsewhere implicitly relies on the principles that one ought to be logically consistent without explaining how this principle relates to one’s desires, he seems to be proposing the former. More will be said about this below.

<sup>26</sup> *IOPR*, 35-36.

<sup>27</sup> Gewirth notes that this criterion overlaps with the first, viz., that the Ought must be moral. *IOPR*, 36.

<sup>28</sup> *IOPR*, 36.

<sup>29</sup> *IOPR*, 40-41. Consider the following: *John knows how to swim. Therefore, if all those who know how to swim ought to rescue drowning persons when they have the opportunity, then John ought to rescue drowning persons when he has the opportunity.* According to Gewirth, this derivation of an Ought from a statement of fact would not be relevant since we could also derive the opposite conclusion via the same means as in: *John knows how to swim. Therefore, if all*

Finally, by ‘categorical,’ Gewirth means that the Ought is “normatively overriding and ineluctable or necessary, in that [its] bindingness cannot be removed by, and hence is not contingent on or determined by, variable, escapable features either of the persons addressed or of their social relations.”<sup>30</sup> By this criterion, any Ought which was contingent on “self-interested desires, variable choices, opinions, or institutional rules whose obligatoriness may itself be doubtful or variable” would not pertain to the real IOP.<sup>31</sup> In short, Gewirth’s claim here is that the Ought that ethicists need to be concerned about when it comes to the problem of derivation, is a specific type of Ought with various characteristics. Even if it can be shown that an Ought-statement can be derived from Is-premises, the Ought would need to have all five of the above characteristics to be relevant to ethical theory.

In addition to the claims Gewirth makes regarding these five characteristics, he claims that any purported counterargument or solution to the IOP would need to be non-circular, insofar as “the premises from which the ‘ought’-conclusions are derived must not themselves be moral or prescriptive.”<sup>32</sup> He thus points out that any authentic derivation of an Ought from an Is would not only need to have premises which do not contain the term Ought, but which also do not contain moral or prescriptive statements.

To be sure, Gewirth’s version of the IOP is much more specific than other versions. It is precisely for this reason that many of the attempts to derive an Ought from

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*those who know how to swim ought to avoid rescuing drowning persons, then John ought to avoid rescuing drowning persons.*

<sup>30</sup> *IOPR*, 35-36.

<sup>31</sup> *IOPR*, 36.

<sup>32</sup> *IOPR*, 36.

an Is which have been proposed would not, by Gewirthian standards, be acceptable. For example, although the following arguments are counterexamples to the thesis that no Ought-conclusion can be validly derived from Is-premises, they would not be acceptable by Gewirth's standards.

A. David believes that Allison ought to marry Jason.

Everything that David believes is true.

Therefore, Allison ought to marry Jason.<sup>33</sup>

Even if we assume that the first premise is not moral or prescriptive but, rather, a statement about what David believes, this would not be acceptable. Given that the conclusion is contingent on and determined by a variable feature (i.e., David's belief), it is not categorical.<sup>34</sup>

B. It is Sunday and it is not Sunday.

Therefore, we ought to give to charity.

Although this argument is valid insofar as a contradiction entails any statement whatsoever, it would not be acceptable since it is neither prescriptive nor determinate.

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<sup>33</sup> A similar purported counterargument is offered by Mark T. Nelson. See "Is It Always Fallacious to Derive Values from Facts?" *Argumentation* 9 (November, 1995): 555. Nelson uses this argument to establish only that it is possible validly to derive an Ought from an Is. He fully admits that his argument does not establish that "any *sound* Is-to-Ought argument exist[s]" (559). He likewise fully admits that it does not establish that it is possible to derive a specifically *prescriptive* Ought from Is-premises. (560)

<sup>34</sup> It is important to note that even an argument which is not formally hypothetical can fail to be categorical in the Gewirthian sense. In order to be categorized as "categorical" in the Gewirthian sense of the term, it is necessary for the conclusion to be derived from premises that cannot change at the whims of an agent. Although it is possible for David to believe that Allison ought to marry Jason, if it is possible for him to eventually come to believe the opposite, an Ought derived from his belief would not be "categorical." Since nothing is said about whether or not David's belief is *necessary*, this argument would not work as it stands. More will be said about this issue in Chapter Three.

Given that the opposite conclusion “we ought to never give to charity” could also be derived, the Ought is not determinate. Also, given that the premise does not provide a rationale for giving to charity which could legitimately guide or influence action, it is not prescriptive. If the agent were to ask “Why ought I to give to charity?” the response, “Because it is Sunday and it is not Sunday” would not, in an ordinary context, guide or influence the agents action.

C. It is Sunday.

Therefore everybody ought to do what he ought to do.

Although this argument is valid insofar as a tautology validly follows from any statement whatsoever, it too fails. Like argument B, the Ought-conclusion is not prescriptive since the premise does not really provide a reason for acting which could legitimately guide or influence action.

### **3. Natural Law and the Is—Ought Problem**

Given the basic claims of natural law theory, there are numerous reasons why one might conclude that it falls prey to the IOP as Gewirth sets it up. First, the Ought of natural law theory would appear to be prescriptive, moral, determinate, egalitarian, and categorical. Although the terminology used by natural law theorists differs from that of Gewirth, the Ought implemented by most natural law theorists has characteristics that are very similar to those discussed by him. Second, as discussed above, one of the basic claims of natural law theory is that there is a correlation between facts regarding human nature and what humans ought to do and refrain from doing; and hence, there is a need to bridge this gap in a manner in which there is relevance between the facts and the Ought.

The reason why natural law needs a moral and prescriptive Ought is that no natural law theorist would be satisfied with an Ought that did not pertain to moral obligation (such as the Oughts of adequacy and likelihood) or with an Ought that did not seek to influence or guide human actions. Aquinas, for example, places his treatment of natural law within the context of his discussion of law in general and, in turn, he claims that the effect of law in general is “to lead its subjects to their proper virtue; and since virtue is ‘that which makes its subject good,’ it follows that the proper effect of law is to make those to whom it is given good....”<sup>35</sup> Likewise, he states, “Law is a rule and measure of acts, by which man is induced to act or is restrained from acting.”<sup>36</sup> He thereby claims that law—whether it is divine, natural, or human—is moral and prescriptive by its very nature.

Natural law also clearly needs an Ought that is determinate since no natural law theorist would be satisfied with a positive Ought that could, by the same means of derivation, be made into a negative Ought. For instance, if it could be proven in a natural law context that “humans ought to preserve their species” and it could also be proven that “it is morally permissible for humans to annihilate their species,” there would be a definite problem with the method being used. No natural law theorist would be satisfied with a method that could be used to affirm and deny the same moral precepts. Just as Aquinas begins with the principle “Good is to be pursued and done and evil is to be

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<sup>35</sup> *ST I-II*, 92, 1.

<sup>36</sup> *ST I-II*, 90, 1.

avoided,” and claims that this precept can never be altered, so too would any natural lawyer maintain that some precepts can never be altered.<sup>37</sup>

It would also seem that natural law needs--and in fact implements--an Ought that is egalitarian. For example, at numerous points in his discussion of law, Aquinas claims that the common good, as opposed to mere individual good, is at stake. In defining law in general, he says it is a rule or measure of reason directed to the *common* good. We read, “...since the law is chiefly ordered to the common good, any other precept in regard to some individual work, must be empty of the nature of a law, save in so far as it regards the common good. Therefore every law is ordered to the common good.”<sup>38</sup> Given that the very nature of law involves the fostering of the common good, natural law can only be categorized as “law”-- in the thought of Aquinas--insofar as it contains an egalitarian Ought. Moreover, any natural lawyer who sought to implement a non-egalitarian Ought would first need to establish that humans are not social by nature and that it is not in accord with human nature to promote the common good. Such a task would be difficult, if not impossible, and would fly in the face of all, or at least virtually all, theories of natural law.<sup>39</sup>

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<sup>37</sup> *ST I-II*, 94, 2.

<sup>38</sup> *ST I-II*, 90, 2.

<sup>39</sup> If Hobbes is accepted as a natural law theorist, it could be argued that he does not recognize the common good as the motivating factor behind an agent’s moral action and, hence, does not implement an egalitarian Ought. Nevertheless, even Hobbes acknowledges the relevance of the common good in determining what is morally obligatory. For a discussion of whether Hobbes can be categorized as a natural law theorist see: Brown, Montague, *The Quest for Moral Foundations*, (Washington D.C.: Georgetown University Press, 1996), 89-90; Braybrooke, David, *Natural Law Modernized*, (Toronto: University of Toronto Press, 2003), 90ff; and Kainz, Howard, *Natural Law: An Introduction and Re-examination*, (Chicago: Open Court, 2004), 34-36.

Finally, it would seem that natural law needs an Ought that is categorical, i.e., that is “normatively overriding and ineluctable or necessary, in that [its] bindingness cannot be removed by, and hence is not contingent on or determined by, variable, escapable features either of the persons addressed or of their social relations.”<sup>40</sup> There are several reasons why natural law needs such an Ought. First, as mentioned above, one of the main claims of natural law theory is that the Ought is universal, unchanging, and non-relativistic. The Ought does not vary from time to time, from social context to social context, or from person to person. Consider again the following quotation from Cicero:

True law... cannot be contradicted by any other law, and is not liable either to deterioration or abrogation. Neither the senate nor the people can give us any dispensation for not obeying this universal law of justice. ...It is not one thing at Rome, and another at Athens; one thing today and another to-morrow, but in all times and nations this universal law must for ever reign, eternal and imperishable.<sup>41</sup>

Clearly Cicero’s claim here rests on a categorical Ought. His claim is not that the universal law of justice ought to be obeyed *if* cultural circumstances require it, or *if* the senate or people uphold it, or *if* the agent happens to want to obey it.

Although Aquinas claims that the natural law is alterable in the sense that it can be added to, this does not change the fact that a categorical Ought is proper to his theory

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<sup>40</sup> Allan Gewirth, “The ‘Is-Ought’ Problem Resolved,” *Proceedings and Addresses of the American Philosophical Association* 47 (1974): 35. I will subsequently use the term “categorical” in the Gewirthian sense unless otherwise indicated. Although the term “categorical” is used by some philosophers to mean “having no relation to or basis whatsoever in the desires of agents”, I am using it, as Gewirth does, in the sense of “having no relation to or basis in *variable* features or *variable* desires of agents.”

<sup>40</sup> Marcus Tullius Cicero, *On the Republic*, Charles Duke Yonge, trans. (London: G.G. Bohn, 183), III, 22. Quoted by Kainz, 11.

<sup>41</sup> The question of whether a hypothetical Ought is sufficient in natural law ethics will be considered in greater detail in a later Chapter.



as well. The reason for this is that he also claims that it is not alterable in the sense that it can be subtracted from. He states:

...we can understand the mutability of the natural law in two ways. We can understand it in one way by things being added to it. And then nothing prevents the natural law changing, since both divine law and human laws add to natural law many things beneficial to human life. We can understand the mutability of the natural law in a second way by way of subtraction, namely, that things previously subject to the law cease to be so. And then the natural law is altogether immutable as to its first principles.<sup>42</sup>

If a precept belongs to natural law, then, it is categorical given that the Ought cannot be changed once it is established. For example, if it is a precept of natural law that people should seek to live peacefully in society, this is categorically so.<sup>43</sup> However, it would be entirely possible to add a specification to this precept such as: “stealing ought to be avoided”. Adding a specification such as this would in no way alter the original precept given that respecting another’s private property is conducive to living peacefully in society; and so the original precept would remain categorical. Thus, in spite of Thomas’s claim, here, he endorses a hypothetical Ought.

It could be argued that Aquinas elsewhere leaves room for a hypothetical or contingent Ought. In his discussion of whether natural law is the same for all human beings, he states, “...practical reason is concerned about contingent things, which include human actions. And so the more reason goes from the general to the particular, the more exceptions we find...”<sup>44</sup> Nevertheless, it is important to realize that, in the same context, he also claims that general principles do not vary and are not contingent. He says,

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<sup>42</sup> *ST I-II*, 94, 5.

<sup>43</sup> Cf. *ST I-II*, 94, 2.

<sup>44</sup> *ST I-II*, 94, 4.

...as regards the general principles whether of speculative or of practical reason, truth or rectitude is the same for all, and is equally known by all. ... it is right and true for all to act according to reason: and from this principle it follows as a proper conclusion, that goods entrusted to another should be restored to their owner. Now this is true for the majority of cases: but it may happen in a particular case that it would be injurious and therefore unreasonable, to restore goods held in trust...<sup>45</sup>

In other words, he claims that the conclusions one draws from the general principles sometimes vary, but the principles themselves do not. It is true for all persons, at all times, and in all cultures that they ought to act in accord with reason; and this is the case even though the conclusions drawn from this principle may vary according to the circumstances. In one circumstance it may be in accord with reason to return goods that belong to others; but in a different circumstance it may not be --such as when a madman asks you to return his hatchet. What Aquinas is claiming, then, is not that the Ought itself is contingent or hypothetical but that the conclusions drawn from it may depend on contingent circumstances. That we ought to act rationally is categorical even though different actions can only be categorized as rational or irrational by considering contingent circumstances. Therefore, the mere fact that Aquinas leaves room for contingency in regard to conclusions does not mean that the Ought from which those conclusions are drawn is itself hypothetical or contingent.

Another reason why natural law theory needs a categorical Ought is that the obligatory force is said to be based in human nature rather than the contingencies of culture or the capricious desires of the agent. Moreover, the aspects of human nature that are relevant are not changeable. Aquinas asserts that the first principle of practical reason is: "good is to be done and pursued and evil is to be avoided". He then asserts that we

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<sup>45</sup> *ST I-II*, 94, 4.

grasp as “good” that which is in accord with our nature (and hence in accord with our inclinations). The aspects of our nature that he says are relevant are our life, sensation, and rationality.<sup>46</sup> Since these aspects of our nature (and the inclinations which stem from them) are *essential* aspects of our nature, anyone who wanted to claim that the Ought of traditional natural law is hypothetical would have to first claim that these aspects of our nature are alterable. Yet to do so would be no small task. In other words, since the Ought stems from our living, sensate, and rational nature, and since our nature is not alterable or contingent, the Ought itself would be categorical.

Consider the following example. Aquinas states that “Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances; that is, every substance seeks the preservation of its own being according to its nature. And by reason of this inclination, whatever is a means of preserving human life and of warding off its obstacles belongs to the natural law.”<sup>47</sup> Otherwise stated, it belongs to natural law to preserve our human life and to avoid that which is contrary to preserving human life; hence we have a moral obligation to preserve our human life and to avoid that which is contrary. Thus, that we ought to preserve human life is not hypothetical. The claim here is not that *if* such-and-such is the case, we ought to preserve life but, rather, *since* we are human and it is part of our (authentic) human nature to be inclined to preserve human life, we ought to preserve human life.<sup>48</sup>

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<sup>46</sup> *ST* I-II, 94, 2.

<sup>47</sup> *ST* I-II, 94, 2.

<sup>48</sup> If Aquinas were to consider this claim in light of the possible existence of other rational creatures, he could still maintain that the Ought of natural law is categorical *within a given species*. For example, he could maintain that all the precepts of natural law which stem from human nature are always binding for humans. It is important to note that natural law theory does

Although it seems clear that the Ought of natural law is categorical, some have argued that it is not. For example, in his article “The Alterability of Natural Law,” R. Hall argues that natural law is alterable. His argument seems to suggest that natural law rests on a hypothetical Ought. One of his arguments runs thus: since natural law commands us to do that which fulfills our nature and since it is possible for our nature to change, what humans ought to do in one era may be different from what they ought to do in another. In his argument, Hall claims that this alterability pertains not only to the conclusions which are derived from such principles but also (contra Aquinas) to the principles themselves. In seeking to back up his claim that human nature can change, he points out that a genetic change could cause us to lose our innate inclination to know God. If such should occur, “the knowledge of God would not be a natural end, and there could not be a first principle of natural law telling us to realize that end.”<sup>49</sup> It seems, then, that if Hall is correct, natural law would rest on a hypothetical Ought given that its precepts would only hold *if* our nature were of a certain type. For example, we would only have a moral obligation to seek to know God *if* our nature led us to have an inclination to do so.

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not need a categorical Ought in the Kantian sense of an Ought which would be binding for *all possible* rational beings. It merely needs a categorical Ought which is binding for all *humans* who have reached the age of reason and are not mentally handicapped or otherwise incapacitated. Thus, natural lawyers need concern themselves only with the question of whether or not they are able to validly, soundly, and relevantly derive an Ought which is categorical in regard to *human beings*. The Kantian project of attempting to base morality on precepts which would pertain to all possible rational creatures does not need to be considered and would be a problem for Kantians to solve. This is not to say, however, that if Kantians have solved the problem, and in a way which is relevant to the problem as it is in the context of natural law theory, their solution would not be worth considering. It is for this reason that in Chapter Two, I will consider Gewirth’s solution IOP even though he is a Kantian.

<sup>49</sup> Hall, Richard, “The Alterability of Natural Law”, *American Catholic Philosophical Quarterly*: 55, (Autumn 1981), 478.

Although it is fair to argue that *if* human nature is alterable, the first principles of natural law are alterable, Hall fails to establish that natural law is alterable in any substantial sense and, hence, his argument cannot be used to establish that the Ought of natural law is hypothetical.<sup>50</sup> The only support he seems to offer for his claim that human nature is alterable is his example regarding the knowledge of God, but this example is faulty. The first problem is that this is not an example of a precept of natural law in the first place. Aquinas claims that since human beings are rational by nature, they have an inclination to know the truth about God and, hence, it belongs to natural law for them to seek to know that truth. Nevertheless, he does not claim precisely that one has a moral obligation to know God in a personal manner or even to know that God exists.<sup>51</sup> Though this distinction may seem subtle, it is important given that it does not seem possible that a rational creature, even through genetic mutation, could cease to have a desire to know at least whether or not it is true that God exists. In short, Hall's argument fails because he does not show that it is possible for a genetic mutation to alter our rational nature in such a way that we would no longer have a desire to know whether God exists; nor does he show that it is in fact a precept of natural law that humans ought to actually *attain* knowledge of God.

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<sup>50</sup> Ibid., 478.

<sup>51</sup> *ST I-II*, 94, 2: "... human beings have inclinations for good by their rational nature, which is proper to them. For example, human beings by nature have inclinations to know truths about God and to live in society with other human beings. And so things that relate to such inclinations belong to the natural law (e.g., that human beings such ignorance, that they not offend those with whom they ought to live sociably, and other such things regarding those inclinations)." Notice that Aquinas is not arguing that since we have a rational nature we must know that God exists or that God has a particular nature. Notice also that although he says we have an inclination to know God, he only concludes that it belongs to natural law that we "shun ignorance".

Even if we attempt to provide a better founded example, it does not seem that Hall's argument would work. It could be argued that human nature is alterable in the sense that humans can be born without a rational capacity or subsequently lose it. We would not consider a child, a severely mentally handicapped adult, a comatose person, or an elderly person with severe dementia to be non-human; and yet such persons do not have an inclination to know truth. Further, given that such persons do not have such an inclination, no natural law theorist would claim that they still have a moral obligation to pursue knowledge, shun ignorance, and the like. Nevertheless, such examples would not establish that natural law is alterable *per se*, but merely that it is not binding for persons who lack a fully rational nature. In other words, such an argument might require natural law theorists to make an addendum to their theories such as "if persons have full use of their rational faculty, then they Ought to shun ignorance" but it would be unfair to conclude that the Ought is alterable or hypothetical *per se*. If a person does not have a rational nature, it would be more accurate to say that the natural law does not pertain to such a person given that ethics and Oughts only pertain to persons who are capable of reasoning. If a natural capacity does not exist in a person, the precepts do not even exist in regard to that person. It is not that the precepts themselves change from one thing to another or are hypothetical in the sense that they are one thing in one situation and something else in another situation.

In addition to claiming that the precepts of natural law are alterable since human nature is alterable, Hall also claims that even if human nature were static, the precepts would still be alterable. He asserts,

...it can be shown that first precepts might become false even assuming the constancy of human nature. Imagine that radiation from the sun causes all human

beings to become sterile. The procreation of children would then be impossible even though everyone had an innate inclination to procreate. Thus, even if human nature (the set of our natural inclinations) were to remain constant, changes in the world may come about which prevent us from realizing some natural ends.<sup>52</sup>

The problem inherent in this argument should be readily evident. Although it is true that if a person did not have the capacity to procreate she would not have an obligation to do so, it does not follow that the natural law precept regarding procreation is alterable. It would be more accurate to say that if one is sterile, the precept regarding procreation is not binding for that person. The term “alterable” suggests that something which exists is one thing at one time and another thing at a different time; but the precepts of natural law are not alterable in this way. Rather, the precept is not binding or existent in regard to certain people. Thus, again, Hall’s claim cannot be used to establish that the Ought of natural law precepts are *per se* hypothetical. It is true that *if* a person does not have a functional nature, she cannot be obligated to follow the precepts which stem from that nature. Nevertheless it does not follow that natural law does not need—and implement—a categorical Ought.

With his claims that the precepts of natural law are alterable as a backdrop, Hall continues by claiming that the precepts of natural law could differ from one society to the next. He states:

It can be clearly demonstrated that the alterability of natural law implies that different sets of natural law precepts could hold for different societies . . . . All we need do is imagine . . . those changes in human nature or the external environment which can falsify natural law precepts to occur in some societies but not in others. In a society in which everyone is sterile, for example, monogamy will not be required by natural law since this institution is required only if it is the best means to the procreation of children, whereas natural law may require such an institution in a fertile society as the best means to this end.”<sup>53</sup>

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<sup>52</sup> Hall, 479.

<sup>53</sup> Hall, 480.

Hall's argument here is faulty for two main reasons. First, the example he provides in support of his argument fails given that—according to most if not all natural law theorists—procreation is not the *only* end of marriage. Aquinas, for example, claims that the ends of marriage include not only procreation but also the education of children and the mutual affection of spouses. He also claims that taking multiple spouses would seriously hinder the latter.<sup>54</sup> Thus, even in a society in which all people became sterile, monogamy would still be required as the best means to fostering mutual affection.

A second difficulty is that Hall, once again, does not distinguish between natural law being alterable and natural law being non-binding for persons who lack certain capacities. If—in a given society—all persons were sterile, they would not be obligated to procreate; nevertheless, it would be more accurate to say that in such a case natural law would be non-binding rather than alterable.<sup>55</sup> Thus, in spite of the fact that the Ought of

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<sup>54</sup>ST III (suppl.), 65, 1. Now marriage has for its principal end the begetting and rearing of children, and this end is competent to man according to his generic nature, wherefore it is common to other animals (Ethic. viii, 12), and thus it is that the "offspring" is assigned as a marriage good. But for its secondary end, as the Philosopher says (Ethic. viii, 12), it has, among men alone, the community of works that are a necessity of life, as stated above (Question 41, Article 1). And in reference to this they owe one another 'fidelity' which is one of the goods of marriage.... Wherefore the first end corresponds to the marriage of man inasmuch as he is an animal: the second, inasmuch as he is a man.... Accordingly plurality of wives neither wholly destroys nor in any way hinders the first end of marriage, since one man is sufficient to get children of several wives, and to rear the children born of them. But though it does not wholly destroy the second end, it hinders it considerably for there cannot easily be peace in a family where several wives are joined to one husband, since one husband cannot suffice to satisfy the requisitions of several wives, and again because the sharing of several in one occupation is a cause of strife: thus 'potters quarrel with one another' [Aristotle, Rhet. ii, 4,] and in like manner the several wives of one husband. ... It is therefore evident from what has been said that plurality of wives is in a way against the law of nature...."

<sup>55</sup> In a footnote, Hall briefly acknowledges this distinction. (478, footnote #1) Yet it seems to be an afterthought and Hall does not appear to realize that once it is made the following claims of his stand in need of revision: (1) a principle could be a natural law precept at one time but not at another (2) a principle could be a natural law precept for one society but not for another (477) and



natural law may appear to be hypothetical, it is only hypothetical in the sense that if particular individuals do not have the capacity to follow a precept, they are not obligated to follow it. The Ought is still categorical in the sense that it is not based on the capricious desires of the agent or on the cultural context.

### **C. Four Solutions to the IOP**

During the past half century philosophers have come up with numerous solutions to the IOP both as it relates to the ethics in general and as it relates to natural law theory in particular. The first of these solutions attempts to show that the problem is merely a pseudo-problem. Searle, for example, claims to have offered a counterexample to the IOP by showing that an Ought can be derived from an Is. Moreover, his counterexample seems to be valid. Although he admits that one counterexample cannot in itself “refute a

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(3) “If the set of our natural inclinations were to change or the right sorts of changes in the external environment were to occur, any action whatever could undergo a radical change in moral quality, not just once, but many times. In effect no moral values would be fixed. We are therefore forced to conclude that our natural law theory fails an essential requirement for absolutism.” (482) Claim (1) would have to be revised to state: If all people lost a natural capacity which they had at a different time, the precept of natural law pertaining to that capacity would no longer hold. Claim (2) would have to be revised to state: If all people in one society lacked a capacity which people in another society lacked, the precept pertaining to that capacity would hold in one society but not the other. Finally, claim (3) would have to be revised to state: If the set of our natural inclinations were to change, we would cease to have some of the moral obligations that we would otherwise have. These revised claims are much more moderate than Hall’s claims and cannot be used to establish that the Ought of natural law theory is hypothetical in the sense of being contingent upon self-interested desires, variable choices, opinions, institutional rules, or cultural context.

philosophical thesis,” he argues that a counterexample in addition to an explanation of how the counterexample works, can.<sup>56</sup> Gewirth also attempts to offer a counterexample.<sup>57</sup>

Even if these counterexamples are valid, however, several questions need to be asked. First, since neither Searle nor Gewirth are natural law theorists, it needs to be asked whether their counterexamples are pertinent to natural law theory. Even if we assume that Searle and Gewirth are successful in providing counterexamples, it could still be argued that, unless they implement the claims of natural law theory, the IOP is still a problem for natural law theory. Second, it needs to be asked whether the Ought derived in their counterexamples are moral, prescriptive, determinate, categorical, and egalitarian. Only if both of these questions can be answered affirmatively can these counterexamples be used by natural law theorists.

A second solution involves deriving an Ought from the desires of agents.<sup>58</sup> By utilizing this method, it is possible to derive a conclusion containing an Ought from statements concerning human nature as in the following argument: (1) *Doing X is contrary to human nature.* (2) *Because X damages or goes against human nature, it leads to bad consequences.* Therefore, (3) *if agents desire to avoid these bad consequences, they ought to avoid doing X.* Although, at this point, only a hypothetical Ought has been derived, further statements can be added to derive a categorical one. These statements are: (4) *All agents in fact desire to avoid bad consequences* and (5)

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<sup>56</sup> J.R.Searle, “How to derive ‘ought’ from ‘is’” in *The Is—Ought Question*, ed. W.D. Hudson (London: MacMillan, 1969), 120.

<sup>57</sup> Gewirth, Allan. “The ‘Is-Ought’ Problem Resolved.” *Proceedings and Addresses of the American Philosophical Association* 47 (1974): 34-61.

<sup>58</sup> Janet Smith is an example of a natural law theorist who utilizes this type of methodology (although she does not specifically claim that it is a way of overcoming the IOP).

*Doing X always leads to bad consequences.* With these additional statements, it is possible to conclude (6) *All agents always ought to avoid doing X.*

The most obvious difficulty with this approach is that it would not seem to address all aspects of the IOP. Although the Ought-conclusion is not formulated as a hypothetical statement *per se*, the argument as a whole seems to be contingent on the desires of the agent and, hence, does not seem to be a viable solution. Otherwise stated, since a categorical Ought cannot be based on contingent on variable or escapable features either of agents<sup>59</sup>—and since desires are variable, escapable features—any derivation based on desires would not seem to be properly categorized as categorical. A related difficulty is that the Ought-conclusion would seem, at least at first blush, to lack determinacy since different agents have different desires. Yet another difficulty is that it does not seem that the Ought derived is necessarily moral. Thus, more work needs to be done if natural law theorists utilize this approach.

A third solution attempts to show that if we return to an Aristotelian, teleological, and functional understanding of human nature, the problem disappears.<sup>60</sup> The claim is that once we come to understand the function of the human person, the Ought emerges. Analogously, if we grasp the notion of a watch as something which has the function of

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<sup>59</sup> Cf. Gewirth, *IOPR*, 35-36.

<sup>60</sup> MacIntyre, for example, argues that “we may safely assert that if some amended version of the ‘No *ought* conclusion from *is* premises’ principle is to hold good, it must exclude arguments involving functional concepts from its scope.” MacIntyre, Alasdair, *After Virtue* 2<sup>nd</sup> ed. (Notre Dame: University of Notre Dame Press, 1984), 58. Following in the same vein, Lisska says, “the relation of final cause to formal cause renders insignificant the claim that a value is added to a fact. The value as fact is a state of completion of the disposition as fact. This is an important consequence of Aristotelian/ Aquinian natural kind essence theory. A dispositional view of natural kinds is, therefore, a necessary condition in rendering the fact/value question inapplicable to Aristotelian/ Aquinian moral theory.” Lisska, Anthony, *Aquinas’s Theory of Natural Law: An Analytic Reconstruction*, (Oxford: Clarendon Press, 1996), 199.

keeping time accurately, we can conclude that a watch which does not keep time properly is a bad watch and one which does is a good watch. In other words, once we grasp what the function of a watch is, it becomes clear that a watch *ought* to keep time accurately. Likewise, if we grasp the notion of a farmer as someone who has the function of producing crops, we can conclude that a farmer who does not produce crops is a bad farmer and one who does is a good farmer. Once we grasp the function of a farmer, it becomes clear that a farmer *ought* to produce crops.<sup>61</sup> It would seem, then, that if we can acquire an understanding of the function of the human person, the Ought would at once surface or-- to put it differently-- it would seem that since natural law theory incorporates a functional view of human nature, the IOP may not apply to it.

Although many natural law theorists have accepted this as a solution to the problem, it too leads to difficulties. One of the main difficulties is that it is not clear that it is possible to come to know the function or essence of the human person. Another difficulty is that, even if we assume that it is possible to know the function of a human being, it is not clear that knowing that function would provide us with a moral Ought rather than merely an Ought of adequacy. It is clear that, since the very function of a watch is to keep time accurately, a watch *ought* to keep time accurately. It may also be clear, at least in some cases, that since the very function of a farmer is to produce crops, a farmer *ought* to do so (provided that he is able to). What is not clear, however, is that this is a moral Ought rather than just an Ought of adequacy. It would be absurd to argue that, since the function of a watch is to keep time, a watch has a moral obligation to keep time. It would also be absurd to argue that just because the function of a farmer is to produce

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<sup>61</sup>MacIntyre, *After Virtue*, 57-58. Examples are those of MacIntyre.

crops, he has a moral obligation to do so. Why, then, must we accept that just because the human person has a particular function, he has a moral obligation to act in accord with this function? Apparently, if this approach is to be used, more work needs to be done here too.

A fourth solution, which has been put forth by Finnis, Grisez and others, has been to start with an underived, self-evident Ought. This approach involves arguing that some goods are self-evident and, hence, need not be derived from statements about human nature at all. As Finnis puts it,

the first principles of natural law, which specify the basic forms of good and evil and which can be adequately grasped by anyone of the age of reason (and not just by metaphysicians, are *per se nota* (self-evident) and indemonstrable. They are not inferred from speculative principles. They are not inferred from facts. They are not inferred from metaphysical propositions about human nature, or about the nature of good and evil, or about ‘the function of a human being’, nor are they inferred from a teleological conception of nature or any other conception of nature.<sup>62</sup>

Finnis also claims that specifically *moral* Ought statements must be derived from these self-evident first principles and, hence, he fully admits that the *moral* Ought must be derived. Nevertheless, he maintains that the *moral* Ought is not derived from Is-statements but, rather, directly from a pre-moral Ought-statement.

However, this solution too meets with difficulties. One such difficulty is that it is not clear that the Ought is related to human nature and so it is not clear that this method is proper to natural law theory.<sup>63</sup> If this approach is utilized by natural law theorists, they must establish that there is some link between the moral Ought and human nature.

Another difficulty is that it would seem to leave us with an indeterminate Ought since

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<sup>62</sup> John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 33-34.

<sup>63</sup> Cf. Henry Veatch, “Natural Law and the ‘Is’—‘Ought’ Question: Queries to Finnis and Grisez.” *Catholic Lawyer* (1980-81): 253.

there is much disagreement about what the first principles and basic forms of good and evil are. Although all persons within a given culture might be able to agree on some principles, it is not clear that all persons *tout court* are able to agree. What might be accepted as a self-evident principle or Ought by some agents might differ from what is accepted as self-evident by other agents.

Each of these proposed solutions have pros and cons, that is, each of them offer a path to a solution to the IOP as it pertains specifically to natural law theory while at the same time leaving some questions unanswered. The purpose of this dissertation is to explore each of these solutions and attempt to answer some of the questions which they leave us with. I will ultimately argue that the second and fourth solutions are the least problematic and defend them against some of the objections which have been raised against them. However, I will also show that the first and third solutions also have something to offer.

#### **D. Status of the Problem**

There is ample literature on natural law theory and the IOP in general. Likewise, much literature has been written by proponents of all four of the above solutions. What is lacking is a full analysis of these solutions within the context of a consideration of the fact that natural law needs a robust, Gewirthian Ought and within the context of a consideration of the type of derivability that is pertinent to the real IOP (i.e., derivability which is valid, sound, and in which there is relevance between the premises and the conclusion).

Lisska briefly touches on part of this issue. He acknowledges that *eudaimonistic* approaches to natural law -- which rely on the premise that *if* we desire to attain *eudaimonia*, we ought to act in a particular way—fall prey to the objection that such an Ought only provides us with a hypothetical imperative. He seeks to surmount this difficulty by claiming that if Kant is able to arrive at a categorical Ought, then Aquinas and the natural law theorist can do the same. Lisska begins by pointing out the similarities between moral normativity in Kant and in Aquinas. He states, “in the Kantian scheme, in so far as rational beings engage in the process of moral deliberation, a contradiction—being fundamentally irrational—strikes against what human beings are in their very existence; i.e., rational beings.”<sup>64</sup> According to Lisska, the precept that we must act in accord with our rational nature is the source of the Ought in the categorical imperative since—according to the categorical imperative—it is *always* wrong to act contrary to one’s rational nature. Lisska then goes on to argue that the Ought in Aquinas is analogous since it rests on the claim that “it is categorically necessary that the practical reason undertake those actions which lead to *eudaimonia*”.<sup>65</sup> Although Lisska discusses the issue in this manner, he does so briefly and—by his own admission—his argument is “limited at best”.<sup>66</sup>

In his article “The Naturalistic Fallacy and Natural Law Methodology,” W.M Grant also briefly touches on part of the issue. He states that “although this point is seldom noticed, whether or not there is a genuine fallacy in deducing an *ought* from a set

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<sup>64</sup> Lisska, Anthony, *Aquinas’s Theory of Natural Law: An Analytic Reconstruction*, (Oxford: Clarendon Press, 1996), 204.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*, 205.

of exclusively descriptive premises depends on what kind of *ought* one seeks to deduce. One can quite easily deduce a *conditional ought* from a set of exclusively descriptive premises, but attempts . . . fail to show how one can deduce a *categorical ought*.”<sup>67</sup> In the course of his short article, he discusses difficulties inherent in attempts made by McNerny, Veatch, and Lisska to licitly derive a categorical Ought from facts about human nature. He also briefly discusses problems inherent in the attempt to ground the Ought in the desires of the agent. What Grant does not provide is a full treatment of the issue. For example, he does not consider attempts made by philosophers outside the Thomistic tradition to licitly derive an Ought from an Is (which may be relevant to natural law) nor does he adequately establish that natural law theory *needs* a categorical ought. Thus, although there is literature concerning the topic of this dissertation, lacunae remain.

In the Chapters that follow, I will proceed by way of a close analysis and critique of the works of the main proponents of each of the four solutions. Although most who have done work on the problem have attempted to establish that their own approach is the most consistent with the thought of St. Thomas, I will not explore this issue even though I will often draw upon the texts of Aquinas.

### **E. Outline of the Dissertation:**

Chapter 2 will provide a treatment of attempts which have been made to provide a counterexample to the IOP. This will involve an analysis of the attempts of both Searle

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<sup>67</sup> W. Matthews Grant, “The Naturalistic Fallacy and Natural Law Methodology,” in *Truth Matters: Essays in Honor of Jacques Maritain* (Washington, D.C. Catholic University Press, 2004), 168.



and Gewirth to validly and soundly derive an Ought-conclusion from Is-premises. This Chapter will also offer an exploration of whether their counterexamples are relevant to natural law theory and whether they implicitly rely on self-evident precepts.

Chapter 3 will consider the fact that many natural law theorists, such as J. Smith, rely on a seemingly hypothetical Ought. It will offer an analysis and critique of this approach and a consideration of whether there is any way to derive a categorical and determinate Ought from premises that include hypothetical statements. I will argue that it is possible to do so but only within certain parameters and if certain assumptions are made.

Chapter 4 will focus on the work of philosophers such as Lisska, McInerny, and MacIntyre who have argued that the problem can be resolved by returning to an Aristotelian, dispositional, and teleological understanding of human nature. I will provide both an analysis and critique of this solution and argue that it is inadequate if used in isolation.

Chapter 5 will provide an overview and critique of the approach of New Natural Law theorists, such as Finnis, Grisez, R. George, and C. Paterson, who have sought to avoid the problem by starting with a self-evident Ought. I will look at both the limitations and benefits of this approach. I will also offer a response to some of the criticisms which have been leveled against it.

Finally, Chapter 6 will provide a summary of the foregoing arguments and conclusions. I will claim that if one wants a theory of natural law that overcomes the real IOP, the New Natural Law approach is the least problematic.

**CHAPTER II**  
**COUNTEREXAMPLES, NATURAL**  
**LAW AND THE ‘IS’—‘OUGHT’**  
**PROBLEM**

One of the most straight-forward ways of attempting to respond to those who claim that it is not possible to validly deduce an Is from an Ought is to come up with a counter-example which shows that this is an inaccurate assumption. Since Searle and Gewirth-- among others-- have attempted to do just this, it will be worthwhile to analyze their counter-examples and to consider whether they are successful. It will also be worthwhile to consider whether their counter-examples, if at least partially successful, might be imitated by natural law theorists.

In this Chapter, I will first consider Searle’s counter-example and the theory he develops in an attempt to establish that it is possible to derive an indefinite number of Ought-statements from Is-premises. I will subsequently consider whether his method of derivation could be imitated by natural lawyers while still affirming the main claims of natural law theory. I will then do the same with Gewirth’s counter-argument. I will ultimately argue that Searle’s counter-example cannot be imitated since the Ought which he derives does not have a sufficient grounding in human nature. I will also argue that Gewirth’s counter-example can be imitated since the Ought which he derives has an implicit ontological and epistemic grounding in human nature.

## A. Searle's Counter-Example

### 1. A Summary of Searle's Counter-Example

In his article *How to Derive 'Ought' from 'Is'*, Searle proposes the following counter-example which purportedly refutes the general claim that it is never possible to derive an Ought from an Is:

(1) Jones uttered the words, "I hereby promise to pay you, Smith, five dollars."<sup>68</sup>

(1a) Under certain conditions C anyone who utters the words (sentence) "I hereby promise to pay you, Smith, five dollars" promises to pay Smith five dollars.<sup>69</sup>

(1b) Conditions C obtain.<sup>70</sup>

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<sup>68</sup> Searle, J.R. "How to derive 'ought' from 'is'," in *The Is—Ought Question*, edited by W.D. Hudson (London: MacMillan, 1969), 120-134. Hereafter abbreviated as *HTD*.

<sup>69</sup> According to Searle, conditions C are all empirical. In explicating them he states, "The conditions will include such things as that the speaker is in the presence of the hearer Smith, they are both conscious, both speakers of English, speaking seriously. The speaker knows what he is doing, is not under the influence of drugs, not hypnotized or acting in a play, not telling a joke or reporting an event, and so forth." Searle, *HTD*, 121-122.

<sup>70</sup> This is an empirical claim that the requisite conditions are present (i.e., that Jones is in the presence of Smith, that he and Smith are both conscious speakers of English, etc.).

(2) Jones promised to pay Smith five dollars.<sup>71</sup>

(2a) All promises are acts of placing oneself under (undertaking) an obligation to do the thing promised.<sup>72</sup>

(3) Jones placed himself under (undertook) an obligation to pay Smith five dollars.

(3a) Other things are equal.<sup>73</sup>

(3b) All those who place themselves under an obligation are, other things being equal, under an obligation.<sup>74</sup>

(4) Jones is under an obligation to pay Smith five dollars.

(4a) Other things are equal.

(5) Jones ought to pay Smith five dollars.<sup>75</sup>

Searle claims that the relationship between each premise and its successor is one of entailment and is based on tautologies, empirical assumptions, the definition of the

<sup>71</sup> Searle claims that the argument from (1) to (2) is valid and takes on the form “If *C* then (if *U* then *P*): *C* for conditions, *U* for utterance, *P* for promise.” (*HTD*, 122) More will be said later regarding the fact that this step involves a hypothetical condition.

<sup>72</sup> Searle adds this tautological sub-premise for the sake of formal neatness but does not think it is necessary in order to derive premise (3). In commenting on the relationship between (2) and (3), Searle claims that, “...promising is, by definition, an act of placing oneself under an obligation.” (*HTD*, 122) Thus, the derivation is based on the definition of promising.

<sup>73</sup> Searle adds this sub-premise in order to account for the fact that it is possible for one to be released from an obligation due to extenuating circumstances. He adds (4a) for the same reason. (*HTD*, 123)

<sup>74</sup> As with (2a), Searle adds this tautological sub-premise for the sake of formal neatness. Searle asserts that the move from (3) to (4) takes the form “If *E* then (if *PUO* then *UO*): *E* for other things are equal, *PUO* for place under obligation and *UO* for under obligation. Adding the two premises *E* and *PUO* we derive *UO*.” (*HTD*, 123)

<sup>75</sup> According to Searle, the move from (4) to (5) takes the form “if *E* then (if *UO* then *O*); *E* for other things are equal, *UO* for under obligation, *O* for ought. Adding the premises *E* and *UO* we derive *O*.” (*HTD*, 124)

term “obligation”, or takes the form: If *X* then (if *Y* then *Z*). In addition, when this latter form is utilized, Searle provides premises stating that *X* and *Y* hold. Thus, the counter-example can be reformulated to read:

*If anyone utters the words “I hereby promise to pay you, Smith five dollars” then, if certain conditions obtain (such as that Jones is in the presence of Smith, that he and Smith are both conscious speakers of English, etc.) then he thereby promises to pay Smith five dollars. Jones utters the words “I hereby promise to pay you, Smith, five dollars. Certain conditions obtain. Therefore, Jones promises to pay Smith five dollars.*

*By definition, promising is an act of placing oneself under an obligation to do the thing promised. Therefore, since Jones promises to pay Smith five dollars, Jones is under an obligation to pay Smith five dollars.*

*If all things are equal then, if Jones has placed himself under an obligation to pay Smith five dollars, then Jones is under an obligation to pay Smith five dollars. All things are equal. Jones has placed himself under an obligation to pay Smith five dollars. Therefore, Jones is under an obligation on to pay Smith five dollars.*

*If all things are equal then, if Jones is under an obligation to pay Smith five dollars, then Jones ought to pay Smith five dollars. All things are equal. Jones is under an obligation to pay Smith five dollars. Therefore Jones ought to pay Smith five dollars.*

In spite of the seeming success of this derivation, numerous objections have been made which Searle has acknowledged.<sup>76</sup> One such objection is that the *ceteris paribus* premise (4a) allows an implicit Ought to seep into the premises and, hence, the premises are not purely descriptive. Another is that Searle fails to provide a statement establishing

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<sup>76</sup> Searle, *Speech Acts*, 188-198. Hereafter abbreviated as *SA*.

that there is a logical connection between the obligation-statement of premise (4), and the Ought-statement of conclusion (5).

In response to these objections, Searle himself revises his counter-example in *Speech Acts*. The first two premises and their sub-premises are identical but he slightly alters the other premises, which are formulated thus:

- (3<sup>ii</sup>) Jones placed himself under (undertook) an obligation to pay Smith five dollars.
- (3a<sup>ii</sup>) All those who place themselves under an obligation are (at the time when they so place themselves) under an obligation.
- (4<sup>ii</sup>) Jones is under an obligation to pay Smith five dollars.
- (4a<sup>ii</sup>) If one is under an obligation to do something, then as regards that obligation one ought to do what one is under an obligation to do.
- (5<sup>ii</sup>) As regards his obligation to pay Smith five dollars, Jones ought to pay Smith five dollars.<sup>77</sup>

In this revision, the *ceteris paribus* clause is eliminated and (4a) establishes the necessary link between (4) and (5). Thus, it would seem that—in spite of objections to the contrary-- at least this revised derivation is valid.<sup>78</sup>

## 2. Searle's Theory Regarding the Derivation

Acknowledging that one counter-example is not sufficient to address all of the issues pertinent to the IOP, Searle examines how his counter-example works, why there is thought to be a gap between descriptive and evaluative terms, and offers a theory supporting the claim that it is possible to derive an indefinite number of Ought-statements from Is-premises. In explaining why there is thought to be a gap, he asserts that if we

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<sup>77</sup> Searle, *Speech Acts*, 188.

<sup>78</sup> More will be said in what follows regarding the validity of Searle's derivation.

consider the problem from an empirical standpoint, the gap will always seem unbridgeable. This is because, from an empirical standpoint, evaluative statements are seen as serving the function merely of expressing emotions or attitudes, praising, insulting, recommending, advising, commending, and so forth; whereas descriptive statements are seen as serving the function of describing states of affairs in the world. From this standpoint, in order for evaluative statements to serve their function of evaluating, they cannot refer to states of affairs in the world, nor can they be defined in terms of descriptive statements.<sup>79</sup>

Searle argues that this empirical standpoint fails to take into account the fact that there are various types of descriptive statements. According to Searle, a distinction needs to be made between descriptive statements that are based on brute facts and ones that are based on institutional facts.<sup>80</sup> Statements such as “Judith has a million dollars” and “Raymond won the tennis match,” are examples of the latter and, as such, they can only be understood within the context of institutions. The statement “Judith has a million dollars” only makes sense within the context of the institution of currency; and the statement “Raymond won the tennis match” only makes sense within the institution of tennis. On the other hand, statements such as “Judith has a lot of paper with green ink on it” and “Raymond hit the yellow sphere and the person on the other side of the net did not hit it back” are statements of brute facts. As such, they can be understood without reference to institutional facts. One need not know anything about currency or tennis in order to verify these statements.

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<sup>79</sup>*HTD*, 129. This distinction is first made by G.E.M. Anscombe. See: “On Brute Facts,” *Analysis*, 18 (1958).

<sup>80</sup>*HTD*, 130.

With this distinction in mind, Searle is able to develop a theory as to how his derivation works and, in turn, he uses this theory to establish that an indefinite number of similar derivations are possible. He states:

It is often a matter of fact that one has certain obligations, commitments, rights, and responsibilities, but it is a matter of institutional, not brute, fact. It is one such institutionalized form of obligation, promising which I invoked . . . to derive an 'ought' from an 'is'. I started with a brute fact, that a man uttered certain words, and then invoked the institution in such a way as to generate institutional facts by which we arrived at the institutional fact that the man ought to pay another man five dollars. The whole proof rests on an appeal to the constitutive rules that to make a promise is to undertake an obligation.<sup>81</sup>

In short, Searle claims that it is because he starts with an institutional fact that he is able validly to derive an Ought. Because the act of promising is constituted by undertaking an obligation and because undertaking an obligation is in turn constituted by an Ought, the Ought-conclusion follows validly from the premises. Analogously, if a man strikes out in a game of baseball, he *ought* to leave the field given the institutional facts, that is, given the rules of the game. If, upon striking out, he protests having to leave the field by pointing out that it is a mere fact that he missed the ball and that no Ought follows from this fact, his claim would seem to preposterous to all present. And rightly so.<sup>82</sup> The reason it would seem preposterous is that within the context of the rules of the game, which are constitutive rules, it is a fact that he ought to leave the field. Searle claims, then, that by starting with constitutive rules, we are capable of validly deriving institutional Oughts. This is how his counter-argument works and many other such derivations are possible.<sup>83</sup>

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<sup>81</sup> *HTD*, 130.

<sup>82</sup> *HTD*, 132.

<sup>83</sup> The making of *any* promise would imply an Ought in this sense, as would any positive law.



### 3. Does it solve all aspects IOP?

Since Searle does not propose these counter-examples within the context of a consideration of the IOP as it pertains to a robust Ought, but is merely trying to show that in general it is possible to deduce an Ought from an Is and to offer a theory as to how it works, the first question which needs to be asked is whether he succeeds in dealing with the problem as it pertains to ethics. More specifically, it needs to be asked whether Searle has non-fallaciously deduced a prescriptive, moral, egalitarian, determinate, and categorical Ought.

In regard to the question of whether the derivation commits any fallacies, there is no reason to suppose that the second formulation of Searle's counter-argument even though his first formulation may seem to do so. It is possible to interpret Searle's first formulation of the derivation in such a way that it is question-begging since there seems to be a need for an explicit premise linking the obligation-statement in premise (4) with the Ought-statement in conclusion. In the first formulation, premise (4) reads "Jones is under an obligation to pay Smith five dollars" and the conclusion reads "Jones ought to pay Smith five dollars". Since there is no explicit premise stating that *if one is under an obligation then one ought to fulfill it*, it is possible to argue that the argument begs the question. However, in the second of his formulations, Searle provides the needed premise. In the second formulation, premise (4a<sup>ii</sup>) reads "If one is under an obligation to do something, then as regards that obligation one ought to do what one is under an obligation to do"; and the conclusion reads "As regards his obligation to pay Smith five dollars, Jones ought to pay Smith five dollars." Given that Searle provides this linking

premise, there is no reason to suppose that there is anything fallacious about the second formulation.

Although it is not fallacious, Searle's counterexample fails in regard to providing us with an explicitly egalitarian Ought. Since no information is given about the circumstances of the promise made, and since the derivation would work regardless of the circumstances, this criterion is not ostensibly met. None of the premises indicate whether Jones or Smith are rich or poor, and the Ought-conclusion would stand regardless. If Jones and his family are starving and if Smith and his family are abundantly wealthy, the conclusion still stands: "Jones ought to pay Smith five dollars". Moreover, this type of derivation could easily be used to derive a non-egalitarian Ought. For example, if Jones were to promise to rob the poor and seriously diminish the common good of his community, we could still derive the conclusion "Jones ought to rob the poor and seriously diminish the common good of his community." Given that the derivation works regardless of whether or not the Ought has any relation to the common good, then, the Ought of this derivation is not explicitly egalitarian. A natural law theorist who desired to derive an Ought that specifically upholds the common good, would therefore be better off looking for a different method of deriving an Ought.

It has been argued that Searle's counterargument also fails in regard to the criterion of determinacy. Gewirth claims that, since the opposite conclusion can be reached using the same method, the counterargument does not pertain to the real IOP. In reference to institutional-based derivations such as Searle's, Gewirth states that the derivation

fails the test of determinacy. One could, by the same mode of derivation, infer diametrically opposed 'oughts'. For example, if one participates in the institution

of constitutional democracy then one ought to support civil liberties, but if one participates in the institution of dictatorship then one ought to oppose such liberties, and if one participates in the institution of slavery then one ought to regard some humans as other humans' property and so forth.<sup>84</sup>

In other words, Gewirth objects to institution-based derivations since all we need to do in order to derive the opposite conclusion is simply choose to start with a different type of institution. If we happen to adopt the institution of promising, then Searle's derivation enables us to derive the conclusion "Jones ought to pay Smith five-dollars." However, if we chose not to adopt this institution, and instead adopt an institution in which lying is considered to be obligatory, we could easily derive the conclusion "Jones ought to avoid paying Smith five dollars."

Although Gewirth's objection may seem to be legitimate at first glance, he fails to take into account the fact that Searle himself deals with this type of objection in his article "Deriving 'ought' from 'is' objections and replies." In this article, Searle essentially responds by pointing out that the Ought does not stem from an ambiguous decision to accept the institution of promising but, rather, from the very meaning of the term "promise". Given the very meaning of the term "promise", anyone who states, "I hereby promise to pay you, Smith five dollars" *ipso facto* ought to pay Smith five dollars. This is not because he has arbitrarily decided to accept the institution of promising but simply because uttering the phrase "I promise to pay", by definition, entails being subject to the Ought which follows from it.<sup>85</sup> So long as the promise is made, the Ought-conclusion is determinate. Moreover, it is not determinate because of an ambiguous

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<sup>84</sup> Gewirth, *IOPR*, 45.

<sup>85</sup> J.R. Searle, "Deriving 'ought' from 'is': objections and replies," *The Is—Ought Question*, edited by W.D. Hudson (London: MacMillan, 1969), 263-269. Hereafter abbreviated *DOFI*.

acceptance of an institutional fact but, rather, because of the nature of the speech act of promising which is made by the agent.

Although it can easily be argued that Searle's Ought is determinate provided that someone makes a promise, the Ought would seem to fail in regard to being categorical since it is only binding *if* someone makes the utterance which comprises a promise. The conclusion is not that all persons categorically ought to pay Smith five dollars but only that *if* someone utters the phrase, "I promise to pay you, Smith five dollars," then that particular person ought to pay him. It could just as easily happen that nobody makes any promise to pay Smith or anybody else.<sup>86</sup> An ethical theory which utilizes an Ought that is only binding *if* someone makes a speech act of a certain type--such as promising--might be appropriate in contractarian theories of ethics, or perhaps even positivistic theories of law, but would not be appropriate in natural law theory, virtue ethics, or utilitarianism.<sup>87</sup> Moreover, given that the Ought of the real IOP needs to be categorical in the sense that it "cannot be removed by, and hence is not contingent on or determined by, variable, escapable features of the persons addressed or of their social relations," Searle's derivation would not seem to be a counterexample to the real IOP.<sup>88</sup> More specifically, since institutional facts and the making of certain utterances or speech acts are themselves based on "variable, escapable features of persons," the Ought of Searle's derivation would seem to fail in regard to being categorical. In short, this type of derivation would not be sufficient within the context of a theory of ethics—such as

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<sup>86</sup> This becomes even more apparent when considering the reformulation of the derivation on p. 39 above.

<sup>87</sup> More will be said about this below.

<sup>88</sup> Gewirth, *IOPR*, 36.

natural law ethics—which makes the claim that there are actions that are impermissible *regardless* of whether the moral agent enters into an agreement or makes a speech act.

Nor is it helpful merely to refer to the meaning of terms such as “promise”.

The greatest problem inherent in Searle’s derivation is that it does not seem to be a derivation of a *moral* Ought—which is not surprising given that Searle is not attempting to derive a specifically moral Ought. In *Speech Acts*, Searle himself states: in

I think, incidentally, that the obligation to keep a promise probably has no necessary connection with morality. It is often claimed that the obligation to keep a promise is a paradigm case of a moral obligation. But consider the following very common sort of example. I promised to come to your party. On the night in question, however, I just don’t feel like going. Of course I *ought* to go, after all, I promised and I have no good excuse for not going. But I just don’t go. Am I *immoral*? Remiss, no doubt. If it were somehow very important that I go, then it might be immoral of me to stay home. But then the immorality would derive from the importance of my going, and not simply from the obligation undertaken in promising.<sup>89</sup>

Here Searle clearly acknowledges that if the Ought in this example is moral, it is so for some reason *other* than just that a promise was made. The same would be true of Jones’s obligation to pay Smith. Only if there were some reason *other* than the mere fact that Jones promised to pay Smith would he have a *moral* obligation to do so. Moreover, given that it is easy to think of situations in which fulfilling a promise would be morally reprehensible, Searle seems to be right in concluding that his Ought is not necessarily moral. For example, if it were the case that Jones knew Smith would use the five dollars to help supply a terrorist ring with ammunition, it would be clear that he certainly has no *moral* obligation to pay him. In fact, he would seem to have a moral obligation *not* to pay him.

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<sup>89</sup> SA, 188.

This problem again surfaces Searle's "Deriving 'ought' from 'is': objections and replies" and it is worth quoting him at length. He states,

There are two radically different ways of taking the phrase 'commit oneself to (accept) the institution of promising'. In one way it means something like (a) 'undertake to use the word 'promise' in accordance with its literal meaning, which literal meaning is determined by the internal constitutive rules of the institution'. A quite different way to take the phrase is to take it as meaning (b) 'endorse the institution as a good or acceptable institution'. Now, when I do assert literally that he made a promise I do indeed commit myself to the institution in the sense of (a): indeed, it is precisely because the literal meaning involves me in this commitment that the derivation goes through. But I do not commit myself in the sense of (b). It is perfectly possible for someone who loathes the institution of promising to say quite literally, 'Jones made a promise', thus committing himself to the view that Jones understood an obligation. ...note that exactly the same distinction holds for geometry. Someone who thinks the whole study and subject of geometry is evil still commits himself to the logical consequence of 'X is a triangle' when he asserts 'X is a triangle'.<sup>90</sup>

Numerous critics have pointed out that since Searle is concerned with the internal, logical, institutional, and definitional aspects of promising--rather than the question of whether the institution of promising is itself of value--his derivation does not provide us with a necessarily moral Ought.

A.C. Genova is one of these critics. He claims that

...Searle's deduction amounts to... deducing an institutional value from premises containing institutional values (or even, if you like, deducing an institutional value from institutional facts); but what he *does not* do (and *cannot* do) is validly to deduce a brute value from any set of premises expressing facts alone (regardless of whether they be brute or institutional facts)...<sup>91</sup>

Genova's argument is that—by Searle's own admission-- speech acts such as promising are mere institutional facts and, as such, they are based on constitutive rules that take the

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<sup>90</sup> *DOFI*, 267-268.

<sup>91</sup> A.C. Genova, "Institutional facts and Brute Values," *Ethics* 81 (Oct., 1970), 37. Hereafter abbreviated IFBV.

form “X counts as Y in context C”.<sup>92</sup> Being bound by an Ought, then, takes the form: “being under an obligation counts as being bound by an Ought in contexts in which one utters the words, *I promise to do Z*.” This is analogous to winning a game of chess which takes the form: “capturing the opponent’s King counts as winning the game in the context of playing chess”. Winning the game of chess is based on the constitutive rules of the game just as being bound by an Ought is based on the constitutive rules of promising. Also, just as establishing that one has won the game requires nothing more than a reference to the context and rules of chess, so establishing that one ought to do Z requires nothing more than a reference to the context and rules of promising. Outside the context of the institutions of chess and of promising, there would be no way to establish that the game was won or that someone was bound by an Ought. Because the Ought is based on constitutive rules, Genova concludes that it is derived from institutional facts rather than brute facts or, in other words, it is dependent on ambiguously-created rules. He also concludes that, for this reason, it is impossible to evaluate whether the institution of promising is itself good or whether the Ought is brute. Thus, Genova’s concern is that, although it is possible to establish that “Jones ought to pay Smith,” this does not establish that “morally-speaking, Jones ought to pay Smith”.

Another of Searle’s critics is K. Witkowski. He claims that since Searle appeals to internal constitutive rules and derives the Ought from the institution of promising and the mere meaning of the term ‘promise’, he is not able to derive a moral Ought. Witkowski further claims that only if one were able to morally evaluate the institution of promising from an exterior standpoint could one justify a conclusion which stated: “Jones *morally* ought to pay Smith”. Witkowski asserts,

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<sup>92</sup> *IFBV*, 40.

For a person to justify the acceptance of the entire institution of ‘promise-keeping’ he must endorse the institution by appealing to some additional, ‘external,’ moral (and not merely constitutive) rule. The ‘ought’ in Searle’s deduction does not have, to borrow an Austinian term, the ‘force’ of an ‘ought’ when intended as a moral prescription. ...the obligation incurred by the *act* of promising—is not necessarily connected with morality (at all, I might add).<sup>93</sup>

In supporting his claim, Witkowski points out that Searle fully acknowledges that “...whether the obligation undertaken in promising is good or evil... are questions external to the institution itself.”<sup>94</sup> He likewise points out that Searle himself admits that it would be possible for someone to object to the whole institution of promising without the Ought thereby being nullified. In other words, according to Searle, even if someone were to object to the institution of promising from an external point of view, the derivation would nevertheless be binding in the sense that it would still be the case that Jones ought to pay Smith five dollars.<sup>95</sup> According to Witkowski, given that Searle’s derivation works irrespective of whether or not the institution of promising is moral, it does not provide a moral Ought.<sup>96</sup>

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<sup>93</sup> Ken Witkowski, “The ‘Is-Ought’ Gap: Deduction or Justification?,” *Philosophy and Phenomenological Research*, Vol. 36, No.2 (1975), 241-242.

<sup>94</sup> SA, 189. Cited by Witkowski, 237.

<sup>95</sup> SA, 188-189. Cited by Witkowski

<sup>96</sup> Philippa Foot is yet another critic who takes this approach. She says, “...it seems to me that while there is *in principle* no objection to the project of deriving an ‘ought’ from an ‘is’ Searle has tried to work from the wrong kind of premise, at least for a ‘moral’ ought. For he has tried to deduce an ‘ought’ statement from premises that are ‘internal’ to a particular institution, and this is not how ‘ought’ statements are used. To see this we have only to suppose that we have a thoroughly bad institution—say one connected with dueling—by the rules of which one has an obligation to shoot another man once certain things have been said and done. We could then construct an argument parallel to Searle’s which should lead to the conclusion that one ought to shoot at X. But in fact this is not what anyone who disapproved of the institution on moral grounds would say.” “Introduction,” in *Theories of Ethics*, ed. Philippa Foot, (Oxford: Oxford University Press, 1967), 11.



#### 4. Searle's Derivation and Natural Law Theory

It would seem that Searle's derivation would have nothing to offer a natural law theorist given that the Ought is not-- or at least does not appear to be-- moral and categorical. Moreover, it would seem that since it is based on the institution of promising rather than facts about human nature, it would again have nothing to offer. Since natural law seeks to ground moral obligation in human nature-- rather than the meaning of terms or internal constitutive rules of institutions such as promising-- and since it utilizes a categorical and moral Ought, Searle's derivation would seem to be thoroughly irrelevant. In short, there are numerous characteristics of Searle's derivation that would seem to be at odds with the Ought of natural law theory: the Ought is not moral, categorical, determinate, or egalitarian, and it stems from the meaning of the term 'promise', facts about the institution of promising, and speech acts rather than from human nature.

In spite of these characteristics, however, it has been argued by E. Wall that Searle's derivation *does* have something to offer. He claims that, just as Searle is able to derive an Ought regarding keeping a promise from the very meaning of the term "promise", so too can natural law theorists-- so long as they also rely on facts about human nature and deal with values that are moral. In the course of doing so, he also objects to the claims of both Witkowski and Genova that Searle's Ought cannot be interpreted as moral.

Wall's objection to Witkowski is that the distinction made between internal and external evaluation is faulty. According to Wall, Witkowski fails to establish that moral

evaluation can *only* take place from an external point of view, that is, he fails to establish that it is impossible to evaluate institutional values from within the context of the institution itself.<sup>97</sup> If we assume that some values are self-evidently or intrinsically valuable in a moral sense, it would be possible to accept or reject them on moral grounds without stepping outside the institution itself. For example, if it is the case that we can accept promising as intrinsically and morally valuable, without stepping outside the institution of promising, then it would be possible to claim that Jones *morally* ought to pay Smith. Otherwise stated, if promising is accepted at the outset as entailing a moral value, then the conclusion can also be accepted as moral.

Wall's objection to Genova's position is similar. He argues that Genova fails to realize that institutional values such as winning a game of baseball or chess are different from values such as keeping promises.<sup>98</sup> It is obvious that a moral Ought could not be derived from rules regarding chess since there is nothing in the notion of winning a chess game that entails a moral value. However, since the very notion of keeping a promise seems to be morally-charged, the Ought-conclusion which is derived from it would likewise seem to entail a moral value. Wall also objects to Genova's position on the grounds that, like Witkowski, he assumes that it is not possible to evaluate the institution of promising without doing so from an external point of view. Wall states,

if there is a meaning of 'ought,' which is to be explained in terms similar to Genova's institutional ought, that would not preclude, based on certain moral approaches, the term being morally charged. ...according to some moral approaches, promising, or some aspect(s) of it, can be intrinsically valuable, and thus a derived obligation to fulfill a promise could be a moral obligation.<sup>99</sup>

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<sup>97</sup>Wall, Edmund, "Searle's Derivation, Natural Law, and Moral Relativism," *Philosophia* 36 (2008) 242.

<sup>98</sup> Wall, 245.

<sup>99</sup> Wall, 245.

Here Wall is claiming that, at least within the context of ethical theories such as contractarianism and natural law theory, the obligation to fulfill a promise entails a *moral* value and obligation. He is also pointing out that, within the context of such ethical theories, it would be absurd to claim that keeping one's promise is only of value given the meaning of the term "promise" and the rules of the institution of promising.

According to Searle, Witkowski, and Genova, keeping a promise (like winning a game of baseball) entails a value *only* in so far as they are in accord with institutional rules and irrespective of question concerning morality. Wall's point is that, since keeping a promise (unlike winning a game of baseball) may be accepted as valuable in itself, rather than merely valuable in reference to constitutive rules, it may be possible to accept it *also* as morally valuable.

After voicing his objections to Witkowski and Genova, Wall proposes two derivations which—although very vague—echo Searle's and which Wall claims can be accepted and imitated by natural law theorists. His first derivation begins with the definition and notion of friendship. Wall notes that natural law theorists Grisez and Shaw identify friendship with harmony and peace between individuals and that Finnis similarly identifies friendship with sociability and "acting for the sake of the purposes and well-being of the other individual(s)."<sup>100</sup> With this notion of friendship as a starting point, Wall asserts that friendship is, by definition, "pursuing peace and harmony in [one's] relations with others."<sup>101</sup> He also asserts that this definition, together with descriptions of human nature and constitutive rules, can be used to derive a conclusion regarding a moral

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<sup>100</sup> Wall, 246; Wall cites Finnis, *NLNR*, 88.

<sup>101</sup> Wall, 247.

duty to place a friend's interest above the interests of others. The premises would consist of purely factual statements regarding human nature (such as statements regarding biology and sociability), factual statements regarding friendship (including the definition of friendship), and possibly a *ceteris paribus* clause. The conclusion would consist of a moral Ought.

Wall's second derivation begins with the definition of knowledge as "justified true belief." Wall states,

...if 'knowledge' is to be defined in terms of justified true belief, we might also observe that, included in the very meaning of the institutional fact of 'knowledge,' is the obligation to pursue truth and avoid undermining knowledge. After all, if one is not seeing truth in the type of investigation in question, or if one is not attending to the justification of the belief under examination, then one is not seeking knowledge. The conclusion that one has an obligation to pursue the truth would follow from a meaning rule within a system of constitutive rules, which would include rules related to basic human capabilities and inclinations.<sup>102</sup>

Like the first derivation, Wall asserts that this derivation proceeds by way of a definition, a system of constitutive rules or institutional facts, and factual statements regarding human nature. As with the first derivation, Wall does not say what the precise premises would be, but he clearly thinks that the conclusion would include a moral obligation to pursue truth and avoid undermining the attainment of knowledge.<sup>103</sup>

Although Wall's position is insightful, there are several difficulties inherent in it. First, he is very vague regarding how the moral Ought-conclusions are reached. He specifies what *types* of premises would be included but he does not provide a specific example for either of his derivations. This makes it difficult to assess adequately the

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<sup>102</sup> Wall, 248.

<sup>103</sup> Wall, 249.

usefulness of his approach. This, of course, does not mean that his argument is necessarily faulty, but it does mean that it would need to be supplemented.

Second, it could be argued that merely adding statements about human nature to a derivation like Searle's is not sufficient since one of the main claims of natural law is that the Ought has a grounding in human nature. The *sine qua non* of Searle's Ought is the meaning of the term "promise". All that is necessary for the Ought-derivation is a definition of the term "promise" and an empirical premise stating that someone has made a promise. The Ought, therefore, can be said to be derived from the definition of "promise". If natural law theorists wish to imitate Searle's argument, they will need to do more than merely add statements about human nature to the premises. They will need to establish that the Ought-conclusion cannot be reached without those statements or, more specifically, they will need to establish that the statements regarding human nature are essential to the Ought-conclusion.<sup>104</sup>

Third, if a derivation such as Searle's is to be imitated by natural law theorists, they will need to establish that the Ought is moral, egalitarian (in the sense that it has some bearing on the common good), and categorical. Since Searle's derivation is lacking in regard to fulfilling the criteria of being moral and categorical, and since it is underspecified in regard to being egalitarian, it is not clear how Searle's derivation could be used as a model.

In order to make the gravity of some of these difficulties more apparent, it may be helpful to consider the following attempted imitation of Searle:

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<sup>104</sup> For example, if an ethicist did nothing more than add statements regarding human nature to Searle's derivation, the Ought-conclusion would not *ipso facto* have a grounding in human nature. Only if the statement regarding human nature is a necessary component of the derivation can the Ought be said to have a grounding in human nature.

- (1) Jones uttered the words, “I hereby promise to pay you, Smith, five dollars.”
- (1a) Under certain conditions C anyone who utters the words (sentence) “I hereby promise to pay you, Smith five dollars” promises to pay Smith five dollars.
- (1b) Conditions C obtain.
- (2) Jones promised to pay Smith five dollars.
- (2a) All promises are acts of placing oneself under (undertaking) an obligation to do the thing promised.
- (3) Jones placed himself under (undertook) an obligation to pay Smith five dollars.
- (3a) All those who place themselves under an obligation are (at the time when they so place themselves) under an obligation.
- (4) Jones is under an obligation to pay Smith five dollars.
- (4a) If one is under an obligation to do something, then as regards that obligation one ought to do what one is under an obligation to do.
- (5) As regards his obligation to pay Smith five dollars, Jones ought to pay Smith five dollars.<sup>105</sup>
- (6) Humans in fact value promise-keeping and do not value the breaking of promises (as is evident by the fact that they dislike it when someone breaks a promise that was made to them).<sup>106</sup>
- (6a) If humans value promise-keeping, promise-keeping is morally-charged.
- (7) Promise-keeping is morally-charged.

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<sup>105</sup> Premises (1) through (5) are identical to Searle’s.

<sup>106</sup> This is a statement about human nature.

(7a) If Jones does not pay Smith five dollars, he will have failed to keep his promise.

(8) Therefore, Jones *morally* ought to pay Smith five dollars.

This derivation imitates Searle's at the outset and, insofar as it specifies that promise-keeping is morally-charged and includes a statement regarding human nature, it also differs from it in the ways prescribed by Wall. Nevertheless, it is faulty in two respects. First, merely adding a premise about the morally-charged nature of promise-keeping does not in itself enable one to derive a moral Ought in a valid manner. Even if we assume that premise (7) is true, it would not enable us to derive the conclusion that Jones necessarily *morally* ought to pay Smith five dollars. Although many natural law theorists may admit that promise-keeping has moral connotations, it does not follow that they thereby also must hold that all promises *morally* ought to be fulfilled. Presumably, no natural law theorist who held that promise-keeping is morally-charged would also maintain that a man who promised to kill his wife *morally* ought to fulfill that promise. Second, merely adding a premise that contains a statement about human nature does not, in itself, mean that the Ought has a grounding in human nature. Only if the statement about human nature has some essential place in the derivation, can the Ought-conclusion be said to have a genuine grounding in human nature.

In response to these difficulties, the following counter-example could be proposed:

(1) Jones uttered the words, "I hereby promise to pay you, Smith, five dollars."

- (1a) Under certain conditions C anyone who utters the words (sentence) “I hereby promise to pay you, Smith five dollars” promises to pay Smith five dollars.
- (1b) Conditions C obtain.
- (2) Jones promised to pay Smith five dollars.
- (2a) All promises are acts of placing oneself under (undertaking) an obligation to do the thing promised.
- (3) Jones placed himself under (undertook) an obligation to pay Smith five dollars.
- (3a) All those who place themselves under an obligation are (at the time when they so place themselves) under an obligation.
- (4) Jones is under an obligation to pay Smith five dollars.
- (4a) If one is under an obligation to do something, then as regards that obligation one ought to do what one is under an obligation to do.
- (5) As regards his obligation to pay Smith five dollars, Jones ought to pay Smith five dollars.
- (6) Humans are inclined to pursue knowledge of the truth (as is evident by the fact that humans dislike being lied to and frequently strive to overcome their ignorance regarding many things).
- (7) By definition, good is that which humans are inclined toward; and, by definition, evil is that which is contrary to good.<sup>107</sup>
- (8) Failing to keep a promise is an act which is contrary to the pursuit of knowledge (and, as such, is contrary to the good)
- (9) Good (morally) ought to be done and evil (morally) ought to be avoided.

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<sup>107</sup> See *ST I-II*, 94, 2.



(10) If Jones does not pay Smith five dollars, he will have engaged in an act which is contrary to the pursuit of knowledge.

(11) Therefore, Jones morally ought to pay Smith five dollars.

This derivation would seem to avoid the difficulties inherent in the one above. It contains a statement about human nature and this statement is an essential premise in the argument. Likewise, assuming that premise (9) is true, it also enables us to derive a valid moral-Ought. Nevertheless, it has a difficulty of its own, and a rather blatant one, viz., it is not a counterexample at all since premise (9) contains a moral ought. In other words, it is not a derivation of an Ought from an Is but, rather, an Ought from a moral Good. Although this may be a means of bypassing the IOP which can be utilized by natural law theorists, it is not, as such, a counter-example.

If natural law theorists are to solve the real IOP by means of a counterexample, then, they will need to find some means other than attempting to derive an Ought from mere speech acts. In the next section, we will look at the question of whether Gewirth's counterexample might provide a better model for natural law theorists.

### **B. Gewirth's Counterexample**

The very purpose of Gewirth's article "The Is-Ought Problem Resolved" is to establish that it is possible to derive a prescriptive, moral, egalitarian, determinate, and categorical Ought from descriptive premises. If his derivation is successful on its own terms and if, in addition, it is sound and the premises are relevant to the Ought-conclusion, it might be a more useful model for natural law theorists. In this section, I will provide a synopsis of his derivation, a discussion of why it seems to pertain to all the

aspects of the real IOP, and an account of why—in spite of possible arguments to the contrary—it seems that natural law theorists can utilize his derivation as a model.

### 1. A Synopsis of Gewirth's Derivation

Gewirth's derivation proceeds from an analysis of basic features of human action and from the standpoint of the moral agent.<sup>108</sup> Unlike Searle, Gewirth does not rely on institutional facts or speech acts and he claims that the Ought derived pertains to any sufficiently rational agent.<sup>109</sup> The four steps of his derivation are as follows.

In step *one*, Gewirth comments on the fact when we act, we do so for a purpose. From the perspective of the moral agent, doing *X* for purpose *P* entails that both *X* and *P* are good in at least some sense. The very fact that the agent sees *P* as worthy of pursuit implies that *P* is of value to the agent. It also implies that the agent sees *X* as being of value insofar it is the means of attaining *P*. Gewirth admits that although *X* and *P* are not necessarily seen by the agent as *morally* valuable, the very fact that they are seen as worthy of pursuit implies that they are of value and therefore good in at least an instrumental sense.<sup>110</sup> Since a moral agent would not choose to act if she did not see the goal of her action as worthy of pursuit, Gewirth concludes that it is a fundamental feature

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<sup>108</sup> *IOPR*, 46 and 52.

<sup>109</sup> *IOPR*, 49-50.

<sup>110</sup> *IOPR*, 51. See also, Gewirth, Alan, "The Normative Structure of Action," in *The Review of Metaphysics*, 25 (Dec. 1971), 242. (Hereafter abbreviated as *NSA*.) Here Gewirth states: "...the agent... controls or directs his action for the sake of something he wants. And so long as this wanting is not a case of forced choice in the sense mentioned above, it constitutes a valuing on the part of the agent so that, to this extent, he regards the object of his action as good, whatever be his further beliefs about the conformity of his action to moral, legal, or even prudential criteria. In such cases, the agent's judgment of the goodness of his immediate purpose is accompanied by further judgments of the badness of his action on some other criterion."

of action that a free agent *de facto* sees the goal of action as being of value. Furthermore, he concludes that, from the perspective of the agent, the Fact-Value distinction is already bridged at this point even though the Is-Ought gap is not.<sup>111</sup> In other words, it is a fact that the agent sees the goal of her action as valuable even though she may not see it as morally obligatory.

Before proceeding to step two, Gewirth adds that since the agent sees *X* and *P* as being of value, and since freedom and basic well-being are necessary if she is to pursue *P* by means of *X*, the agent thereby also grasps that her freedom and basic well-being are good.<sup>112</sup> Since this grasp of the goodness of freedom and well-being must be grasped by *any* rational and conscious agent, it is a necessary—rather than “contingent or variable”—aspect of human action. In other words, *any* agent who engages in purposive action *de facto* must realize that her freedom and basic well-being are goods. By proceeding in this way, Gewirth avoids basing step one on a contingent or variable desire of the agent and thereby is able to claim that his derivation is categorical.

In step *two*, Gewirth introduces justificatory and rights claims which he says are self-evident and follow from step one.<sup>113</sup> Gewirth states:

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<sup>111</sup> Incidentally, Gewirth also claims that this approach bypasses the open-question argument of G.E. Moore. Gewirth asserts: “...the position here upheld bears on the relation between purpose, valuing or wanting and *seeming* good to the agent, not *being* good. This position is hence not subject to attack from the usual version of the ‘open question’ test: even if *x* is someone’s purpose, something he wants or values, it still makes sense to ask whether *x* is good. For the test to apply here, it would have to make sense to ask whether *x* *seems* good to the person whose purpose it is.” *NSA*, 243

<sup>112</sup> In explicating what he means by well-being, Gewirth states that it “comprises certain physical and psychological dispositions ranging from life and physical integrity to a feeling of confidence as to the general possibility of attaining one’s goals.” *IOPR*, 52.

<sup>113</sup> *IOPR*, 52-53.

...since every agent regards as basic goods the freedom and basic well-being which are the proximate necessary conditions of his acting for the achievement of any of his purposes, and since the criterion of claiming justifications and rights, so far as the agent is concerned, consists in the first instance in such proximate necessary conditions, it follows that any agent must claim, at least implicitly, that he has a right to freedom and basic well-being.<sup>114</sup>

In regard to the rights claim, the argument here is that in order for an agent to have a right to *Y*, she must grasp *Y* as something that is either directly or indirectly good and as something which is a basic good insofar as it is required for the pursuit of any other goods whatsoever.<sup>115</sup> Since any rational human agent must at least implicitly recognize that her freedom and well-being are good and necessary for the pursuit of anything else that she sees as good, it follows—according to Gewirth—that she thereby grasps that she has a right to freedom and basic well-being.<sup>116</sup> In regard to the justificatory claim, the argument here is that when the agent grasps *Y* as a good that is necessary for the pursuit of any other good, she has a justification (i.e., rationale) for pursuing or seeking to preserve *Y*.<sup>117</sup> For example, provided that Jones recognizes that his freedom is a good that is necessary for the pursuit of other goods, he will have a rationale for seeking to preserve his freedom; and he will also recognize that he has a right to freedom and well-being. Even if other agents do not in fact recognize Jones's right, it would nevertheless be

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<sup>114</sup> *IOPR*, 53.

<sup>115</sup> *IOPR*, 53.

<sup>116</sup> By “freedom”, Gewirth means freedom from interference. Any agent who pursues something he sees as good must at least implicitly grasp that it is in some sense good not to have others interfere with the pursuit of that good.

<sup>117</sup> Cf.: *NSA*, 244-248. Gewirth uses the term “justified” in the sense of “having a rationale,” rather than in the sense of “being morally justified.”

the case that Jones himself would believe that he has a right to freedom and that others ought to avoid interfering with his pursuit of what he values.<sup>118</sup>

In step two Gewirth claims he is able to derive a normative Ought since, “the normative concept of having a right either already is, or is directly translatable into, a deontic concept.”<sup>119</sup> It is important to realize, however, that he does not claim to have derived a *moral* Ought at this point. This is because his notion of rights is very broad and encompasses non-moral obligations such as obligations that stem from mere prudential judgments. Since Gewirth claims that the notion of rights can be employed “in connection with many kinds of justificatory criteria other than moral and legal ones,” in step two he only claims to have derived a generic Ought.<sup>120</sup>

In step *three*, Gewirth continues to proceed from the perspective of the moral agent and attempts to generalize the rights claim of the preceding step so that it applies to all persons. In so doing, he relies on the logical Principle of Universalizability which reads: *If some predicate P belongs to some subject S because S has the property Q (where the ‘because’ is that of sufficient reason or condition), then P must also belong to all other subjects... which have Q.*<sup>121</sup> Gewirth points out that rational agents realize that they have a right to freedom and well-being precisely *because* they also realize that (i) they are prospective agents who have purposes they want to fulfill and (ii) they cannot

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<sup>118</sup> Cf.: Gewirth, Alan, *Reason and Morality* (Chicago: University of Chicago Press, 1978), 71-73.

<sup>119</sup> *IOPR*, 54.

<sup>120</sup> Gewirth, *Reason and Morality*, 69. Gewirth asserts that non-moral contexts in which the notion of rights can be utilized include prudential, aesthetic, logical and legal ones.

<sup>121</sup> *IOPR*, 54. Although Gewirth does not assert that his principle is self-evident there is no reason to suppose that it is not.

fulfill these purposes if they do not have the requisite freedom and well-being.<sup>122</sup> Gewirth then points out that any rational agent who employs the principle of universalizability, will be left having to conclude that other persons also have a right to freedom and well-being. In short, any rational agent will be left with the following thoughts: *I have a right to freedom and basic-well-being precisely because (i) I act for purposes that I regard as good and (ii) freedom and basic well-being are necessary in pursuing these purposes. Since others also act for purposes that they regard as good and since freedom and basic well-being are necessary if they are to act for those purposes, they too must have a right to freedom and basic well-being.* Gewirth concludes, therefore, that any rational agent must—on pain of contradiction—admit that others have the same rights.

Finally, in step *four*, Gewirth derives moral Oughts which oblige the agent both to avoid inflicting harm on other agents and to preserve the well-being of such agents.

Gewirth states:

...since the agent logically had to admit [in step three] that ‘All prospective purposive agents have a right to freedom and basic well-being,’ he must also logically accept the ‘ought’-judgment, ‘I ought to refrain from interfering with the freedom and basic well-being of all prospective purposive agents,’ ....<sup>123</sup>

In this step, Gewirth links the rights-claim regarding other agents, which are derived in step three, to moral Oughts which follow from those claims. Since in step three the rational agent realizes that others have the same right to freedom and well-being as she herself does, and since she also realizes that—in accordance with her own rights—others have a duty to refrain from interfering with her freedom and well-being, she must conclude that she too has a duty to refrain from interfering with the freedom and well-

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<sup>122</sup> *IOPR*, 55.

<sup>123</sup> *IOPR*, 57.

being of others. Thus, in this step, two duties or moral Oughts are derived. First, the agent has a “negative duty not to inflict serious gratuitous harm on other persons.” Second, the agent has a “positive duty to perform such actions as rescuing drowning persons or feeding starving persons, especially when this can be done at relatively little cost....”<sup>124</sup>

## 2. The Characteristics of the Ought Derived in Gewirth’s Counterexample

Before looking at the question regarding whether Gewirth’s derivation can be imitated by natural law theorists it will be helpful first to consider whether he has provided a counter-example in which a moral, prescriptive, determinate, categorical, and egalitarian Oughts have been derived.

In explicating his counter-example and establishing that the Oughts derived have all of these characteristics, Gewirth notes that this derivation can be expressed by the Principle of Generic Consistency (PGC) which reads: *Apply to your recipient the same generic features of action that you apply to yourself.*<sup>125</sup> Since this Principle requires equal distribution of basic rights, Gewirth is able to claim that the Ought-statements which are derived from it are egalitarian. Since Gewirth defines moral Oughts as ones that “take positive account of the interests of other persons as well as the agent or speaker, especially as regards the distribution of what is considered to be basic well-being,” he is able to claim that the Oughts derived from the PGC are moral.<sup>126</sup> Since

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<sup>124</sup> *IOPR*, 57.

<sup>125</sup> *IOPR*, 57.

<sup>126</sup> *IOPR*, 35.

moral Oughts seek to guide actions, he is also able to conclude that these Ought derived is prescriptive.<sup>127</sup> Moreover, since the positive and negative duties derived in step four rule out coercion and harm, and since it would not be possible to derive the contrary, he is able to conclude that the Oughts are determinate.

In establishing that the Oughts are categorical, Gewirth admits that—at first blush—the Oughts in this derivation may appear to be dialectical rather than categorical since they are derived by proceeding from the point of view of the agent. It would seem, in other words, that the Oughts would only apply *if* a particular agent proceeded through the dialectical exercise of thinking through each of the above steps in the way explicated and—even then—they would only apply to that particular agent rather than absolutely.<sup>128</sup> Gewirth responds to this seeming difficulty in two ways. First, he argues that the reasoning involved in the above steps necessarily applies to *all* rational agents on pain of contradiction. Since the reasoning involved is reasoning which *any* rational acting person must accept, and since moral Oughts only apply within the context of rational acting persons, the Oughts are categorical. Although it is true that the moral Oughts would not apply to non-rational individuals or individuals who are not capable of action, this is of no consequence since, in order for Oughts to be categorical, it is sufficient that they apply only to all rational agents. Second, he points out that the moral Oughts are categorical insofar as they “cannot be removed or evaded by variable, escapable features...”<sup>129</sup> In short, since the reasoning involved in deriving the moral Oughts is not *escapable* but is

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<sup>127</sup> Cf., *IOPR*, 35. Here Gewirth states that prescriptive Oughts “seek to guide or influence actions.”

<sup>128</sup> *IOPR*, 59.

<sup>129</sup> *IOPR*, 60.



based on generic features of *all* rational action, the Oughts again must be categorized as categorical.

### 3. Gewirth's Derivation and Natural Law Theory

Assuming that a moral Ought-conclusion is successfully derived from Is-premises in the above steps, we are still left with the question as to whether this derivation—at least in part—can be imitated by natural law theorists.<sup>130</sup> Although it would be impossible to definitively answer this question given the limits of this dissertation, I will look at two reasons why it might be argued that it cannot be so imitated and then provide a response. In this response I will attempt to show that natural law theory and Gewirth's approach have more in common than is evident. Subsequently, I will discuss the specific differences and similarities between Gewirth's approach and what a natural law approach would require.

First, then, it could be argued that Gewirth's derivation is far too Kantian to be useful to natural law theorists since the Ought does not explicitly stem from facts about human nature but rather from the principle that one ought to avoid contradicting oneself. More specifically, Gewirth appears to derive the moral Ought by relying on logic alone rather than facts about human nature. To make this more evident it will be helpful to consider his own summary of his derivation at some length. He states:

A crucial move in my argument for the *PGC* is the step from (3) 'My freedom and well-being are necessary goods,' to a right-claim that logically must be made or accepted by every agent. This step is accomplished as follows. First, I argue that by virtue of accepting (3), every agent has to accept (4) 'I must have freedom and well-being.' This 'must' is practical-prescriptive in that it signifies the agent's

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<sup>130</sup> Many criticisms leveled against Gewirth and his response to them can be found in: *Gewirth's Ethical Rationalism*, edited by Edward Regis Jr., (Chicago: University of Chicago Press, 1984).

advocacy of this having what he needs in order to act either at all or with general chances of success in achieving he purposes for which he acts. Now by virtue of accepting (4), every agent has to accept (5) ‘I have rights to freedom and well-being.’ For, if he denies (5), then, *because of the logical correlativity* of claim-rights and strict ‘oughts,’ he also has to deny (6) ‘All other persons ought at least to refrain from removing or interfering with my freedom and well-being.’ By denying (6), he has to accept (7) ‘Other persons may... remove or interfere with my freedom and well-being.’ And by accepting (7) he has to accept (8) ‘I may not ... have freedom and well-being.’ But (8) contradicts (4). Since every agent must accept (4), he must reject (8). And since (8) follows from the denial of (5), every agent must reject that denial, so that he must accept (5) ‘I have rights to freedom and well-being.’<sup>131</sup>

If one asked Gewirth *why* the agent should believe that others have rights and, hence, *why* the agent ought to avoid inflicting harm on anyone, his response would have to be something like, “Because if the agent did otherwise, she would fall into a logical contradiction and this is something she ought to avoid doing.” For this reason it seems that the Ought in Gewirth’s derivation is not based on facts about human nature but rather on the logical principle that one ought to avoid contradicting oneself.

In a similar vein, it could be argued that Gewirth’s derivation is not grounded in facts about human nature but in the notion of rights. This is evident since Gewirth clearly admits that it is his notion of rights that enables him to bridge the Is-Ought gap.

Commenting on the second step in which he introduces the notion of rights, he says “this second step is, of course, crucial for the ‘is-ought’ derivation, since the normative

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<sup>131</sup> Gewirth, Allen, “Replies to My Critics,” in *Gewirth’s Ethical Rationalism*, edited by Edward Regis Jr., (Chicago: University of Chicago Press, 1984), 205-206. Emphasis mine. See also *Reason and Morality*, 157: “... the logical transition from (2) [‘Every agent ought to act in accord with the generic rights of his recipients as well as of himself’] to (3) [‘Every agent ought to act in accord with the generic rights of his recipients as well as of himself’] is obvious, *given the premise that agents ought to do what they logically must accept that they ought to do*. This premise is also obvious; for what stronger ground can be given for someone’s having a duty than that he logically must accept that he has the duty. For since he logically must accept that he has the duty, he contradicts himself if he denies that he has the duty. And from this it follows that he necessarily has the duty...” Emphasis mine. Paul Allen criticizes Gewirth for relying on the premise that “agents ought to do what they logically must accept that they ought to do.” See Paul Allen III “A Critique of Gewirth’s ‘Is-Ought’ Derivation” in *Ethics*, 92 (Jan., 1982), 222.

concept of having a right either already is, or is directly translatable into, a deontic concept.”<sup>132</sup> Although some natural law theorists introduce the notion of rights in their theories of natural law, the Ought is not grounded in rights but, rather, in human nature. Their arguments are not that rights provide a grounding for the Ought but that the Ought—which is grounded in some way in human nature—provides a grounding for natural rights. Moreover, even if natural law theorists were to use a notion of rights to ground the Ought, they would still need to demonstrate that the Ought had a grounding in human nature as well. A derivation that did not have a grounding in human nature could not properly be categorized as a natural law derivation. Since Gewirth’s derivation seems to lack this grounding, it is not clear that natural law theorists could imitate it without first substantially revising it.

In response to these arguments it is necessary to consider whether it is accurate to claim that Gewirth’s Ought has no grounding in human nature. If it can be shown that it has at least an implicit grounding in human nature, this would nullify the force of both of the above arguments. More specifically, although Gewirth’s derivation utilizes both a notion of rights and the implicit principle *one ought to avoid contradicting oneself*, so long as it also has at least some ontological and epistemological grounding in human nature, it could successfully be imitated by natural law theorists.

Given that Gewirth utilizes generic features of human action as a starting point for his derivation, and given that human action is an aspect of human nature, his derivation

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<sup>132</sup> *IOPR*, 54.

has an implicit ontological grounding in human nature.<sup>133</sup> In step one, he proceeds by considering the fact that all rational human agents *de facto* value both that which they pursue and the means by which they attain it. He begins not with principles or a notion of rights but with a fact about human agency. Even though he proceeds from within the perspective of the agent herself, he nevertheless implicitly begins with a fact about human nature. Moreover, even though he relies on explicit and implicit principles, as well as a notion of rights, the derivation begins with the fact that human agents value that which they pursue and the means by which they pursue it. Thus, the Ought has an ontological grounding in human nature and the only way to argue that it does not would be to argue that one's own experience of being a human agent has no relation to one's nature as a human being.

In addition, Gewirth's derivation also has an implicit epistemic grounding in human nature insofar as the agent's knowledge of her own nature as a human agent is the starting point. It is not sufficient for the agent to have knowledge of the various principles utilized in the derivation and an understanding of Gewirth's notion of rights, she must—before all else—have an understanding that she—as a human agent—values that which she pursues. Since, knowledge of one's own human nature ultimately enables one to have knowledge about what she ought to do, the Ought-conclusion of Gewirth's derivation can be said to have an epistemic grounding in human nature.

Since it is not an essential claim of natural law theory that the Ought has a grounding *only* in facts about human nature--or that it can have *no* grounding whatsoever

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<sup>133</sup>Cf. Gewirth, "Natural Law, Human Action, and Morality," in *The Georgetown Symposium on Ethics*, ed. Rocco Porreco, (Lanham: University Press of America, 1983), 86. Here Gewirth acknowledges that "human nature is the *necessary* condition of human action...."

in self-evident principles, a broad notion of rights, or generic features of human action-- there is no reason to conclude that Gewirth's derivation cannot be imitated by natural law theorists.<sup>134</sup> In order to successfully establish that Gewirth's derivation cannot be imitated by natural law theorists, one would have to show either that Gewirth's Ought-conclusion has no ontological and epistemic grounding in human nature or that it is an essential tenet of natural law theory that the Ought can *only* be grounded in facts about human nature. And it is far from clear that this can be done.

To be sure, since Gewirth does not subscribe to all the claims of natural law theory, he cannot properly be categorized as a natural law theorist. Unlike natural law theorists, he does not claim that human law must participate in or be congruent with natural law in order to be authentic and binding; nor does he claim that acting in accord with what one ought to do leads to flourishing.<sup>135</sup> He clearly lacks both the jurisprudential and the sanctions claims discussed in Chapter One. Nevertheless, given that there is nothing in his derivation that is antithetical to these claims, this lack would not preclude the possibility that his derivation could be imitated by natural law theorists.

In principle, then, it would be possible for natural law theorists to imitate Gewirth's derivation by imitating his methodology of starting from the perspective of the agent and relying on self-evident principles. Upon deriving a robust Ought, the natural law theorist could then discuss the relation of the Ought to human law and also discuss

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<sup>134</sup> If it is asserted that the Ought of natural law theory can have a grounding *only* in facts about human nature, then it would follow that Aquinas is not a natural law theorist since he relies not merely on such facts but also on the self-evident principle "Good ought to be done and evil ought to be avoided". See *ST* I-II, 94, 2.

<sup>135</sup> Gewirth himself also claims that his theory is distinct from natural law theory. Although his reasons for making this conclusion seem inadequate, there are multiple other reasons for making this conclusion. See: Gewirth, "Natural Law, Human Action, and Morality," 80 ff.

the sanctions claim. Since the jurisprudential and sanctions claims do not pertain to the grounding of Ought itself but merely to how it relates to human law and flourishing, there is no reason to suppose that these aspects of natural law would need to play an explicit role in the derivation itself. These claims could be tacked on, as it were, after establishing that the Ought of natural law need not fall prey to the IOP.

In this Chapter we have seen why it would be a formidable task for natural law theorists to imitate a derivation such as Searle's. Searle's derivation is based on institutional facts and proceeds by way of speech acts and definitions. As a result, the Ought which is derived cannot be said to have a grounding in human nature. In this Chapter, we have also seen that it would be possible for natural law theorists to imitate Gewirth's methodology in order to derive a robust Ought which has an ontological and epistemological grounding in human nature *and* which avoids the IOP.

## CHAPTER III

*...we call complete without qualification that which is always  
desirable in itself and never for the sake of something else.  
Now such a thing happiness, above all else,  
is held to be; for this we choose always for itself  
and never for the sake of something else.*

Aristotle<sup>136</sup>

The previous chapter shows that it is possible to solve the IOP by starting from the perspective of the agent. But it does not adequately consider whether doing so is consistent with the claims of natural law; nor does it adequately consider the methods actually utilized by natural law theorists. In the first section of this Chapter we will consider a method utilized by numerous natural law theorists which entails beginning with the desires of the agent in order to arrive at an Ought. In the second section we will consider whether or not this method can be used to derive a moral, prescriptive, determinate, categorical, and egalitarian Ought. It is important to note that this approach is not meant to be an attempt at providing a counterexample; it is merely meant to provide a route to epistemically and ontologically grounding an Ought in facts about human nature.<sup>137</sup> I will ultimately argue that it can but only within certain parameters and if certain assumptions are made.

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<sup>136</sup>*Nicomachean Ethics*, 1097a34-35.

<sup>137</sup> In other words, the question addressed in this chapter is not whether a counterexample can be provided—in which all the premises are non-Ought statements and the conclusion is an Ought-statement. The question addressed, rather, is whether it is possible to ground an Ought in facts about human nature without doing so invalidly.

### A. The Method Used

One of the most common approaches taken by natural law theorists in attempting to establish that a specific type of act is-- or is not-- in accord with natural law is to begin with the desires of the agent and then provide statistics in order to establish that the act fulfills-- or fails to fulfill--those desires. In taking this approach it is implicitly, and sometimes explicitly, argued that acts that lead to human flourishing are in accord with human nature, and therefore ought to be pursued, and acts that lead to the contrary are not in accordance with human nature and therefore ought to be avoided. Although this approach is frequently utilized by natural lawyers, little has been said about whether it avoids the IOP. To my knowledge this method has never been proposed as a means of surmounting the IOP but it is worth exploring whether it could be, especially since it is so commonly utilized. It would seem that this approach could be a path toward combining Gewirth's approach of beginning from the perspective of the agent with the natural law claim that the Ought has a grounding in human nature.

One of the clearest examples of this approach is found in the work of J. Smith.<sup>138</sup> Although it is by no means the *only* approach she takes in attempting to establish that certain acts ought to be avoided, it is certainly *one* of the approaches she takes.<sup>139</sup> In "Humanae Vitae a Generation Later," for example, Smith claims that there is a moral difference between using natural family planning (NFP) and artificial contraception, and that couples ought to avoid using artificial contraception.<sup>140</sup> In the course of attempting

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<sup>138</sup> I am focusing on the work of J. Smith because it is a very clear example of this type of approach, not because I take her assertions to be uncontroversial.

<sup>139</sup> For a summary of the other natural law approaches which Smith takes see: Janet Smith, *Humanae Vitae a Generation Later* (Washington, D.C.: CUA Press, 1991), 98-108. (Hereafter this work will be abbreviated as *HVGL*.)

<sup>140</sup> *HVGL*, 126-187.



to substantiate these claims, she points out the following: (1) the divorce rate among couples who use artificial contraception is over 50 percent whereas divorce is extremely rare for couples who use NFP; (2) there is evidence that the increase in the divorce rate in the mid-seventies can be attributed to the use of contraception; (3) the use of NFP can lead to an improvement of communication between married couples; (4) the use of NFP can lead to an increase in respect for women and a lowering in objectification of women; (5) the self-mastery gained by couples using NFP can lead to greater harmony in one's relationships both in and outside the home; and (6) when couples are motivated and well-informed, NFP is as effective as artificial contraception as a method of family planning. Smith also provides a testimonial of a woman who used various types of artificial contraception and found the results to be far less desirable than the results of using NFP.<sup>141</sup> Smith's general assertion is: *If you want to increase your chances of having a long-lasting and healthy marriage, you ought to avoid using artificial contraception.*

Although Smith's derivation may seem to be consequentialist insofar as she focuses on the consequences of artificial contraception versus those of using NFP, she elsewhere asserts that “[artificial] contraception is [not] wrong because it has bad consequences, but ... because contraception is wrong, it will have bad consequences.”<sup>142</sup> She likewise claims that artificial contraception is wrong because it violates the dignity of

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<sup>141</sup> *HVGL*, 126-127. Smith provides a much more comprehensive discussion of the pros of NFP and the cons of artificial contraception in her lecture “Contraception Why Not” (One More Soul, 1999) and “Paul VI as a Prophet,” in *Why Humanae Vitae Was Right* (San Francisco: Ignatius Press, 1993), 519-531.

<sup>142</sup> Janet Smith, “Paul VI as a Prophet,” 520

the human person rather than merely because it has bad consequences.<sup>143</sup> Assuming acts that violate the dignity of the human person can be equated with acts that damage or go against human nature, Smith's specific assertions can be formulated as follows:

*Contraception is wrong because it damages or goes against human nature. Because it damages or goes against human nature, it leads to bad consequences. If you want to avoid these bad consequences, you ought to avoid using it.*

These specific assertions can be understood as instantiations of both the ontological and sanctions claims of natural law theory, which were discussed in Chapter One. They are instantiations of the former insofar as human nature is the grounding for the Ought; and they are instantiations of the latter insofar as it relies on the principle that acting contrary to the way one ought leads one away from flourishing. If one were to ask "Why ought I to avoid artificial contraception?" the answer would be: "Because doing so results in undesirable consequences." In turn, if one were to ask "Why does it have undesirable consequences," the answer would be: "Because it is contrary to your nature and, hence, it is damaging."

Smith's assertions would be analogous to the following: Drinking arsenic is wrong because it damages or harms the physiological nature of the human person. Because it damages the physiological nature of the human person, it leads to undesirable consequences (such as pain and death). If you want to avoid these undesirable consequences, you ought to avoid drinking arsenic.<sup>144</sup>

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<sup>143</sup> Ibid.

<sup>144</sup> Another formulation is: Drinking arsenic leads to suffering and death. (This is a fact about human physiology.) Agents in fact desire to avoid suffering and death. (This is a fact about human psychology.) When we say "You ought to do X" we mean "You will fulfill your desire or goal if you do X." (This is a fact about the meaning of "You ought to do X" rather than a

Although this approach relies on the hypothetical form *if you want to avoid X, you ought to avoid Z*—and is clearly hypothetical in a sense—there are ways in which this approach can be used to derive a categorical Ought. Provided that X is something that *all* human agents want, the Ought which stems from X would pertain to *all* human agents.<sup>145</sup> Moreover, provided that the specific want did not pertain to variable features of agents but to wants that are ingrained in human nature, the Ought would not be hypothetical in the Gewirthian sense (i.e., it would not be based on variable features of agents).<sup>146</sup> For example, if it is the case that *all* human agents want to flourish, and if this desire to flourish is not based on *variable* features of particular agents, the Ought which stems from the desire to flourish could be interpreted as categorical. Moreover, if it is also the case that there are some actions that always lead away from flourishing and some that always foster flourishing, or that there are some actions that are necessary if one is to attain flourishing,<sup>147</sup> the Ought could be interpreted as categorical for this reason as

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normative statement.) Therefore, agents ought to avoid drinking arsenic. (This is a normative Ought-conclusion.)

<sup>145</sup> Cf. Grant, W. Matthews. “The Naturalistic Fallacy and Natural Law Methodology.” In *Truth Matters: Essays in Honor of Jacques Maritain*, edited by John G. Trapani, Jr., 168-181. Washington, D.C.: CUA Press, 2004, 172-173. I am here assuming that the human agents in question are not seriously compromised, that is, they are not mentally handicapped, suffering from dementia, too young to engage in practical reasoning, unconscious, etc. As discussed in Chapter One, an Ought can be categorical even though it may not be binding for persons who are incapacitated. In order for an Ought to be categorical, it is sufficient that it pertain to those who are not compromised.

<sup>146</sup> Gewirth denies that this method can be used to derive a categorical Ought. However, his claim would only hold if the X stands for a want which is not common to all agents. See: Gewirth, *IOPR*, 46.

<sup>147</sup> For a discussion of the claim that some actions are necessary if one is to attain flourishing and are, hence, categorical or absolute see: Mary Hayden, “Natural Inclinations and Moral Absolutes: A Mediated Correspondence for Aquinas,” in *Proceedings of the American Catholic Philosophical Association* 64 (1990), 130-150.

well.<sup>148</sup> The full argument would then be: *X is wrong because it is contrary to human nature.*<sup>149</sup> *Because X is contrary to human nature, it always leads to bad consequences, that is, it is inimical to human flourishing. If all agents desire to flourish, all agents ought to avoid X.*<sup>150</sup> *All agents desire to flourish. Therefore, all agents ought to avoid X.* And, of course, it could also be formulated as: *X is right because it is in accordance with human nature. Because X is in accordance with human nature, it leads to good consequences, that is, it leads to flourishing. If all agents desire to flourish, all agents ought to pursue X. All agents desire to flourish. Therefore, all agents ought to pursue X.*

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One possible objection to these formulations might be that it does not derive an Ought from statements about human nature but, rather, from the notions of “right” and “good” which contain implicit Oughts. If this is conceded, it would also have to be

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<sup>148</sup> One could argue that Smith’s Ought-conclusion regarding the use of artificial contraception (which is provided above) would not be categorical since the statistics she provides do not prove that it is *always* the case that contraception has undesirable consequences but merely that it is *often* the case. Nevertheless, provided that there are some actions that *always* lead away from long-term flourishing, it would be possible to derive categorical Oughts regarding such actions via this method of derivation. It would also seem to be possible to derive a categorical Ought regarding actions that so frequently lead away from long-term flourishing that it would be unreasonable to take the risk. For example, since using cocaine so frequently leads to addiction and, hence, to long term undesirable consequences, it could be argued—using this method of derivation—that agents have a categorical obligation to avoid using it even though it does not *always* lead to addiction. This issue overlaps with the question of whether this method of derivation can be used to derive a determinate Ought and will be discussed in more detail below.

<sup>149</sup> In this context and in what follows, I will be assuming that acts that are inimical to human well-being are equivalent to acts that go against human nature. Just as pouring gasoline on plants is inimical to their well-being because it is contrary to the nature of plants to attain hydration through such a substance, so too, performing (or failing to perform) a certain act could be inimical to human well-being if it were contrary to human nature.

<sup>150</sup> It is at this point in the argument that the hypothetical Ought is derived. It is in the remaining statements where a specifically categorical Ought is derived.

<sup>151</sup> To say that agents Ought to do X is another way of saying that they will attain their desire if they do X.

conceded that this approach does not avoid the IOP but clearly falls into it. Moreover, even if the notions of “right” and “good” are not considered to contain implicit Oughts, one could object to this method since it does not bridge the broader fact-value gap (of which the Is-Ought gap is just one instance) which is the foundation of the IOP.

In response to these objections, the derivation could be reformulated to read:

(1) X is contrary to human nature. (2) If X is contrary to human nature, it leads to undesirable consequences, that is, it leads away from flourishing. (3) All human agents *de facto* believe that they ought to avoid that which leads to undesirable consequences.<sup>152</sup> (4) Therefore, all humans ought to avoid X.<sup>153</sup>

Assuming that premise (3) is read as a factual statement regarding what humans believe, rather than a normative statement, this argument would be a valid derivation of an Ought from statements of fact. Since this formulation avoids using the terms “right,” and “good,” it would seem to bypass the objection above; and since it involves the desires of the agent, it would seem to be in accord with the basic method considered above.

Although this formulation does not explicitly indicate that *X is wrong because it is inimical to human well-being or goes against human nature*, it would be possible to argue that the Ought still has a grounding in human nature. Since the first two premises are statements about human nature, since the third premise concerns the beliefs of *human* agents, and since the Ought-conclusion is dependent on these premises, the Ought of this argument can itself be said to have a grounding in human nature.

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<sup>152</sup> I am assuming that this is a belief which *all* agents who are capable of rational thought would accept and, hence, would be an adequate premise from which to derive a categorical or universal Ought.

<sup>153</sup> The positive formulation would be: X is conducive to human well-being or is in accord with human nature. Because X is conducive to human well-being or in accord with human nature, it leads to desirable consequences, that is, it leads to flourishing. All human agents *de facto* believe that they ought to do that which leads to desirable consequences. Therefore, humans ought to avoid X.

## **B. The Type of Ought Derived Via This Method**

Assuming that this approach can be used to derive a categorical rather than merely hypothetical Ought, we still need to explore whether the Ought is moral, determinate, prescriptive, and egalitarian. In this section, we will explore whether it is.

### **1. Is the Ought Moral?**

Although it would seem that the Ought derived by this approach is clearly moral since it takes the interests of agents into account, it could be argued that it is merely prudential. One could argue, for instance, that although it is true that certain acts are contrary to human nature—and therefore damaging to human nature—and although it may be prudent to avoid these acts given their undesirable consequences, this does not establish that it is necessarily *immoral* to engage in such acts. For example, it may be true that given the nature of human physiology, humans tend to get sick when exposed to extreme cold, and it may also be true that it is therefore prudent to avoid wearing shorts in Alaska in December, but these facts would not necessarily establish that it is *immoral* to wear shorts in Alaska in December or that one has a *moral* obligation to avoid doing so. Even if that which is prudential is *always* prudential for *all* humans—and therefore categorically prudential—this would not necessarily entail a moral Ought. It would seem, then, that this approach would only be useful if it is the case that moral Oughts are types of prudential Oughts.

Although natural law theorists do not claim that all prudential Oughts are moral Oughts, it does seem that they claim—or at least ought to claim—that all moral Oughts

are prudential since this claim is implicit in the sanctions claim. As mentioned in Chapter One, the sanctions claim is the claim that natural law has sanctions insofar as to act in accordance with natural law leads to flourishing and to act contrary to it leads to a failure to flourish. Again, as Cicero puts it, "...he who does not obey it flies from himself, and does violence to the very nature of man. And by so doing he will endure the severest penalties even if he avoids the other evils which are usually accounted punishments."<sup>154</sup> So long as natural law theorists wish to hold this, they will implicitly be committing themselves to the claim that it is always prudent for the agent to act in accord with the moral Ought and, hence, that all moral Oughts are also prudential. Thus, even though it is possible to derive a non-moral prudential Ought using this approach, there is no reason to suppose that in principle it cannot also be used to derive a moral Ought that is acceptable within the context of natural law theory.<sup>155</sup>

### **Is the Ought Prescriptive?**

This approach would seem to be a stellar means of deriving a prescriptive Ought since the premises which support it are based on well-being, flourishing, and the desire of the agent to attain flourishing. Although agents may desire many different things, all agree that flourishing is worthy of pursuit.<sup>156</sup> As noted above, if an agent were to ask a proponent of this approach "Why ought I to do X?" the answer would be: "Because doing

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<sup>154</sup> Marcus Tullius Cicero, *On the Republic*, Charles Duke Yonge, trans. (London: G.G. Bohn, 183), III, 22. Quoted by Howard Kainz, *Natural Law: An Introduction and Re-examination*, (Chicago: Open Court, 2004), 11.

<sup>155</sup> To be sure, natural law theorists need to be able to show what it is that distinguishes Oughts which are merely prudential from those which are both prudential and moral, but this is not a task that needs to be taken up within the context of attempting to establish that a moral-prudential Ought can be validly derived from statements about human nature.

<sup>156</sup> Aristotle, *Nicomachean Ethics*, 1097b20.

so results in desirable consequences.” As such, this approach would be an effective way to derive an Ought that is capable of guiding action, of explaining why the Ought is mandatory,<sup>157</sup> and of leading subjects to their proper virtue.<sup>158</sup>

Nevertheless, it could be objected that, in order to be authentically prescriptive, the agent would have to be capable of *recognizing* that acting in accord with the proposed Ought in fact leads to long-term flourishing. For example, in order for the Ought-conclusion in the following argument to be capable of guiding action, the agent would have to recognize (or at least come to recognize through an added argument) that acting in accord with the Ought in fact leads to flourishing:

Seeking to know the truth is right because it is in accordance with human nature. Because it is in accordance with human nature, it leads to good consequences, that is, it leads to flourishing. If all agents desire to flourish, all agents ought to seek to know the truth. All agents desire to flourish. Therefore, all agents ought to seek to know the truth.

If we suppose that a particular agent did not recognize that seeking to know the truth leads to good consequences, it is doubtful that this Ought would be capable of guiding action and, hence, of being prescriptive. More likely such an agent would claim that no real reason or motive has been provided which explains *why* he ought to seek to know the truth.

In response to this difficulty, it could be argued simply that although not every Ought that is typically proposed by natural law theorists could necessarily be derived

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<sup>157</sup> As stated in Chapter One, Oughts are prescriptive, according to Gewirth, “in that their users advocate or seek to guide or influence actions which they set forth as required by the facts presented in the antecedents.” Gewirth, *IOPR*, 35.

<sup>158</sup> Aquinas claims that the effect of law is “to lead its subjects to their proper virtue.” *ST I-II*, 92,1.. He also defines law as “a rule and measure of acts, by which man is induced to act or is restrained from acting.” *ST I-II*, 90, 1.



using this approach, many such Oughts could. For instance, although it would not be clear to all agents that acting in accord with reason leads to flourishing, it *would* be clear to all mentally healthy agents that smoking crack every day and going on killing rampages would be inimical to flourishing. Thus, this method of derivation could still be utilized by natural lawyers as a method of deriving many prescriptive Oughts.

It could also be argued that, even when there are ambiguous cases, this method could still be successfully utilized to derive prescriptive Oughts provided that a sufficient number of relevant facts are added to the derivation. For example, although it would not be clear to all agents that seeking to know the truth leads to flourishing (a claim often made by traditional natural law theorists) it might be possible to make this clear to all agents by adding more facts and statistics to the premises.<sup>159</sup> Such facts might include the following: (1) those who seek to know the truth are much more likely to come to know the truth than those who do not; (2) those who come to know the truth are able to discern true goods from merely apparent goods and are therefore more equipped to make choices which lead to flourishing than those who do not; (3) those who seek to know the truth come to be more educated than those who do not; and (4) those who are more educated are better able to find happiness and avoid misery. This is not to say that all claims typically made by natural law theorists could necessarily rely on this approach. It

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<sup>159</sup> Smith seems to be attempting to do just this when she lists numerous facts in support of her claim that the use of artificial contraception is inimical to flourishing. She seems to realize that her claim is controversial and not easily accepted and precisely for this reason provides more facts and statistics.

is possible that some claims would remain controversial.<sup>160</sup> Nevertheless, it seems that at least in principle this approach could be used to derive numerous prescriptive Oughts.

### **Is the Ought Determinate?**

It has been argued by numerous philosophers that this method of derivation cannot be used to derive a determinate Ought. The basic argument is that, since different agents have different notions about what good consequences and flourishing consists in, contradictory Ought-conclusions could be derived from premises that are based on such notions. For instance, a secular humanist might think that in order for humans to flourish, they must strive to avoid pain, seek health, develop the talents they wish to develop, and do what they can to help others do the same. On the other hand, a member of a new-age cult might think that humans can flourish only if they spend their days fasting and their nights sleeping on beds of nails while awaiting the arrival of the mother ship. Both could, in principle, hold that these notions of flourishing pertain to *all* human agents and that there are no other means to attaining authentic flourishing. Hence, both could claim to be deriving a categorical Ought. However, the secular humanist would be able to derive the conclusion that agents ought to avoid sleeping on beds of nails while the cult member could derive the opposite.<sup>161</sup>

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<sup>160</sup>For example, many natural law theorists claim that using in vitro fertilization (IVF) is contrary to the natural law. But since it would be difficult to establish that use of IVF necessarily leads away from the fulfillment of the desires of agents and leads away from flourishing, it would not be possible to use this approach to derive the Ought conclusion *you ought to avoid using IVF*.

<sup>161</sup> For example, the secular humanist could propose: “Sleeping on a bed of nails is contrary to human nature. Because it is contrary to human nature, it leads to bad consequences (i.e., it is inimical to human flourishing). If all agents desire to flourish, all agents ought to avoid sleeping on beds of nails. All agents desire to flourish. Therefore, agents ought to avoid sleeping on beds of nails.” On the other hand, the cult member could propose: “Sleeping on a bed of nails is in accordance with human nature. Because it is in accordance with human nature, it leads to good

In “On Morality’s Having a Point,” D.Z. Phillips and H. Mounce make a similar argument.<sup>162</sup> They argue that there can never be a universal consensus regarding what is desirable and that one’s view of the human good is dependent on and determined by one’s moral beliefs and traditions. They also argue that ethicists who hold that it is possible to arrive at an agreement merely by coming to know the relevant facts are naïve and unable to account for the fact that there is moral disagreement even among those who know the relevant facts.<sup>163</sup>

Gewirth also advances a similar argument. In commenting on the attempt to derive an Ought from the desires of agents, he states:

This mode of derivation is... circular because it premises about what constitutes human well-being or harm, far from being straightforwardly factual or descriptive, represent moral commitments about what is worth striving for or what interests of persons other than the agent are worth promoting. Consider for example, the moral disagreement between religionists and secularists, between pacifists and militarists, between romantics and practical-minded persons, and so forth.... Because of such disputes, the *eudaemonist derivation does not yield determinate ‘oughts’*.<sup>164</sup>

Gewirth’s claim here is that even though there may at times be a general consensus about what human flourishing consists in, and hence about what human agents desire, there is no *universal* consensus and, as a result, any Ought that is derived from a notion of flourishing is bound to be indeterminate.

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consequences (i.e., it leads to flourishing). If all agents desire to flourish, all agents ought to sleep on beds of nails. All agents desire to flourish. Therefore, all agents ought to sleep on beds of nails.”

<sup>162</sup> D.Z. Phillips and H.O. Mounce, “On morality’s having a point,” in *The Is—Ought Question*, edited by Deal Hudson, 228-239 (London: MacMillan, 1969). Hereafter I will abbreviate this as: *MHP*.

<sup>163</sup> *MHP*, 234.

<sup>164</sup> *IOPR*, 45-46. The emphasis is mine.

In spite of the fact that these objections may seem insurmountable, there are several possible responses to them. First, it could be claimed that by making a distinction between ends and purposes of human agents, and limiting ourselves to the latter, it is possible to find common ground. R. Sokolowski makes just this claim. He defines “purposes” as the wishes of human agents which can be deliberated about; and he defines “ends” as the natural *telos* of human beings which is present regardless of such wishes and which cannot be deliberated about.<sup>165</sup> The examples he gives of purposes are: the wish to become a lawyer, to support one’s family, and to go on vacation. Such desires are not found in all human agents and have no extra-mental existence. Examples he gives of ends are: the natural *telos* of human thinking (i.e, rationality) and human sexuality (i.e., procreation). Such ends are not based on mere human conventions or traditions, are found in all healthy adult humans, and exist regardless of whether they are wished for. With this distinction as a backdrop, Sokolowski locates the Ought in ends and states, “Natural law is shown to us when we recognize that there are ends in things and that our purposes and choices must respect their priority. ....Only ends can make us accountable; our purposes have nothing obligatory about them. Ends are not just an aesthetic alternative to our purposes but a ‘law’ in the nature of things.”<sup>166</sup> His argument, then, is that while mere purposes would not be an adequate starting point for deriving a

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<sup>165</sup> Sokolowski, Robert, “What is Natural Law? Human Purposes and Natural Ends,” in *The Thomist* 68 (2004): 508-509. Cf. Slade, Francis, “On the Ontological Priority of Ends and Its Relevance to the Narrative Arts,” in *Beauty, Art, and the Polis*, ed. Alice Ramos (Washington, D.C.: CUA Press, 2000), 58-69; and “Ends and Purposes,” in *Final Causality in Nature and Human Affairs*, ed. Richard Hasting (Washington, D.C.: CUA Press, 1997), 83-85. Slade is cited by Sokolowski.

<sup>166</sup> Sokolowski, 521-523.

determinate Ought, ends would be since purposes vary from person to person whereas ends are universal and common to all.

A similar claim is made by R. Hayden who asserts that natural human inclinations do not directly correspond to moral absolutes (i.e., determinate, categorical Oughts) without mediation. She acknowledges that,

A non-universal natural inclination cannot suffice of itself for a universal moral absolute. So, if the natural law prohibitions, for example against suicide... were based *solely* upon opposing natural inclinations and if these natural inclinations were truly lacking in some, then any individual lacking those natural inclinations could not be obligated in that regard, e.g., to abstain from suicide....<sup>167</sup>

The mediating notion which Hayden says is essential for grounding an absolute Ought is the notion of the final end.<sup>168</sup> Her argument is based on the claim that “even though one might not personally experience the suitability of a certain good... one could still discover that it is perfective of human beings [and hence necessary for attainment of the final end].... For one could consider the nature of any good and its contrary independently of one’s own inclinations.” In short, her claim is that even if a particular agent is not inclined to a particular good (such as life), he can still be obligated to pursue that particular good if the good is necessary for the attainment of his final *telos*. Thus, both Sokolowski and Hayden respond to the determinacy problem by claiming that,

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<sup>167</sup> Hayden, R. Mary, “Natural Inclinations and moral Absolutes: a Mediated Correspondence for Aquinas,” in *Proceedings of the American Catholic Philosophical Association* 64 (1990), 134. The emphasis is mine.

<sup>168</sup> Hayden cites *ST I II*, 99, 1 in which St. Thomas claims that “since a precept of law is binding, it is about something which must be done: and, that a thing must be done arises from the necessity of some end. Hence it is evident that a precept implies, in its very idea, relation to an end, insofar as a thing is commanded as being necessary or expedient to an end. Now many things may happen to be necessary or expedient to an end; and accordingly, precepts may be given about various things a being ordained to one end.” She also cites *ST I II*, 91, 4; 1, 5; 3, 5; 1, 7; 90, 2; 231, 1 ad. 2; and *II II* 44, 3 ad 3.

although a determinate Ought cannot be derived *merely* from the wishes or inclinations of human agents, a determinate Ought *can* be derived if the notion of an ultimate human *telos* is included in the derivation. Acts that are necessary for the attainment of this *telos* are determinately and categorically prescribed; and those acts that are incompatible with the attainment of this *telos* are determinately and categorically proscribed.

The main difficulty with this response is that it would seem to involve a change in approach. Although Sokolowski and Hayden claim that the desires of the agent play a role in deriving an Ought, they fail to establish that wishes play an *essential* role in deriving a determinate Ought. This difficulty is present in Hayden's article insofar as she maintains that it is possible to derive a determinate Ought even if there are no universal human inclinations. It is present in Sokolowski's article insofar as he claims that a determinate Ought can be derived from ends but not purposes. Since they maintain that a determinate Ought can be derived even if there are no universal desires, there is no essential role for such desires. It is the notion of a final *telos*, rather than the desires of the agent that is the *sine qua non* of the derivation. The derivation, then, is not derived from the desires of the agent but rather from a teleological concept.<sup>169</sup>

Another difficulty with this response is that it begs the question since it does not establish that there is agreement as to what the final *telos* is but merely assumes that there is such agreement or that such agreement is possible. Although it is clear that if there is

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<sup>169</sup> A derivation in accord with the claims of Sokolowski and Hayden is: *X is good because it is in accord with human nature. Because X is in accord with human nature, it enables humans to attain their final telos. Some agents desire to attain their telos but some do not. All agents are capable of coming to know that X enables them to attain their final telos. Therefore, all agents ought to pursue X.* Since the Ought-conclusion is derived regardless of whether agents desire the end, this derivation is not an example of deriving an Ought from the desires of agents. (The unstated premise, here, is: *All agents ought to pursue that which enables them to attain their final telos*).

universal agreement regarding what the final end is, it would be possible to derive a determinate Ought from it, it is not at all clear that there is in fact universal agreement. Hayden, for instance, says that the final end is human perfection, yet she does not specify what human perfection consists in.<sup>170</sup> As a result, her approach would not provide an adequate response to Phillips' claim that one's view of the human good is dependent on and determined by one's moral beliefs and traditions.<sup>171</sup>

A second possible response to the determinacy objection is that, if this method is restricted to apply only to very basic desires, it would be possible to find common ground and, hence, to derive a determinate Ought. Although there are many areas of disagreement in regard to what flourishing, the final *telos*, or human perfection consists in, all would agree that in some way it consists in the attainment and preservation of basic goods such as knowledge, life, and freedom.<sup>172</sup> In addition, there is reason to suppose that it is possible for all agents to agree that some actions are inimical to the attainment and preservation of such goods. For instance, both secular humanists and new-age cult members would be able to agree that freedom is a human good and is necessary for flourishing. The secular humanist might think that freedom is a good insofar as it enables

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<sup>170</sup> Hayden states, "...the end of natural law is the self's last end, i.e., his natural last end. And this last end is the self's perfection, culminating in both contemplative and practical acts of virtue ordered to the common good of all within a community. More specifically, the natural last end consists of altruistic love of God above all and neighbors as self." (142) Only if we assume that this notion of the final end is universal and that there is universal agreement regarding what is necessary for the attainment of this end, could it be used to derive a determinate Ought. Obviously, there is no universal consensus that the last end "consists of altruistic love of God above all."

<sup>171</sup> *MHP*, 234.

<sup>172</sup> This response parallels Aquinas's claim that the basic principles of practical reason are the same for all people and are known equally by all. We read: "...as regards the common principles, whether of speculative or of practical reason, truth or rectitude is the same for all, and is equally known by all." *ST I-II*, 94, 4

agents to seek to develop the talents they wish to develop, and the new-age cult member might argue that freedom is a good insofar as it enables agents to sleep on beds of nails. However, both would agree that freedom is a good which is necessary for the attainment of human flourishing and therefore part of such flourishing. Both would also be able to agree that whatever is inimical to freedom is inimical to human flourishing.

An example of a derivation which is based on the basic good of freedom, incorporates the desires of agents in an essential way, and is in accord with Smith's approach would be as follows:

Freedom is a basic good insofar as it is necessary if humans are to flourish. If all agents desire to flourish, all agents ought to seek to preserve their freedom and ought to avoid that which is inimical to freedom. All agents desire to flourish. Therefore all agents ought to seek to preserve their freedom and ought to avoid that which is inimical to freedom.

Since any agent, regardless of his or her view of what flourishing consists in, would presumably be able to grasp that freedom is necessary for the pursuit of anything whatsoever (be it sleeping on beds of nails or developing one's talents) the Ought would presumably be determinate. Moreover, any good that is so basic as to be required for the pursuit of any desire whatsoever could also be used as a starting point for deriving determinate Oughts. Since all agents would presumably be able to grasp that good such as knowledge and life are also required for the pursuit of any desire whatsoever, these goods could also be used to derive a determinate Ought.<sup>173</sup>

Although there is no explicit premise regarding human nature in the above derivation, it can be said to have an implicit grounding in human nature since freedom is a basic *human* good which is necessary for the attainment of *human* flourishing. It would

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<sup>173</sup> This approach parallels that of Gewirth insofar as it stems from goods that are necessary for the pursuit of anything whatsoever. It also in some ways parallels the approach of Finnis which will be the topic of Chapter Five.



also be possible to make this grounding more explicit by formulating the derivation as follows:

The preservation of freedom is right because it is in accordance with human nature. Because freedom is in accordance with human nature, it leads to good consequences (i.e., freedom enables humans to seek that which leads to flourishing). If all agents desire to flourish, all agents ought to seek to preserve freedom. All agents desire to flourish. Therefore, all agents ought to seek to preserve freedom.

It seems possible, then, to derive an Ought that has a grounding in human nature and that relies on the desires of the agent. Provided that the desires pertain to goods that are basic and can be grasped by all agents, such an Ought would also be determinate.

#### **4. Is the Ought Egalitarian?**

The most difficult issue for this approach is that of establishing that the Ought is egalitarian in the sense that it fosters the common good.<sup>174</sup> Obviously, any moral philosopher who wishes to derive an egalitarian Ought concerning the common good from the desires of agents, must find a way to respond to Thrasymachus's assertion in *The Republic* that it is more profitable and desirable to be unjust than to be just or, in other words, that it is more desirable to seek one's *own* good rather than the *common*

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<sup>174</sup>Matthews Grant makes a similar statement. He says, "The challenge for such a natural law theory... would be to show that it could generate precepts proscribing all those things that we know to be unjust. On an ethics comprised of strictly conditional oughts, the only reason I ought to do or refrain from doing anything is because it is a necessary means or obstacle to *my* happiness, which *I desire*." The emphasis is that of Matthews Grant. *NLM*, 173.

good.<sup>175</sup> Moreover, the very fact that his assertion is so difficult to disprove would seem to indicate that it would be impossible simultaneously to derive a categorical, determinate, and egalitarian Ought regarding the fostering of the common good using this approach. Since not all agents admit that fostering the common good is in his or her own interest, how could it possibly be argued that an egalitarian *and* determinate egalitarian Ought can be derived from the desires of agents?

In spite of the fact that there has been little agreement about whether or not seeking the fulfillment of one's own desires can lead to the fostering of the common good, many philosophers have tried to establish that it can. P. Foot, for example, tries to establish that it is in the interest of all agents—and hence in accord with their authentic desires—to act justly. She points out that an unjust person who never fostered the common good would need to be a very good deceiver. In order for such a person to function well in society, for example, she would have to spend a great deal of effort trying to appear to be just and—in the end—her relations with others would become depersonalized to such an extent that her own life would become impoverished.<sup>176</sup> Foot also points out that, “The reason why it seems to some people so impossibly difficult to show that justice is more profitable than injustice is that they consider in isolation particular just acts.”<sup>177</sup> Her point is that although it may be possible to establish that it is

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<sup>175</sup> Plato, *The Republic* 343d ff. Gewirth objects to this approach to deriving an Ought from the desires of agents for precisely this reason. He claims that this type of approach, “fails to cope with the crucial moral problem of distribution, of *whose* well-being ought to be promoted and whose harm avoided.” (*IOPR*, 46. The emphasis is that of Gewirth) See also Phillips and Mounce, *MHP*, 228ff.

<sup>176</sup> Philippa Foot, “Moral Beliefs,” in *Virtues and Vices* (Berkeley: University of California Press, 1978), 128-129. Hereafter this is abbreviated: *MB*.

<sup>177</sup> Foot, *MB*, 129-30.

more profitable for the agent to engage in self-seeking acts *on occasion* or in *particular circumstances*, it is not possible to establish that it is more profitable for the agent to engage *only* in such acts. The more self-seeking an agent is, the less she will be able to flourish in society since, in order to flourish in society, a certain amount of give-and-take is necessary. Certainly it is difficult—if not impossible—to imagine a purely self-seeking agent having the things that are ordinarily accepted as being part of a life of flourishing: having friends, being trusted by others, being considered by others as being a decent person, etc.

Although insightful, Foot's argument has been subject to criticism. W.D.

Hudson, for example, criticizes Foot for failing to acknowledge that being unjust does not *necessarily* lead to an impoverished life. Hudson states:

[Foot] seems to assume that, once people catch [the unjust man] lying or cheating, they will regard him with suspicion for ever; and, consequently, that he will have to go in for more and more lying and cheating once he has started. But is this so? Two facts at least should be taken into account. One, that people are prepared to tolerate a certain amount of injustice in others because they know that they are not innocent of it themselves; and the other, that a certain amount of lying and cheating is sometimes necessary to keep personal relationships harmonious.<sup>178</sup>

Although Hudson admits that an agent who is *always* unjust will likely end up with an impoverished life, his point is that an agent who is *sometimes* unjust could very well live a fulfilled life in which she attains her desires. His point is also that—even though the unjust agent may at times have to lie or cheat—a certain amount of lying and cheating may be necessary for the attainment of harmonious relationships. According to Hudson,

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<sup>178</sup> W. D. Hudson, *Modern Moral Philosophy*, 2<sup>nd</sup> ed., (New York: St. Martin's Press, 1983), 320. Hereafter this will be abbreviated as: *MMP*.

then, being unjust and self-serving can be the best means to fulfilling one's desires even though it may require lying and cheating down the road.

The difficulty with Hudson's criticism is that it relies on an uncharitable reading of Foot. Foot fully acknowledges that an agent might *occasionally* be unjust. Her claim is not that it never pays to be unjust but, merely, that it never pays to be unjust at all times or even to be unjust most of the time. Moreover, Hudson is only able to establish that it can more profitable to be unjust by considering unjust actions in isolation, that is, by prescind from the question of whether unjust actions in general, and within the context of living in society, lead to the fulfillment of the agent's desires. Foot would undoubtedly agree wholeheartedly with Hudson that there can be instances in which occasional unjust acts can enable the agent to attain her desires. What Foot would insist on, however, is that an agent who *frequently* engages in such actions would not in fact attain her desires. In short, Foot could respond to Hudson by pointing out that he is only considering unjust actions in isolation—which is precisely what she warns against.<sup>179</sup>

### **Is the Egalitarian Ought Also Categorical and Determinate?**

Assuming that there is an adequate basis for concluding that is in the best interest of the agent to avoid being unjust, at least for the most part, it might still be asked

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<sup>179</sup> Aquinas makes a claim which is somewhat similar to Foot's. He states: "...there is in man an inclination to good, according to the nature of his reason, which nature is proper to him; thus man has a natural inclination...to live in society. And in this respect, whatever pertains to this inclination belongs to the natural law; for instance... to avoid offending those among whom one has to live, and other such things regarding the above inclination." (*ST I II*, 94, 2.) Provided that (1) acting justly and seeking to foster the common good are necessary aspects of avoiding "offending those among whom one lives," and (2) acting in accord with and attaining that which one has an inclination toward, is equivalent to attaining one's desire, this passage can be interpreted as an implicit claim that it is in the agent's best interest to seek to foster the common good.

whether this egalitarian Ought is simultaneously also categorical and determinate.<sup>180</sup> If it can only be established that the agent ought to avoid being consistently unjust *for the most part* or *in most situations*, it could be argued that this is not an absolute, categorical Ought but one which depends on particular circumstances. And, since there seem to be agents who have no desire for sociability and friendship, and therefore have no reason to avoid being unjust as a means to such goods, it would seem impossible to claim that determinate, egalitarian Ought can be derived from the desires of agents.

This question is of particular importance given that traditional natural law theorists typically maintain that the fostering of the common good is an essential aspect of law in general and natural law in particular. Their claim is not that some mention of the common good should be made in the context of natural law but that the binding aspect of the Ought of natural law stems from its relation to the common good. For example, Aquinas defines law as “an ordinance of reason *for the common good* ....”<sup>181</sup> He also states: “since the law is chiefly ordered to the common good, any other precept in regard to some individual work, must be empty of the nature of a law, save in so far as it regards the common good. Therefore every law is ordered to the common good.”<sup>182</sup>

And Grotius similarly states, “maintenance of the *social* order... is the source of law

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<sup>180</sup> I am assuming that it is fairly obvious that an egalitarian Ought is *moral* since (i) it clearly takes the interests of agents into account, (ii) it is clear that the statement “agents ought to foster the common good” can be used in ordinary language to mean “agents have a moral obligation to foster the common good,” and (iii) the Ought in “agents ought to foster the common good” cannot be reduced to an mere Ought of likelihood or adequacy. I am also assuming that it is fairly obvious that an egalitarian Ought that is based on the desires of agents is *prescriptive* since it not only seeks to guide or influence action but even provides a motivation for doing so. Thus, in what follows I will not deal with the question of whether the specifically egalitarian Ought is also moral and prescriptive.

<sup>181</sup> *ST I-II*, 90, 4. The emphasis is mine.

<sup>182</sup> *ST I-II*, 90, 2.

properly so called.”<sup>183</sup> Since the Ought of traditional natural law theory has a necessary grounding in the common good, then, unless a solution to the IOP can establish that it is possible to derive validly an egalitarian Ought that is also categorical and determinate, it would be inadequate. In other words, if the egalitarian Ought of a theory of natural law were not determinate and categorical, there would be no guarantee that the agent’s acting in accord with the precepts of natural law would necessarily foster or even safeguard the common good. As such, it would not be sufficient.

In regard to the question regarding whether a validly-derived, egalitarian Ought can also be categorical and absolute, it could be argued that—at least in principle—it could be. For example, it could be argued that the desire to live peaceably in society and to have friends is a basic desire of *all* non-incapacitated human agents and, therefore, that the Ought which stems from this desire pertains to all agents.<sup>184</sup> In addition, it could be argued that having at least some friends or peaceful social interactions is *necessary* if agents are to attain flourishing and, further, that the desire for flourishing is not itself based on variable features of agents or their social situations. If (1) all non-incapacitated agents desire to flourish, (2) friendship and peaceful social interactions are *necessary* if

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<sup>183</sup> Hugo Grotius, *De Jure Belli ac Pacis Libri Tres*, trans. Francis Kelsey (New York: Oceana, 1964), Prolegomena §§ 6-9. The emphasis is mine. Cicero makes a similar claim. His rationale for positing that human law is not sufficient is that, if it were, injustice and tyranny could be considered to be legitimate. He states, “If the will of the people, the decrees of the senate, the adjudications of magistrates, were sufficient to establish rights, then it might become right to rob, right to commit adultery, right to substitute forged wills, if such conduct were sanctioned by the votes or decrees of the multitude.... Are the laws of tyrants just, simply because they are laws? Suppose the thirty tyrants of Athens had imposed certain laws on the Athenians? or, suppose again that these Athenians were delighted with these tyrannical laws, would these laws on that account have been considered just?” Cicero, *On the Laws*, Charles Duke Yonge trans. (London: H.G. Bohn, 1853), I, 12, 18.

<sup>184</sup> As mentioned in Chapter One, an Ought can be categorized as “categorical” even if incapacitated agents are not obligated to follow it due to their incapacity.

agents are to attain flourishing, and (3) it is necessary to contribute to the common good (or at least avoid diminishing it) in order to have friendship and peaceful social interactions, it would be possible to conclude that the obligation to contribute to the common good (or at least avoid diminishing it) is categorical.<sup>185</sup>

Even if one were only to admit that acting justly and contributing to the common good are only *for the most part* or *usually* necessary for attaining flourishing, the egalitarian Ought could be said to be categorical. If the risk involved in engaging a certain act is unreasonable to take, it would be possible to conclude that people always ought to avoid such acts. For example, if ACME parachute company sold parachutes which had a twenty percent failure rate, it would be possible to conclude that--if people wish to live more than they wish to skydive--they always ought to avoid using parachutes made by ACME. In addition, it would be possible to claim that this Ought pertains to all mentally-healthy, adult agents and, hence, is binding to all such agents. Analogously, if it could be established that engaging in acts which do not contribute to the common good often times does not enable people to attain their desire to live peaceable in society and have friends, it would be possible to claim that the egalitarian Ought is categorical. In addition—as in the case of the parachute example—it would be possible to claim that this Ought pertains to all mentally-healthy, adult agents and, hence, is binding to all such agents.

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<sup>185</sup> The following is an example of a derivation of a categorical and egalitarian Ought: *Seeking to foster the common good and/or avoiding that which is detrimental to the common good is necessary if agents are to flourish. If all agents desire to flourish, all agents ought to avoid that which is detrimental to the common good. All agents desire to flourish. Therefore, all agents ought to seek to foster the common good and/or avoid that which is detrimental to the common good.*

Regarding the question of determinacy, it could easily be argued that the egalitarian Ought is not determinate since it seems to be possible to derive the conclusion “I ought to act justly,” as well as “I ought to act unjustly,” by relying on the desires of agents. Even though most human agents are capable of grasping the connection between acting justly and attaining their desire to live peacefully in society, have friends, and flourish, some agents are not. There are, for instance, wealthy agents who have no need of being just toward others as a *means* to attaining ends which are necessary for most agents (such as employment) and who in addition have no desire for friendship or to live peacefully in society as an *end* in itself. Although most agents could derive the conclusion “I ought to act justly” from premises concerning their desires, agents who desire to be unjust and avoid fostering the common good could derive the conclusion “I ought to be unjust” from premises concerning their desires. Thus, it would seem to be difficult—if not impossible—to derive a specifically *determinate* egalitarian Ought by relying on the desires of agents.

In response to this difficulty, one could argue that agents of this latter type could be considered to be incapacitated and, hence, not bound by the egalitarian Ought. As discussed in Chapter One, even though there are some agents who are not capable of seeking to know the truth, it is still possible to claim that the natural law precept regarding truth-seeking is categorical and absolute in the sense that it pertains to all agents who have the capacity to grasp the precept and follow it. Just as a severely mentally handicapped person or a child would not be obligated by the precept “you ought to seek to know the truth” so too, it could be argued, the hard-core recluse would not be obligated by the precept “you ought to seek to foster the common good.” In short, it



could be argued that the egalitarian Ought is categorical even though some agents are not bound by it.<sup>186</sup>

By way of summary, then, there is reason to suppose that it is possible to derive a robust Ought—which has all five of the requisite characteristics—from the desires of agent provided that: (1) we limit ourselves to basic desires which all non-incapacitated human agents have in common; (2) we concede that non-incapacitated agents are all capable of grasping the premise that acting unjustly, and therefore diminishing the common good, is at least *usually* not in accord with their most authentic desires; (3) we “live by probabilities” in that we acknowledge that certain acts will (or will not) lead to attainment of desires; (4) we do not look at unjust acts in isolation; and (5) we concede that incapacitated agents are not bound by the egalitarian Ought-precepts if they are not capable of grasping them.

One of the questions which might be asked by opponents of this method, however, is whether or not it has an adequate grounding in human nature or whether it would be better categorized as a version of utilitarianism with a statement about human nature randomly tacked on. To be sure, Smith asserts that proscribed acts are not wrong because they have bad consequences but they have bad consequences because they are wrong. Moreover, in specifying what constitutes “wrongness,” Smith makes reference to human dignity and human nature. It is for this reason that the above example of this type of derivation has, as its first premise, the statement: “X is wrong because it is contrary to human nature.” Nevertheless, this premise seems to be tacked on, as it were. Nothing is said about what human nature is or how it relates to the agent’s desires, nor is the premise

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<sup>186</sup> One could, for example, argue that agents who truly cannot grasp the connection between fostering the common good or even of avoiding diminishing it have a disorder (such as anti-social personality disorder) and are therefore incapacitated.

necessary for the Ought derivation. Unlike Aquinas, Smith does not discuss the basic aspects of human nature and *then* discuss how inclinations or desires stem from that nature; and it is assumed, rather than established, that acts which lead away from the agent's desires are not in accord with human nature. Although addressing this issue in detail would far surpass the limits of this Chapter, it is worth noting that—while this method can be used to solve the IOP—if natural law theorist *qua* natural law theorists wish to utilize it, more work needs to be done.

In the next Chapter we will consider the solution which involves returning to an Aristotelian, teleological understanding of human nature. Since it has a much more explicit grounding in human nature than does the present one, it could turn out to be a better solution for natural law theorists.

CHAPTER IV:  
STARTING FROM THE NOTION OF  
THE FUNCTION OR *TELOS* OF THE HUMAN PERSON

*...to say that happiness is the chief good seems a platitude  
and a clearer account of what it is is still desired.  
This might perhaps be given, if we could first ascertain  
the function of man. For just as... for all things  
that have a function or activity, the good and the 'well'  
is thought to reside in the function, so would it seem to  
be for man.*

Aristotle<sup>187</sup>

Veatch and Rautenberg have both asserted that the problem with attempting to derive an Ought from the desires of the agent is that it leaves the *Euthyphro* question unanswered. It is only if we *assume* that things are good because they are desired that we

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<sup>187</sup> *Nicomachean Ethics*, 1097b21-28.

are justified in claiming that acting in accord with what agents most desire is what is moral.<sup>188</sup> But such an assumption is unwarranted; and it is for this reason that Veatch and many others recommend returning to a functional and teleological understanding of the human person as a means of providing an adequate starting point for deriving an Ought. Veatch further argues that if we attempt to derive an Ought from the desires of the agent, we will be left with relativism since the moral good would have then have no objective foundation. He states:

On the basis of the more traditional natural law theory (Aquinas), all human duties and human rights may be reasonably adjudged to be duties and rights only in so far as they can be justified, and thus shown to be duties or rights, in the light of man's natural end and perfection. Take away, then, this notion of a natural end or natural perfection of human life, and there would no longer be any ground on the basis of which rights or duties of any kind might be rationally justified.<sup>189</sup>

Otherwise stated, if we equate the moral good with that which we desire, then we will be left with only a subjective bedrock for the Ought; but, on the other hand, if we equate the moral good with the natural *telos* which exists independently of our desires, then we have an objective bedrock.

In this chapter, we will explore in more detail the claims of those who argue in the same vein as Veatch. We will consider in some detail the claims of Geach, MacIntyre, McInerney, and Lisska and how they contribute to the development of the approach of returning to a functional account of nature. Subsequently, we will explore whether this approach can be used to derive a robust Ought which is moral, prescriptive, categorical,

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<sup>188</sup> Henry B. Veatch and Joseph Rautenberg, "Does the Grisez—Finnis—Boyle Moral Philosophy Rest on a Mistake?", *Review of Metaphysics*, 44 (June 1991), 828. Quoted by Lisska, *AT*, 178.

<sup>189</sup> Veatch, "Natural Law" Dead or Alive?", in *Swimming Against the Current in Contemporary Philosophy* (Washington, DC, 1990), 265. Quoted by Lisska, 181. Cf. Veatch, "Telos and Teleology in Aristotelian Ethics", in *Swimming Against the Current in Contemporary Philosophy*, 116. Quoted by Lisska, *AT*, 184.

determinate, and egalitarian. I will ultimately argue that there are difficulties in deriving an Ought that is simultaneously moral and categorical but that it is otherwise possible to derive a robust Ought using this approach. I will also point out that one version of this approach cannot be used to derive a prescriptive Ought but that the other versions can.

## A. The Teleological-Functional Method

### 1. Geach:

In his article “Good and Evil,” Geach attempts to establish that it is not possible to understand what a “good” human being is without first understanding the essence of the human being.<sup>190</sup> He begins by distinguishing between attributive and predicative adjectives. An example of the former is the word “small” in the sentence: “Bruno is a small lagomorph.” An example of the latter is the word “red” in the sentence: “This is a red book.” Although it is possible to know whether an object is red without knowing *what* it is, this is not the case with attributive adjectives such as “small”. In order to determine whether a lagomorph that is three inches long is “small”, one must know what a lagomorph is. It is only when we know that a lagomorph is a rabbit that we can intelligently answer the question “Is Bruno, who is three inches tall, a *small* lagomorph?”

With this distinction as a backdrop, Geach asserts that the terms “good” and “bad” are attributive adjectives. In order to know if a knife is good, we must know what a knife is, that is, we must know its function, essence, or final cause. Once we know that a knife’s function is to cut things, we can determine whether a particular knife is “good”. If a given knife is capable of fulfilling its function, it is good; if not, it is bad. Likewise,

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<sup>190</sup> P.T. Geach, “Good and Evil,” in *Theories of Ethics*, ed. Philippa Foot, (Oxford: Oxford University Press, 1967), 64-82. [Reprinted from *Analysis* 17 (1965), 33-42.] Hereafter this will be abbreviated as *GE*.

in order know if a particular person is good, we must know what a person is. Geach's claim here is that unless we know the function, essence, or *telos* of the human person—or human nature—we cannot determine whether a given person is good. His claim is also that once we know the function or *telos* of the human person, it is possible to know what people ought to do in order to be “good”. Particular humans who fulfill their function—or who are in the process of doing so—are “good”, and those who do not are “bad”.

With this distinction between attributive and predicative adjectives as a backdrop, Geach is able to substantiate his conclusion that although the term “good” does not satisfy one specific condition and does not have one set definition, it is not—as Moore claims—a hopelessly ambiguous term. In some cases the term “good” might mean “pleasurable,” in another, it might mean something else, but it does not follow that it is therefore an indefinable, non-natural attribute. The meaning of good in the phrase “good knife” does not correspond to the same set of properties as it does when used in the phrase “good human being.” Nor does the meaning of “small” in the phrase “small egg” correspond to the same height as it does when used in the phrase “small elephant”. Nevertheless, neither the term “good” nor “small” are hopelessly ambiguous or altogether indefinable. Moore claims that “good” expresses an indefinable, non-natural property. Geach responds by pointing out that, regardless of the way the term is used, it corresponds to the fulfillment of the function, essence, or *telos* of the object which it specifies.

Although Geach is not concerned explicitly with the term “ought”, his claim here is relevant to the IOP insofar as both “good” and “ought” are normative. If it is possible to grasp what a “good” human being is by considering human nature and the function of

the human person, it will be possible to grasp what humans ought to do. What humans ought to do in this scheme is fulfill their function *qua* human beings. Although Geach is primarily concerned with the naturalistic fallacy and the term “good”, his insights are relevant to questions about the Ought and the IOP. If it is possible to bridge the fact-value gap of the naturalistic fallacy by returning to a functional notion of things in general and human beings in particular, presumably it would be possible to bridge the Is—Ought gap by the same method. If it is possible to derive a “good” from facts about human nature, and if the Ought relies on the notion of the good, it will be possible to derive an “ought” from such facts.

## 2. McInerny:

Ralph McInerny echoes Geach’s claim and develops it by drawing upon Aristotle’s *Nicomachean Ethics*. McInerny agrees with Geach that once we grasp the function or *telos* of the human person *qua* human, we can determine what constitutes good human action and, hence, what a person ought to do. He states,

*The judgment that something is good presupposes and depends upon theoretical knowledge of the thing judged to be good and of the one for whom it is judged to be good. Far from being a fallacy, an erratic boulder, a vitiating element, the dependence of the judgment that ‘X is good’ on some theoretical knowledge of X, is all but definitionally true. This is the sense of the insistence that evaluative judgments are based upon nature and knowledge of nature.<sup>191</sup>*

Thus, it is in no way fallacious to start with a theoretical or factual knowledge about the human person and then conclude what constitutes good human behaviour. In addition to claiming that knowledge of the function of a thing enables us to know whether or not it is

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<sup>191</sup> Ralph McInerny, *Aquinas on Human Action: A Theory of Practice*, (Washington D.C.: CUA Press, 1992), 191-192. Emphasis is that of McInerny.

good, McInerny also attempts to show what the function of the human person is. Like Aristotle, he identifies the function of the human *qua* human as being rational. The functions of growth, nutrition, and sensation are not specifically *human* functions since they are functions that all species of animals have. Since rationality is the only function that humans do not have in common with other animals, it is rationality that is identified as the function of humans *qua* humans.<sup>192</sup>

The general conclusion McInerny reaches is that humans ought to be rational; yet he is aware that this is overly-vague and attempts to provide a more detailed account. Again like Aristotle, he identifies the ultimate human good with “an activity of soul in accordance with virtue, and, if there is more than one virtue, in accordance with the best and most complete.”<sup>193</sup> In turn, McInerny makes a distinction between intellectual and moral virtues and asserts that, although the moral virtues take precedence over the theoretical in terms of temporal priority or expedience, the theoretical virtues are the best and most complete. McInerny clearly recognizes that the ultimate end consists in “a plurality of virtuous activities” while still asserting that contemplation or “the task of metaphysics” is the highest of such activities.<sup>194</sup> However, McInerny does not claim that contemplation or “the task of metaphysics” is *the* ultimate end or function of the human person. Rather, he concludes that it is *part* of the ultimate end in combination with other virtuous activities. Since the function of the human person is to practice the moral and

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<sup>192</sup> Ralph McInerny, *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas*, revised edition, (Washington D.C.: CUA Press, 1997), 19-22. Hereafter this will be abbreviated as *ET*. McInerny cites *Nicomachean Ethics*, 1097b17-19.

<sup>193</sup> *Nicomachean Ethics*, 1098a16-19. This passage is quoted by McInerny, *ET*, 24.

<sup>194</sup> McInerny, *ET*, 25.



theoretical virtues, and since the *telos* is reached by engaging in such activity, the conclusion McInerney reaches is that humans ought to engage in such activity.

McInerney's point here is that there is no real Is—Ought or fact—value gap. According to McInerney, it is a fact that humans have a *telos* and an essential function, and thus it is nonsensical to presume that the Ought is distinct from facts about human nature. For example, it is a fact that a good car is a car that is capable functioning as a car and thereby realizing its final *telos* which is to provide transportation. This is why cars that run are called “good.” Analogously, it is a fact that humans have a function and a *telos*. Those persons who function properly (i.e., rationally and virtuously) and thereby realize their *telos* are “good” and are doing what they “ought” to do. The Ought is thereby founded on the facts or the Is of human nature. Like Geach, McInerney claims to be able to bridge the supposed Is—Ought gap by returning to a functional account of human nature.

### **3. MacIntyre:**

Alasdair MacIntyre adds to this discussion in three ways: (1) by providing an historical account of how moral philosophers came to presume that there is an unbridgeable Is-Ought gap; (2) by attempting to establish that this presumption is doomed to lead to failure in moral philosophy; and (3) by proposing a solution. He claims that moral philosophers came to presume that no Ought can be derived from an Is because they abandoned the Aristotelian tradition in which the human person was thought of as having a function and *telos*. His solution, of course, is to return to the Aristotelian

tradition and its corresponding teleological understanding of human nature.<sup>195</sup> According to MacIntyre, once we make a distinction between “man-as-he-happens-to-be” and “man-as-he-could-be-if-he-realized-his-essential-nature,” it becomes possible to understand what humans ought to do. He asserts that, within the context of this distinction, “to say what someone ought to do is at one and the same time to say what course of action will in these circumstances as a matter of fact lead toward a man’s true end.”<sup>196</sup> It is only when we attempt to do moral philosophy without a functional concept of human nature and without a concept of the human *telos*—as Enlightenment philosophers did—that the supposed Is-Ought problem even emerges.

Using terminology similar to that of Geach and McInerney, MacIntyre claims that once we know the function of a thing, we can know what it ought to do. He states:

From such factual premises as ‘this watch is grossly inaccurate and irregular in time-keeping’ and ‘This watch is too heavy to carry about comfortably’, the evaluative conclusion follows that ‘this is a bad watch’. From such factual premises as ‘He gets a better yield for this crop per acre than any farmer in the district’, ‘He has the most effective programme of soil renewal yet known’ and ‘His dairy herd wins all the first prizes at the agricultural shows’, the evaluative conclusion validly follows that ‘He is a good farmer’. Both of these arguments are valid because of the special character of the concepts of a watch and of a farmer. Such concepts are functional concepts; that is to say, we define both ‘watch’ and ‘farmer’ in terms of the purpose or function which a watch or farmer are characteristically expected to serve. It follows that the concept of a watch cannot be defined independently of the concept of a good watch nor the concept of a farmer independently of that of a good farmer.<sup>197</sup>

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<sup>195</sup> MacIntyre considers the work of St. Thomas to be part of this Aristotelian, teleological tradition.

<sup>196</sup> Alasdair MacIntyre, *After Virtue*, 2<sup>nd</sup> edition, (Notre Dame: University of Notre Dame Press, 1984), 53. Hereafter this will be abbreviated as *AV*.

<sup>197</sup> MacIntyre, *AV*, 57-58

MacIntyre's claim in this passage is that facts about a particular type of thing, which enable us to know the function of that particular thing, must be known before one can determine whether that particular thing is "good" or doing what it "ought" to do.

Although he believes there may be a bona fide problem in deriving an Ought from facts when dealing with things that do not have functions, he believes that this is not the case with things that *do* have functions. And since in the Aristotelian-Thomistic (A-T) tradition human beings are understood as having a function, MacIntyre claims that—if we return to this tradition—the supposed Is-Ought gap will disappear.<sup>198</sup>

Immediately after making this claim, MacIntyre goes on to assert that we can validly derive an Ought from an Is provided that we do so within the context of the A-T tradition. He states,

...any argument which moves from premises which assert that the appropriate criteria are satisfied to a conclusion which asserts that 'That is a good such-and-such-', where 'such-and-such' picks out an item specified by a functional concept, will be a valid argument which moves from factual premises to an evaluative conclusion. Thus we may safely assert that, if some amended version of the 'No "ought" conclusion from "is" premises' principle is to hold good, it must exclude arguments involving functional concepts from its scope.<sup>199</sup>

MacIntyre is essentially showing that if we make the innocuous assumption that a thing that fulfills its function is "good" and, in turn, make the innocuous assumption that a thing ought to fulfill its function, then it is possible validly to derive an Ought-statement from factual statements. Although he does not provide a syllogistic example of such a

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<sup>198</sup> Cf. Alasdair MacIntyre, *Three Rival Versions of Moral Inquiry*, (Notre Dame: University of Notre Dame Press, 1990): "For an Aristotelian, whether Thomist or otherwise, what is good or bad for anyone or anything is so in virtue of its being of a certain kind, which its own essential nature and that which peculiarly belongs to the flourishing of beings of that kind. Take away the notion of essential nature, take away the corresponding notion of what is good and best for members of a specific kind who share such a nature, and the Aristotelian Scheme...necessarily collapses."

<sup>199</sup> MacIntyre, *AV*, 58.

derivation, he would presumably agree that following derivation would work precisely because it begins with a functional concept: *This watch keeps time accurately and can be worn on my wrist. The function of a watch is to keep time accurately and to be worn on one's wrist. When we say "X ought to be Y" we mean "the function of X is to be Y". Therefore, this watch is doing what it ought to do.* Since, within the Aristotelian tradition, the human person is seen as having a function, MacIntyre would also presumably agree that—within the A-T tradition—the following derivation would likewise work: *Socrates is a human being who is rational and virtuous. The function of a human being is to be rational and virtuous. When we say "X ought to be Y" we mean "the function of X is to be Y".<sup>200</sup> Therefore, Socrates qua human being is doing what he ought to do.*

#### 4. Lisska:

Anthony Lisska is another proponent of this approach and he too adds to the discussion. In so doing, he emphasizes the fact that—in the Aristotelian tradition—essences or natures are dispositional insofar as they tend toward a *telos*.<sup>201</sup> He also insists that a metaphysical understanding of human nature must precede any attempt to understand what humans ought to do and avoid and that—once we acquire such an

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<sup>200</sup> This is a statement about the definition of Ought rather than a normative claim in itself. It can therefore be interpreted as a factual or Is-statement, rather than an Ought-statement, and this derivation can be said to be a counterexample to the "No Ought from Is" claim.

<sup>201</sup> Lisska seems to pick up where MacIntyre leaves off in *After Virtue*. MacIntyre asserts that analytic philosophers tend "to think atomistically about human action and to analyze complex actions and transactions in terms of simple components." AV, 204.

understanding of human nature—both the IOP and naturalistic fallacy objections disappear.

By emphasizing the dispositional aspect of essence within the Aristotelian tradition, Lisska is able to provide a response to G.E. Moore's naturalistic fallacy objection which is a version of the "no Ought from Is" objection. One of Moore's objections to ethicists who rely on the notion of or term "good" is that such a notion or term cannot be reduced to or defined by reference to natural properties. According to Moore, since it always makes sense to ask, "Is natural property  $x$  good?", it is not possible to equate natural property  $x$  with goodness or to define the term "good" by simply referring to property  $x$ . For example, since it makes sense to ask, "Is pleasure good?", we cannot conclude that pleasure is necessarily one and the same thing as goodness.<sup>202</sup> Moore's complaint is that naturalistic ethicists assume that there is some natural property that is expressed by the term "good".

According to Lisska, what fuels Moore's naturalistic fallacy objection is the metaphysical assumption that essences, including the essence of the human person, are non-dispositional rather than dispositional. The assumption that essences are non-dispositional was embraced by those philosophers who—following in the wake of psychological atomists such as Berkeley and Hume—embraced an ontology of simple properties. Lisska states:

In considering the ontology underpinning the naturalistic fallacy...it appears that the fact/value dichotomy assumes as a theoretical presupposition, an ontology of simple, discrete, complete properties. ...Given this ontology, a 'fact' is reducible fundamentally to a complex of 'simples'. If a 'simple' is complete in and of

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<sup>202</sup> The naturalistic fallacy is sometimes said to be a version of the IOP insofar as it rests on the implicit claim that goodness is not identical with a natural property.

itself, there is no sense theoretically that can be made of the concept of a disposition or of a potentiality.<sup>203</sup>

Such an assumption is what follows when the Aristotelian scheme is rejected and replaced with an ontology of simples. Lisska maintains that once we grasp the human person as having a dispositional nature, which tends toward a natural *telos*, it becomes evident that humans ought to strive to attain that natural *telos*.

Although Lisska is somewhat vague here, his point seems to be that if it is assumed that there is no *telos* to which we are inclined, it makes sense to conclude that there is a fact-value gap. If things have no natural dispositions or inclinations but are at all times fully what they are, there is no point in claiming that those things ought to become what they already are. But if things must strive to attain their essence which they have only potentially, then—and only then—does it make sense to claim that they *ought* to strive to attain their essence. In relation to the human person, if humans must intentionally do certain things in order to fully act in accord with their essence, it would make sense to claim that they *ought* to do those things.<sup>204</sup> Lisska's point is that if essences are non-dispositional, it is indeed nonsensical to claim that they ought to be what they are, but if—as Aristotle claims—things are capable of acting in accord with their teleological essence or contrary to it, it is in no way nonsensical to claim that they ought to strive to fulfill their essence.

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<sup>203</sup> Lisska, 197.

<sup>204</sup> For instance, if people were always fully rational, it would be nonsensical to claim that they ought to be rational. But, assuming that people are not fully rational and must strive to become rational, it would make sense to claim that they ought to strive to become more rational.

Returning to the notion of the “good”, Lisska is able to provide a framework for responding to Moore because he insists on adopting Aristotle’s concept of essences.

Lisska asserts that, in the context of a theory of essences as dispositional,

the ‘good’ is the terminal point, however construed, which is the end of the process of development common to the natural process in the dispositional property itself. There is no fact/value dichotomy because the ‘value’—in this case, the ‘end’ of the natural process—is the result of the normal development of the ‘fact’—in this case, the dispositional property.”<sup>205</sup>

In identifying the good as the end, he is able to bypass the problem inherent in trying to identify the ‘good’ with a particular property of things. The good is not identified with pleasure or any other particular accidental property. Rather, the good is identified with the end or fulfillment of the essence of a thing. In this way, Lisska implicitly agrees with Moore that there is no particular property that corresponds to ‘goodness’, while providing a new approach to establishing that there can still be some objective ‘good’ for human beings. The good of the human person is the fulfillment of the essence—a fulfillment which is equivalent to the attainment of the person’s *telos*— rather than a simple property.

Given that Lisska embraces Aristotle’s theory of essences as dispositional, it is no surprise that he also insists that a theoretical understanding of human nature must precede any attempt to understand what humans ought to do and avoid. Once it is admitted that the good of the human person is the fulfillment of the human essence, it must also be admitted that is only if we have an understanding of the essence of the human person that we can understand what humans ought to strive to become. He states, “in attempting to resolve this fact/value issue, one must...recall that moral philosophy in the

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<sup>205</sup> Lisska, 199.

Aristotelian/Aquinian tradition is a second order activity. It is based upon the concept of a human nature, which is dependent upon a theory of ontological essence.”<sup>206</sup> Without an understanding of human nature, it is impossible to understand the Ought.<sup>207</sup>

According to Lisska, then, the IOP and naturalistic fallacy objection only arise when we assume that essences are non-existent, non-dispositional, or fully actualized at all times. If we are already fully what we are, it makes no sense to claim that we *ought* to be or become what we are. If we are already fully what we are, there is also no room for claiming that the good is the attainment of a *telos*; and, in turn, it becomes enormously difficult to provide a definition for the term ‘good’. But, if we return to an Aristotelian, dispositional theory of essences, these difficulties are surmounted.

### **5. Strong and Weak Versions:**

Before moving on to a consideration of whether this proposed solution to the IOP can be used to derive a robust Ought, it will be helpful to distinguish between two basic versions of this solution. The first, I will call the “strong version” and the second, the “weak version.”

The weak version relies on statements regarding *both* the essence, function, or *telos* of the human person *and* the inclinations, wants, or desires of the agent. In this version abstract knowledge of our essence, function, or *telos* is necessary but not sufficient for deriving the Ought. What is also necessary is an understanding of the

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<sup>206</sup> Lisska, 197.

<sup>207</sup> Striving to understand what humans ought to do without first understanding what human nature is would be akin to striving to understand what kind of work an ophthalmologist ought to do without first knowing what an ophthalmologist is.



human agent's inclinations, desires, or wants. Proponents of this version incorporate the method discussed in the previous chapter insofar as they claim that the desires of the agent are relevant to the Ought; but they go beyond it insofar as they also incorporate an Aristotelian understanding of essences.

It is somewhat difficult to categorize Geach but it is possible to interpret him as a proponent of this weak version. It seems at first glance that he could be categorized as a proponent of the strong version since, in regard to human action, he claims that there is usually but not always a connection between the desires of agents and identifying a thing as "good". He states, "normally, and other things being equal, a man who wants an A will choose a good A..."<sup>208</sup> Given the *ceteris paribus* clause it would seem that he cannot be interpreted as claiming that there is a *necessary* link between the agents wants and the 'good'. Nevertheless, he elsewhere admits the following:

an action's being a good or bad human action is of itself something that touches the agent's desires. Although calling a thing 'a good A' or 'a bad A' does not of itself work upon the hearer's desires, it maybe expected to do so if the hearer happens to be choosing an A. Now what a man cannot fail to be choosing is his manner of acting; so to call a manner of acting good or bad cannot but serve to guide action.<sup>209</sup>

Since in this passage he admits that the agent "cannot fail to be choosing in this manner" he thereby implicitly admits that there is a necessary correlation between the desires of the agent and the 'good'. Moreover, Geach also elsewhere admits that certain types of wants (viz., wants that are also needs) are an essential aspect of his teleological-

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<sup>208</sup> Geach, *GE*, 69.

<sup>209</sup> Geach, *GE*, 71.

functional concept of morality.<sup>210</sup> It therefore reasonable to interpret Geach as holding to the weak version.

It is also somewhat difficult to categorize McInerny, but it is reasonable to interpret him as a proponent of the weak version as well. Although at times he seems to propose that an understanding of the function and *telos* of the human person is sufficient for determining what a “good” person is—and hence what a person ought to do—he admits that, “The good is the desirable.”<sup>211</sup> In explicating this claim, he makes a distinction between “desirable<sub>1</sub>” which pertains to desire in the descriptive sense (and which corresponds to *anything* that happens to be desired), and “desirable<sub>2</sub>” which pertains to desire in the prescriptive sense (and which corresponds to things that *ought* to be desired). That which is desirable<sub>1</sub> may be truly perfective of the human agent or may be a mere apparent good. That which is desirable<sub>2</sub>, is *only* that which is truly perfective of us (but may or may not be actually desired by a particular agent). Since McInerny claims that we ought to do that which is truly perfective of us *qua* human beings, and since he admits that that which is truly perfective of us is desirable<sub>2</sub>, he thereby implies that we ought to do that which is truly desirable as opposed to merely apparently desirable. In this way, he admits that there is an essential correlation between authentic desire and the Ought. He states, “To say that we ought to desire what is truly perfective of us is not to introduce something that is not already present in any given desire, some new motive, some factor coming from we know not where. Any action assumes that

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<sup>210</sup> Geach, *The Virtues*, (Cambridge: Cambridge University Press, 1977), 9. For a discussion of Geach’s distinction between wants that are also needs and wants that pertain to any desire whatsoever see W.D. Hudson, 342.

<sup>211</sup> McInerny, *ET*, 36.

desireable<sub>1</sub> is desirable<sub>2</sub>. If we learn that desirable<sub>1</sub> is desirable<sub>2</sub>, we already have a motive for desiring what truly is desirable, desirable<sub>2</sub>.<sup>212</sup> Thus, insofar as McInerny claims that that which we ought to do is in fact desirable, he can be interpreted as holding that there is a necessary link between the desires of the agent and the Ought.

Unlike the weak version, the strong version relies *only* on statements concerning the *telos* and function of the HP. The Ought is not derived from the desires of human agents but only from facts about the nature of the human person and abstract notions such as the attainment of the human *telos* and acting in accord with human nature. In the strong version there is epistemologically no need to have an understanding of the desires of the agent in order to come to have knowledge of what humans ought to do and avoid.

Lisska's treatment of the grounding of the Ought is an example of this version since he claims that the grounding is not related to the wants of the agent, that the disposition (*inclinatio*) toward the *telos* is not necessarily conscious or based on what we are conscious of,<sup>213</sup> and that "a knowledge of the essence of a human person is *all* that is necessary for understanding the concept of natural law...."<sup>214</sup> Given that he insists that the Ought is grounded in the dispositional essence of the human person and that we need not be conscious of our own essential dispositions, he leaves no room for claiming that a knowledge of our own dispositions, inclinations, or desires for a *telos* is necessary for knowing what we ought to do. His fear is that if a theory of ethics relies on the

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<sup>212</sup> McInerny, *ET*, 37.

<sup>213</sup> See Lisska, 104 and 107.

<sup>214</sup> Lisska, 106. The emphasis is mine. A full treatment of this issue would take us far afield. My intention here is merely to establish that Lisska is best interpreted as a proponent of the strong version and briefly to explain why he adopts this version.

subjective desires of the agent, we will be left with a subjective ethical theory. As he succinctly puts it: “the metaphysics of finality...argues that an end is to be attained, not because of a subjective desire or wish on the part of the agent, but because the end itself determines the well-functioning of the human person.”<sup>215</sup> If we assume that the good is good merely because it is desired, then we are—according to Lisska—left with subjective relativism. It is only if we adopt an ethical theory that grounds the good and the Ought in something other than the desires of the agent that we can avoid this difficulty. Thus, Lisska concludes that regardless of whether human agents desire their essential *telos*, they have a moral obligation to pursue it.

### **B. Does this Approach Bypass All Aspects of the IOP?**

In spite of the fact that many Thomists are convinced that returning to a functional, teleological concept of human nature is the best solution to the IOP and related problems, this solution itself leaves us with unanswered questions. MacIntyre’s fundamental concern is that historically-speaking the emergence of the IOP is a result of the fact that moral philosophers have been engaging in moral enquiry without an adequate understanding of the history of moral philosophy. He draws an analogy between the current state of moral philosophy and what the state of the hard sciences would be like if those engaging in scientific enquiry had nothing but fragments from the past to draw from. If science texts were partially destroyed and later generations tried to piece the remaining texts together, without an adequate understanding of the theoretical and historical contexts in which they were written, they would find much of what they

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<sup>215</sup> Lisska, 107.

read to be incoherent and conclude that there was no objective means for determining whether one theory is better than another. Just as such a situation would lead to a great deal of confusion, so too our lack of understanding of the context in which ethical theories were written has led to a great deal of confusion.<sup>216</sup>

Although returning to the A-T tradition—and the notion of human essence found therein—might be an appealing solution, it needs to be asked whether doing so would be akin to trying to return to a pre-Copernican view of the universe in order to resolve some of the present difficulties in astronomy. It may be tempting to return to an earlier paradigm, but before doing so, it needs to be asked whether doing so could create more problems than it solves. In other words, it needs to be asked whether simply striving to have a better understanding of the historical and theoretical contexts in which Aristotle discussed ethics—and subsequently adopting that world-view—will really solve the problems we think it will solve. If the purported solution leaves us with more questions than answers, we will need to reconsider whether we should accept it. Otherwise stated, it needs to be asked whether MacIntyre is naïve in his seeming belief that the problems we have inherited from modern moral philosophy are so easy to solve. In what follows I will consider this issue by asking the question: Can returning to an Aristotelian-Thomistic understanding of the essence of the human person—in the way suggested by the philosophers discussed above—enable us to derive a moral, prescriptive, determinate, categorical, and egalitarian Ought? As discussed in Chapter One, there is reason to conclude that this is the type of Ought that is implemented by traditional natural law theorists such as Aquinas and Cicero. Thus, to ask this question is simultaneously to ask

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<sup>216</sup>MacIntyre, *AV*, 1-5.

whether traditional natural law theorists are successful in their own right and within their own context. It is not anachronistic to ask whether such an Ought can be derived from human nature given that traditional natural law theorists themselves claimed to uphold this type of Ought (even though the specific terms they used are in some instances different than the terms I am using here).

### **1. Is the Ought Moral?**

Let us begin by considering whether or not this approach provides us with a moral Ought. As mentioned in Chapter One, the Ought implemented by traditional natural law theorists is moral in the sense that (1) it pertains to moral obligation rather than merely to Oughts of likelihood or adequacy and (2) it pertains to leading its subjects to their proper virtue and goodness.<sup>217</sup> It is important to note that in the A-T tradition, an Ought only pertains to moral obligation if the agent to whom it applies is capable of having knowledge of the Ought. An agent who is ignorant of the moral Ought and who is not herself responsible for this ignorance cannot act in a morally praiseworthy or blameworthy manner. In the A-T tradition, it is also the case that only voluntary action can be categorized as morally praiseworthy or blameworthy. Acts done under compulsion and which are contrary to the will of the agent are not, strictly speaking, human acts and hence are not subject to moral evaluation.<sup>218</sup> In commenting on this, Aquinas states: “it is essential to the voluntary act that its principle be within the agent, together with some knowledge of the end. ... Knowledge of the end consists in not only

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<sup>217</sup>Cf. *ST* I-II, 92, 1.

<sup>218</sup> Cf. *ST* I-II, 6, 1.

apprehending the thing which is the end, but also in knowing it under the aspect of end, and the relationship of the means to that end.”<sup>219</sup> He likewise states that

a man may be ignorant of some circumstance of his act, which he was not bound to know, the result being that he does that which he would not do, if he knew of that circumstance; for instance, a man, after taking proper precaution, may not know that someone is coming along the road, so that he shoots an arrow and slays a passer-by. Such ignorance causes involuntariness simply.<sup>220</sup>

Thus, in order for an Ought to be categorized as moral it must pertain to action that is voluntary and, hence, in order for an Ought to be categorized as moral it must be possible for the agent to have knowledge of the Ought.

Given these criteria, there are several difficulties that emerge for those who propose that merely returning to a functional and dispositional understanding of human essence is a viable solution to the IOP. The first difficulty is that proponents of this solution claim that knowledge of the essence of the human person is necessary for knowing what humans ought to do but they simultaneously admit that, in the A-T tradition, it is not possible to fully understand what the human essence is. Lisska, for example, admits that “Aquinas was almost agnostic about this possibility of knowing essences....”<sup>221</sup> What this seems to suggest, then, is that the Ought which is being derived by proponents of this solution cannot be categorized as moral, given Aquinas’s own description of moral action and obligation and given Aquinas’s own claim that it is

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<sup>219</sup> *ST I-II*, 6, 2.

<sup>220</sup> *ST*, I-II, 6, 8. Aquinas cites Aristotle *NE* iii, 1.

<sup>221</sup> Lisska, 151. Lisska cites the following passages from Aquinas: “The essential principles of things are unknown to us.” (*De Anima* I lec. 13) “Essential differences are unknown to us.” (*De Veritate*, q. 4 a. I ad. 8) “We are ignorant of many of the properties of sensible things, and in many cases we are unable to discover the proper nature even of those properties that we perceive by the senses.” (*Summa contra Gentiles*, I, 3)

enormously difficult at best to know essences. For Aristotle and Aquinas, it is nonsensical to claim that an agent is morally obligated to do X, but the agent lacks the ability to know that she is obligated to do X, and the agent is not responsible for her lack of ability to know he is obligated to do X. Thus, anyone who proposes a return to the A-T tradition needs to address this.

One possible response to this difficulty is to claim that it is possible for agents to acquire enough knowledge about human nature that they can know the Ought. It could be claimed, for example, that although it is not possible for agents to fully comprehend human nature, it is possible for them to know *something* about it and that this partial knowledge is sufficient for deriving a moral Ought. Lisska himself attempts to do just this; and he points out that Aquinas claims merely that it is difficult but not impossible to know essences.<sup>222</sup> It is for this reason that Lisska insists that metaphysical enquiry must precede ethical enquiry and that ethics is a second-order enquiry. According to Lisska,

moral philosophy for Aristotle and Aquinas... is a second order philosophical inquiry. ...In other words, first Aquinas expects the metaphysical account of essence to be developed. Only then, as a second order inquiry, is the philosopher ready to develop a normative theory. The normative issues are developed from and dependent upon the ontological issues."<sup>223</sup>

Lisska's claim in this passage is that by first engaging in metaphysical enquiry it is possible to develop an understanding of human essence; and his implication is that this understanding can subsequently be used to come to understand the Ought. But the conclusion that follows from this is that unless an agent is a metaphysician, he cannot be bound by a moral ought. If knowledge of the Ought is only possible after engaging in

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<sup>222</sup>Lisska, 151.

<sup>223</sup> Lisska, 152ff.



metaphysical inquiry, and if knowledge of the Ought is necessary in order to be morally obligated to follow it, then it would follow that the Ought is only moral for those who are capable of such enquiry. Strictly-speaking, this solution enables us to derive a moral Ought but it is a moral Ought with limitations insofar as since only metaphysicians—rather than all non-incapacitated humans who have reached the age of reason—would be bound by it. If the Ought is truly moral it would seem to lack the criterion of being categorical or universal.

In addition to this difficulty, D.Z. Phillips and H.O. Mounce have argued that this solution does not enable us to derive a moral Ought since moral concepts are not based merely on the notion of functions or essences. In their article “On Morality’s Having a Point” they claim that “moral concepts are not functional.”<sup>224</sup> In the context of making this claim, they make numerous references to the knife and farmer analogies which are utilized by MacIntyre and subsequently by other proponents of this solution to the IOP. Phillips and Mounce ask: “...when a thing has a function the main criterion for its goodness will be that it serves that function well. Clearly, then, not anything can count as a good knife. But how does this help our understanding of *moral* goodness?”<sup>225</sup> Part of their concern is that simply knowing the facts about the function of a thing cannot help us in moral reasoning since it is not possible to know which facts to consider without first adopting a certain point of view on ethical matters.<sup>226</sup> Unless one first has some ideas about the Ought *before* considering facts about functions and essences, one will not know

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<sup>224</sup> D.Z. Phillips and H.O. Mounce, “On Morality’s Having a Point,” in *Philosophy* 40 (Oct., 1965), 313. Hereafter, this will be abbreviated as: *OMHP*.

<sup>225</sup> Phillips and Mounce, *OMHP*, 312-313.

<sup>226</sup> Phillips and Mounce, *OMHP*, 311.

which facts to consider; and so simply knowing facts about human nature is not sufficient for deriving a specifically moral Ought.

In illustrating this claim, Phillips and Mounce point out that a scientific rationalist and a Catholic housewife may know the exact same facts regarding birth control but still come to vastly different conclusions regarding what course of action to take. The scientific rationalist might argue that the housewife ought to use birth control given the facts that she might wind up with a larger family than she can manage if she does not use it. The housewife on the other hand might argue that the honor of bringing children into the world outweighs the fact that she could wind up in a less than desirable situation. Both the scientific rationalist and the housewife would know the same facts but come to different conclusions precisely because facts are not sufficient. It is the normative point of view that the rationalist and housewife have *before* considering the facts that determine the conclusions they come to and that guide them in their consideration of the facts.<sup>227</sup> Phillips and Mounce argue that it is our initial views about value that determines which facts we consider to be relevant and so it is not facts alone that enable us to make moral conclusions.<sup>228</sup>

With this as a backdrop, it could be argued that proponents of this solution to the IOP fail to establish that knowledge of facts about human nature is sufficient for deriving a moral Ought since knowledge of the facts about function is not *in itself* what enables us to make conclusions about what morally ought to be done. In other words, it could easily be argued that even if we know what the function of the human person is, this knowledge

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<sup>227</sup> Phillips and Mounce, *OMHP*, 317-318.

<sup>228</sup> Phillips and Mounce, *OMHP*, 311.

would not automatically enable us to know what humans ought to do, morally-speaking. Although knowledge of the function of a knife enables us to know what a knife ought to do—and knowledge of the function of a farmer enables us to know what a farmer ought to do—knowledge of the function of a human being does not by itself enable us to know what humans ought to do. What is necessary *in addition* to such knowledge is a presupposition that humans have a moral obligation to fulfill their essences.<sup>229</sup> From the premises (1) *human beings are rational by nature*, or (2) *part of the function of the human person is to be rational*, we cannot validly conclude (3) *humans have a moral obligation to be rational*. Only if we assume at the outset that humans have a moral obligation to fulfill their function or act in accord with their nature is it possible validly to derive (3) from (1) or (2).

One forceful way of responding to this objection would be to claim that, provided we remain within the A-T tradition, this objection does not apply. Since MacIntyre and other proponents of this solution to the IOP do not claim *merely* that we must return to a functional understanding of human nature but also that we must return to the whole A-T approach to ethics, and since within the A-T scheme it is granted that humans have a moral obligation to fulfill their function, this objection is impertinent. In other words, a proponent of this solution could acknowledge that by returning to the A-T tradition, they are adopting the presupposition that saying “Agent X morally ought to do Y” is equivalent to saying “Y fulfills the nature of agent X”. Thus, although it is not clear that

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<sup>229</sup> Paterson makes a similar argument. He points out that the statement (a) “I ought to do X” does not follow from the statement “My essence tells me to pursue X”. Only if the moral premise “If my essence tells me to pursue X then I ought to pursue X” is assumed does (a) validly follow from (b). See: Patterson, Craig, “Aquinas, Finnis and Non-Naturalism,” in *Analytical Thomism*, ed. Craig Paterson and Matthew Pugh, (Hampshire: Ashgate Publishing Limited, 2006), 174-175.

this solution to the IOP can be used to derive an Ought that is *simultaneously* moral and categorical, there is no reason to suppose that it cannot be used to derive an Ought that is moral.<sup>230</sup>

Although this response may be an adequate way of responding to the objection of Phillips and Mounce, it does not resolve the previous objection. Even if we agree to adopt the A-T tradition and hence agree to adopt this functional understanding of the moral Ought, we would nevertheless still need to address the question of whether it is possible, in the A-T tradition, to arrive at an adequate understanding of the function of the human person. Even if saying “Agent X ought to do Y” simply means “Y is in accord with the nature of agent X”, it would only be possible to know precisely what agent X ought to do if we know something about the agents nature. And if knowing about the agent’s nature requires metaphysical inquiry, the agent would need to be a peculiar type of agent—namely an agent with the capacity and time to engage in such metaphysical inquiry—if he were to be morally obligated to do Y.

## **2. Is the Ought Prescriptive?**

It could be argued that this solution also fails in regard to providing us with a prescriptive Ought. This solution begins with the notion of the function or *telos* of the human person and yet, even if agents can come to know what this function is, such knowledge will not guide or influence the actions of agents unless they already happen to

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<sup>230</sup> More will be said in what follows, both in this chapter and in chapter six, about the issue of categoricalness. If adopting this solution requires also adopting the A-T tradition, it would seem to fail in regard to pertaining to those outside this tradition and, hence, would not be categorical.

have a desire to fulfill that function.<sup>231</sup> This is perhaps the biggest hurdle for the strong version of this approach and Geach himself admits this. He says,

calling a thing a good A does not influence choice unless the one who is choosing happens to want an A; and this influence on action is not the logically primary force of the word ‘good’. ‘You have ants in your pants’, which obviously has a primarily descriptive force, is far closer to affecting action than many uses of the term ‘good’.<sup>232</sup>

In this passage, Geach himself acknowledges that simply to call something “good” does not, in itself, provide motivation to pursue it.<sup>233</sup> Just as calling a can of sardines “good” will not induce agents to eat them *unless* they already desire to eat them, so calling certain traits “good” and “part of the essence of the human person” will not induce agents to seek to attain those traits unless they already have a desire to do so.<sup>234</sup>

The easiest way of responding to this difficulty is to abandon the strong version and retain the weak version. Since proponents of the weak version of this solution to the IOP admit that the desires of the agents are relevant and play some role in the derivation, there is no reason to suppose that the weak version of this solution would fail to provide us with a prescriptive Ought. In line with this response, one could also make the claim that it is precisely when human agents act in accord with their essence—and thereby

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<sup>231</sup> As discussed in Chapter one, the Ought of St. Thomas’s theory of natural law can be categorized as prescriptive since he defines law as “a rule and measure of acts, by which man is induced to act or is restrained from acting.” (*ST I-II*, 90, 1)

<sup>232</sup> Geach, *GE*, 68.

<sup>233</sup> Elsewhere Geach also points out that purely descriptive statements such as “You have ants in your pants” can often have more prescriptive, action-inducing affects than statements about goodness. He likewise points out that the term “good” can be used in statements that are uttered with no prescriptive intent as in the phrase, “Good burglars are good at picking locks.” Geach, *GE*, 68.

<sup>234</sup> Cf. R.M. Hare, “Universal Prescriptivism” in *A Companion to Ethics*, ed. Peter Singer (Cambridge: Blackwell, 1991), 451-463.

fulfill their natural function *qua* humans—that they attain their most authentic desires. Otherwise stated, a natural law theorist who wished to take this approach could emphasize the sanctions claim which, as discussed in Chapter One, is one of the basic claims made by traditional natural law theorists.

In his attempt to bypass the *Euthyphro* question, Lisska embraces the notion that it is possible to discover what humans ought to do without considering their desires. He wants to avoid claiming that things are good merely because they are desired. But he ends up going to the opposite extreme by asserting that the desires of agents are irrelevant. Thus, his version of the solution, i.e., the strong version of the solution, cannot provide us with a prescriptive Ought. Nevertheless, there is no reason to suppose that the weak version also fails in this respect.

### 3. Is the Ought Categorical?<sup>235</sup>

The first question that needs to be asked, especially if we accept the weak version of this approach, is whether the Ought derived thereby is categorical in the sense that it is not based on contingent aspects of agents.<sup>236</sup> Again, the Ought of traditional natural law theory is categorical in the sense that it is universal, non-relativistic, pertains to all ~~non~~\_\_\_\_\_

<sup>235</sup> I have already argued that there are difficulties in deriving an Ought that is simultaneously moral and categorical. Here I will focus merely on the question of whether there are difficulties in deriving an Ought that is *merely* categorical. This will be helpful in trying to identify *precisely* what the strengths and weakness of this approach are and—in turn—will enable us to provide a more precise comparative analysis of the various solutions in Chapter Six.

<sup>236</sup> The question of whether this method enables us to derive a categorical, non-hypothetical Ought overlaps with the question of whether it enables us to derive a determinate Ought. In this section I will limit myself to the consideration of whether this method relies on aspects of human nature that are changeable and contingent (within the Aristotelian-Thomistic scheme). In the section on determinacy which follows I will consider the question of whether it would be possible to derive opposite Ought-conclusions even when beginning with unchangeable and non-contingent aspects of human nature.

incapacitated agents, and is not merely hypothetical. Once we accept the weak version and admit that desires or inclinations play a role in the derivation of the Ought, it becomes necessary to establish that these desires are not changeable and hence do not leave room for a non-universal, relativistic, or merely hypothetical Ought. Moreover, since both versions of this solution rely on the A-T notions of human nature and the human *telos*, it also becomes necessary to ask a second question, viz., whether these notions are such that a categorical Ought can be derived from them. If human nature is contingent and variable, in the A-T tradition, then the Ought which stems from this nature would also be contingent and variable rather than universal and categorical.

In addition to these issues, if one wishes to establish that the Ought derived via this approach is categorical in the sense that it applies to all persons, in all cultures, and at all times, one will have to address the objection that this solution only works within a particular tradition. If this solution only works within the context of the A-T tradition, it would seem to follow that the Ought derived would not necessarily be categorical. Since addressing this objection adequately would far surpass the limits of this chapter, I will address it in Chapter Six. In this present chapter, I will consider only whether this solution works within the context of the A-T tradition within which it is developed.

In regard to the first question above, it should be noted that Gewirth's objects to the approach of Aquinas because he speaks not only of human nature but also of the inclinations which stem from and are a consequence of human nature. Gewirth argues that since the inclinations which humans have differ and are therefore not universal, the

Ought of Aquinas's theory of natural law is not categorical.<sup>237</sup> Gewirth states that in the thought of Aquinas,

...the things that constitute man's good are the things to which man has a natural inclination. And to this the rationalistic thesis makes no independent contribution, for [Aquinas] says simply that reason apprehends, as the criterion of the things that constitute man's good, than man has a natural inclination to them.<sup>238</sup>

Gewirth's concern here is that natural inclinations could in principle lead one person to apprehend X as good but another person to apprehend X as not good; and since, in Aquinas's theory of natural law, there is "no independent contribution" made by reason, there is no way to remedy this problem. For example, even though Aquinas claims that *all* persons are sentient by nature, one person's sentient nature could incline her toward gluttony while another person's sentient nature could incline her toward a more moderate diet. Therefore, according to Gewirth, merely acknowledging that all persons are sentient by nature would not in itself leave us with a categorical Ought which pertains to all persons. Even if we remain within the A-T tradition, then, it seems that it would be possible to claim that the Ought would vary from person to person. Though human nature is held to be universal in this tradition, the tradition itself seems to rely not just on human nature but also on variable inclinations that stem from that nature.

Although insightful, Gewirth's objection seems to be based on a misunderstanding of Aquinas. Aquinas does not claim that natural law is based on any and all inclinations of humans but only on *some* inclinations. These inclinations include

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<sup>237</sup> Gewirth quotes Aquinas, *ST I-II*, 95, 4: "...all those things to which man has a natural inclination, reason naturally apprehends as good, and consequently as having to be pursued in deed, and their contraries as evil and having to be avoided." Gewirth also cites *ST I-II*, 105, 1. Gewirth, *NLHA*, 82.

<sup>238</sup> Gewirth, *NLHA*, 82.



the inclinations to: preserve one's being, procreate, educate one's offspring, know the truth, and live in society.<sup>239</sup> Given that these inclinations are basic and given that there is no reason to suppose that they are inclinations that are not shared in some way by all non-incapacitated humans, there is no reason to suppose that Gewirth's objection applies. Since there is no reason to suppose, for example, that some non-incapacitated humans lack the natural inclinations to know the truth or to self-preserve, there is no reason to suppose that Ought's derived from these inclinations would differ from person to person, culture to culture, or time to time.<sup>240</sup>

In regard to the second question above, viz., the question regarding whether human nature itself could change from time to time, it is important to note that, in the A-T tradition, human nature and the human *telos* are not said to be merely universal, but also unchanging. For example, in response to Empedocles's claim that species are not eternal, Aristotle says, "the world is a whole, perpetual and eternal, and has never ceased to produce animals and plants and all their species."<sup>241</sup> Similarly, in explaining the final cause of the generation of individuals in a species, Aristotle states:

These, then, are the reasons of the generation of animals. For since it is impossible that such a class of things as animals should be of an eternal nature... that which comes into being is eternal in the only way possible. Now it is impossible for it to be eternal as an individual—for the substance of the things

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<sup>239</sup> *ST I-II*, 94, 2.

<sup>240</sup> It must be admitted that Aquinas claims that not all humans are bound by the natural law precept regarding biological procreation. Nevertheless, one could not argue, as Gewirth does, that the Ought that stems from inclinations is not categorical *because* the relevant inclinations themselves vary from person to person. Moreover, Aquinas strictly-speaking claims that all non-incapacitated humans are bound by the overall precept regarding procreation when procreation is considered in a spiritual rather than merely biological sense. See: *ST II-II*, 152.2 ad 1.

<sup>241</sup> Aristotle, *On Plants*, 817b37-818a1.

that are in the particular; and if it were such it would be eternal but it is possible for it as a species.<sup>242</sup>

For Aristotle, the human species—and hence human nature—does not change from time to time but is eternal.

Aquinas too believes that there are aspects of human nature that are unchanging. For example, although he acknowledges that it is possible for humans to become more rational<sup>243</sup>—and hence change in regard to the degree to which they exhibit rationality—he claims that the rational feature of human nature is itself unchanging and is the very essence or form of the body.<sup>244</sup> It is the intellectual soul, that is, it is the rational aspect of human beings that makes humans what they are. It is not the sensate or vegetative aspects of the human person that can be said to make a human specifically human. Thus, in Aquinas, although it would be possible for a person to change in some way in regard to those aspects he or she has in common with animals, it would not be possible for a person to change in regard to the intellectual component.<sup>245</sup> To change in regard to this

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<sup>242</sup> Aristotle, *Generation of Animals*, 731b30-35.

<sup>243</sup> *ST I*, 85, 7. For a discussion of the unchanging aspects of human nature in Aristotle and Aquinas see: Marie George, “Aristotle vs. the Neo-Darwinians,” in *Virtue’s End: God in the Moral Philosophy of Aristotle and Aquinas*, ed. Fulvio Di Blaasi, Joshua P. Hochschild, and Jeffrey Langan, (South Bend: St. Augustine’s Press, 2008), 44-66. M. George quotes: *ST I*, 85, 7.

<sup>244</sup> “Of one thing there is but one [substantial](#) being. But the [substantial](#) form gives [substantial](#) being. Therefore of one thing there is but one substantial form. But the [soul](#) is the [substantial](#) form of [man](#). Therefore it is impossible for there to be in [man](#) another [substantial](#) form besides the [intellectual soul](#).” (*ST I*, 76, 4)

<sup>245</sup> K. Flannery interprets Aquinas as holding that precepts that proceed from inclinations which humans have in common with animals admit of exceptions unlike other more general precepts. If we accept Flannery’s interpretation of Aquinas, this would leave room for claiming that some precepts are categorical even though others are not. Thus, there are two ways of responding to Gewirth. First, one could claim that it won’t do to claim that Aquinas’s precepts must fail in regard to being categorical simply because inclinations differ from one person to the next. Second, one could claim that even if there are *some* precepts that are variable and hence non-categorical, it does not follow that all the precepts are non-categorical. See: Kevin Flannery, *Acts*

component would not be to change in regard to qualities but, rather, to cease to be human. Since Aquinas equates being human with having a rational soul, it would be at odds with his thought to claim that human nature can change or evolve in regard to this component. Although he acknowledges that individual human beings are different from each other in some respects, he maintains that they do not differ in regard to having a rational soul.<sup>246</sup>

Although there is much contemporary debate regarding whether there can be said to be a static and universal human nature, within the A-T tradition this is not something that is debated. Thus, so long as we agree to remain within this tradition, there is no reason to suppose that we cannot derive a categorical ought by starting with the notion of human nature. Since the rational or intellective soul is equated with human nature, this component cannot change without humans ceasing to be human. Any Oughts that stem from this aspect of human nature would therefore also be unchanging.<sup>247</sup>

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*Amid Precepts: the Aristotelian Logical Structure of Thomas Aquinas's Moral Theory.*  
Washington D.C.: CUA Press, 2001.

<sup>246</sup> “We must assert that the [intellect](#) which is the principle of [intellectual](#) operation is the form of the [human](#) body. For that whereby primarily anything acts is a form of the thing to which the act is to be attributed: for instance, that whereby a body is primarily healed is health, and that whereby the [soul knows](#) primarily is [knowledge](#); hence health is a form of the body, and [knowledge](#) is a form of the [soul](#). The reason is because nothing acts except so far as it is in act; wherefore a thing acts by that whereby it is in act.” (ST, 76, 1)

<sup>247</sup>It would be possible to claim that there is room within the thought of Aquinas to claim that those precepts of natural law that stem from the non-rational aspect of human nature could change, there is not room to claim that those precepts that stem from the rational aspect of human nature could change. This will be discussed in more detail below.

#### 4. Is the Ought Determinate?

Even if the aspects of human nature and the *types* of desires that this method relies on are not contingent and are universal, it could still be argued that it would be possible to derive opposite conclusions regarding what humans ought to do and, hence, that there is a lack of determinacy. Gewirth makes just this objection. We read:

if man's good is identified with or derived from his nature in the sense of his distinctive mode of functioning, then...we get very different and indeed incompatible contents for man's good.... The Aristotelian-Thomistic theory of natural law seems to incur [this failing] ...because the concept of human nature as [a] distinctive mode of functioning, on which it tries to ground its precepts, is too diffuse and varied to provide a determinate set of contents for natural law”<sup>248</sup>

Aristotle claims that rationality is a function which only humans have; but Gewirth points out that “using an opposable thumb” and “being capable of lying, cheating and stealing” are also distinctive functions.<sup>249</sup> Since there are a great many functions that humans have but that other animals lack, the Oughts that—in theory—could be derived from a consideration of these functions are “too diffuse and varied to yield such determinacy.”<sup>250</sup> Gewirth's concern here is that the methodology Aristotle uses would leave us with indeterminate Oughts. By using this methodology and starting with a specifically human function one could, for example, derive the conclusion that—since humans *qua* humans are social by nature—humans ought to seek to live peacefully in society. And, since lying is not conducive to living peacefully in society, one could also derive the conclusion: *lying ought to be avoided*. However, by using this methodology, one could also derive the conclusion that, since human *qua* human are capable of lying, *humans*

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<sup>248</sup> *NLHA*, 73.

<sup>249</sup> *NLHA*, 74.

<sup>250</sup> *Ibid.*

*ought to lie*. Thus, since it would be possible to derive potentially contradictory conclusions by merely starting with specifically human functions, according to Gewirth, this approach cannot provide us with a determinate Ought.

Gewirth takes this objection a step further by claiming that even if we limit ourselves to a consideration only of the *social* aspect of human nature, there is still room for indeterminacy. Gewirth thinks that the precept Aquinas derives regarding avoiding offending those one must live with is valuable,<sup>251</sup> and yet Gewirth also thinks that it is by starting with the social aspect of human nature, that Aquinas is able to derive the conclusion that killing heretics and upholding slavery is morally permissible.<sup>252</sup> Here Gewirth's concern is not merely that Aquinas is able to justify something that should not be justified but that Aquinas is able to derive contradictory Oughts by starting with the fact that humans are social by nature. In one case, Aquinas is able to derive the conclusion that one ought to avoid offending others; and in another case--according to Gewirth--he is able to derive the conclusion that it is morally permissible to slay heretics. Gewirth thus concludes that, "even if we agree that men have a natural inclination to live in society, this inclination can be satisfied in very diverse ways...."<sup>253</sup>

In regard to Gewirth's concern above about the methodology utilized by Aristotle, it is important to note that although Aristotle's methodology could *in theory* lead to the derivation of different and indeterminate Oughts, Aristotle does not *in fact* derive such Oughts. Aristotle indeed focuses on the rational capacity in distinguishing humans from

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<sup>251</sup> See *ST* I-II, 94, 2.

<sup>252</sup> Gewirth, *NLHA*, 84. Gewirth quotes Aquinas, *ST*, II-II, 10, 8 ad 3; 11, 3; and *Summa contra Gentiles*, III, 81.

<sup>253</sup> Gewirth, *NLHA*, 84.

other animals, as Gewirth points out, but Aristotle does not focus on capacities such as having opposable thumbs or the capacity to lie. In the Aristotelian scheme, such capacities are not the starting point of ethics, nor are they equated the human good. In his *Nicomachean Ethics*, for instance, Aristotle argues that the specifically human good is an “activity of *soul* in conformity with excellence” and he carefully distinguishes bodily excellence from the excellence of the soul.<sup>254</sup> He is not concerned with what distinguishes us from animals in a bodily sense—such as the type of thumbs we have—nor does he say that any use of the rational faculty—such as lying—constitutes an excellence of the soul. Not just any use of the rational faculty fulfills the Ought of Aristotle’s ethics, only a proper use does; and this proper use involves practicing the intellectual virtues which would, it seems, preclude lying.<sup>255</sup> Gewirth’s objection to Aristotle thus appears to be based on a superficial reading of Aristotle’s position and so his objection would not suffice to prove that this solution to the IOP fails in regard to determinacy—provided that we agree at the outset to remain within the A-T tradition.

In regard to Gewirth’s concern that Aquinas has in fact derived indeterminate, contradictory Oughts, it should be noted that Gewirth has failed to provide adequate textual support that this occurs within Aquinas’s discussion of *natural law* theory. The discussion of heresy which Gewirth cites occurs within Aquinas’s treatment of the theological virtue of faith. Moreover, Aquinas does not draw on any *natural law* precepts in this discussion but, rather, on quotations from Scripture. For this reason, there is no reason to suppose that this aspect of Gewirth’s objection can be used to establish that Aquinas’s theory of *natural law* as such is indeterminate. This is not to say that

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<sup>254</sup>*Nicomachean Ethics*, 1098a16-17 and 1102a15.

<sup>255</sup> *Nicomachean Ethics*, 1107a1-2

Aquinas's approach to divine law and the theological virtues is determinate. If a theologian wished to establish that Aquinas's theory of divine law is determinate, much work would need to be done. Nevertheless, there is no reason to suppose that the Oughts that Aquinas derives from the rational nature of the human person—within the context of his theory of natural law—are indeterminate. Thus, so long as we consider only Aquinas's theory of natural law rather than his theory of divine law and the theological virtues, there is no reason to suppose that it would not be possible to derive determinate, natural-law-based Oughts.

### **5. Is the Ought Egalitarian?**

In discussing the question of whether an egalitarian Ought can be derived using this method, it will again be helpful to begin with Gewirth. Just as Gewirth objects to the approach of starting with the notion of human nature because he thinks cannot provide us with a categorical and determinate Ought, so too, he objects to it because he thinks it cannot provide us with an egalitarian Ought. He argues that since humans by nature have a tendency to violence, it follows that—if we attempt to derive an Ought from the notion of human nature—it will be possible to derive an Ought that is non-egalitarian.<sup>256</sup> In other words, since acts of violence do not foster the common good or the well-being of others, and since it would be possible to derive the conclusion “Humans ought to be violent” from the premise “Humans are have a natural tendency to violence,” this method will not work.

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<sup>256</sup> As noted in chapter one, by ‘egalitarian,’ Gewirth means that the Ought must “require that at least basic well-being be distributed equally as between the agent addressed and his potential recipients, or as among members of a society.” Gewirth, *IOPR*, 35-36.

Gewirth further argues that this objection is amplified by the fact that in his treatise on natural law Aquinas "...moves from man's animal inclinations [directly] to the rational apprehension of the goodness of their object, and from this to the precepts whereby those objects are to be secured."<sup>257</sup> Thus, Gewirth's concern is that Aquinas in fact leaves room for such a derivation. More specifically, Gewirth's concern is that, since in Aquinas's treatment of natural law there is "no *independent* place for a rational *moderation* of the inclinations,"<sup>258</sup> Aquinas himself leaves room for deriving a conclusion such as "You ought to be violent." Only if Aquinas claimed the inclinations were rationally considered and evaluated *before* the corresponding Oughts were derived from them, would there be room for claiming that an Ought prescribing acts of violence could not be derived from the human inclination towards violence.<sup>259</sup> According to Gewirth, then, Aquinas has no ground for excluding the violent tendencies of human nature from consideration when deriving an Ought from the notion of human nature.<sup>260</sup>

There are several problems with Gewirth's claim. First, in discussing this difficulty, Gewirth relies explicitly on Spinoza's concept of human nature rather than on Aquinas's. Gewirth asks the rhetorical question, "on what ground can Aquinas *exclude* from this biologically-based segment of natural law the violence which 'nature has taught all animals,' including Spinoza's observation that in the sea the big fish eat the little fish,

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<sup>257</sup> Gewirth, *NLHA*, 83.

<sup>258</sup> *Ibid.* Gewirth cites *ST I-II* 94, 2.

<sup>259</sup> For example, Aquinas states, "because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substance; that is, every substance seeks the preservation of its own being, according to its nature. And by reason of this inclination, whatever is a means of preserving human life and of warding off its obstacles belongs to the natural law." *ST I-II*, 94,2. Here Aquinas proceeds from the human inclination to self-preserve *directly* to a statement about what belongs to the natural law.



and so forth?”<sup>261</sup> Since it is Spinoza’s claim that humans are naturally inclined to violence, not Aquinas’s claim, it is far from clear that Gewirth’s concern is substantiated. Moreover, since the solution to the IOP which we are here considering presupposes that we remain within the A-T tradition, in order for Gewirth’s concern to be substantiated in this context he would have to establish that in the A-T tradition it is in fact accepted that humans are inclined to violence *by nature*. Since this solution to the IOP involves precinding from non A-T traditions, and since Spinoza’s view of human nature is at odds with the view found in the A-T tradition, Gewirth’s objection would not hold.

Another difficulty with Gewirth’s objection is that Aquinas clearly states that one of the precepts of the natural law is to avoid offending others. We read:

...there is in man an inclination to good, according to the nature of his reason, which nature is proper to him; thus man has a natural inclination to...live in society. And in this respect, whatever pertains to this inclination belongs to the natural law; for instance...to avoid offending those among whom one has to live, and other such things regarding the above inclination.<sup>262</sup>

Since an act of violence would be a prime example of an act that offends others, it would be inaccurate to claim that there is any room whatsoever in Aquinas’s discussion of natural law for deriving an Ought that prescribes violence. Aquinas does not claim that humans are naturally inclined to be violent but, on the contrary, that they are naturally inclined to seek to live peacefully.

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<sup>261</sup> Gewirth, *NLHA*, 83. The emphasis is that of Gewirth. In this passage Gewirth is quoting: B. de Spinoza, *Tractatus Theologico-Politicus*, ch.16, para.2.

<sup>262</sup> *ST I-II*, 94, 2. Since Aquinas claims that the social inclination of human nature stems from the rational faculty, and since—like Aristotle—he also holds that this is an essential and unchanging aspect of human nature, it would follow that the egalitarian precept regarding living well in society is also unchanging. Thus, it is possible to derive an Ought that is simultaneously egalitarian and categorical within the A-T scheme.

In response to Gewirth's concern it is also worth noting that Aquinas explicitly leaves room for deriving a *positive* prescription regarding the fostering of the common good. In discussing law in general, Aquinas claims that law is always directed to the common good. He says, "since the law is chiefly ordered to the common good, any other precept in regard to some individual work, must be empty of the nature of a law, save in so far as it regards the common good. Therefore every law is ordered to the common good."<sup>263</sup> Moreover, in discussing natural law in particular, Aquinas claims that anything that is part of living well in society can be considered to be a natural law precept. He says that avoiding offending others belongs to the natural law, but he also says that other such things (*et cetera huiusmodi*) regarding the social aspect of human nature also belong to the natural law.<sup>264</sup> Assuming that fostering the common good can be considered to be conducive to living in society, it could be argued that a specific precept regarding the fostering of the common good would be appropriate given Aquinas's own comments. For these reasons, then, it would be proper to conclude that the Ought of Aquinas's theory of natural law can be properly categorized as egalitarian.<sup>265</sup>

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<sup>263</sup> *ST I-II*, 90, 3.

<sup>264</sup> *ST I-II*, 94, 2.

<sup>265</sup> In addition to the fact that Aquinas bases natural law on the common good—and does not leave room for deriving a non-egalitarian Ought—it is important to realize that proponents of this solution to the IOP *themselves* claim that the Ought derived from the notion of the function or essence of the human person pertains to the common good. Geach, for example, claims that it is a false dichotomy to distinguish between moral virtue for its own sake *or* for selfish, non-egalitarian reasons. In commenting on human nature, he says, "men...do care what happens to others...that is the way men's inclinations go." (Geach, *The Virtues*, 17.) MacIntyre also makes a similar claim and states: "on the traditional Aristotelian view... what education in the virtues teaches me is that my good as a man is one and the same as the good of those others which whom I am bound up in human community. There is no way of my pursuing my good which is necessarily antagonistic to you pursuing yours because the good is neither mine peculiarly nor yours peculiarly—goods are not private property." (*After Virtue*, 229) Here MacIntyre claims that within an Aristotelian context it does not make sense to claim that living a virtuous life would be egoistic or non-egalitarian.

## 6. Conclusion

By way of summary, it is possible to utilize this teleological-functional solution to the IOP to derive an Ought that is determinate, categorical, and egalitarian. Provided that we limit ourselves to the weak version of this solution—and thus acknowledge that the desires of the agent play a role in the derivation—it is also possible to derive a prescriptive Ought. Nevertheless, it is not clear that this overall solution can be utilized to derive an Ought that *simultaneously* moral and categorical. In order to establish that such an Ought could be derived, it would have to first be shown that *all* non-incapacitated agents are capable of doing the metaphysical enquiry necessary for coming to know the essence of the human person. This is because in the A-T tradition it is held, first, that an Ought only pertains to moral obligation if it is possible for the agent to come to know the Ought and, second, that coming to know essences is very difficult at best (even when agents are able to engage in metaphysical enquiry). Thus, those who propose this solution would either have to (1) settle for an Ought that is only binding to diligent metaphysicians rather than to all non-incapacitated humans, or (2) establish that it is consistent to claim—within the A-T tradition—that it is not necessary to engage in diligent metaphysical enquiry in order to come to an understanding of the human essence. Since proponents of this solution do not seem to be willing to do the latter, they need to ask themselves if they would be content to do the former.

CHAPTER V  
NEW NATURAL LAW THEORY AND  
THE UNDERIVED OUGHT

“...Aquinas asserts as plainly as possible that the first principles of natural law, which specify the basic forms of good and evil and which can be adequately grasped by anyone of the age of reason (and not just by metaphysicians), are *per se nota* (self-evident) and indemonstrable. They are not inferred from facts.”<sup>266</sup>

Another solution to the IOP is to argue that Ought-conclusions are not derived invalidly from Is-premises because they are not derived at all but, rather, are self-evident. This is the solution put forth by new natural law theorists such as Finnis, Grisez, R. George, and C. Paterson. New natural law theorists claim that just as principles of speculative reason are not derived from other principles but are *per se nota*, so too is the first principle of practical reason. In addition, they claim that since there are self-evident goods, it is possible to grasp the basic precepts or Oughts of natural law without deducing them from facts about human nature. In this chapter, I shall provide a brief overview of this new natural law solution to the IOP and defend it against the accusation that it is either not properly categorized as a theory of natural law theory or that it implements two non-co-assertable claims. Subsequently I will consider whether or not this approach can be used to uphold a *robust* Ought. I will ultimately argue that it can but that new natural law theorists would do well to do more to show that the basic, self-evident goods are in fact self-evident to all non-incapacitated agents.<sup>267</sup>

<sup>266</sup> John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 33. Finnis cites: Aquinas, *in Eth.* V, lect. 12 para. 1018; *ST* I-II, 94, 2; and 91, 3c.

<sup>267</sup> Due to the limits of this dissertation I will not address the question of whether new natural law theorists interpret Aquinas correctly. Nevertheless, I will consider some of the commentaries on Aquinas offered by new natural law theorists.

## A. The New Natural Law Solution

### 1. Finnis and Grisez

Grisez admits that most Thomists interpret Aquinas as holding that Ought conclusions are deduced from Is premises. More specifically, he claims that most Thomists hold that a conclusion such as (1) *You ought to avoid stealing* can be deduced from: (2) the first principle of practical reason (FPPR) which is sometimes formulated as: *Do good and avoid evil*, and (3) the premise: *stealing is not in accord with human nature*.<sup>268</sup> According to Grisez, however, in the thought of Aquinas, the principle of practical reason is not derived but, like the principle of non-contradiction, is "...given to us by our most primitive understanding."<sup>269</sup> Aquinas does not claim that the Ought is derived but that it is contained within underived, self-evident principles. In order to engage in theoretical reasoning, it is necessary first to have a grasp of the principle of non-contradiction. It is not the case that, in the course of engaging in theoretical reasoning we deduce this principle from other principles or from facts about the world. Analogously, when we engage in any form of practical reasoning, it is necessary first to have a grasp of the first principle of practical reason.<sup>270</sup> It is not the case that in the course of engaging in practical reasoning we deduce this principle from other principles or from facts about human nature. Only when we have a grasp of this principle are we

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<sup>268</sup> Germain G. Grisez, "The First Principle of Practical Reason: A commentary on the *Summa theologiae*, 1-2, Question 94, Article 2", in *Natural Law Forum* 10 (1965): 169-201. Hereafter this will be abbreviated as: *FPPR*

<sup>269</sup> *FPPR*, 175.

<sup>270</sup> *FPPR*, 170-175. Grisez cites: *ST I-II*, 94, 2. In this passage, Aquinas claims that the role the principle of practical reason plays in practical reasoning is like the role the principle of contradiction plays in theoretical reasoning. In this passage, Aquinas also claims that both of these principles are self-evident. Because Aquinas says that they are self-evident, Grisez concludes that they are not derived or deduced from other principles.

capable of engaging in practical reasoning. Thus, according to Grisez, Aquinas does not claim that our notion of the good or the Ought is derived from facts.

In explicating this position, Grisez and Finnis deny that Aquinas claims that the other precepts that pertain to natural law are derived. It is not only self-evident that *good is to be done and pursued and evil avoided*, it is also self-evident that things we have an inclination toward are good. Since the very meaning or intelligibility of *good* is “that which each thing tends toward”, and since it is self-evident that we tend toward certain ends, it is self-evident that these ends are good.<sup>271</sup> Thus, in order to grasp a precept such as *knowledge is a good to be pursued*, it is not necessary to deduce it from other precepts or from statements about human nature. Grisez’s and Finnis’s main point here is that we do not need to determine whether an act is in accord with human nature in order to grasp that it is a good to be pursued. For example, we need not come to an understanding that humans are rational by nature in order to reach the understanding that knowledge is good and worthy of pursuit. On the contrary, all we need is an understanding that we in fact desire knowledge.

In expounding upon what it is that we have basic inclinations toward, Finnis speaks at length about knowledge and points out that claiming that knowledge is not a self-evident good involves inconsistency. In turn, he points out that knowledge must be considered to be an example of a self-evident good. By “knowledge” he means speculative knowledge or “knowledge for its own sake” as opposed to mere instrumental knowledge which is sought as a means of acquiring something else.<sup>272</sup> He argues:

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<sup>271</sup> *FPPR*, 178. Grisez cites: *ST I-II*, 94, 2.

<sup>272</sup> *NLNR*, 59.

the skeptical assertion that knowledge is not a good is operationally self-refuting. For one who makes such an assertion, intending it as a serious contribution to rational discussion, is implicitly committed to the proposition that he believes his assertion is worth making, and worth making *qua* true; he thus is committed to the proposition that he believes that truth is a good worth pursuing or knowing. But the sense of his original assertion was precisely that truth is not a good worth pursuing or knowing. Thus he is implicitly committed to formally contradictory beliefs.<sup>273</sup>

Since uttering the proposition “knowledge is not a good worth pursuing” implies that it is true that “knowledge is not a good worth pursuing”, the proposition also implies that truth is of value.<sup>274</sup> In turn, since the proposition implies that truth is of value, it also implies that knowledge is of value and hence good. Because it is not possible consistently to argue that knowledge is not a good, Finnis concludes that it is self-evident that it is indeed good. In regard to the relation of this self-evident good to the Ought, Finnis’s point is that if we grant that the FPPR is self-evident and—in addition—that knowledge is a self-evident good worthy of pursuit, it is possible to grasp the precept “knowledge ought to be pursued” without relying on non-self-evident statements regarding metaphysics or facts about human nature.

In addition to knowledge, Finnis claims that we also have basic inclinations toward the following: life, play, aesthetic experience, sociability or friendship, practical reasonableness, and religion. And since we have inclinations toward these, we are capable of grasping that they too are goods worthy of pursuit. Thus, according to Finnis, it is likewise possible to grasp the proposition that “life, play, aesthetic experience, etc. ought to be pursued” without having to deduce the proposition from statements or facts regarding human nature. In short, his claim is that we do not need to conduct studies

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<sup>273</sup> *NLNR*, 74-75.

<sup>274</sup> Finnis also says that the proposition “I do not exist” is operationally inconsistent since, by uttering it, one thereby implies that he or she exists. See *NLNR*, 74.

regarding facts about human nature—or study metaphysics and philosophical anthropology—*before* being able to grasp propositions such as: “I ought to preserve my life” and “I ought to refrain from being unreasonable when pursuing things that I see as worthy of pursuit”.<sup>275</sup>

Although Grisez and Finnis hold that the FPPR and the basic precepts of natural law concerning basic goods are not derivable—and that we must have a grasp of them if we are to engage in practical reasoning at all—it is important to note that they do not hold that these precepts are innate, that no experience *whatsoever* is necessary to grasp them, or that theoretical reasoning plays no role in coming to a deeper understanding of them. Grisez states, “of course, one cannot form these principles if he has no grasp upon what is involved in them, and such understanding presupposes experience.”<sup>276</sup> Similarly, in commenting on deepening our understanding of the basic goods, Grisez and Finnis state, “theoretical reflection deepens [one’s] understanding of the basic goods, and knowledge about facts bearing on their instantiation is necessary to pursue them effectively.”<sup>277</sup> Thus, neither Grisez nor Finnis claim that these principles can be fully grasped without any experience whatsoever of the world. All they claim is that these principles are not deduced or derived from other premises or from an understanding of human nature that is attained through theoretical reasoning.<sup>278</sup>

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<sup>275</sup> This latter proposition pertains to the self-evident good of practical rationality.

<sup>276</sup> *FPPR*, 195. The emphasis is mine. See also Germain Grisez, Joseph Boyle, and John Finnis, “Practical Principles, Moral Truth, and Ultimate Ends” in *American Journal of Jurisprudence* 99 (1987): 106. Hereafter this will be abbreviated as: *PPMT*.

<sup>277</sup> *PPMT*, 111.

<sup>278</sup> Cf. Finnis, *NLNR*, 34. More will be said about this in what follows.



It is also important to note that Grisez and Finnis acknowledge both that the specifically *moral* Ought does not emerge until a consideration of *all* the basic goods is in place and that the FPPR is relied upon even in faulty moral reasoning. They should not be interpreted as claiming that the single precept “knowledge ought to be pursued” is in itself moral in nature. The principle of practical reason and the basic goods considered individually merely provide us with “pre-moral goods”. In order to attain a specifically *moral* good, *all* of the basic goods and all of the principles of practical knowledge must be considered. We read,

...the *ought* to be which calls for morally right choice represents the full directiveness of the principle of practical knowledge while the *is* to be which commends the morally wrong choice represents only a fragment of that directiveness operating in isolation from the whole. ...*only* morally right choices respond *fully* to all of the principles of practical knowledge. Thus, only morally right choices respond perfectly to the first principle of practical knowledge.<sup>279</sup>

Thus, according to Grisez and Finnis, the pre-moral Ought corresponds in some way to the FPPR and to a basic good or set of basic goods, but it does not correspond fully to all of the basic goods. The *moral* Ought, on the other hand, corresponds fully to the FPPR and to all of the basic goods; and as such, the moral Ought pertains to *integral* human fulfillment rather than only to partial human fulfillment.<sup>280</sup> An agent who sought the good of aesthetic experience while acting contrary to the good of friendship or any of the other basic goods, for example, would utilize the FPPR and would necessarily grasp that aesthetic experience is a basic good, but she would nevertheless fail to act in accord with the *moral* Ought. Likewise, a scientist who sought to learn more about human reflexes by killing human subjects would grasp the FPPR and the good of knowledge, but would

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<sup>279</sup> *PPMT*, 125.

<sup>280</sup> *PPMT*, 126.

still fail to abide by a *moral* Ought since killing human subjects would involve acting contrary to the basic good of life. According to Grisez and Finnis, the moral Ought only emerges when all the basic goods and integral human fulfillment are preserved; yet they still maintain that, since the basic goods can be grasped without first considering the metaphysics or anthropology, the moral Ought can be grasped without deriving it from facts about human nature.

In regard to the IOP, Grisez specifically argues that natural law theorists who claim that we must begin with facts about human nature and then derive the Ought-conclusion—including theorists who interpret Aquinas as making such a claim—must respond to the objection that this derivation is invalid. He states,

if one supposes that principles of natural law are formed by examining kinds of action in comparison with human nature and noting their agreement or disagreement, then one must respond to the objection that is impossible to derive normative judgments from metaphysical speculations.<sup>281</sup>

Grisez's contention, then, is that those who wish to begin with non-normative premises about the essence of the human person and derive normative conclusions about what humans ought to do and avoid—such as the philosophers discussed in chapter four—must explain how it is possible to bridge the gap. But those who begin with self-evident normative premises are capable of bypassing this difficulty since there is no fact—value gap to bridge.

In line with this general thesis regarding the IOP, Grisez and Finnis elsewhere argue that any attempt to derive an Ought from facts about human nature ends up being enthymematic. For example, McInerny attempts to derive the Ought-conclusion “Joe ought to go on a diet” from the Is-premises “Joe weighs two hundred and fifty pounds

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<sup>281</sup> *FPPR*, 196.

[which means he is overweight]” and “It is not healthy to be overweight.”<sup>282</sup> But Grisez and Finnis are quick to point out that such a derivation is invalid as such and relies on the more basic premise “Health is a good to be pursued and protected.” Since Grisez and Finnis think this more basic premise is a self-evident specification of the FPPR, rather than a truth of metaphysics or anthropology, they think that McInerny fails to establish that it is possible to derive an Ought conclusion *merely* from factual premises. Only if we rely on self-evident Ought principles such as “Health is good” and “Good ought to be done and pursued” is it possible validly to conclude that “Joe ought to go on a diet.”

Grisez elsewhere comments specifically on the naturalistic fallacy and in so doing he gets to the heart of the new natural law response to the IOP. He says,

the point of saying that good is to be pursued is not that good is the sort of thing that has or is this peculiar property, obligatoriness—a subtle mistake with which G. E. Moore launched contemporary Anglo-American ethical theory. The point rather is to issue the fundamental directive of practical reason. ‘Is to be’ is the copula of the first practical principle, not its predicate; the gerundive is the mode rather than the matter of law. To know the first principle of practical reason is not to reflect upon the way in which goodness affects action, but to know a good in such as way that in virtue of that very knowledge the known good is ordained toward realization.<sup>283</sup>

To know that something is good and that it ought to be done does not involve discovering that a particular thing has a particular quality—in a way analogous to discovering that a particular banana has the quality yellowness—rather, it simply involves being aware that a particular thing is worthy of pursuit in some way. To know that knowledge is good and ought to be pursued, for example, it is not necessary first to investigate whether humans

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<sup>282</sup>Ralph McInerny, “The Principles of Natural Law”, in *American Journal of Jurisprudence* 25 (1980), 1-12. This work of McInerny’s is cited by Grisez and Finnis, in “The Basic Principles of Natural Law: A Reply to Ralph McInerny,” in *American Journal of Jurisprudence* 21 (1981), 24. Hereafter this will be abbreviated as: *RRM*.

<sup>283</sup> *FPPR*, 191.

are rational by nature. It is only necessary to know—from a first person perspective—that one in fact finds knowledge to be worth pursuing. As such, it is not necessary to know human nature from a theoretical or second-person point of view; it is sufficient to know one’s nature via an experience of one’s own inclinations. And since, in addition, it is possible to grasp that “good ought to be pursued” without deducing it from some other proposition, it is possible to grasp that “knowledge ought to be pursued” without deducing it from some non-Ought premise.

## **2. Is This Really a Version of Natural Law Theory?**

Before asking whether the new natural law solution to the IOP can uphold a robust Ought, it will be helpful first to consider whether new natural law is appropriately categorized as a theory of *natural law* insofar as it incorporates the main claims of natural law theory. One of the most common objections to Grisez’s and Finnis’s solution to the IOP is that it is not an authentic theory of natural law since it does not have an adequate grounding in human nature. As stated in Chapter One, one of the basic claims of natural law theory is that there is an ontological and epistemological grounding of the Ought in human nature. Since new natural law theorists prescind from overt considerations of human nature when discussing our grasp of the precepts of natural law, it would seem that they fail to implement and acknowledge these basic claims. If it is the case that facts about human nature are not an essential element of their theory, their theory cannot

properly be categorized as a theory of natural law and hence their solution to the IOP could not be considered a viable solution for natural law theorists.

Veatch is among those who make this type of objection.<sup>284</sup> In doing so, he accuses Finnis of the following: (i) denying that morals and ethics have a basis in nature or the facts of nature, (ii) believing that there is a stringent separation between Is and Ought and between facts and values, (iii) insisting that ethical principles can have no grounding in fact and nature, and (iv) supposing that ethics is absolutely independent of metaphysics and the knowledge of nature.<sup>285</sup> It is for these reasons he concludes that Finnis's theory is natural law without nature and that "new *natural law* theory" is a misnomer.<sup>286</sup>

Given many of Finnis's claims, it is easy to sympathize with Veatch. Finnis clearly rejects the "perverted faculty argument", i.e., the argument that actions are always morally impermissible if they involve using a faculty in a way contrary to its natural purpose.<sup>287</sup> Moreover, as we have seen, Finnis also clearly asserts that moral concepts "...are not inferred from metaphysical propositions about human nature... or about 'the function of a human being', nor are they inferred from a teleological conception of nature

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<sup>284</sup>McInerny, Weinreb, Hittenger, and Murphy also make this objection.

<sup>285</sup> Henry Veatch, "Natural Law and the 'Is'—'Ought' Question" in *Catholic Lawyer* 26 (1980-1981), 257-265. Hereafter this will be cited as *IOQ*. See also, John Finnis, "Natural Law and the 'Is'—'Ought' Question: An Invitation to Professor Veatch", *Catholic Lawyer* 26 (1981): 266. Hereafter this will be cited as *IPV*.

<sup>286</sup> *IOQ*, 252-253.

<sup>287</sup> *NLNR*, 48.

or any other conception of nature.”<sup>288</sup> Veatch’s criticism thus seems to be substantiated, at least at first glance.

Although it is easy to understand why natural law theorists might make this overall objection to new natural law theory, it nevertheless seems to be based on a poor interpretation of Finnis and Grisez. In his response to Veatch, Finnis unequivocally states, “my thesis does not for a moment deny that the understanding thus attained can be integrated into a general account of human nature, i.e. of human potentialities and their various forms of fulfillment”.<sup>289</sup> He also bluntly advises Veatch to “read what [I] have written, strictly and fully.”<sup>290</sup> Both Finnis and Grisez—in their response to McInerny—also state,

we have never said that one cannot pass from metaphysical and/or factual truths *together with principles of practical reasoning* to normative conclusions. Our point rather was that there can be no valid deduction of a normative conclusion without a normative principle, and thus that *first* practical principles cannot be derived from metaphysical speculations.<sup>291</sup>

Therefore, it is misguided to object to new natural law theory merely on the pretext that Grisez and Finnis leave no room for asserting that the Ought has a grounding in human nature.

Even if one considers these added claims of new natural law theorists, however, it could still be argued that the following two claims of Finnis are not simultaneously justifiable: (1) *the first principles of natural law are self-evident and not derived from*

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<sup>288</sup>*NLNR*, 33-34.

<sup>289</sup>John Finnis, *Fundamentals of Ethics*, (Washington, D.C.: Georgetown University Press, 1983), 12.

<sup>290</sup>*IPV*, 266.

<sup>291</sup> *RRM*, 24. The emphasis is that of Grisez and Finnis.

*facts about human nature, and (2) the first principles of natural law are grounded in human nature insofar as facts about human nature explain why that which is a human good is a true human good.* This is precisely the objection that has been made by M. Murphy and it deserves consideration.<sup>292</sup>

Murphy's concern is not that these two statements are contradictory but that they are *non co-assertable*, by which he means that if claim (1) can be justifiably asserted then claim (2) cannot; and if (2) can be justifiably asserted then claim (1) cannot.<sup>293</sup> In other words, Murphy's concern is that, if the first principles of natural law are truly self-evident, it does not make sense simultaneously to claim that facts about human nature explain why we ought to pursue a particular good. If we are justified in holding that "it is self-evident that x is to be pursued", then, it does not seem that we can also be justified in claiming that "facts about human nature are necessary to explain why x is to be pursued". Analogously, if we are justified in asserting that the principle of non-contradiction is self-evident and cannot be validly deduced from other statements, we could not also be justified in asserting that the principle of non-contradiction can be deduced from certain statements or facts. Thus, even if Finnis is interpreted as an authentic natural law theorist, his theory might be problematic in other ways.

Murphy's concern here is also that unless we can interpret new natural law theorists as being proponents of claim (2), we cannot properly categorize them as natural law theorists. Murphy acknowledges that Finnis and Grisez hold (3) that *the first principles of natural law are grounded in human nature in that if human nature were*

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<sup>292</sup>Mark C. Murphy, "Self-Evidence, Human Nature, and Natural Law" in *American Catholic Philosophical Quarterly* 69: 3 (1995), 471-484. Hereafter this will be cited as *SE*.

<sup>293</sup>*SE*, 477; see footnote 15.

*different, certain goods would no longer be available for humans.* Nevertheless, Murphy quickly points out that even non-natural law theorists subscribe to such a claim. He argues that if a theory asserts only claim (3), then it is “indistinguishable in relevant respects from any other moral theory (such as that proposed by G.E. Moore, for example) that asserts the existence of objective goods. For no moral theorist could reasonably deny that if human nature were sufficiently different, certain goods would be inaccessible to us.”<sup>294</sup> It is for this reason that Murphy concludes that, regardless of the fact that Finnis acknowledges claim (2), it is not clear that he can properly be categorized as a natural law theorist.

It does indeed seem that Finnis would accept (2). As Murphy points out, Finnis clearly states: “the basic goods are basic reasons for acting *because* they are aspects of the fulfillment of persons, whose action is rationally motivated by these reasons.”<sup>295</sup> As Murphy has also pointed out, Finnis also claims that “human nature determines ‘why the [self-evident practical] principles are principles of natural law.’”<sup>296</sup> Thus, it is not my intention to argue against Murphy’s interpretation of Finnis in this regard.

Nevertheless, while Murphy indeed seems to be justified in maintaining that Finnis asserts (2), it is not at all clear that he is justified in maintaining that Finnis makes *non co-assertable* claims by proposing (1) and (2). One of the problems with Murphy’s argument is that he fails adequately to consider the contexts in which Finnis makes these two claims. As a result, it seems that Murphy fails to realize that when Finnis speaks of

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<sup>294</sup> SE, 474-475.

<sup>295</sup> PPMT, 114. Cited by Murphy on page 476.

<sup>296</sup> Murphy, 476. Murphy is here quoting from the following article: John Finnis and Germain Grisez, “The Basic Principles of Natural Law: A Reply to Ralph McInerny,” *American Journal of Jurisprudence* 26 (1981): 22.



derivability in (1), there is indication that he is speaking of a different type of derivability than when he speaks of derivability, or groundedness, in (2). As stated above, Murphy interprets Finnis as claiming that principles of natural law are self-evident and underivable as well as claiming that the principles of natural law are in no sense derivable from human nature. It is for this reason that he also interprets Finnis as making *non co-assertable* claims. However, if Finnis's first claim pertains to a different type of derivability than in his second claim, there is no reason to suppose that his claims are *non co-assertable*.

Before considering this in more detail, it is important to note that Finnis explicitly asserts that there are multiple types of derivability. In *Natural Inclinations and Natural Rights*, he claims that in an epistemological sense we cannot derive an Ought from an Is. We read: “. . . propositions about primary (*secundum se*) human goods are not derived from propositions about human nature or from any other propositions of speculative reason. . . . In this sense, *ought* is not derived from *is*.” After making this statement, he immediately adds the following:

but. . . if we shift from the epistemological to the ontological mode, the same methodological principle, in its application to human beings, presupposes and thus entails that the goodness of all human goods. . . is derived from (i.e. dependent upon) the nature which, by their goodness, those goods perfect. For those goods— which as ends are the *rationes* of practical norms or *oughts*— would not perfect that nature were it other than it is. So, *ought* ontologically depends on— and in that sense may be said to be derived from— *is*.<sup>297</sup>

In these passages, Finnis is claiming that in an epistemological sense, an Ought *cannot* be derived from an Is since we do not need to know propositions about human nature in

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<sup>297</sup>Finnis, “Natural Inclinations and Natural Rights: Deriving *Ought* from *Is* According to Aquinas”, *Lex et Libertas: Freedom and Law According to St. Thomas Aquinas*, (Vatican City: Libreria Editrice Vaticana, 1987), 45-47.

order to know that certain things are good and hence ought to be pursued. For example, we do not need to accept the premise that humans are rational by nature in order to know that knowledge is a good worth pursuing. In these passages, Finnis is also claiming that, in an ontological sense, the Ought depends on the Is since goods—which provide the foundation for the Ought—are only genuine goods if they perfect human nature. Life and friendship, for example, are only genuine goods if they perfect human nature. With this as a backdrop, then, let us return to a consideration of the allegedly non co-assertable claims.

As mentioned above, when Finnis discusses (1), he does so within the context of trying to show that a theory of natural law—in spite of appearances— does not necessarily fall into the IOP. He is claiming that a natural law theory need not be accused of deriving an Ought from an Is *if* the theory asserts that first principles of natural law are self-evident. Thus, when Finnis asserts (1), he does so within the context of showing that it is not necessary to deduce principles of natural law from statements about human nature in order to know or understand those principles.

Given this context, it seems safe to interpret (1) as an *epistemological* claim about the first principles. His claim is that one need not *know* that certain statements about human nature are true in order to *know* the first principles are true. For this reasons we can reformulate (1) as follows:

(1R):           The first principles of natural law are self-evident and thus not epistemologically deduced from statements about human nature (i.e., it is not necessary to know that certain statements about

human nature are true in order to know that first principles of natural law are true).<sup>298</sup>

The claim here is not that there is no ontological link between first principles of natural law and human nature.

Although (1R) is addressed within the context of an *epistemological* concern, it seems that both (2) and (3) are addressed within the context of other concerns. As a result of this, it also seems safe to assume that (1R) and (2) are co-assertable. Before considering this in more detail, let us first explore the texts that Murphy points to when arguing that Finnis asserts that there is some grounding of principles of natural law in human nature.<sup>299</sup>

One of these texts is found within the context of Finnis's response to the criticisms of Veatch. Again, Veatch's accusation is that Finnis and Grisez are (1) denying that morals and ethics have a basis in nature or the facts of nature, (2) believing that there is a stringent separation between 'is' and 'ought' and between facts and values, (3) insisting that ethical principles can have no grounding in fact and nature, and (4) supposing that ethics is absolutely independent of metaphysics and the knowledge of nature.<sup>300</sup> In responding to Veatch, Finnis only commits himself to the following: morals and ethics have a basis in human nature (or facts about human nature), there is not a stringent separation between Is and Ought or between facts and values, ethical principles

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<sup>298</sup> Of course Finnis would admit that we need to have a first-person awareness that the basic goods are worthy of pursuit.

<sup>299</sup> See Murphy, 475-476.

<sup>300</sup> *IPV*, 266 ff. Murphy, 472.

can have a grounding in fact and nature, and ethics is not absolutely independent of metaphysics and the knowledge of nature. There is no evidence in this text that Finnis is making a claim that one must have knowledge that statements about human nature are true in order to grasp first principles; nor is there evidence that Finnis is claiming anything other than that ethics can have an ontological grounding in human nature and facts about human nature. All he commits himself to is the claim that there is *some* link between ethics and facts.

A second text Murphy refers to in establishing that Finnis asserts that principles of natural law are grounded in human nature, is found in a context in which Finnis is providing a dialectical defense of basic goods and first principles of natural law.<sup>301</sup> The passage reads:

why is it that the basic goods are the ultimate reasons for acting? Why do these goods have motivating power? These are theoretical questions. In trying to answer them, we are not trying to *deduce* first principles; that cannot be done. Rather, we are continuing our dialectical defense of these principles, by explaining how basic goods are both one with and distinct from persons, who, therefore, in one respect are and in another are not the ultimate reason for every human action. Any creature which acts is one whose reality is not fully given at the outset; it has possibilities which can be realized only through its acting. The basic goods are basic reasons for acting because they are aspects of the fulfillment of persons, whose action is rationally motivated by these reasons.<sup>302</sup>

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<sup>301</sup>Elsewhere, in explicating what a dialectical defense entails, Finnis states: “dialectical arguments relate a proposition to be defended to other knowledge, and show that denying it has unacceptable consequences. The dialectical defense of the basic goods is a theoretical project. It presupposes natural, nontheoretical knowledge of the first practical principles, which are the subject matter of this theoretical reflection. Hence, the knowledge of these practical principles as practical in no way depends on these theoretical arguments. As we have said, the practical principles are self-evident truths, not conclusions from theoretical knowledge about human persons.” PPMT, 111.

<sup>302</sup> PPMT, 114. See Murphy, 476.

In this passage, Finnis indeed claims that there is some relation between first principles and human nature. What he does not claim, however, is that this relation involves an epistemological derivability or deduction of first principles from factual statements about human nature. Indeed, Finnis explicitly denies that there is any such derivability.

In yet another text that Murphy refers to, Finnis states:

the diversity of the basic goods is neither a mere contingent fact about human psychology nor an accident of history. . . . Rather, being aspects of the fulfillment of persons, these goods correspond to the inherent complexities of human nature, as it is manifested both in individuals and in various forms of community. . . . (1) As *animate*, human persons are organic substances. Life itself . . . health, and safety are one category of basic good. (2) As *rational*, human persons can know reality and appreciate beauty and whatever intensely engages their capacities to know and to feel. Knowledge and esthetic experience are another category of basic good. (3) As *simultaneously rational and animal*, human persons can transform the natural world by using realities, beginning with their own bodily selves, to express meanings and purposes.<sup>303</sup>

In this passage, Finnis is clearly asserting that there is a strong relationship between human nature and basic goods to be pursued. For this reason, Murphy is right in claiming that Finnis can be read as asserting that facts about human nature explain why certain basic goods are true human goods. However, in this passage, Finnis does *not* claim that one must accept statements about human nature in order to know or understand the first principles of natural law and, hence, there is no reason to suppose that he is making a statement about epistemological derivability.

With these considerations as a backdrop, it should be evident that Murphy's accusation that Finnis holds *non co-assertable* claims fails. It is possible for Finnis justifiably to claim that one need not know that certain factual statements about human nature are true in order to understand first principles of natural law. It is even possible

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<sup>303</sup> PPMT, 107. See Murphy, 476.

for Finnis justifiably to claim that—epistemologically speaking— first principles of natural law *cannot* be adequately derived from facts about human nature. However, it is also possible for Finnis justifiedly to claim that first principles of natural law are ontologically derived from or related to human nature. In short, it is possible for him to justifiedly claim both of the following:

(1R): The first principles of natural law are self-evident and thus not epistemologically deduced from statements about human nature (i.e., it is not necessary to know that certain statements about human nature are true in order to know that first principles of natural law are true).

(2): The first principles of natural law are ontologically derived from human nature (i.e. goods which are referred to in the first principles of natural law are genuine goods because they perfect human nature).

In short, if the first principles of natural law are self-evident, there is no reason to suppose that it cannot also be justified that they are not also ontologically grounded on human nature. It may be self-evident that knowledge is a good worth pursuing. It may also be the case that knowledge is a genuine good *because* human nature is what it is.

Although Finnis claims that the principles of natural law are not *epistemologically* derivable from human nature, it would be inaccurate to conclude that he therefore fails to implement and accept the epistemological claim of natural law. As previously mentioned, one of the basic claims of natural law theorists is that knowledge about

human nature in some way enables one to know or determine what ought to be done and avoided. New natural law theorists insist that it is not necessary to know premises about human nature in order to know the Ought precepts of natural law. Nevertheless, they do not hold that no knowledge *whatsoever* about human nature is necessary in order to know these precepts. They are very forthcoming in admitting that the agent must know and be aware of his own inclinations toward the basic goods in order to know the precepts. In explicating this position, Finnis states:

...practical reasoning begins not by understanding this nature from the outside, as it were, by way of psychological, anthropological, or metaphysical observations and judgments defining human nature, but by experiencing one's nature, so to speak, from the inside, in the form of one's inclinations. But again, there is no process of inference. ... by a simple act of non-inferential understanding one grasps that the object of the inclination which one experiences is an instance of a general form of good, for oneself (and others like one).<sup>304</sup>

It is not that knowledge of human nature has no relation to knowledge of the Ought, it is merely that experience of one's own nature "from the inside" is sufficient to understand what is good and hence what ought to be pursued. In explicating this position Finnis, together with Grisez, states, "theoretical reflection [about human nature] deepens [one's] understanding of the basic goods, and knowledge about facts bearing on their instantiation is necessary to pursue them effectively."<sup>305</sup> Thus, again, it is not that knowledge of human nature has no relation to knowledge of the Ought. There is a clear relation between knowledge of one's own nature and knowledge of what one ought to do;

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<sup>304</sup> *NLNR*, 34.

<sup>305</sup> *PPMT*, 111.

so the epistemological claim of natural law theory is clearly implemented by Grisez and Finnis.<sup>306</sup>

By way of summary, then, Murphy's claim is that Finnis "cannot justifiably assert that natural law is strongly grounded in human nature if the principles of the natural law are in no sense derivable from human nature; Finnis can assert (1), or (2), but not both." What Murphy fails to take into consideration, however, is that (1) pertains to epistemological derivability while (2) does not. Finnis never asserts that the principles of the natural law "are in no sense derivable from human nature" but merely that they are not *epistemologically* derivable from human nature.

As a consequence, there is no reason to conclude that Finnis has made non-co-assertable claims. Moreover, since he has admitted that there is an ontological relationship between human nature and the Ought, there is no reason to conclude that he cannot be properly categorized as a natural law theorist.

### A. A Critique of the New Natural Law Solution

The question which must be asked at this point is whether the new natural law theory provides us with a method of derivation that provides us with a robust Ought

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<sup>306</sup> The position of Grisez and Finnis is similar to the position of Maritain which is discussed in Chapter One. Maritain states, "the genuine concept of Natural Law is the concept of a law which is natural... insofar as it is *naturally* known, that is, known through inclination or through connaturality, not through conceptual knowledge and by way of reasoning. . . . judgments in which Natural Law are made manifest to practical Reason do not proceed from any conceptual, discursive, rational exercise of reason; they proceed from that *connaturality or congeniality* through which what is consonant with the essential inclinations of human nature is grasped by the intellect as good; what is dissonant, as bad." See: Jacques Maritain, *Natural Law: Reflections on Theory and Practice*, William Sweet ed., (South Bend: St. Augustine Press, 1943), 20. New natural law theorists are not the first to take a somewhat phenomenological approach to the natural law theory.



which is moral, prescriptive, categorical, determinate, and egalitarian. Since Grisez and Finnis claim that the Ought is not deduced from factual statements, the question thus becomes: Do they provide us with an underived robust Ought?

### 1. Is the Ought Moral?

Numerous philosophers have argued that the Ought of new natural law theory is not moral in nature. In fact, this is one of the most common objections to it. McInerny, for instance, argues that the basic goods do not pertain to a moral Ought given that they are not themselves *moral* values. He states: "...the basic values that Finnis lists, expanding a bit on Grisez, namely Life, Knowledge, Play, Aesthetic Experience, Sociability, Practical Reasonableness, and Religion are not moral values, singly, or cumulatively."<sup>307</sup> V. Kerruish objects to the new natural law for similar reasons and points out that the basic goods are too broad to guide practical reasoning. Commenting on the good of friendship, she states, "friendship or love might encompass individually disinterested benevolence to all of humanity or the limited egoism of relationships between individuals."<sup>308</sup> Since a consideration merely of the good of friendship could enable us to justify seeking friendship for any reason whatsoever, there is no reason to conclude that an Ought that is based on the this good would necessarily be *moral* in nature. Moreover, given that Finnis and Grisez themselves claim that the FPPR and the basic goods are "pre-moral", it is no surprise that such objections have emerged. If the

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<sup>307</sup> McInerny, "The Ps of NL" in *Readings in Moral Theology*, 148.

<sup>308</sup> Valerie Kerruish, "Philosophical Retreat: A Criticism of John Finnis' Theory of Natural Law", in *University of Western Australia Law Review*, 15 (1983), 227. Cited by Kainz, 52. Kainz notes that, "Valerie Kerruish finds Finnis's seven basic values susceptible to extremely volatile interpretations, so as to give hardly any clear moral directives...."

FPPR and precepts concerning the basic goods are the origin of the Ought, it needs to be established—rather than assumed—that this Ought can be used as a foundation for a moral Ought. More specifically, it needs to be established that an Ought based on the basic goods and the FPPR would have a necessary relation to the fostering of the basic well-being of the agent and others.<sup>309</sup>

Although it is no surprise that these objections have emerged, they seem to be based on an inadequate understanding of the new natural law position. It is important to look at the whole of Grisez and Finnis' claim rather than merely part of it; and it is precisely when we only consider part of it that these objections seem substantiated. As discussed above, according to Grisez and Finnis, the Ought becomes moral only when *integral* human fulfillment is considered and when *all* of the basic goods are grasped. They fully acknowledge that considering the basic goods individually, while prescind-ing from a consideration of integral human fulfillment, is inadequate if we are seeking a moral Ought.

If we consider this aspect of the new natural law position, it is not clear that McInerny's and Kerruish's objections hold. Finnis and Grisez would fully agree with McInerny that the basic goods are not themselves moral values. What they would insist upon, however, is that once integral human fulfillment and all of the basic goods which make up this integral fulfillment are considered, the Ought becomes moral. It is not entirely clear what McInerny means by *moral* but if he means that it has a relation to authentic human well-being, it is not at all clear that he could maintain that the Ought of new-natural law theory is not moral in this sense. McInerny is right in his assertion that the basic goods in themselves are not moral values but if he wishes to claim that the basic

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<sup>309</sup> This is a summary of the characteristics of a *moral* Ought discussed in Chapter One.

goods taken together have no relation to basic human well-being, his claim is highly implausible and counter-intuitive.

If we consider the whole of Grisez and Finnis' position it is also not clear that—as Kerruish claims—the basic goods are too broad to provide direction for practical reasoning and hence too broad to provide a foundation for a moral Ought. The example Kerruish provides concerning friendship, when considered in light of the whole of the new natural law position, is lacking. If we consider friendship alone, without considering the other basic goods and integral human fulfillment, it is clear that it could not provide us with a moral Ought. Simply considering the basic good of friendship would indeed leave us with too broad of a foundation since it would not preclude the possibility of upholding a non-moral precept such as, “We ought to seek the good of friendship even if it does not foster human well-being.” However, if we consider the good of friendship while also considering integral human fulfillment and *all* of the other basic goods, the foundation would not be too broad. By insisting that all the basic goods and integral human fulfillment must be considered—rather than merely one of some of the basic goods—Grisez and Finnis are thereby able to provide us with an Ought that is necessarily relevant to basic human well-being and therefore moral.

## **2. Is the Ought Prescriptive?**

Given that new natural law theorists base their theory on basic, self-evident goods, there is little reason to doubt that their theory would fail in regard to providing us with a prescriptive Ought. Since self-evident, basic goods are by definition goods that we in fact grasp as being worthy of pursuit, and since these basic goods are part of the very

foundation of the Ought, there is no reason to suppose that the Ought would fail in regard to having the capacity to induce people to action that is in accord with the Ought. Grisez admits that the FPPR, when considered in isolation from the basic goods, “merely offers rational direction *without* promoting the execution of the work to which reason direct.”<sup>310</sup> He also admits that the FPPR “is not an imperative demanding morally good action, and imperatives... cannot be derive from it...”<sup>311</sup> Nevertheless, he insists that the FPPR is merely part of the foundation and that once the basic goods are considered, the action-inducing or prescriptive nature of the Ought emerges. And since the moral Ought is based on both the FPPR and the basic goods, the moral Ought—not just the pre-moral Ought—would also be prescriptive in nature. Since we in fact see the basic goods as worthy of pursuit, at least on some level, and since the moral Ought is based on them, the moral Ought is capable of inducing us to action. We might at times—or even frequently—desire to pursue one of the goods to the exclusion of others and hence fail to act morally; but since the basic goods are grasped as worthy of pursuit, the moral Ought would still be prescriptive.<sup>312</sup> A scientist might, for instance, desire to pursue the good of knowledge to such an extent that he begins to offend his friends and family. In such a case, the scientist would be acting contrary to the good of friendship or sociability.

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<sup>310</sup> Grisez, FPPR, 192. The emphasis is mine. Grisez says that the FPPR is a “prescription” but he is not thereby asserting that it is prescriptive in the sense that it provides the agent with a motive for action. He maintains that the FPPR in itself does not motivate.

<sup>311</sup> Grisez, FPPR, 200.

<sup>312</sup> A moral Ought can be categorized as prescriptive even though agents do not always choose to act in accord with it. Provided that the moral Ought has *some* necessary relation to the desires of agents, the moral Ought has prescriptive force. To require anything more to categorize an Ought as prescriptive would involve failing to leave room for freedom. In other words, the agent need not be *compelled* to seek *nothing other* than the moral Ought in order for the moral Ought to be prescriptive.

Nevertheless, this scientist would not thereby cease to grasp that friendship is a good and, moreover, it might be precisely after losing his friends and family that he would realize that he was lacking something and ought to change his ways.<sup>313</sup> So long as we grant that the basic goods are in some sense each a necessary part of attaining integral fulfillment and that agents on some level in fact grasp them as worthy of pursuit—even though they may at times pursue some good or goods to the exclusion of others—an Ought that is based on these goods will have prescriptive force.<sup>314</sup>

The only way to argue that the moral Ought is not prescriptive would be to establish that agents are not capable of realizing the basic goods as goods. So long as agents are capable of doing so, the moral Ought must be categorized as prescriptive. For instance, to argue that the moral Ought is not prescriptive, it would be necessary to establish that agents who do not act in accord with the moral Ought are failing not merely failing to act in a way conducive to the attainment of the moral Ought but are also failing in the sense that they are not in fact able to grasp the basic goods as goods. In short, it is insufficient to argue that the moral Ought is not prescriptive merely by pointing out that agents often seek one good—or several goods—at the exclusion of others. Provided that agents on some level can identify the basic goods as goods, and hence as worthy of

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<sup>313</sup>Cf. *NLNR*, 105.

<sup>314</sup> An examination of whether the basic goods proposed by Finnis and Grisez are truly *basic* and necessary for human fulfillment is beyond the scope of this dissertation. If it could be shown that one of the purported goods was not necessary for human fulfillment, this would merely show that such a good was not a basic good and hence should be omitted from the list. So long as goods are basic, they are capable of providing motivation to the agent and hence capable of being used as a foundation for a prescriptive moral Ought.

pursuit, this is sufficient for establishing that the moral Ought is essentially prescriptive.<sup>315</sup>

### 3. Is the Ought Determinate?<sup>316</sup>

In the proceeding chapter, we considered Gewirth's objection that Aquinas's theory of natural law is not determinate. His objection is that Aquinas's theory of natural law cannot provide us with a determinate Ought because "no independent contribution" is made by reason.<sup>317</sup> Since natural inclinations can purportedly lead to the apprehension of x as good and also to the apprehension of x as not good, Gewirth concludes that these inclinations are not an adequate starting point for upholding a determinate Ought.

Since new natural law theorists start with the agent's apprehension of basic goods when trying to provide a foundation for the moral Ought, it might seem that Gewirth's objection might indicate that it is impossible to arrive at a determinate moral Ought using this approach. More specifically, Gewirth's objection seems to apply to the new natural law solution since this solution relies on each agent's first-person grasp of goods and since it is not clear that all agents necessarily grasp the same goods.<sup>318</sup> Nevertheless, provided that there are truly "basic" goods which all non-incapacitated agents grasp, it

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<sup>315</sup>Cf. *ST I-II*, 77, 2 and 94, 6. Here Aquinas insists that it is possible to know the basic precepts of natural law, that it is impossible for these basic precepts to be blotted out from the human heart, and that it is possible to know the good and cease to pursue it.

<sup>316</sup> As was the case in considering the previous solutions to the IOP, many of the issues regarding the criterion of categoricalness overlap with the issues regarding the criterion of determinacy. In addressing the question of determinacy, I will be considering the question of whether different agents might in fact grasp contradictory goods. In addressing the question of categoricalness, I will be considering the question of whether the Ought of new natural law theory pertains to *all* non-incapacitated humans who are of the age of reason. In actuality, however, these issues are almost impossible to separate when being treated in light of the NNL solution.

<sup>317</sup> Gewirth, *NLHA*, 82

<sup>318</sup> For instance, one agent might feel inclined to pursue knowledge while another may not.

would *not* be possible to substantiate Gewirth's objection. Thus, we are left with the question: Is there reason to assume that there are such goods?

As discussed above, Finnis argues that the basic good of knowledge cannot be denied without falling into an operational contradiction. Again, his claim is that anyone who attempts to argue—in a serious and rational manner—that knowledge is *not* a good, thereby implicitly acknowledges that knowledge *is* a good. It is for this reason that Finnis concludes that knowledge is in fact basic good. It is also for this reason that one might conclude that it would be impossible to have an indeterminate precept regarding the pursuit of this good. Nevertheless, Finnis's rationale for concluding that knowledge is a basic good seems to be insufficient—on its own—for concluding that all non-incapacitated agents in fact grasp that knowledge is a basic good. It could be argued that all Finnis really establishes is that *any agent who engages in argumentation* in fact grasps that knowledge is a good. As a consequence, it could also be argued that an agent who does not in fact engage in argumentation, and who does not grasp that knowledge is a good, could fail to grasp the precept that knowledge is a good and hence ought to be pursued. Moreover, it could be argued that an agent who had a distaste for argumentation and knowledge might even hold that knowledge ought to be avoided.

There are two main ways one could respond to this difficulty. First, it could be argued that although it is possible to *imagine* that there are agents who are thoroughgoing misologists and who believe that knowledge ought to be avoided, it does not seem that agents who are capable of engaging in practical reasoning could actually fail to acknowledge that at least *some* knowledge is good. Any agent who is capable of engaging in practical reasoning must be capable of recognizing that “good is to be done

and pursued”.<sup>319</sup> In addition, any agent who is capable of engaging in practical reasoning must be capable of recognizing that basic knowledge about the world is necessary if any good is to be attained. Though there may be misologists who detest certain types of knowledge, it is not possible for an agent who is capable of engaging in practical reasoning to be a *thoroughgoing* misologist. Hence, it does not seem possible that a non-incapacitated agent—who is capable of engaging in practical reasoning and who as has at least some inclinations that she wishes to fulfill— could fail to grasp that basic knowledge is good at least as a means. And from this it follows that it would be impossible for a rational, non-incapacitated agent to hold that “basic knowledge ought to be avoided”.

Another way of responding to this difficulty would be to argue that, although there is certainly no paucity of agents who detest having to undertake the oftentimes laborious task of learning, there is no reason to suppose that agents in fact detest knowledge per se.<sup>320</sup> Who that has reached the age of reason and is not mentally disabled would prefer ignorance to knowledge if knowledge were easy to attain? What agent, who happened upon a mysterious box omitting strange sounds would not want to peer inside? What agent upon hearing an extraordinary and perhaps scandalous story about a public figure would not want to know if the story was actually true? There are many people who dislike engaging in laborious study. There are also many disabled people who do not have a natural curiosity and desire to know for the sake of knowing. But it is far from clear that there are any non-disabled, non-incapacitated agents, who are capable of

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<sup>319</sup> I am here relying on Aquinas’s definition of “good” as “what all desire”. (*ST* I-II, 94, 2)

<sup>320</sup> Cf. *NLNR*, 84-85.



reasoning and who do not have at least a minimal curiosity and desire to know at least some things.<sup>321</sup> Therefore, it is also far from clear that knowledge fails in regard to being a basic good which can be—and in fact is—grasped as a good by all rational agents.<sup>322</sup>

Provided that all agents are capable of grasping that knowledge is a good, and provided that it is impossible for non-incapacitated agents *not* to hold that at least some types of knowledge are good, there is no reason to conclude that the Ought precept pertaining to knowledge is indeterminate. If new natural law theorists wished to uphold the precept that “knowledge of mathematics ought to be pursued” such a precept would be indeterminate given that not all agents see knowledge of mathematics as a good to be pursued. But this is not what natural law theorists are claiming. They are merely claiming that knowledge in general is a good. Since rational agents in point of fact seem to grasp that knowledge in general is good, there is no reason to suppose that the precept “knowledge ought to be pursued” is indeterminate.

### 3. Is the *Moral Ought* Determinate?

Since Grisez and Finnis would not admit that a consideration of only one basic good is sufficient for a *moral Ought*, we are now left needing to consider whether the Ought of new natural law theory is simultaneously *moral* and *determinate*. A full treatment of this issue would require a thorough treatment of each of the basic good individually and a proof that none of them can be denied by non-incapacitated agents. It

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<sup>321</sup>Finnis does not claim that knowledge is a good merely in the sense that it is a means to attaining other things. He clearly holds that it is a good in itself. (See: *NLNR*, 59) Thus, this second response to the above difficulty is more to the point.

<sup>322</sup> As mentioned in previous chapters, in order to be categorical, it is sufficient that the Ought is binding to all *non-incapacitated* agents.

has been argued that one of the weaknesses of Finnis's discussion of the basic goods is that—although he provides a detailed argument that knowledge is a basic good—he does not provide an adequate discussion of *all* the basic goods. Because it has been argued that some of the basic goods are not in fact basic, since it is not self-evident to all agents that they are worthy of pursuit, it could be argued that it would not be possible to provide a determinate Ought for each of them. And, since an Ought is only *moral* in Finnis's view if all of the basic goods are considered, it could in turn be argued that Finnis's version of new natural law theory cannot provide us with an Ought that is both moral and determinate. Merely establishing that it is possible to uphold a determinate Ought regarding one or only some of the basic goods would not be sufficient.

Because a full discussion of this issue would surpass the limits of this dissertation, I do not intend to argue that—as it stands—Finnis's version of natural law theory could provide us with a moral and determinate Ought. Nevertheless, I would like to suggest that, on the condition that it is possible to draw up a list of authentically basic, self-evident goods, there is reason to suppose that it would be possible to provide a moral and determinate Ought. Regardless of whether Finnis's entire list is justifiable, so long as it is possible to provide some such list of self-evident, basic goods—which are essential aspects of basic human well-being and fulfillment—it would also be possible to uphold a moral and determinate Ought.

If, for example, it could be established that knowledge, friendship, and life are necessary aspects of integral human fulfillment (i.e., basic goods) and that it is impossible for non-incapacitated agents to deny this, it would be possible to provide a determinate and moral Ought by relying on such basic goods. In other words, if it can be proved that

these three goods are necessary aspects of human well-being, that all agents are at least implicitly acknowledge this, and that the FPPR is self-evident, it would be possible to accept the following precept without deducing it from facts about human nature: (1) “One ought to pursue knowledge, friendship, and life and avoid whatever is antithetical to these goods”. It would also be impossible to accept the opposite precept: (2) “One ought to avoid knowledge, friendship, and life and pursue whatever is antithetical to these.” Moreover, provided that knowledge, friendship, and life are necessary aspects of human well-being, precept (1) would need to be categorized as moral.

New natural law theorists would do well to provide more in-depth analysis of each of the basic goods. They would also do well to provide more reasons for believing that the basic goods are in fact basic in the sense that all non-incapacitated agents in fact grasp them and in the sense that they are essential aspects of human well-being. Provided that such a list can be substantiated, it could be used to uphold a determinate moral Ought.

#### **4. Is the Ought Categorical?**

Provided that the foregoing is accurate, there would be no reason to suppose that the NNL solution could not be utilized to uphold a categorical Ought. Since Grisez and Finnis begin with the first-person perspective, the questions of determinacy and categoricalness overlap almost entirely. If all non-incapacitated agents (1) at least implicitly grasp that certain things are basic goods, (2) grasp the FPPR, and (3) are capable of recognizing that the basic goods are necessary aspects of basic human well

being, then they would all be bound by the moral Ought; and hence the moral Ought would be properly categorized as categorical.

### 5. Is the **Ought Egalitarian?**

It might seem that the>NNL approach would fail to provide an egalitarian Ought since it focuses on the first-person recognition of basic goods. Since the>FPPR and basic goods are grasped by the agent and since presumably the agent sees the basic goods as being good *for himself*, the Ought pertaining to each of the goods would be non-egalitarian. Moreover, since the agent presumably sees the basic goods taken together as leading to *his own* integral fulfillment, the specifically moral Ought would likewise be non-egalitarian. It would seem reasonable to conclude, then, that the Ought pertains to the good of the individual rather than to the common good and to the equal distribution of basic well-being among all members of society.<sup>323</sup>

Nevertheless, it is important to note that such a conclusion would fail to take into account the fact that>Grisez and Finnis explicitly claim that the>Ought of their>NNL theory is related to the common good insofar as the agent who acts in accord with it thereby fosters the well-being of others. They state: “these [practical] principles direct one to live at peace with others...and everyone knows from experience that harming others is likely to have consequences contrary to these interests.”<sup>324</sup> Their point is that if the agent lives in accord with the precepts of natural law, which are based on the>FPPR and the basic goods, the agent will in fact foster not only her own well-being but that of others as well. Their point is also that if the agent lives in accord with these precepts,

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<sup>323</sup>As in the preceding chapters the notion of an egalitarian Ought is taken from St. Thomas *ST I-II*, 94, 2 and 90,2 as well as Gewirth, *IOPR*, 35-36.

<sup>324</sup> *PPMT*, 123.

acting contrary to the well-being of people in general will be precluded. In illustrating this, they provide an example of an agent who desires to read a novel that is on a six-month waiting list at the library.<sup>325</sup> Since reading the novel would involve pursuing the basic good of aesthetic experience, Grisez and Finnis do not see anything intrinsically wrong with the agent reading the novel; but they are quick to admit that in this particular case it would not be permissible for the agent to discard the waiting list and check out the book. Such an act would be impermissible because it would fail to be in accord with the basic good of practical reasonableness. An agent who acts in a selfish, non-egalitarian manner “fetters reason by abusing one of its own practical principles.”<sup>326</sup> Moreover, since the agent would be capable of realizing that “people cannot hope to live together in harmony if they treat one another as they themselves do not wish to be treated”, the agent would also act in a way contrary to the basic good of friendship. Thus, acting in a non-egalitarian manner would be contrary to the moral Ought of NNL theory insofar as it would require acting contrary to the basic goods of both friendship and practical reasonableness.<sup>327</sup>

Elsewhere, Grisez and Finnis similarly assert that acting in accord with the moral Ought leads to the fulfillment of more than just the individual agent. They state: “... the freely chosen actions shaped by moral truth would bear fruit in the fulfillment of *all* persons in all the basic goods. This *ideal community* is what we mean by ‘integral human

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<sup>325</sup> *PPMT*, 124.

<sup>326</sup> *PPMT*, 124. This will be treated in more detail below.

<sup>327</sup> Finnis elsewhere states that “friendship involves acting for the sake of one’s friend’s purposes, one’s friend’s well-being”. (*NLNR*, 88) Since friendship is one of the basic goods that ought to be pursued, he again provides a foundation for an egalitarian Ought.

fulfillment.’ A good will is one fully responsive to thoroughgoing practical reason. Therefore, the morally good will is a will toward integral human fulfillment.”<sup>328</sup> Given that Grisez and Finnis here specify that integral human fulfillment pertains to all persons rather than merely the individual agent, there is again reason to interpret them as upholding—or at least claiming to uphold—a moral Ought that is specifically egalitarian.

If we interpret Grisez and Finnis as upholding the position that acting as one morally ought requires only that the agent seek her own fulfillment, or that it requires that the agent seeks only a few of the basic goods, we would have to conclude that there is room for a non-egalitarian Ought. But, since interpreting Grisez and Finnis in this way requires that we fail to take into account what they have in fact said, we would be unjustified in our conclusion. Since integral human fulfillment pertains to the fulfillment of all persons there is reason to conclude that the Ought is egalitarian. And since acting in accord with the *moral* Ought requires a consideration of all the basic goods—including the basic goods of friendship and practical reasonableness which in turn require that the agent refrain from acting in a selfish manner—there is reason to conclude that the *moral* Ought is egalitarian.

### **6. Is the Ought Simultaneously Moral, Prescriptive, Egalitarian, Determinate, and Categorical?**

Since Grisez and Finnis rely on the basic good of friendship when arguing that the Ought is egalitarian, it is necessary to resolve the following question before concluding that the Ought is simultaneously prescriptive, egalitarian, determinate, and categorical:

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<sup>328</sup> *PPMT*, 128. The emphasis is mine.

Do all non-incapacitated agents in fact recognize that friendship is a basic good?<sup>329</sup> If it is not the case that all such agents in fact recognize that friendship is a good, it might be still be possible to uphold an egalitarian Ought but there would be no guarantee that this egalitarian Ought would also be categorical, determinate, and prescriptive. The egalitarian Ought would not be prescriptive for those agents who failed to recognize that friendship is a good and hence worthy of pursuit. Likewise this Ought would also not be categorical since it would not be binding for the agent who did not recognize it as a good. In addition, if it turned out that some agents found the opposite of this good to be worthy of pursuit, the egalitarian Ought would not be determinate.

In discussing the basic good of friendship, Finnis argues that it is an authentically basic good, and hence capable of being recognized by all rational agents as a good. Like Aristotle, he distinguishes friendship of utility and pleasure from friendship in the full sense which “involves acting for the sake of one’s friend’s...well-being.”<sup>330</sup> He also adds that such friendship is reciprocal and “...requires that one go beyond self-love”.<sup>331</sup> When he claims that friendship is a basic good he is referring specifically to friendship in the full sense. In regard to friendship of this sort, he states,

having a friend is a basic form of good. That is to say, for any person, A, to have a friend, B, is a basic aspect of A’s well-being. He can scarcely think of himself as really well-off if he has no friends. The intrinsic value of having a true friend does not consist precisely in the services the friend may render him (though they may be valuable), or precisely in the pleasure the friend may give him (though who would not welcome that?), but in the state of affairs itself that we call

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<sup>329</sup> They also rely on the basic good of practical rationality but since this is a separate argument and since a full analysis of this good and its relationship to the present inquiry would take us too far afield, I will focus merely on friendship.

<sup>330</sup> *NLNR*, 88. For a discussion of the friendships of utility and pleasure see *NLNR*, 140-141.

<sup>331</sup> *NLNR*, 142-143.

friendship. That state of affairs itself is the source of the deep satisfaction which normally accompanies it and which is a manifestation of the intrinsic value of the state of affairs.<sup>332</sup>

Finnis's claim here is that it is part of one's own well-being to foster the well-being of others and that agents cannot really think otherwise. Although this may seem to be more of an assertion rather than an argument that friendship is a basic good, Finnis seems to be placing the burden of proof on those who wish to argue that it is not a basic good; yet this is understandable since Finnis also holds that the basic goods are self-evident goods. He is implicitly saying, "rational, non-incapacitated agents in fact are capable of recognizing, and in fact recognize, that seeking the well-being of others is a necessary aspect of attaining their own well-being." He is also implicitly agreeing with Aristotle who holds that nobody would choose to live who did not have true friends.<sup>333</sup>

Although Finnis's method may seem to be inadequate, there are reasons to believe that his conclusion is acceptable. As discussed in previous chapters, it is difficult to imagine that an agent who was purely self-seeking—and who never sought the good of others—would really attain well-being, that is, integral fulfillment. It is precisely the cantankerous loner who is suspected of lacking well-being, being mentally ill, or being incapacitated in some way. Moreover, there seems to be every reason to believe that, given the daily experience of life, acting in a purely self-seeking manner—and being deprived of authentic friendship—oftentimes has quite negative consequences.<sup>334</sup> People

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<sup>332</sup>*NLNR*, 142.

<sup>333</sup>Aristotle, *Nicomachean Ethics* 1155a5-6.

<sup>334</sup> It is important to remember that Finnis recognizes that experience plays a role in grasping self-evident principles. He does not equate self-evidence principles with principles that are known purely *a priori*.



in fact easily tire of being around those who are purely self-seeking and hence such people lack an adequate social life and the well-being that goes with it. Moreover, in order to establish that it would be possible adequately to establish that the egalitarian Ought is indeterminate and non-categorical, it would be necessary first to establish that non-mentally ill, non-incapacitated agents, who have reached the age of reason, are capable of holding that friendship is an evil to be avoided. Provided that non-incapacitated agents in fact grasp that friendship is worth pursuing and that acting in a purely selfish manner is antithetical to the attainment of friendship, the egalitarian Ought can be properly categorized as determinate and categorical.<sup>335</sup>

In conclusion, it seems that the new natural law theory is capable of upholding a robust Ought. Since there is disagreement regarding what goods can be properly categorized as *basic*, and hence capable of being grasped as goods by *all* agents, new natural lawyers would do well to continue augmenting and, if necessarily, slightly revising their theory until consensus can be attained. Nevertheless, their basic approach to resolving the IOP as it pertains to the robust Ought seems to be fundamentally successful.

<sup>335</sup>This topic will be treated in more detail in the following chapter.

## CHAPTER V

### CONCLUSION

In the foregoing chapters, we explored four fundamental solutions to the IOP. The first is to offer a counterexample to the thesis that it is not possible validly to derive an Ought from an Is; the second involves beginning from a first person grasp of what is *de facto* desired and, hence, self-evidently valued; the third is to return to an Aristotelian-Thomistic understanding of the human person; and the fourth is to begin with self-evident basic goods. The task of this present chapter is to compare these fundamental methods and attempt to determine which of them is the least problematic for the natural law theorist who desires to uphold a robust Ought. After providing a brief summary of the pros and cons of each of these approaches, I shall argue in favor of the fourth. In doing so I shall focus especially on the third and fourth approaches and include a discussion of whether the third approach bypasses relativism and also a discussion of whether proponents of the fourth are presumptuous to assert that there are self-evident basic goods. I shall ultimately argue that, while none of the solutions are problem-free, the fourth is the least problematic if we wish to uphold a robust Ought.

#### **A. Counterarguments and Natural Law Theory**

In chapter two, we considered Searle and Gewirth's attempts at providing counterarguments. Searle makes this attempt by starting with the speech act of promising while Gewirth does so by analyzing basic features of human action in general and by beginning from a first-person perspective.

Searle attempts to show that if one utters the words "I promise to do X," this entails that she has made a promise, has placed herself under an obligation to do X, is

under an obligation to do X, and—*ceteris paribus*—ought to do X.<sup>336</sup> One of the difficulties with Searle’s counterargument is that it does not provide us with a moral, categorical, determinate, and egalitarian Ought. Since it would be possible to derive “Jones ought to murder his wife” from “Jones uttered the words *I hereby promise to murder my wife*,” the Ought could not be said to be moral. Likewise, since it would be possible to derive “Jones ought to rob the poor and give to the rich” by starting with the statement “Jones uttered the words *I hereby promise to rob the poor and give to the rich*,” the Ought could not be said to be egalitarian. And, since it would be possible to derive “Jones ought to avoid murdering his wife” by starting with “Jones uttered the words *I hereby promise to avoid murdering my wife*,” the Ought could not be said to be determinate. Finally, since a particular Ought statement only obliges the persons who make promises, it cannot be said to be categorical.

In addition to these problems, Searle’s derivation is a poor model for natural law theorists since he proceeds entirely from a consideration of human nature. Irrespective of the nature of the human person, it is possible to derive various Ought-conclusions. For example, it would be possible to conclude that Jones ought to murder his children, even if such an act is contrary to human nature, provided that he utters the words “I hereby promise to murder my children”. It is not ultimately helpful to argue, as E. Wall has done, that it is possible for natural law theorists to utilize Searle’s method provided that they begin with institutions that are self-evidently morally acceptable and—in addition—

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<sup>336</sup>Searle, J.R., “How to derive ‘ought’ from ‘is’,” in *The Is—Ought Question*, edited by W.D. Hudson (London: MacMillan, 1969).

add statements about human nature.<sup>337</sup> The weaknesses of Wall's argument are: (1) he fails to provide an example of such a derivation and it is far from clear that this can be done, (2) even if he could provide such a derivation it would not be clear that the Ought would be determinate, categorical, and egalitarian, and (3) it is not clear that merely adding statements about human nature would provide a necessary grounding in human nature. In short, even if it is accepted at the outset that—in general—promise keeping is moral and part of human nature, it would not follow that: all promises are moral, that promise-keeping is egalitarian in that it has a necessary relation to the common good, or that it would be impossible to end up with indeterminate obligations. If Jones uttered, "I hereby promise to murder my wife" and Alex uttered, "I hereby promise to refrain from murder" it would not matter whether promise keeping *in general* was moral and part of human nature.

Gewirth's counterargument, unlike Searle's, begins with an analysis of basic features of human action in general and proceeds from a first person perspective. He attempts to show that *any* agent who acts in an intentional manner must implicitly acknowledge that whatever he pursues is in some way worthy of pursuit and hence valuable (since otherwise that agent would not act in the first place). Since it is a *fact* that agents *value* that which they pursue, Gewirth concludes that there is no true Fact—Value gap, even though he acknowledges that there is an Is—Ought gap. Gewirth then shows that any agent who sees something as worthy of pursuit implicitly must also acknowledge that freedom and basic well-being are of value and hence worth preserving. This is because any agent who acts, must at least implicitly grasp that he would be incapable of

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<sup>337</sup> Wall, Edmund, "Searle's Derivation, Natural Law, and Moral Relativism," *Philosophia* 36 (2008).

acting without these two goods. The goods of freedom and basic well-being, in other words, are grasped by the agent as at least instrumental goods which are needed as a means to any desired end. For this reason, the agent then must grasp that he has a right to pursuing and preserving these goods as they relate to him personally. By employing the Principle of Universalizability, Gewirth then shows that the agent must grasp that other agents also must value these two goods and, hence, have a rationale or right to pursue them.<sup>338</sup> Finally, Gewirth concludes that, given the above steps, the agent must admit that in order to be logically consistent, he must acknowledge that he “ought to refrain from interfering with the freedom and basic well-being of all prospective agents”.

Given that Gewirth’s approach begins with basic features of *human* action, and given that acting is an essential aspect of human life, his approach has more to offer natural law theorists than Searle’s.<sup>339</sup> Of course, Gewirth does not invoke the sanctions or jurisprudential claims of natural law theory. Nevertheless, provided that Gewirth is able to bridge the Is—Ought gap by beginning from the perspective of the agent, there is nothing that would preclude a natural law theorist from imitating his approach. There is an implicit grounding of the Ought in facts about human nature in Gewirth’s counterargument and, hence, this should suffice to establish that in theory it would be

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<sup>338</sup>As stated in chapter two, this Principle reads: *If some predicate P belongs to some subject S because S has the property Q (where the ‘because’ is that of sufficient reason or condition), then P must also belong to all other subjects... which have Q.* Also as stated in chapter two, Gewirth’s point is that the agent is capable of grasping the following: *I have a right to freedom and basic-well-being precisely because (i) I act for purposes that I regard as good and (ii) freedom and basic well-being are necessary in pursuing these purposes. Since others also act for purposes that they regard as good and since freedom and basic well-being are necessary if they are to act for those purposes, they too must have a right to freedom and basic well-being.* To have a “right” to X is, according to Gewirth, the same as to have a rationale for pursuing and preserving X.

<sup>339</sup> Cf. Gewirth, “Natural Law, Human Action, and Morality,” in *The Georgetown Symposium on Ethics*, ed. Rocco Porreco, (Lanham: University Press of America, 1983), 86.

possible for natural law theorists to resolve the IOP by beginning from a first-person perspective which, in turn, involves accepting that some things are *de facto* good and worthy of pursuit. What would be necessary, in addition, would be a supplemental discussion of exactly how this grasp of goods relates to human nature and the other basic claims of natural law. Thus, in short, Gewirth's approach is a step in the right direction though it would need to be supplemented if used by natural law theorists.

### **B. Beginning With *De Facto* Desires**

In chapter three we explored an approach utilized by many natural law theorists, such as J. Smith, which involves beginning from the *de facto* desires of human agents. Although Smith does not overtly claim that this approach bypasses the IOP, nor does she recognize the similarities between her approach and Gewirth's, we considered whether it in fact bypasses the IOP. Numerous formulations of a derivation of this type were proposed in chapter three. The fundamental idea was that, if all human agents in fact desire certain things, then it would be possible validly to reach a conclusion such as "All humans ought to do X" from the premises "All humans desire X" and "X is in accord with human nature". The background assumption here, of course, is that to say "You ought to do X" means "If you do X, you will attain what you seek".

One of the biggest objections to this approach is that there are not universally-desired ends—or specific things which all human agents desire—and hence this approach cannot be used to derive a categorical and determinate Ought. This objection was addressed by exploring whether freedom and basic well-being would fit the bill. Since, presumably, all human agents are capable of grasping that freedom and basic well-being

are necessary if they are to act or pursue *anything* whatsoever, and since all agents desire to pursue at least *something*, there is reason to believe that these two goods are examples of universally-desired by all human agents.

Another objection to this approach is that it would be impossible to use it to support an egalitarian Ought—or an Ought which, when followed, promotes the common good—since not all agents recognize that the common good is desirable. In response to this objection, we explored the claim of P. Foot that the only way philosophers have been able to establish that pure self-seeking is desirable for agents, is to look at examples of such behavior in *isolation* from the whole of human life. Foot's claim is that human agents are capable of recognizing that if they *consistently* act in *purely* self-seeking ways—with no consideration or concern for the good of others—they will not attain what is truly in their best interest. Provided that it is indeed the case that all non-incapacitated human agents are capable of grasping this, it would be possible to utilize this approach to reach an egalitarian Ought that is also categorical and determinate. The Ought would be categorical insofar as it would pertain to all non-incapacitated agents, determinate insofar as it would preclude acts which consistently lead away from the fostering of the common good.

At the end of chapter three, it was conceded that more work would need to be done if natural law theorists, *qua* natural law theorists, wish to use this approach to bypass the IOP. More specifically, the conclusion reached was that more work would need to be done to establish that there is a necessary relation between human nature and the universal human desire for goods such as freedom and basic well-being, as well as the goods which come from avoiding purely self-seeking behavior.

### C. Returning To the Aristotelian-Thomistic Tradition

Chapter four consisted of an exploration of the approach of those who recommend returning to an Aristotelian-Thomistic understanding of the *telos*, function, or essence of the human person. Proponents of this approach argue that in the A-T tradition, saying “X ought to do Y” is equivalent to saying “Y is the *telos*, function, or essence of X”. Once we know the *telos* of the human person, we know what the human person ought to do.

Veatch is a proponent of this view. He dismisses the possibility of basing an Ought on the desires of the agent since he does not think such a basis is a sufficient starting-point. Since basing the Ought on the desires of the agent leaves the Euthyphro question unanswered (i.e., the question of whether something is good because it is desired or vice versa) and only provides a subjective starting point, Veatch claims that it is necessary first to understand what a human being is before being able to come to an understanding of what humans ought to do.

Geach illustrates this position by pointing out that trying to determine what a human ought to do—or more precisely what a good human being is like— without first understanding the essence of the human person, is akin to trying to determine whether a mysterious object is good without first understanding what its function is. The terms “good” and “bad” are attributive adjectives rather than predicative ones. When we say that an individual person is “good,” we do not mean that she has the quality of goodness but that she fulfills her essence as a person. Geach responds to the naturalistic fallacy problem by pointing out that goodness is not a quality added to a thing but is intrinsic to the fulfillment of a thing’s purpose. For instance, a good knife is not a knife that has the



quality of “goodness” but is simply a knife that is capable of fulfilling its function of cutting.

McInerny echoes Veatch by claiming that “the dependence of the judgment that ‘X is good’ on some theoretical knowledge of X, is all but definitionally true.”<sup>340</sup> To know what a good human is and, hence, what a human ought to do, we must first know what a human is. In addition to agreeing with Veatch, McInerny tries to specify what the human person is. Like Aristotle, he identifies the function of the human person as being rational and therefore concludes that what humans ought to do is be rational which, in turn, means that they ought to practice the moral and intellectual virtues.

One of MacIntyre’s predominant contributions to the foregoing discussion is his in-depth analysis of tradition-based rationality. Borrowing from Anscombe’s insights in *Modern Moral Philosophy*, MacIntyre points out that the IOP only emerges when we divorce ourselves from the Aristotelian-Thomistic tradition. In this tradition a distinction is made between “man-as-he-happens-to-be” and “man-as-he-could-be-if-he-realized-his-essential-nature”. Moreover, in this tradition “what is good or bad for anyone or anything is so in virtue of its being of a certain kind...”.<sup>341</sup> Once we know the essence of the human person, we know what human beings ought to become, or, in other words, what the human person could and should be. Only when philosophers began doing ethics outside the A-T tradition did the IOP emerge and hence, one solution to it is to return to this tradition and its rich understanding of essence.

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<sup>340</sup> Ralph McInerny, *Aquinas on Human Action: A Theory of Practice*, (Washington D.C.: CUA Press, 1992), 191-192.

<sup>341</sup> Alasdair MacIntyre, *Three Rival Versions of Moral Inquiry*, (Notre Dame: University of Notre Dame Press, 1990).

Finally, Lisska adds to this discussion by considering the fact that human nature is dispositional rather than static. If we assume that all humans always fully act in accord with their essence, there is no sense in claiming that humans ought to act in accord with their essence. For instance, if humans are always fully rational, it does not make sense to claim that they *ought* to be rational; but if humans have a disposition to be rational and it fulfills their essence to act rationally, then it does make sense. Once we know the essence of the human person, we automatically know what the human—who has not yet realized that essence—ought to strive to become. Thus, according to Lisska, it is ultimately impossible to grasp the Ought without first understanding the facts about what the human person essentially Is.

As mentioned in chapter four, although proponents of this approach do not offer a syllogistic example of how an Ought can be derived from an Is, they would presumably accept the following: *Socrates is a human being who is rational. The function of a human being is to be rational. When we say “X ought to be Y” we mean “the function of X is to be Y”*.<sup>342</sup> *Therefore, Socrates qua human being is doing what he ought to do.* To this, Lisska would probably want to add the concept of disposition, that is, of potentiality. He would presumably accept: *Socrates (as a young boy) is potentially rational. The function of the human being is to be rational. When we say “X ought to be Y” we mean “the essence of X is Y”*. *Therefore, young Socrates ought to strive to become rational.* Provided that we know that a given agent is behaving in a way which is in accord with

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<sup>342</sup> This is a statement about the definition of Ought rather than a normative claim in itself. It can therefore be interpreted as a factual or Is-statement, rather than an Ought-statement, and this derivation can be said to be a counterexample to the “No Ought from Is” claim.

his essential function, and provided that we accept that the above meaning of Ought, there is nothing invalid about this derivation.

This overall approach has many strengths. First, and foremost, it overtly grounds the Ought in facts about human nature. On both the epistemological and ontological levels, the Ought has a basis in human nature. In order for it to be the case that *humans ought to do X*, it also must be the case that *X is in accord with human nature*; likewise, to *know* what humans ought to do, it is first necessary to know what humans essentially are. Second, this approach provides a method for deriving a universal (i.e., categorical) Ought. Given that in the A-T tradition species are eternal and unchanging, so too is the essence of the human person. Thus, the Ought does not vary from time to time. Similarly, given that *all* members of the human species are alike in that they are rational—rather than that they have some non-universal desire—the Ought does not vary from person to person.

In spite of these strengths, there are several difficulties with this approach. One of the weightiest is that in the A-T tradition the following two claims are made: (1) we cannot completely understand essences, and (2) an agent cannot be morally obligated to do X if he is invincibly ignorant of this fact. Given these two claims—even if we agree to return to the A-T tradition and only proceed from within the context of that tradition—more work would need to be done in order to establish that we can uphold an Ought that is universally obligatory for all non-incapacitated agents rather than merely obligatory for those capable of engaging in fruitful metaphysical inquiry about the essence of the human person. In short, this approach leaves us with a non-categorical Ought since it is only binding for metaphysicians.

In addition to this difficulty, which was considered in chapter four, additional problems emerge for those who wish to provide an Ought that is universal in the sense that it does not require approaching ethics from within the Aristotelian-Thomistic tradition. This concern is voiced by J. Haldane who notes that MacIntyre's approach

will be worrying to those who saw the appeal to Aristotle as marking the adoption of a kind of naturalism that would begin with an empirical-cum-philosophical anthropology and move from this to an account of the virtues as rational habits which it is necessary to possess *always and everywhere*—variation *only* appearing at the level of their application in diverse circumstances.<sup>343</sup>

Given MacIntyre's insistence upon tradition-based rationality and his coherentist epistemology, he seems to offer little to philosophers who are looking for more. If we must approach ethics from within a tradition, and only then determine normative goods, this will leave many philosophers worried that this is just another form of relativism. Haldane suspects that "given the conceptual connections between rationality and truth, and the claim that the former is immanent within, and constituted by, traditions of inquiry, it is difficult to see how truth itself can be tradition-transcendent, which is what metaphysical realism requires." Haldane attempts to interpret MacIntyre charitably but ends up admitting that he finds many of MacIntyre's claims to "lead to a relativism quite at odds with...the philosophy of Aquinas."<sup>344</sup>

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<sup>343</sup> John Haldane, "MacIntyre's Thomist Revival", *Faithful Reason: Essays Catholic and Philosophical* (London: Routledge, 2004), 18. Hereafter this will be abbreviated as *FR*. Emphasis is mine. Cf. Peter Tumulty, "A Contemporary Bridge from Facts to Values: But Will NL Theorists Pay the Toll", in *International Philosophical Quarterly* 28 (March 1988), 53-63. In this article, Tumulty states: "This particular way of bridging the fact-value gap...has implications for our understanding of NLT [that is, natural law theory]. NLT will be necessarily general in its formulations and will always depend upon the virtues of historically situated selves for its proper interpretation and application. These limitations of a revised NLT will perhaps be resisted by some NL theorists who had hoped to find in NLT a moral/legal decision procedure which functioned independently of the character and social-historical perspective of the selves who employ it." (53)

<sup>344</sup> *FR*, 28

If we interpret Aquinas, as I have done in Chapter one, as upholding general Ought-precepts which are universally binding, and differ only in respect to how they are applied in particular circumstances, it is easy to sympathize with Haldane. Aquinas claims: “truth in practical matters...is the same for all human beings...regarding the general principles.”<sup>345</sup> But MacIntyre seems to hold that there are no Ought-precepts—even general ones—that can be understood by all non-incapacitated agents and which are thus tradition-transcendent.

MacIntyre’s view is very nuanced, and it could be argued that he does leave room for the possibility that we could eventually arrive at a universal, non-relativistic Ought. In order to understand this, it will be helpful first to consider some of MacIntyre’s more recent insights. In *Intractable Moral Disagreements*, MacIntyre opts for a theory of justification in ethics that is similar to that of Thomas Kuhn’s theory of justification in the hard sciences. Kuhn acknowledges that when there are two different paradigms or theories, this results in incommensurability between the two. It can and does happen in such circumstances that “there are no shared neutral standards [which] can be identified by appeal to which the two rival contending parties could...settle their disagreements.”<sup>346</sup> According to MacIntyre, the same is true in ethics: it can and does happen that there is incommensurability between rival ethical theories such that there is no shared neutral standard which can be appealed to in resolving the incommensurability. Nevertheless, in science, it is possible in such cases to determine that one of the two rival theories is

<sup>345</sup> *ST I-II*, 94, 4.

<sup>346</sup> MacIntyre, “Intractable Moral Disagreements”, in *Intractable Disputes About the Natural Law*, ed. Lawrence S. Cunningham, (Notre Dame: University of Notre Dame Press, 2009), 37. Hereafter this will be abbreviated as *IMD*.

superior to the other. It can be determined, for instance, that Newton's physics is rationally superior to impetus theory. This happens when one theory is not only able to "provide a superior explanation of nature"—perhaps by being able to take account of anomalies in other theories while still being able to account for what is empirically observed—but is also able to explain why the other theory was bound to fail.<sup>347</sup> The rationally superior theory, then, is the theory which is able to account for what the rival theory accounts for while also being able to explain why that theory had to fail. Likewise, such is the case in ethics. When one theory is able (1) to determine why another theory had to fail and (2) more adequately to answer the questions the other theory is asking than that theory itself is able to, it can be identified as the superior of two theories.

In explicating this claim, MacIntyre looks at utilitarianism and compares it to A-T ethics. He claims that utilitarianism is beset with insurmountable difficulties because of its impoverished concept of happiness. Utilitarians claim that we ought to do that which maximizes happiness and yet this leads to indeterminacy because happiness is understood to be a mere psychological state. Utilitarians are left with ample questions about what happiness consists in, how it is best attained, and how to evaluate various types of pleasures. According to MacIntyre, A-T ethics—with its rich understanding of *eudaimonia*, human nature, and the means-end relation—is better able to answer these questions than utilitarians themselves are.<sup>348</sup>

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<sup>347</sup> *IMD*, 37.

<sup>348</sup> *IMD*, 48-50.

With this as a backdrop, it could be argued that MacIntyre does not in fact fall into relativism and that it is therefore possible—at least in theory—for him to uphold a universal, non-categorical, non-relativistic theory of ethics and ethical justification or, in other words, to uphold a non-relativistic Ought. In response to the charge of relativism, MacIntyre states,

...on occasion one tradition can advance and may perhaps be able to justify a claim to superiority over some rival tradition in respect of both rational justification and truth. To recognize that one thinks and speaks out of a particular tradition of enquiry with its own canons and standards and its own history of intellectual progress is not then to condemn oneself inescapably to some version of relativism.<sup>349</sup>

MacIntyre's basic response here is that, although all moral reasoning is tradition-dependent, and although there can be intractable and incommensurable disputes between rival traditions of moral enquiry, it is still possible to establish that one is more justified and closer to the truth than another. If ethical theory Y has questions it *cannot* answer which ethical theory X *can* answer, and if ethical theory X is able to account for why ethical theory Y is unable to answer its own questions, then ethical theory X is said to be superior (i.e., more justified and closer to the truth).

Given MacIntyre's claims, it seems that it would be inaccurate to conclude that he unqualifiedly leaves room for a non-universal or relativistic Ought. He is not unqualifiedly concluding that there are various moral theories that are in fact each equally justifiable. He is claiming, rather, that some theories are more justifiable even though there are no trans-traditional criteria by which to assess individual theories or traditions.

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<sup>349</sup> *IMD*, 35.

More specifically, he is claiming that the Ought of the A-T tradition is superior and more coherent than the Ought of utilitarianism.<sup>350</sup>

In spite of the fact that MacIntyre has responded to the accusation of relativism, numerous problems remain. He holds that one tradition can be superior to another and yet he still explicitly *denies* that it is possible to establish that "... Thomists have resources that should enable them to refute their opponents in ways that are or should be compelling to *any* rational individual, whatever her or his standpoint."<sup>351</sup> Thus, in the end, he does not assert that the Ought of the A-T tradition is trans-traditionally universal. Haldane's concern with this is that (i) either there are no truly incommensurable ethical theories which result in intractable disputes, and hence it is possible to determine that one is superior, or (ii) there are truly incommensurable ethical theories and there is no way to avoid the pitfall of relativism. MacIntyre wishes to have it both ways, yet as Haldane points out, more work needs to be done if he is to pull this off.

By way of summary, although it is possible to resolve the IOP by returning to the A-T tradition, this solution leaves us with several problems. The primary difficulty is that it only provides us with an Ought that is universal and non-relativistic if we accept the outdated Aristotelian thesis that essences are unchanging and eternal. A second difficulty is that, within the A-T tradition it is difficult at best to come to knowledge of essences. And yet a third difficulty is that it is not clear that this approach can provide us with an Ought that is unqualifiedly and trans-traditionally universal and non-relativistic.

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<sup>350</sup> MacIntyre also suggests that the A-T tradition is superior to Kantianism.

<sup>351</sup> *IMD*, 51.



#### D. “Self-Evident” Goods and Natural Law Theory

Chapter five consisted of an analysis of the new natural law approach. Finnis and Grisez, the primary proponents of this approach, argue that it is not necessary to deduce Ought-statements from factual statements about human nature in order to understand the first principle of practical reasoning (*FPPR*): “Good ought to be done and pursued and evil ought to be avoided”. They likewise argue that it is self-evident that some things—such as knowledge and friendship—are goods and, hence, that it is possible to know that such goods ought to be pursued. In other words, it is possible to understand precepts such as “knowledge ought to be pursued” and “friendship ought to be pursued” without deducing them from purely factual statements about human nature. Although such precepts do not constitute the *moral Ought* when they stand on their own, all such precepts concerning the basic goods, when taken together, do constitute the moral Ought since they are each an essential part of integral human fulfillment.

One of the most common objections to this approach is that it does not hold to the ontological and epistemological groundedness claims of natural law. Precisely because the Ought is not derived from premises concerning human nature, many have argued that it does not have a basis in human nature and so cannot properly be categorized as a *natural law* approach. In response to this objection, as discussed in chapter five, it has been argued that since our grasp of the *FPPR* and the self-evident goods stem *de facto* from our nature as human beings, the Ought is *de facto* grounded in human nature. It is, in other words, by understanding our human nature *via* a first-person awareness of our inclinations towards these basic goods, that we are capable of knowing that certain goods

ought to be pursued; and since this awareness stems from our human nature, there is an implicit grounding in nature. It has also been argued that it is possible to provide an account of the ontological relation between the Ought and facts about human nature without having to claim that it is necessary to deduce Ought-conclusions from Is-premises. The response, then, is that epistemologically there is an implicit relation between our nature and our grasp of certain things as good and worthy of pursuit; the response is also that it is possible to provide an explanation of the ontological groundedness of the Ought as a second-order activity.

The primary strength of this solution is that it seems capable of supporting a robust Ought. The Ought is moral and prescriptive since it pertains to the pursuit of basic human well-being or “integral fulfillment” which we in fact grasp as worthy of pursuit. It is categorical since it pertains to all non-incapacitated human agents who are capable of engaging in practical reasoning and, hence, of grasping both the *FPPR* and basic goods. It is determinate insofar as it precludes upholding Ought-statements that are contrary to integral human fulfillment. And, finally, provided that it is possible for non-incapacitated agents to see the relation between acting in an egalitarian manner and attaining the goods of sociability or friendship, it is possible to conclude that this approach can uphold an egalitarian Ought.

Due to the fact that many philosophers have despaired of the possibility of justifying the claim that there are self-evident principles, one of the most formidable objections to this method is that it is impossible to establish that there are in fact self-

evident principles and self-evident goods.<sup>352</sup> Finnis provides an in-depth argument for his claim that knowledge is a self-evident good; yet he fails to do this for his claim that the other “basic goods” are self-evident. Thus, one could easily object to new natural law theory by arguing against this “self-evidence” claim.

Although this is a very common objection to new natural law theory, it is important to consider this objection in light of what new natural law theorists actually claim regarding self-evidence. Many who object to this method on account of the supposed lack of self-evidence are working with an overly-stringent understanding of self-evidence. More specifically, many who make this objection seem to interpret new natural lawyers as claiming that we have an innate and *a priori* grasp of the *FPPR* and the basic goods. As mentioned in Chapter five, however, neither Grisez nor Finnis hold that the Ought is self-evident in this sense; and their argument that the *FPPR* and basic goods are “self-evident” should not be interpreted as a claim that the precepts which follow from them are analytic. They acknowledge that experience of the world is necessary in order to grasp the precepts of natural law and that we can deepen our understanding of them through theoretical reasoning.<sup>353</sup>

### **E. Conclusion:**

Aquinas claims that it is necessary to grasp the self-evident, first principle of speculative reason in order to engage in speculative reasoning and that it is necessary to

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<sup>352</sup> Here I have in mind especially Quine and MacIntyre. See: W.V.O. Quine, “Two Dogmas of Empiricism,” *The Philosophical Review* 60 (1951) and *From a Logical Point of View*, (Cambridge, Mass.: Harvard University Press, 1953), 20-46.

<sup>353</sup> See *FPPR*, 195, *PPMT*, 106, and *NLNR*, 34. For an interesting discussion of types of a priorism, see John Haldane, “Thomistic Ethics in America,” in *Logos* 3:4 (Fall 2000), 162-163.

grasp the first principle of practical reasoning in order to engage in practical reasoning.

Our grasp of these principles is the *sine qua non* of these forms of reasoning. Aquinas

states:

now a certain order is to be found in those things that are apprehended universally. For that which, before aught else, falls under apprehension, is "being," the notion of which is included in all things whatsoever a man apprehends. Wherefore the first indemonstrable principle is that 'the same thing cannot be affirmed and denied at the same time,' which is based on the notion of 'being' and 'not-being': and on this principle all others are based, as is stated in *Metaph. iv.*<sup>354</sup>

In addition, Aquinas claims that we have basic inclinations which enable us to grasp what is worth pursuing and that such inclinations stem from our nature. He states,

Now as 'being' is the first thing that falls under the apprehension simply, so 'good' is the first thing that falls under the apprehension of the practical reason, which is directed to action: since every agent acts for an end under the aspect of [good](#). Consequently the first principle of practical reason is one founded on the notion of [good](#), viz. that '[good](#) is that which all things seek after.' Hence this is the first precept of law, that '[good](#) is to be done and pursued, and [evil](#) is to be avoided.' All other precepts of the [natural law](#) are based upon this: so that whatever the practical reason [naturally](#) apprehends as [man's good](#) (or [evil](#)) belongs to the precepts of the [natural law](#) as something to be done or avoided.<sup>355</sup>

Grisez and other new natural law theorists echo Aquinas by claiming both that it is impossible to engage in practical reasoning without grasping the *FPPR* and that we in fact grasp some things as good. Those who wish to deny that there are ethical first principles, then, are left needing to explain how practical reasoning is possible; while those who do not are left with a method for bypassing the IOP.

New natural law theory—with its emphasis on first principles—is not without its difficulties. One must ask, however, whether these difficulties are as problematic as some of the ones that emerge for those who wish to return to the A-T understanding of

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<sup>354</sup> *ST I-II*, 94, 2.

<sup>355</sup> *Ibid.*

human nature and the Ought. Solutions to philosophical problems invariably lead to new problems. The question, then, is not whether there are problem-free solutions to the IOP but rather: *Which of the solutions put forward are the least problematic, most coherent, and most acceptable?* Each of the solutions explored here have something to offer and each leave us with at least some difficulties. Nevertheless, provided that there are some things which all non-incapacitated humans are capable of grasping as being worthy of pursuit, and provided that a grasp of the *FPPR* is indeed necessary if we are to engage in practical reasoning—and hence ethical reasoning—the new natural law solution is viable. Before we dismiss it in favor of returning to the A-T tradition, it is essential to ask: *What might the cost be and is this really the least problematic solution?*

## SELECTED BIBLIOGRAPHY

## PRIMARY SOURCES

- Aquinas, St. Thomas. *Summa Theologica*. Translated by Fathers of the English Dominican Province. Toronto: Encyclopaedia Britannica, 1952.
- Aristotle. *Nicomachean Ethics*. In *The Complete Works of Aristotle*. Edited by Jonathan Barnes. Volume 2. Princeton: Princeton University Press, 1984, 1729-1867.
- \_\_\_\_\_. *On Plants*. In *The Complete Works of Aristotle*. Edited by Jonathan Barnes. Volume 2. Princeton: Princeton University Press, 1984, 1251-1271.
- \_\_\_\_\_. *Generation of Animals*. In *The Complete Works of Aristotle*. Edited by Jonathan Barnes. Volume 1. Princeton: Princeton University Press, 1984.
- Grotius, Hugo. *De Jure Belli ac Pacis Libri Tres*. Translated by Francis Kelsey. New York: Oceana, 1964.
- Cicero, Marcus Tullius. *On the Laws*. Translated by Charles Duce Yonge. London: H.G. Bohn, 1853.
- \_\_\_\_\_. *On the Republic*. Translated by Charles Duke Yonge. London: G.G. Bohn, 1853.
- Plato. *The Republic*. Translated by Lane Cooper. Princeton: Princeton University Press, 1961.

## SECONDARY SOURCES

- Allen, Paul. "A Critique of Gewirth's 'Is-Ought' Derivation." *Ethics*: 92 (January 1982): 211-226.
- Anscombe, G.E.M. "Modern Moral Philosophy." *Ethics: History, Theory, and Contemporary Issues*, edited by Steven Cahn and Peter Markie, 481-493. Oxford: Oxford University Press, 2006.
- \_\_\_\_\_. "On Brute Facts." In *Ethics, Religion and Politics: Collected Philosophical Papers*. Volume 3. Minneapolis: University of Minnesota Press, 1981.
- Braybrooke, David. *Natural Law Modernized*. Toronto: University of Toronto Press, 2003.
- Brown, Montague. *The Quest for Moral Foundations*. Washington D.C.: Georgetown University Press, 1996.

- Finnis, John, and Germain Grisez. "The Basic Principles of Natural Law: A Reply to Ralph McInerney." *American Journal of Jurisprudence* 21 (1981): 21-31.
- Finnis, John. *Fundamentals of Ethics*. Washington, D.C.: Georgetown University Press, 1983.
- \_\_\_\_\_. "Natural Inclinations and Natural Rights: Deriving 'Ought' from 'Is' According to Aquinas." In *Lex et Libertas: Freedom and Law According to St. Thomas Aquinas*. Volume 30 of *Studi Tomistici*. Edited by Leo Elders and Klaus Hedwig, 43-55. Città del Vaticano: Libreria Editrice Vaticana, 1987.
- \_\_\_\_\_. *Natural Law and Natural Rights*. Oxford: Clarendon Press, 1980.
- \_\_\_\_\_. "Natural Law and the 'Is'--'Ought' Question: an Invitation to Professor Veatch." *Catholic Lawyer* 26 (1981): 266-277.
- Flannery, Kevin. *Acts Amid Precepts: the Aristotelian Logical Structure of Thomas Aquinas's Moral Theory*. Washington D.C.: CUA Press, 2001.
- Foot, Philippa. "Introduction." In *Theories of Ethics*, edited by Philippa Foot. Oxford: Oxford University Press, 1967.
- \_\_\_\_\_. "Moral Beliefs." In *Virtues and Vices: and Other Essays in Moral Philosophy*, 110-131. Berkeley: University of California Press, 1978.
- Geach, Peter. "Good and Evil." In *Theories of Ethics*, edited by Philippa Foot, 64-73. Oxford: Oxford University Press, 1967.
- \_\_\_\_\_. *The Virtues*. Cambridge: Cambridge University Press, 1977.
- Genova, A.C. "Institutional facts and Brute Values." In *Ethics* 81 (Oct., 1970): 36-53.
- George, Marie. "Aristotle vs. the Neo-Darwinians." In *Virtue's End: God in the Moral Philosophy of Aristotle and Aquinas*, edited by Fulvio Di Blassi, Joshua P. Hochschild, and Jeffrey Langan, 44-66. South Bend: St. Augustine's Press, 2008.
- Gewirth, Allan. "The 'Is-Ought' Problem Resolved." *Proceedings and Addresses of the American Philosophical Association* 47 (1974): 34-61.
- \_\_\_\_\_. "Natural Law, Human Action, and Morality." In *The Georgetown Symposium on Ethics*, edited by Rocco Porreco, 67-90. Lanham: University Press of America, 1983.
- \_\_\_\_\_. "The Normative Structure of Action." In *The Review of Metaphysics*, 25 (Dec. 1971), 238-261.
- \_\_\_\_\_. *Reason and Morality*. Chicago: University of Chicago Press, 1978.

- \_\_\_\_\_. "Replies to My Critics." In *Gewirth's Ethical Rationalism*, edited by Edward Regis Jr., 205-206. Chicago: University of Chicago Press, 1984.
- Grant, W. Matthews. "The Naturalistic Fallacy and Natural Law Methodology." In *Truth Matters: Essays in Honor of Jacques Maritain*, edited by John Trapani, 168-181. Washington, D.C. Catholic University Press, 2004.
- Grisez, Germain G. "The First Principle of Practical Reason: A commentary on the *Summa theologiae*, 1-2, Question 94, Article 2." In *Natural Law Forum* 10 (1965): 169-201.
- \_\_\_\_\_, Joseph Boyle, and John Finnis. "Practical Principles, Moral Truth, and Ultimate Ends." In *American Journal of Jurisprudence* 99 (1987): 99-152.
- \_\_\_\_\_ and John Finnis. "The Basic Principles of Natural Law: A Reply to Ralph McInerny." In *American Journal of Jurisprudence* 21 (1981): 21-31.
- Haldane, John. "MacIntyre's Thomist revival." In *Faithful Reason: Essays Catholic and philosophical*. London: Routledge, 2004.
- \_\_\_\_\_. "Thomistic Ethics in America." *Logos* 3:4 (Fall 2000), 150-168.
- Hall, Richard. "The Alterability of Natural Law." *American Catholic Philosophical Quarterly*: 55 (Autumn 1981), 474-483.
- Hare, R.M. "Universal Prescriptivism." In *A Companion to Ethics*, edited by Peter Singer, 451-463. Cambridge: Blackwell, 1991.
- Hayden, Mary, "Natural Inclinations and Moral Absolutes: A Mediated Correspondence for Aquinas." In *Proceedings of the American Catholic Philosophical Association* 64 (1990): 130-150.
- Hudson, W.D. *Modern Moral Philosophy*, 2<sup>nd</sup> Edition. New York: St. Martin's Press, 1983.
- Hume, David. *Treatise of Human Nature*. Buffalo: Prometheus Books, 1992.
- Kainz, Howard. *Natural Law: An Introduction and Re-examination*. Chicago: Open Court, 2004.
- Kerruish, Valerie. "Philosophical Retreat: A Criticism of John Finnis' Theory of Natural Law." In *University of Western Australia Law Review*, 15 (1983): 224-244.
- Lisska, Anthony. *Aquinas's Theory of Natural Law: An Analytic Reconstruction*. Oxford: Clarendon Press, 1996.



- MacIntyre, Alasdair. *After Virtue*, 2<sup>nd</sup> Edition. Notre Dame: University of Notre Dame Press, 1984.
- \_\_\_\_\_. "Intractable Moral Disagreements." In *Intractable Disputes About the Natural Law*, edited by Lawrence S. Cunningham, 1-52. Notre Dame: University of Notre Dame Press, 2009.
- \_\_\_\_\_. *Three Rival Versions of Moral Inquiry*. Notre Dame: University of Notre Dame Press, 1990.
- Maritain, Jacques. *Natural Law: Reflections on Theory and Practice*, edited by William Sweet. South Bend: St. Augustine Press, 2001.
- McInerny, Ralph. *Aquinas on Human Action: A Theory of Practice*. Washington D.C.: CUA Press, 1992.
- \_\_\_\_\_. *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas*, Revised Edition. Washington D.C.: CUA Press, 1997.
- \_\_\_\_\_. "The Principles of Natural Law." *American Journal of Jurisprudence* 25 (1980): 1-12.
- Moore, G.E. *Principia Ethica*, Revised Edition. Cambridge: Cambridge University Press, 1993.
- Murphy, Mark. "Self-Evidence, Human Nature, and Natural Law." *American Catholic Philosophical Quarterly* 69 (Summer 1995): 471-485.
- Nelson, Mark. "Is It Always Fallacious to Derive Values from Facts?." *Argumentation* 9 (November, 1995): 553-562.
- Paterson, Craig, "Aquinas, Finnis and Non-Naturalism." In *Analytical Thomism*, edited by Craig Paterson and Matthew Pugh, 171-193. Hampshire: Ashgate Publishing Limited, 2006.
- Phillips, D.Z. and H.O. Mounce. "On Morality's Having a Point." In *The Is—Ought Question*, edited by W.D. Hudson, 228-239. London: MacMillan, 1969.
- Pierce, Christine. *Immovable Laws, Irresistible Rights: Natural Law, Moral Rights and Feminist Ethics*. Kansas: University Press of Kansas, 2000.
- Quine, W.V.O. *From a Logical Point of View*. Cambridge, Mass.: Harvard University Press, 1953.
- \_\_\_\_\_. "Two Dogmas of Empiricism." In *The Philosophical Review* 60 (1951), 20-43
- Regis, Edward. *Gewirth's Ethical Rationalism*, edited by Edward Regis Jr. Chicago: University of Chicago Press, 1984.

- Searle, John R. "How to Derive 'Ought' from 'Is'." In *The Is—Ought Question*, edited by W.D. Hudson. London: MacMillan, 1969.
- \_\_\_\_\_. *Speech Acts: An Essay in the Philosophy of Language*. New York: Cambridge University Press, 1977.
- Slade, Francis, "Ends and Purposes." In *Final Causality in Nature and Human Affairs*, edited by Richard Hasking, 83-85. Washington, D.C.: CUA Press, 1997.
- \_\_\_\_\_. "On the Ontological Priority of Ends and Its Relevance to the Narrative Arts." In *Beauty, Art, and the Polis*, edited by Alice Ramos. Washington, D.C.: CUA Press, 2000.
- Smith, Janet. *Humanae Vitae a Generation Later*. Washington, D.C.: CUA Press, 1991.
- \_\_\_\_\_. "Paul VI as a Prophet." In *Why Humanae Vitae Was Right*, 519-531. San Francisco: Ignatius Press.
- Sokolowski, Robert. "What is NL? Human Purposes and Natural Ends," *The Thomist* 68 (2004): 507-529.
- Tumulty, Peter. "A Contemporary Bridge from Facts to Values: But Will Natural Law Theorists Pay the Toll?" In *International Philosophical Quarterly* 28 (March 1988): 53-63.
- Veatch, Henry. "Natural Law and the 'Is'—'Ought' Question: Queries to Finnis and Grisez." *Catholic Lawyer* (1980-81): 251-265.
- \_\_\_\_\_. and Joseph Rautenberg. "Does the Grisez—Finnis—Boyle Moral Philosophy Rest on a Mistake?" *Review of Metaphysics*, 44 (June 1991): 807-830.
- \_\_\_\_\_. "Natural Law: Dead or Alive?" In *Swimming Against the Current in Contemporary Philosophy*. Volume 20. Washington, DC, 1990.
- \_\_\_\_\_. "Telos and Teleology in Aristotelian Ethics." In *Swimming Against the Current in Contemporary Philosophy*. Volume 20. Washington, DC, 1990.
- Wall, Edmund, "Searle's Derivation, Natural law, and Moral Relativism," *Philosophia* 36 (2008): 237-249.
- Witkowski, Ken, "The 'Is-Ought' Gap: Deduction or Justification?," *Philosophy and Phenomenological Research* 36 (Dec., 1975): 233-245.

