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DO PRINCIPLES OF NATURAL LAW DEPEND ON CONCEPTIONS OF HUMAN NATURE?*

Abstract. This article deals with the "is" – "ought" question in the Thomist natural law tradition. The 20th century revival of natural law theory, in jurisprudence and political theory, has placed its foundations under scrutiny. Do principles of natural law depend on conceptions of human nature? If so – how?

Two central claims are made in this article. First, I put forth that there is no obvious position on human nature among contemporary natural law theorists. Some thinkers argue that a natural law doctrine must not rely on accounts of human nature at all. Such is the view of John Finnis, who has been particularly influential in shaping a present understanding of natural law. Several theorists of the tradition, however, find a certain kind of dependence necessary and vehemently argue against Finnis' interpretation.

I suggest, secondly, using a distinction made by David Miller, that the disagreement on human nature is not substantial, but rests on whether one speaks of "dependence" as a matter of *logical entailment*, as Finnis' does, or as *presuppositional grounding*, which seems to be the concept employed by his critics. I argue that one may safely deny that normative principles are derived from

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accounts of human nature (rejecting the former kind of dependence), while also presupposing that human nature conditions those principles (assuming dependence of the latter kind).

Lastly, I put forth two questions that arise for natural law theorists, if they wish to maintain this position.

Keywords: natural law, human nature, dependence, John Finnis, Hume's law, David Miller, logical entailment, presuppositional grounding

1. INTRODUCTION

"The rational foundations of human living, once known, need to be pursued", writes James V. Schall, a contemporary adherent to the philosophy of Thomas Aquinas (1225–1274).[1] In jurisprudence and political theory, Aquinas is known as a central figure for classical natural law theory. "Human living in all its forms," Schall continues, "including its political forms, is to be identified according to that order that seems best by nature."[2] To many, a particular reliance on nature is the characteristic element of this tradition of thought.[3]

A repeated critique, directed at natural law theory, concerns nature as a point of departure. It often amounts to a mere pointing out that natural law theory draws on accounts of human nature in order to make

[1] J.V. Schall, *The Uniqueness of the Political Philosophy of Thomas Aquinas*, Perspectives on Political Science 26(1997)2, 85–91, 90.

[2] Ibid.

[3] One of the key figures behind the Universal Declaration of Human Rights – Thomist philosopher Jacques Maritain – wrote in a similar vein: "natural law is an *ideal order* relating to human actions, a *divide* between the suitable and unsuitable, the proper and improper, which depends on human nature or essence and the unchangeable necessities rooted in it." J. Maritain, *Man and the State*, Chicago 1951, 87–88, emphases in original; cited also in A.J. Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction*, Oxford 1998, 150.

normative claims. Such a theoretical feature is, for many contemporary thinkers, an obvious drawback.

In addition, there are many authors (in favour of the philosophy of Aquinas) who confirm a link, between facts and norms, as both legitimate and foundational to natural law. Thus, a *prima facie* conclusion could be that there is a watershed – regarding the status of human nature in normative theory – that separates natural law theorists from others. The simple conclusion would be that natural law theorists recognize and draw on alleged facts of nature, while others do not.

Yet, considering the actual positions of natural law theorists, that picture seems mistaken. A number of thinkers, among them John Finnis and Germain Grisez, have come forth as opposed to statements such as Schall's above. These authors claim that it is unwarranted and untraditional for natural law thinkers to draw normative conclusions from factual observations. Rather, the starting point for normative theorizing, they argue, is basic principles (goods) provided by reason.

While Finnis' theory has become influential, and within jurisprudence representative of the classical natural law tradition, his and Grisez' impasse has given rise to controversy among natural law theorists. Several authors have criticized Finnis and Grisez for breaking, rather, with Thomist thought.[4] Anthony Lisska suggests that their arguments could "undermine the role of essence in traditional natural law moral theory."[5] Russell Hittinger, on his part, refers to the position of Finnis and Grisez as "new" natural law theory, arguing that their position is neither inherent to the tradition, nor desirable.[6]

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[4] R. McInerny, *The Principles of Natural Law*, American Journal of Jurisprudence 25(1980)1, 1–15; H. Veatch, *Natural Law and the "Is" – "Ought" Question*, Catholic Lawyer 26(1981), 251–65; R. Hittinger, *A Critique of the New Natural Law Theory*, Notre Dame 1989; A.J Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction*, Oxford 1998. In a line, illustrating for this critique, commentator David Gordon writes that "Natural law not based on human nature: that is indeed Hamlet without the Danish Prince." D. Gordon, *New But Not Improved*, The Mises Review 5(1999)4.

[5] A.J Lisska, op. cit., 163.

[6] R. Hittinger, op. cit.

In this article, I make two central claims. First, I put forth that the position on human nature in natural law theory is not clear-cut. A representative controversy between contemporary natural law theorists is outlined for this purpose. The critique against Finnis is here structured by three arguments formulated by Henry Veatch.

Secondly, using a distinction made by David Miller, I suggest that the disagreement on human nature is not substantial, but rests on whether one speaks of "dependence" as a matter of *logical entailment*, as Finnis' does, or as *presuppositional grounding*, which seems to be the concept employed by his critics.

Miller's argument originally related to similar discussions, taking place within other theoretical frameworks. Many a liberal theory, for instance, although these are theories in the academic mainstream, struggle with the meta-theoretical status of human nature.[7]

I argue that also natural law theorists may safely deny that normative principles are derived from accounts of human nature (rejecting the former kind of dependence), while presupposing that human nature conditions those principles (assuming dependence of the latter kind). Lastly, in this article, I put forth two questions that arise for natural law theorists, if they wish to maintain this position.

2. NATURAL LAW THEORY AND HUME'S LAW

What, we shall ask initially, is the origin of the debate on nature among natural law theorists?

Most objections to Finnis and Grisez have one fundamental, historically rooted, disagreement at its core. The disagreement regards whether

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[7] An immediate example would be John Rawls' contested standpoint in *A Theory of Justice*; he there claims that "the fundamental principles of justice quite properly depend upon the natural facts about men in society" and that "there is no objection to resting the choice of first principles upon the general facts of economics and psychology". This view has been questioned, by e.g. G.A. Cohen, and a relevant scholarly discussion stems from it. I here draw attention to an equivalent in the field of natural law theory. See J. Rawls, *A Theory of Justice*, Boston 1971, 158–159. See also D. Miller, *Political Philosophy for Earthlings*, in: *Theory: Methods and Approaches*, ed. D. Leopold and M. Stears, Oxford 2008, 32.

the principle established by David Hume (1711–1776), which states that we cannot derive an "ought" from an "is", should be accepted. In this section, I will introduce Hume's concern, and in the following section, account for Finnis' expressed allegiance.

In *A Treatise of Human Nature* (1738), Hume contemplated the following: "In every system of morality, which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surprised to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, it is necessary that it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it."[8]

The point Hume wants to make regards propositional logic. We shall only entertain a minimal understanding of it here.

A valid argument will, when its premises are true, also produce a true conclusion. As in the following syllogism:

P1: All Scandinavian states are monarchies
P2: Sweden is a Scandinavian state

C: Sweden is a monarchy

If we know P1 and P2, we can (given they are true) hold C as true by deduction. If we allowed for non-logical words (such as "monarchies" and "Sweden") to be replaced by others, the statements would not necessarily remain true, but the formal argument would still be valid.[9]

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[8] D. Hume, *A Treatise of Human Nature*, III, i, 1, cited in J. Finnis, *Natural Law and Natural Rights*, Oxford 1980, 36–37.

[9] It would remain formally valid, as long as every particular, non-logical word is replaced by one and the same word, and as long as the latter belongs to the same

A logical word (one which relates non-logical words to one another), however, must not, if the argument is to remain valid, be replaced by a different copula (expressing "some new relation or affirmation").[10] Hume remarks – with regard to the moral systems he encounters – that many arguments (nonetheless) run as follows:

P1: All Scandinavian states are monarchies
P2: Sweden is a Scandinavian state

C: Sweden should be a monarchy

In the altered example, the logical word "is" has been exchanged for "should be", why the conclusion, here, does not necessarily follow from the premises. With regard to the example provided, many of us apprehend the incoherence intuitively, regardless of our familiarity with specific rules of logic. Often, however, arguments are laid out in a more complex way, as Hume's own argument implies, whereby this sort of move escapes our notice. Hume's principle reiterates that we cannot, formally, derive an "ought" from an "is" in this manner.

Now, while the Finnis-Grisez school[11] affirms that the principle should be accepted, their opponents within the natural law tradition understand it as a misleading torch of the Enlightenment. Ralph McInerny comments, for example, that the insistence of "a distinction between the normative and the factual, [between] is and ought," has "a certain

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semantic category as the former. D. Follesdal, L. Walloe, J. Elster, *Argumentationsteori, språk och vetenskapsfilosofi*, Stockholm 2001, 292.

[10] This rule was later formulated by Bernard Bolzano (1781–1848).

[11] It would include Joseph Boyle (see e.g. G. Grisez, J. Boyle, J. Finnis, *Practical Principles, Moral Truth, and Ultimate Ends*, The American Journal of Jurisprudence 32(1987)1, 99–151), see also *inter alia* R.P. George, *In Defense of Natural Law*, Oxford 1999; W.E. May, *Germain Grisez on Moral Principles and Moral Norms: Natural and Christian*, in: *Natural Law and Moral Inquiry: Ethics, Metaphysics and Politics in the Work of Germain Grisez*, ed. R.P. George, Washington, D.C. 1998; P. Lee, *Comment of John Finnis's Foundations of Practical Reason Revisited*, American Journal of Jurisprudence 50(2005)1, 133–138.

dated charm about it."[12] The Humean point is, on this view, irreconcilable with – or irrelevant to – any enquiry drawing on Aquinas.

3. FINNIS ON THE "IS" – "OUGHT" QUESTION

Not only McInerny's, but a common understanding of natural law theory – within as well as outside the tradition – is that "any form of a natural-law theory of morals entails the belief that propositions about man's duties and obligations can be inferred from propositions about his nature".[13] At the same time, textbook knowledge (in contemporary moral and legal philosophy) has it that this outlook prevents, or has prevented, natural law theory from being taken seriously. Finnis' proposed approach is, likewise, marked by an understanding of natural law as widely, and fundamentally, discredited due to a purported reliance on human nature.[14]

In one passage of *Natural Law and Natural Rights* (1980) Finnis means to answer the critical, rhetorical question whether "natural lawyers" have "shown that they can derive ethical norms from facts".[15] Finnis answers it, notably, by rejecting the ambition altogether. He writes (on the subject of natural lawyers): "They have not, nor do they need to, nor did the classical exponents of the theory dream of attempting any such derivation."[16] Although he devotes few sections to this question, the argument has received comparatively much attention from natural law theorists. We shall therefore consider it in more detail.

On the one hand, on Finnis' account, we get those thinkers that he holds to be misconceived – such as D.J. O'Connor, who believes that for Aquinas "good and evil are concepts analyzed and fixed in metaphysics

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[12] R. McInerny op. cit., 7–8.

[13] D.J. O'Connor, *Aquinas and Natural Law*, London 1967, 68; cited in J. Finnis, *Natural Law and Natural Rights*, op. cit., 33. See also A.J Lisska, op. cit., 145.

[14] Veatch insists, here, that Finnis is victim of an "Oxbridge superstition" that renders an extraction of norms from facts, or an "ought" from an "is", the "capital philosophical offense in England today." H. Veatch, op. cit., 252.

[15] J. Stone, *Human Law and Human Justice*, Stanford 1965, 212; cited in J. Finnis, *Natural Law and Natural Rights*, op. cit., 33.

[16] J. Finnis, *Natural Law and Natural Rights*, op. cit., 33.

before they are applied in morals".[17] On the other hand, we get Finnis' own central point: that the first principles of natural law specify "basic forms of good", which in turn "can be adequately grasped by anyone of the age of reason (and not just by metaphysicians), are *per se nota* (self--evident) and indemonstrable."[18] On these basic forms of good (basic goods), we should understand it, one grounds one's moral reasoning, whether one is aware of it or not.

The list of basic goods is itself subject to a discussion that will not be treated in this article. Among the goods are usually the values of e.g. life, knowledge and friendship.[19] Importantly, it is to be understood as a normatively significant, not merely descriptive, account of the human being. Basic goods are said to be "pre-moral", in the sense that the values do not prescribe (or prohibit) particular actions, yet constitute the starting point for normative enquiry.

The attentive reader might have noticed that, in fact, Finnis could potentially be objecting to two different ways of trying to derive indemonstrable goods from nature of some kind. O'Connor mentions both a human nature and metaphysics, respectively. In the literature, these categories might label entirely different things (as when metaphysics refers to a divine reality), while sometimes they are used synonymously. We shall not delve too deep into this matter here. We will assume that, since metaphysics is concerned with the fundamental nature of all being, the discipline is at times directly (and sometimes less) concerned with the nature of the human being.[20] The aspiration of this article is

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[17] D.J. O'Connor, op. cit., 19; cited in J. Finnis, *Natural Law and Natural Rights*, op. cit., 33.

[18] J. Finnis, *Natural Law and Natural Rights*, op. cit., 33, emphasis in original. He refers to Aquinas, *Commentary on Aristotle's Nicomachean Ethics*, V, lect. 12, para. 1018; *Summa Theologiae*, I–II, q. 94, a. 2; q. 91, a. 3c; q. 58, aa. 4c, 5c.

[19] This list has been modified over the years, Finnis' original list (which seems to hold sway in the field despite Finnis' later modifications) can be found in J. Finnis, *Natural Law and Natural Rights*, op. cit.

[20] Philosophers of the metaphysical branch may ask: "What is there?" and "What is it like?", and answer by defining fundamentals such as time, space and causality, or suggest basic categories of being.

exclusively to deal with the relationship that normativity may or may not have to factual conceptions of human nature.

Yet, Finnis does not take different views depending on whether we are talking about the one or the other. Concrete ethical principles (of right and wrong) are derived from basic forms of good, as mentioned above. And these are neither inferred from "speculative principles" (metaphysics), nor from facts about human nature. They are claimed to be underived. What is considered natural, with regard to these principles *qua* goods is that they, rather than being deducible from metaphysics or human nature, come natural to *reason*.[21]

The question *how* a certain kind of normativity comes natural to reason does, of course, remain. Finnis' attempted answer, here, is that when intelligence is "discerning what is good, to be pursued (*prosequendum*), [it] is operating in a different way, yielding a different logic, from when it is discerning what is the case (historically, scientifically, or metaphysically)".[22] In another central paragraph, he argues: "Aquinas considers that practical reasoning begins not by understanding [human] nature from the outside, as it were, by way of psychological, anthropological or physical observations and judgments defining human nature,[23] 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. (…) Rather, 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)."[24]

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[21] The idea that the concept of natural reason characterizes natural law theory, together with universality and superiority, seems to have made its way into recent introductory literature on jurisprudence, where Finnis is also presented as an authority, see e.g. R. Wacks, *Understanding Jurisprudence*, Oxford 2012, 15. This is not to say that the Finnis-Grisez school is the first to argue in that vein: Cicero (106–43 BC) has Laelius make a similar point in *De Re Publica*, Liber III.

[22] J. Finnis, *Natural Law and Natural Rights*, op. cit., 34.

[23] Finnis objects to O'Connor, who writes that "the theory of natural law (...) turns on the idea that human nature is constituted by a unique set of properties which can be understood and summed up in a definition." D.J. O'Connor, op. cit., 15.

[24] J. Finnis, *Natural Law and Natural Rights*, op. cit., 34, emphases added.

According to this view, then, most people can realize that life, knowledge, friendship, etc. is valuable because we share individual inclinations to these things. And the insight that a specific inclination represents some form of good (foundational for normative reasoning), Finnis insists, is not based on any preceding premise. It simply takes place, non-inferentially.

Below, I account for three kinds of objection that have followed as this view has been expressed. The objections have all been put forth by Henry Veatch; however, contributions of other scholars seem to tap into at least one of these.[25]

The first is a basic rejection of the suggested independence of ethical, i.e. normative, theory from accounts of human nature. The second builds on this critique and holds, defending the idea of dependence, that human nature consists in potentialities, rather than facts. The third objection points to Finnis' own reliance on "inclination" in ethical theorizing as an inconsistency.

Objection 1: Ethics is not an independent discipline

The first of Veatch's objections addresses the (degree of) autonomy, or independence, of ethical theory from conceptions of human nature, starting from the possible "logical 'deducibility' or 'inferability'" of ethics from anthropology (and metaphysics, on Veatch's account). He claims that Finnis, in denying this possibility, understands deduction and inference in a "straitened and overly technical sense".[26]

It is incorrect, Veatch argues, to consider ethical principles to be deducible in the way "principles of arithmetic are simply deducible from those of logic". For "one science or discipline might be radically dependent upon another for the very intelligibility of its first principles, and yet not be considered merely 'deducible' from that other."[27]

An immediate question, then, is whether it is mutually exclusive to consider ethical principles to be deducible from basic goods (and not

[25] See e.g. R. McInerny op. cit., R. Hittinger, op. cit..

[26] The sense Veatch wants to avoid here is, reportedly, one sometimes "associated with modern logic." H. Veatch, op. cit., 254–255.

[27] H. Veatch, op. cit., 255.

from facts) and to acknowledge the sort of dependence on fact described by Veatch.

In *Natural Law and Natural Rights*, accounting for the idea that there are indemonstrable basic goods, Finnis makes pedagogical use of what he understands to be "the good of knowledge".[28] In an article directed to Veatch, he refers to his original argument, and states: "In denying that the good in question can be demonstrated or inferred, I also denied that 'there are no pre-conditions for recognizing that value.'"[29] A prerequisite, Finnis thinks, for being able to grasp the value of truth, or knowledge, as obvious, is that one's nature is such (namely, human) as to enable e.g. the experience of "the urge to question", "the advantage of attaining correct answer", and so on.[30]

If we accept this position, then basic goods – in a Thomist analysis – should be understood as indemonstrable (and *in this way*, independent of facts or premises). Yet, facts of human nature will still have bearing, according to the natural law theorist, on which those goods turn out to be.

In order to distinguish these two understandings of dependence, we could employ two categories suggested by political theorist David Miller. The distinction appears in an exchange with G.A. Cohen, who similarly to Finnis objects to fact-dependent principles. Miller observes that in the examples Cohen uses, "facts ground principles by virtue of being premises in a relationship of *logical entailment*."[31] Miller argues, further, that there are other ways in which facts may ground principles. One of them, which should be of interest to us, he refers to as *presuppositional grounding*. In such a case, although A does not entail B, "A's being true is a necessary condition of B's being true."[32] Here, we may conclude that Finnis agrees with Veatch that we could not appreciate

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[28] J. Finnis, *Natural Law and Natural Rights*, op. cit., III.4.

[29] J. Finnis, *Natural Law and the "Is" – "Ought" Question: An Invitation to Professor Veatch*, Catholic Lawyer 26(1981), 266–77, 267; see also J. Finnis, *Natural Law and Natural Rights*, op. cit., 65f.

[30] J. Finnis, *Natural Law and Natural Rights*, op. cit., 65; J. Finnis, *Natural Law and the "Is" – "Ought" Question: An Invitation to Professor Veatch*, op. cit., 267.

[31] D. Miller, op. cit., 33, emphasis added.

[32] Ibid., 34.

certain goods, were it not for a common nature that allowed us to do so: "the goodness of all human goods (and thus the appropriateness, the *convenientia*, of all responsibilities) is derived from (i.e., depends upon) the nature which, by their goodness, those goods perfect." Those goods "would not perfect that nature were it other than it is."[33]

An alternative way of classifying these two claims would be to say that the first concerns epistemology – how we come to know of principles, while the second regards ontology – what there is that sustains them.[34]

We could then have reason to believe that Finnis and Veatch are not in genuine disagreement. Although "deduction" might not be the correct term, Veatch wishes to point to the "dependence" of a basic good (such as the good of knowledge) on a conception of human nature "for its proper intelligibility"[35], presuppositionally or ontologically speaking. This, while for Finnis, who is meticulous with any use of the term "deduction" (or "inference", which he equates with it), the relevant dependence is epistemological, and concerns the possibility to come to know of the goods by logical entailment.

Objection 2: The "is" of human nature has an "ought" built in to it

With his second objection, Veatch questions the assumption that conceptions of human nature *are* merely factual. "Finnis and Grisez," he writes, "charge traditional, professed natural-law moralists with conceiving human nature in a purely static manner."[36] Veatch agrees, here, that many of the thinkers they criticize do "conceive human nature and the nature of man largely on the model of the nature of purely

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[33] J. Finnis, *Natural Inclinations and Natural Rights: Deriving "Ought" from "Is" According to Aquinas*, in: *Lex et Libertas*, ed. L.J. Elders, K. Hedwig, Studi Tomistici, Pontificia Accademia di S. Tommaso 30, Vatican City 1987, 45–47. See also R.P. George, op. cit., 86.

[34] Robert P. George will make a distinction between an "epistemological" and an "ontological" mode of analysis. R.P. George, op. cit., 86. This terminology may obscure, however, an important issue at hand: that some scholars wish to grant presuppositionally grounded facts epistemological standing.

[35] H. Veatch, op. cit., 255.

[36] Ibid., 256.

geometrical figures."[37] And he owns that, accordingly: "one might be tempted to argue that since it is contrary to nature for a human being to walk on all fours, it is therefore wrong for a human being to so walk (…) Quite patently, though, inferences of this sort would be clear cases of an illicit process from 'is' to 'ought' or from the natural or the unnatural to the right or the wrong."[38]

Veatch insists, nonetheless, that although "certain so-called natural--law thinkers" deserve this critique, "such criticisms are not necessarily warranted with respect to any and every apparent inference from nature to norms."[39] The difference, he argues, "lies precisely in the fact that change is relevant to the nature of a human being"; man is a creature who by his nature is subject to development (so the argument runs), one of which he is co-responsible.[40] Veatch argues thence: "Finnis and Grisez can no longer say that the introduction has been made from »is« to »ought« through an illicit process. On the contrary, *the very »is« of human nature has been shown to have an »ought« built into it*. It is impossible to determine what a human being, just as a human being, really is in fact without determining what he might be or could be – without taking account of a man's potentialities and actualities toward which those potencies are oriented."[41]

Veatch does not fully explain why it is that change or development in a human being implies an "ought". Yet, we are able to understand his conclusive position – that the conceptions of human nature (of relevance here) are inherently normative, why inferences from nature to norms would result unproblematic. According to this argument, it is Hume, or the Humean, that should learn better, not the natural law theorist.

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[37] With regard to geometry, suggests Veatch, "we might say that it is contrary to the nature of a square that its size could be doubled by doubling the length of its sides." The nature of a square is thus not subject to change or development, and can therefore be educed to its formal cause. Ibid., 256–7.

[38] Ibid., 257.

[39] Ibid., 257.

[40] Ibid., 257–8.

[41] Ibid., 258, emphasis added.

In Veatch's wording, the dilemma Finnis and Grisez are concerned by is "dissolved".[42]

This is not the place to discuss the concepts of potentiality and actuality in Thomist thinking. Here, we will simply assume that these concepts do (successfully) build an "ought" into an account of human nature. If this is so, it also means that what was previously defined as a factual premise (a conception of human nature) now includes the indispensable ought, required for deduction.

This fulfills, in its own way, the initial Human condition for normative reasoning. Veatch's argument would thus correspond to the position, held by Finnis as well as Cohen, that one cannot derive an "ought" from a mere "is". It is likewise in line with Finnis' view as regards logical entailment. If we take the second objection seriously, then, what dissolves seems to be the disagreement within the natural law tradition, rather than Hume's law or any pertaining dilemma.

Objection 3: Finnis' account of inclinations conveys a naturalistic fallacy

A third objection concerns the identification of the good by "inclination".

A formal principle, or precept, with regard to natural law was formulated by Aquinas as: "Bonum est faciendum et prosequendum, et malum vitandum",[43] which Grisez has translated into: "Good is to be done and pursued, and evil is to be avoided."[44] A natural law doctrine, in turn, purports to answer what should count as rightful or wrongful acts, on the basis of an account of the good.

Yet, one's fundamental capacity to define specific acts as right or wrong, according to the theory of Finnis and Grisez, does not depend on one's coming across some moral doctrine or other. Neither is it thought

[42] Ibid., 259.

[43] T. Aquinas, *Summa Theologiae*, I–II, 94, 2c.

[44] G. Grisez, *The First Principle of Practical Reason: A Commentary on the Summa Theologiae 1–2, Question 94, Article 2*, Natural Law Forum 10(1965)1, 168–201, 168. The translation "is to be" (rather than "should be") is meant to correspond better to the Latin gerundive form we find in "est faciendum" et c.

to rely on particular intuitions – "insights without data".[45] Rather, they argue that human persons have natural inclinations, as described above, understood as "natural dispositions toward what will fulfill their potentialities".[46] These dispositions are *experienced*, seen as providing "data" for insight regarding basic goods. Finnis will thus point to an initial "'induction' of indemonstrable first principles of practical reason (i.e. of natural law)".[47] Knowledge of such goods, or first principles, does not immediately imply that certain acts should be considered rightful and some wrongful; but they constitute a normative foundation, a list of what is at stake (such as life, knowledge and friendship), for any human person.

On Veatch's view, the referring to inclinations – in order to evidence basic goods – is to resort to one's desires in order to determine whether something really ought to be pursued. He recalls Plato's *Euthyphro*, where Socrates "raised the question whether a thing is said to be good because it is beloved of the gods; or rather is it beloved of the gods because it is good? [sic]"[48] The analogy points, in this case, to the difference between a subjectivist view, where a thing is good for me if and because I define it so, and an objectivist view, where a thing is objectively good for me, or not, regardless of my opinion. For instance, according to a subjectivist view, to collectively hold goods as basic would be a matter of aggregated preferences (a summing up of individual desires), rather than genuinely shared values. A natural law doctrine, faithful to its own standards, should rather adhere to the objectivist view.

Veatch's claim, then, is that the approach of Grisez and Finnis implies adherence to the former alternative. In that case, things are not considered good for any other reason than that men happen to desire

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[45] G. Grisez, J. Boyle, J. Finnis, op. cit., 108.

[46] Ibid.

[47] J. Finnis, *Natural Law and Natural Rights*, op. cit., 77; J. Finnis, *Natural Law and the "Is" – "Ought" Question: An Invitation to Professor Veatch*, op. cit., 268.

[48] H. Veatch, op. cit., 262. Formulations of the "Euthyphro dilemma" vary slightly. In the dialogue, Socrates asks: "Is the pious loved by the gods because it is pious, or is it pious because it is loved?" (*Euthyphro*, 10a, in: *4 texts on Socrates*, ed. and transl. T.G. West, G. Starry West, Ithaca 1998.)

them. For Veatch, to "perpetrate such an inference would be to commit the 'is' – 'ought' fallacy."[49]

If Veatch is correct, it implies that the natural law theory proposed by Grisez, Finnis and like-minded thinkers is both 1) a deviation from the natural law tradition as it embraces subjective preferences, or desires, as a source of normativity, and 2) incoherent, as it comprises the naturalistic fallacy the authors mean to avoid.

Now, if inclinations are to be seen as an expression of subjective desires, then we will have to ascribe to Finnis and Grisez a naturalistic fallacy, according to their own standards. That question cannot be satisfactorily dealt with here.

We may ask, nonetheless, whether the idea of inclinations does not correspond to the idea of potentialities proposed by Veatch himself in his second objection. One of the provided definitions of the natural inclinations of human persons was: "natural dispositions toward what will fulfill their potentialities".[50] This could imply that the inclinations should have an "ought" built in to them, on Veach's own view.

This article does not cover all questions that arise, as we deal with the concept of human nature in natural law theory. We do not know whether there actually are such things as natural dispositions or inclinations in individuals that point to objective potentialities or goods. But we seem to have gathered enough evidence to say that a specific dispute within the natural law tradition, with regard to so-called "new" natural law theory, is insubstantial.

Authors on both sides of this pseudo-dispute seem to deny that normative principles are derived from accounts of human nature, given that the latter are merely factual. All seem to presuppose, furthermore, that human nature, as a matter of *fact*, does condition such principles. Below, I will summarize and discuss these findings.

[49] H. Veatch, op. cit., 262.

[50] G. Grisez, J. Boyle, J. Finnis, op. cit., 108.

4. CONCLUSIVE DISCUSSION

At the beginning of this article, we detected one camp in natural law theory, championed by Finnis and Grisez, that rejects a certain idea: that normative principles depend on conceptions of human nature. We also identified a camp, here represented by Veatch, which meant to object to their position.

This disagreement between natural law theorists, as analysed above, appears unsubstantial in at least one respect. If dependence is understood as logical entailment, then none of these authors believes that normative principles can be inferred from factual statements on human nature. A statement including an "ought" must always be included among the premises. If dependence is understood as presuppositional grounding, on the other hand, all of these authors believe that there is a common human nature that conditions specific normative principles. If human nature were different than it is, so would our principles. It is not the case that these two views are mutually exclusive. I.e., one may safely deny that normative principles are derived from accounts of human nature, while also presupposing that human nature determines which principles will make sense.

This conclusion does not leave us without further questions. At least two issues arise for natural law theorists, if they wish to maintain this position.

If natural law theory is not characterized by inferences from nature to norms, then what does set natural law theory apart from other traditions of thought? This is a "naïve" question, in the sense that a vast literature handles this question already, from a variety of angles. But it must arise, if one considers only the findings of this short study. One sort of objection to Finnis' approach has been to say that what he "has done is, in effect, to adopt a method of argument common to contemporary analytical philosophy" and to centre his energies on "what counts for a good argument". This would in turn make it "similar structurally to the method used by Rawls and Dworkin".[51] Finnis' view that goods

[51] A.J Lisska, op. cit., 160.

are natural, because they come natural to reason, does not *prima facie* make him much different from a number of liberal moral theorists.[52]

My reflections on this matter must remain minimal and insufficient. There could be several things together that render natural law theory different from other schools of thought. On all occasions, however, it should not be desirable that criteria regarding the employment of reason and good argument be any different, from e.g. mainstream liberal theory, if these are as basic as to demand consistency and adherence to the rules of logic.

Yet, there are important fundamental differences. It is, for example, one thing to say that it is reasonable to justify claims on the basis of individuals (and more or less, their interests), as liberals like Rawls and Dworkin do, and quite another thing to justify them on the basis of independent values, as in natural law theory. The distinction will not be lingered on here, but it is *the kind of* distinction we should be interested in, if we wish to establish what sets natural law theory apart from other theories.

A second question regards the relationship between natural law theory and tradition. As stated above, I have not set out to further explore Aquinas' idea of potentialities. We may, however, perceive it as a background notion when Veatch and Finnis wish to establish basic goods, or "oughts" of human nature, respectively. What status are authorities of a tradition, its canonical exponents, to be given?

We are able to distinguish, here, if not a genuine disagreement among natural law theorists, then a possible *tension* as regards the uncovering of basic goods or "oughts". Finnis and Grisez will start out from *personal introspection*, whereby one (still on the basis of experience) is able to identify a number of goods. The presupposition regarding a common human nature will have one conclude that the goods are good for oneself, and "others like one" (namely, all human beings). In this case, the extent to which the natural law corresponds to an account provided by some tradition, also subscribing to the natural law, is an important but secondary question. A tradition may deepen our understanding of

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[52] See e.g. J. Rawls, op. cit., R. Dworkin, *Taking Rights Seriously*, Boston 1978; T. M. Scanlon, *What We Owe to Each Other*, Boston 1998.

basic goods, but the starting point for normative enquiry remains the person herself.

Finnis' and Grisez' adversaries, on the other hand, who remark e.g. that "good and evil are concepts analysed and fixed in metaphysics before they are applied in morals" (O'Connor) and that "one science or discipline might be radically dependent upon another for the very intelligibility of its first principles" (Veatch), are implying that there is another possible starting point, namely the employment of *authoritative texts*. Putting less emphasis on conscious effort to read, one could even point to the experience of a common culture. Personal reflection (which might have a tradition's members turn to other texts of the same tradition, or result in reinterpretations) is here secondary, indispensible as it may be.

One area of interest thus concerns the uniqueness of Thomist natural law theory, if it does not derive principles from accounts of human nature. A second area concerns the role of tradition and authority, given the account of natural reason provided by the Finnis-Grisez school. Above, these areas amount to large and open questions, which this article leaves unanswered. Hence, I suggest the closing of one particular disagreement – regarding whether principles of natural law depend on conceptions of human nature – while anticipating several others.

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