

Introduction

Natural Law and the Theory of Practical Rationality

0.1 Natural Law Theory as an Account of Practical Rationality

The theory of practical rationality is fundamentally concerned with two types of evaluations with respect to action: that of *intelligibility* and that of *rationality*, or *reasonableness*.¹ This book is a formulation and defense of a natural law account of practical rationality. We may begin, then, by considering briefly the notions of intelligible and rational action, and noting what theses concerning intelligible and rational action are essential to the defense of a natural law account of practical rationality.

For something to be intelligible is for it to make sense, to be something that can be understood. But an item can be considered in different ways, and thus may be intelligible in one respect while lacking intelligibility in a different respect. There are different ways to consider human action, and correspondingly different senses in which human action can be intelligible. It is thus crucial to be clear about the sense of intelligibility that is central to the theory of practical rationality. The performance of an action can be considered simply as behavior, and can be intelligible merely as such: it might be understandable as the outcome of the conjunction of a determinate set of antecedent conditions with the totality of psychological laws. But even if all human actions were intelligible in this way, in that they could be understood as behaviors, there would still be a sense of intelligibility in which some human actions might yet fail to be intelligible.

Consider, for example, a person who is stabbing himself in the leg with a fork at regular intervals. When asked about this – is this some extreme form of acupuncture, enabling the relief of a nagging injury? is this an experiment to determine to what extent the human can withstand pain? is this a sacrificial religious ritual of some sort? – the agent rejects all of these suggestions; he is aiming simply to stab himself in the leg. I take it that there is a clear sense in which we would find this behavior unintelligible, even if we were able to diagnose precisely what is the case with respect to this agent's physical condition that

gives rise to this peculiar behavior. Even if intelligible with respect to its etiology – the behavior might be locatable within a true, comprehensive descriptive theory of the springs of human action – it would not be, as I shall say, *practically* intelligible: we cannot understand what the agent is *up to*, we cannot see a *point* to his actions, we cannot see that what he is doing is in any way *worth doing*.

For an action to be practically intelligible is, I propose, for it to be an action that is worth performing under the description under which it is performed; it must be possible to offer what Anscombe calls a “desirability-characterization” with respect to which the action is a choiceworthy one (Anscombe 1957, p. 71; see also Norman 1971, pp. 53–55, 63). For an action to be practically intelligible is for it to have a worthwhile point, something that makes the action worth doing. The first task of a theory of practical rationality is, then, to provide an account of what makes actions practically intelligible. What the theory of practical rationality must provide, that is, is an account of *reasons for action*: for a reason for action just is whatever it is that confers intelligibility on action. Such a theory must identify what reasons for action there are and must characterize as fully as possible the nature of those reasons.

The theory of practical rationality presupposes the applicability of the idea of practical intelligibility; its search for an account of the identity and nature of reasons for action is a search for a clear understanding of that which underwrites whatever practical intelligibility that actions possess. Now, the theory of practical rationality also presupposes that the possibilities of intelligible action out-run the capacity of agents to act on them. There are, that is, cases of *practically significant choice*, cases where an agent may ϕ intelligibly or may ψ intelligibly, but it is impossible for the agent both to ϕ and to ψ (see also Finnis, Boyle, and Grisez 1987, pp. 254–260). The second fundamental task of a theory of practical rationality is to provide, in light of its theory of reasons for action, an account of how agents can act in conditions of practically significant choice in a way that is insusceptible to rational criticism. For an action to be insusceptible to rational criticism is for that action to be rational, or reasonable (see also Parfit 1984, p. 119).

A theory of practical rationality aims, then, to identify and characterize reasons for action and to explain how choice between actions worth performing can be appropriately governed by rational standards. A natural law theory of practical rationality is a theory that aims to accomplish these two tasks in the following distinctive way. First, a natural law theory asserts that the fundamental reasons for action are certain goods that are grounded in the nature of human beings. Thus, natural law theory provides a catalog of goods in its identification of the fundamental reasons for action, and offers a characterization of those goods by connecting them to human nature. Secondly, a natural law theory asserts that the requirements of practical reasonableness, those standards the following of which makes action fully rational, are justified by reference to

features of the goods that are the fundamental reasons for action. Thus, natural law theory explains how it is reasonable to deliberate in cases of practically significant choice by appealing to principles that have their warrant from the nature of the fundamental reasons for action themselves.

This book is a defense of a particular natural law account of practical rationality. The first three chapters constitute a defense of the natural law theorist's claim that the fundamental reasons for action are goods that are grounded in the nature of human beings. In Chapter 1, I provide an interpretation of the claim that the basic goods are grounded in human nature, an interpretation that I call the 'real identity thesis': this thesis both makes an assertion about the metaphysics of human goods and suggests a method for defending a catalog of human goods. In Chapter 2, I introduce the idea that the natural law theorist should understand the basic goods as aspects of human well-being. Since the present philosophical orthodoxy concerning well-being is that it is best understood along subjectivist lines, an understanding that is inconsistent with this natural law view's objectivist account of the nature of the good, I devote most of this chapter to indicating the severe difficulties that accompany subjectivist accounts of well-being. In Chapter 3 I provide a catalog of goods, justified by appeal to the method of knowing the basic goods elaborated in Chapter 1; the plausibility of this catalog of goods completes the case against subjectivist accounts of well-being begun in Chapter 2.

Chapters 4 through 6 are devoted to the defense and elaboration of the second natural law thesis, that concerning the natural law theorist's understanding of how principles of practical reasonableness are to be formulated and justified. Since this natural law account of practical rationality is welfarist – it holds that the fundamental reasons for action are aspects of agents' well-being – it is subject to all of the criticisms that have been leveled against welfarist conceptions of practical rationality as such. In Chapter 4, I consider these criticisms, and hold that they are best understood not as criticisms of welfarism as such but as criticisms of welfarism in conjunction with some other distinct theses about practical rationality – theses that this natural law view rejects. In Chapter 5, I offer an account of natural law principles for situations of practically significant choice, defending them in terms of the nature of the fundamental reasons for action against rival egoist, consequentialist, Kantian, and virtue accounts. And finally, in Chapter 6 I explore the issue of whether a plausible account of morality can be constructed within the natural law view.

0.2 The Ways in Which This Work Is Incomplete

There are at least two major ways in which this work is incomplete as an account of natural law theory. The first way in which this work is incomplete is that the title 'natural law theory' names more than a theory of practical rationality. 'Natural law theory' names also a certain type of theory of politics, a the-

ory that provides an account of the value, source, form, and limits of political authority. Moreover, it names a certain type of theory of religious morality, that is to say, an account of how we are to make intelligible the moral claims of some specific religious tradition or other. And ‘natural law theory’ is also a label applied to certain accounts of how practical rationality fits within the scheme of divine providence. It is this last usage of the term ‘natural law’ that makes sense of the very name: for, on such a view, the natural law by which human agents may reasonably guide their own conduct is, as Aquinas puts it, a participation in the eternal law by which God governs all creation (for the eternal law, see *Summa Theologiae* IaIIae 91, 1; for natural law as a participation in the eternal law, see IaIIae 91, 2; for God’s providence, see Ia 22, 1–2). Clearly, these uses of the term ‘natural law theory’ are not merely equivocal: rather, natural law theories of politics and religious morality are outgrowths or applications of the natural law theory of practical rationality; and the natural law account of the relationship between rational action and divine providence is a way of adding a new dimension of explanation to the theory of rational action (see, e.g., Finnis 1980, pp. 371–410, esp. 403–410, and Lisska 1996, pp. 128–131).

The original plan for this book included both a discussion of the natural law account of practical rationality and additional chapters on political and divine authority. But these additional chapters turned out underdeveloped and unsatisfactory, and it soon became clear that they could not be developed satisfactorily without the book’s becoming unreasonably long. My failure to treat these issues here is not, then, an indication that I think them unimportant in the development of a natural law view, or that I think that somehow political and theological issues historically bound up with natural law theory are mere accretions to be cast off by a contemporary, ‘purified’ version of the view. Rather, I think these issues still to be central to the development of an adequate natural law account and, thus, to be too important to be dealt with in a slipshod way. The present book thus concludes with an account of why a natural law account of authority is needed, that is, how the incompleteness of the natural law theory of practical rationality indicates a need for a natural law theory of authority (and, in particular, political authority), but it does not take any steps toward providing such an account. I hope to return in the future to the issue of natural law and political authority and that of natural law and divine authority. (For a developed natural law account of political authority, which I, however, do not affirm, see Finnis 1984 and Finnis 1989; for a sketchy attempt at my own natural law take on political authority, see Murphy 2001.)

The second major incompleteness of this book is that it does not on its surface give much indication of the way that the history of natural law thought contributed to its conclusions. This is not to say merely that it is not a history of natural law theorizing: it is obviously not a broad work on the natural law tradition (such as, e.g., Crowe 1977 and Haakonssen 1996), and it is just as obviously not an attempt to describe finely, or to recast, the work of any of the great

natural law theorists (such as, e.g., Lisska 1996 and Bradley 1997). It is to say, rather, that little space is devoted to formulating and considering the arguments of past natural law thinkers, even for the sake of furthering my own argument. Aquinas, of course, makes several appearances; and, of course, there are a number of themes and debates central to the natural law tradition that are central to the working out of my view. But my concern in this book is not to recapitulate the history of natural law thought as culminating in my own, partially developed view – that would be the most extreme hubris – but rather to show how positions definitive of or consonant with the tradition of natural law thought about practical rationality can emerge as serious contenders within contemporary analytic ethics.

‘Naturalism,’ ‘objectivism,’ ‘cognitivism,’ ‘welfarism,’ ‘anti-particularism,’ ‘anti-consequentialism’ – all of these name views that are, individually, now taken seriously within analytic ethics, even if not as dominant positions. What I want to do in this book is to make a case for a particular naturalist, objectivist, cognitivist, welfarist, anti-particularist, anti-consequentialist view – which, it turns out, is a version of natural law theory as traditionally understood.

1

The Real Identity Thesis

1.1 Rival Views of How Goods Are Known

The natural law theorist aims to fulfill the first task of a theory of practical reasoning (to provide an account of the reasons that make action intelligible; see 0.1) by offering a catalog of basic goods. These basic goods are the fundamental reasons for action. This chapter is primarily devoted to the issue of the justification of the most basic natural law principles, that is, to an account of how these basic goods are known to be such. But it will turn out that the disputed question of how basic goods are to be known cannot be treated except by reference to another of the central theses of natural law theory, the claim that the basic goods are grounded in human nature. So, by the end of this chapter, I will have offered both an account of how the basic goods can be known (to be put to work in Chapter 3 to provide the catalog of fundamental reasons for action) and an interpretation of the thesis that the natural law is grounded in human nature, an interpretation that I call the ‘real identity thesis.’

Inclinationist and Derivationist Accounts of Fundamental Practical Knowledge

Standard natural law accounts of how the basic goods are known fall into two classes. One type of view, which I shall call ‘inclinationism,’ holds that no practical judgments regarding which objects are goods to be pursued can be derived from any set of nonpractical judgments; rather, knowledge of such goods is immediate and undervived, occasioned by an inclination toward those goods. The other type of view, which I shall call ‘derivationism,’ holds that practical judgments regarding goods to be sought are not self-evident; rather, they must be derived from theoretical judgments regarding human nature.¹

Let us consider first the derivationist view, which is the popular image of natural law theory. According to derivationism, the first principles of the natural law, which specify the basic goods to be pursued, are derived from claims

about human nature knowable by speculative reason. Even apart from worries about how this task is to be accomplished, this may seem a strange claim: how could the principles of the natural law be *first* principles if they are to be *derived* from other propositions? The answer is, however, that while the principles of the natural law are, on the derivationist view, derived from premises drawn from the speculative order, they are first in the practical order. As such, they are the principles from which practical reason proper takes its guidance concerning how one ought to act.

Part of the attractiveness of derivationism comes from widely shared assumptions about the capacities of practical reason. A widely shared view of practical reason can be summed up by the slogan: practical reasoning is deliberation. To reason well in the practical domain is to deliberate well. A widely shared view of deliberation can be summed up by the slogan: deliberation is from ends, not about ends. (But see Schmidtz 1994 and Richardson 1994.) Now, in the contemporary philosophical climate, the conjunction of these slogans often leads writers in the philosophy of action to use objects of desire or preference as the ends from which deliberation operates. If one were to reject, though, the view that the starting points for practical reason-as-deliberation are nonrational, it seems clear that one would have to find those starting points in a product of theoretical reason.

This sort of picture of practical reason provides support of a negative kind for the derivationist claim: it cannot be practical reason that grasps the first principles of the natural law, and so it must be theoretical reason. But we yet have no account of that to which theoretical reason can appeal in order to derive the first principles of the natural law. Typically, though, one who is interested in defending a natural law theory of practical reason will want to appeal to some feature or other of human nature in order to determine what those first principles are: the derivationist generally holds that theoretical reflection on the nature of human beings enables us to characterize what the human good consists in, with the result that this conception of the human good can be employed by practical reason in determining how agents are to act.

Consider as an example of this kind of derivationist reasoning Aristotle's function argument in the *Nicomachean Ethics* (1097b24–1098a3), or at least a common understanding of that argument. While I would not claim that Aristotle was himself a natural law theorist, the function argument had a great influence on later natural law thinkers; and, indeed, it seems as if it is the derivationist elements of Aristotle's view that lead many to classify him as a proto-natural law thinker.² The function argument appears to be an argument carried out in theoretical terms, starting with a conceptual connection between the idea of 'good' and 'kind,' followed by an examination into what the human's kind is, and concluding with an at least partial statement of the human good, rational activity carried out well. On this derivationist interpretation of Aristotle, the conclusion of the theoretical function argument serves as a starting point for

deliberation about how to act – what we ought to do can be determined by reference to our theoretically discovered good, rational activity. (I will return to the function argument for a more detailed treatment in 1.2.)

Or consider the derivationist interpretation of Aquinas recently offered by Anthony Lisska. On his view, Aquinas characterizes human nature in terms of essential properties that are dispositional – that is, that explain the human being's tending to develop a certain way. It is the complete and harmonious attainment of the objects of these dispositions that constitutes the human end (Lisska 1996, p. 103). But Aquinas defines goodness in terms of ends: it is analytically true that such ends are good (Lisska 1996, pp. 198–199). This understanding of goods as the ends to which we tend by nature yields an account of the epistemology of practical knowledge: such knowledge takes its first principles from our speculative understanding of human nature, and thus we come to know the natural law by grasping the character of the dispositional properties that are essential to us.

Derivationism is often quickly dismissed, due to the widely held – and, in my view, eminently plausible – view that its presupposition that practical judgments can be deduced from nonpractical judgments alone is simply logically untenable. But it does have its rationale within a natural law theory of practical reasoning: if one accepts common doctrines concerning the limited capacities of practical reasoning, it seems that one must either reject natural law theory or affirm a derivationist account of how the goods are known.

Let us now turn to the 'inclinationist' account of how basic goods are to be known, and begin by considering a particular version of the inclinationist picture, that offered by John Finnis. Finnis rejects derivationism's account of the relationship between judgments about human nature and the principles of the natural law:

The first principles of the 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 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. They are not inferred or derived from anything. They are underived. (Finnis 1980, p. 34)

Given that no derivations from theoretical considerations are allowed in the defense of one's account of these principles of practical reason, how does practical reason grasp the correctness of these principles? On Finnis's view, one's grasp of these goods must be wholly internal to practical reason: one becomes aware "by a simple act of non-inferential understanding" that certain objects are goods to be sought (Finnis 1980, p. 34). Thus, Finnis rejects one of the slo-

gans about practical reason that underwrites the derivationist view: the claim that practical reasoning is deliberation. On his view, practical reason is capable of grasping first principles, which is an act distinct from deliberating.

Finnis describes the process by which one comes to grasp the character of the basic goods as such as a twofold movement: a movement from inclination to awareness of value and from the specific to the general. Essential to the process of grasping a basic good to be pursued is the agent's having at some point a felt want, desire, inclination for a particular object. Finnis illustrates this point with regard to knowledge, which is on his view a basic good. The seed of one's awareness that knowledge is a basic good is curiosity, "the desire or inclination or felt want that we have when, just for the sake of knowing, we want to find out about something. One wants to know the answer to a particular question" (Finnis 1980, p. 60). But since "[c]ommonly one's interest in knowledge . . . is not bounded by the particular questions that first aroused one's desire to find out, . . . it becomes clear that knowledge is a good thing to have" (Finnis 1980, p. 61). It is important to note here that, on Finnis's view, one does not *derive* the conclusion "Knowledge is a good" from such propositions as "I have an inclination toward knowing" or "Everyone has an inclination toward knowing." A view that held that practical principles are derived from statements about what inclinations we have would be a version of derivationism, since it derives practical claims from purely descriptive claims about human nature. Rather, the presence of these inclinations is simply a condition that occasions reason's consideration of and grasp of the good of knowledge. (Thus: if in some person the inclination of curiosity is lacking, that person will have difficulty recognizing knowledge as a good at all.)

I take to be essential to inclinationism both the affirmation of the indemonstrability of the first practical principles of the natural law and the reliance on inclinations as providing the impetus toward knowledge of the good. While it seems to me that Finnis is right to emphasize the relationship between the particular object of inclination and the general form of good that that object instantiates (that is, that the inclination toward the particular is the occasion for the grasp of a general form of good), the best version of inclinationism would portray the relevant inclinations in a slightly different way than Finnis presents them and would move away from the 'flash of insight' picture that Finnis's remarks suggest. Let us examine first the issue of what is the nature of the inclinations that are the preconditions for knowledge of the basic goods. Consider, as a foil for Finnis's inclinationist picture, the account offered by Aquinas:

The precepts of the natural law bear the same relation to practical reason that the first principles of demonstration bear to speculative reason, for both are self-evident [*per se nota*] principles. . . .

The first principle of practical reason is that which is based on the nature of good: "The good is that which all things desire." The primary precept of the law, therefore, is

that good is to be done and pursued, and evil is to be avoided. On this precept all the other precepts of the natural law are based, so that all things to be done or avoided pertain to the precepts of the natural law that practical reason naturally apprehends as human goods [or evils]. Because, however, good has the nature of an end, whereas evil has the nature of its contrary, thus it is the case that reason apprehends all things to which the human has a natural *inclinatio* as good, and consequently as objects to be pursued, and their contraries as evil and to be avoided. Therefore, the order of the natural *inclinationes* corresponds to the order of the precepts of the natural law. (*Summa Theologiae*, IaIIae 94, 2)

Like Finnis, Aquinas emphasizes the self-evidence of the principles of the natural law, and also indicates that practical reason's grasp of those principles is tied closely to inclinations toward those goods. But the notion of *inclinatio* as it appears in Aquinas differs from the notion of inclination as it appears in Finnis. For Finnis, inclination is paradigmatically something felt, a sort of urge – even if in particular cases this urge can be fairly colorless. But Aquinas's notion of *inclinatio* is different – it is better translated as 'directedness,' denoting an agent's tendency to act purposively to secure certain objects. (For this translation, and discussion of this point, see MacIntyre 1988, pp. 173–174.)

I think that the best inclinationist view would rely on Aquinas's notion of inclination, rather than on Finnis's. On Finnis's view, the precondition for recognizing a good as such is an urge; on Aquinas's, the precondition is a tendency to act. Now, the reason that Aquinas's account seems better suited is that the basic goods are held to be reasons for action, ways in which action can be made intelligible. Thus, there seems to be a tighter connection between Aquinas's view of how goods are known and the role that a theory of basic goods is supposed to play in the natural law theory of practical rationality, that is, of conferring intelligibility on action (0.1).

The notion of intelligibility is also central to the rejection of Finnis's account of how reason moves from inclination to grasp of value. Finnis denies that his view can correctly be called intuitionistic, because the act of insight by which one becomes aware of the status of a basic good as such cannot take place without data – one's felt inclinations toward objects as understood (Finnis 1983, p. 51). Theoretical reason thus plays a subsidiary role in Finnis's account, as providing *descriptions* of objects; practical reason then makes its judgments upon these objects as described by theoretical reason (Finnis 1980, p. 66). Now, I do not think that it is a sufficient criticism of Finnis's account that it requires at some point a simple insight into the truth of a principle; at some point, we must stop with insights of this sort. What gives Finnis's view the appearance of intuitionism, though, is the absence of any explanation of how the transition from inclination to grasp of value takes place. Even if one's grasp of the first principles is unmediated by deductive proof, can we say nothing about how one moves from inclination to judgments of goodness?