

# Is Contemporary Natural Law Theory a Beneficial Development?

## The Attempt to Study Natural Law and the Human Good Without Metaphysics

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Natural law, as an ethical and political theory, is often associated with medieval scholastic philosophy and Roman Catholic theology. However, since the 1970's there has been a resurgence of natural law thinking that has attempted to discuss natural law theory without grounding it in any specific view of human nature. The increased popularity of the natural law theory raises the question as to whether this should be viewed as a positive or negative development in philosophy of law. The following paper will define what contemporary natural law theory is by looking at some of its main advocates, and then contrast it with alternative theories, and conclude by arguing that natural law provides a better framework for rationally justifying ethical and political actions and therefore its return is a beneficial development in contemporary thought. This conclusion will be mixed however, because it will be shown that contemporary natural law theory has not adequately addressed the concept of the good or grounded the good in the metaphysical absolute. If natural law theory fails to correctly define the good its method will be unsuccessful and its return will not be permanent.

Natural law is defined by *Encyclopedia Britannica* as the “system of right or justice held to be common to all humankind and derived from nature rather than from the rules of society.”<sup>1</sup> On the face of it this preliminary definition might be hard to disagree with. But whether a person sees natural law in a positive or negative light will largely be determined by their understanding of the definition of this theory. A common criticism of natural law theory has been that it is grounded in medieval scholastic philosophy and Roman Catholic theism and therefore does not appeal to audiences outside of those traditions. Modern forms of this theory are conscious of this problem and therefore take great pains to avoid any necessary connection between natural law and these other systems of thought. *Encyclopedia Britannica* includes this in

<sup>1</sup> “Natural Law.” *Encyclopedia Britannica*. CD-Rom, 2002 ed.

its discussion of natural law: “As far as secular moral philosophy is concerned, during most of the 20<sup>th</sup> century, natural law ethics has been considered a lifeless medieval relic, preserved only in Roman Catholic schools of moral theology. It is still true that the chief proponents of natural law are of that particular religious persuasion, but they have recently begun to defend their position by arguments that make no explicit appeal to their religious beliefs. Instead, they start their ethics with the claim that there are certain basic human goods that we should not act against.”<sup>2</sup> There has also been an appeal to human rights and natural law at the international level: “On the level of international politics in the 20<sup>th</sup> century, the assertion of human rights was the product rather of an empirical search for common values than of any explicit doctrine about a natural law.”<sup>3</sup> The Encyclopedia gives a general definition that helps not only understand what a contemporary natural law theory might look like, but also some of the potential stereotypes it faces.

To move beyond a formal sense of what modern nature law looks like it is necessary to examine some of those who are calling for a return of this approach. This will bring to the surface three common features of contemporary natural law: (i) the belief in universal laws based on human goods and human flourishing; (ii) a focus on practical rationality directed toward the goods of human flourishing; (iii) an empirical method of discovering what it is for humans to flourish. Some of the thinkers considered will emphasize one or more of these to different extents, but these points help characterize contemporary natural law from its medieval form. The modern approach is empirical rather than rationalist, focuses on human flourishing as a knowable and universal empirical finding, and all of this without any necessary connection to theism.

An example can be seen in Martha Nussbaum and her book *Women and Human Development: The Capabilities Approach* which focuses on what can be called natural law with respect to women’s rights. She summarizes her project by saying:

The aim of the project as a whole is to provide the philosophical underpinning for an account of basic constitutional principles that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires. . . . the best approach to this idea of a basic social minimum is provided by an approach that focuses on *human capabilities*, that is, what people are actually able to do and to be – in a way informed by an intuitive idea of a life that is worthy of the dignity of the human being.<sup>4</sup>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Nussbaum, Martha C. *Women and Human Development: The Capabilities Approach*. Cambridge University Press, Cambridge: 2000, p. 5.

While Nussbaum applies this specifically to women, it is an example of how the three principles mentioned above are applied by a contemporary thinker. The focus is on what people are actually able to do and be, and then this is applied through practical rationality to insure human flourishing.

Perhaps the name most associated with the return of natural law is John Finnis. His book *Natural Law and Natural Rights* is seen by many as the initiator of contemporary interest in natural law theory. In it he defines the modern approach to natural law. Central to his project is practical rationality aimed at human well-being.

The sense that the phrase ‘natural law’ has in this book can be indicated in the following rather bald assertions . . . There is (i) a set of basic practical principles which indicate the basic forms of human flourishing as goods to be pursued and realized, and which are in one way or another used by everyone who considers what to do, however unsound his conclusions; and (ii) a set of basic methodological requirements of practical reasonableness (itself one of the basic forms of human flourishing) which distinguish sound from unsound practical thinking and which, when all brought to bear, provide the criteria for distinguishing between acts that (always or in particular circumstances) are reasonable-all-things considered, i.e. between ways of acting that are morally right or morally wrong – thus enabling one to formulate (iii) a set of general moral standards.<sup>5</sup>

This approach is present in the other thinkers that will be considered here with only slight variation. Their differences arise with respect to the content of natural law. What is relevant for this paper is to see how these thinkers define natural law and in doing this give a sense of how they defend natural law from alternative theories. Finnis summarizes natural law in a way very similar to the Encyclopedia: “A theory of natural law claims to be able to identify conditions and principles of practical right-mindedness, of good and proper order among men and in individual conduct.”<sup>6</sup> Or consider how David Braybrooke summarizes his approach to natural law:

I mean to present and stand by the basic view of moral rules found in St Thomas Aquinas’s medieval natural law theory, a theory that makes three chief claims: first, there is a set of universally applicable moral rules, with principled allowances for variations in circumstances; second (another empirical thesis), people will thrive and their societies will thrive only if these rules prevail; and third (a further empirical thesis), human beings by and large are inclined to heed the rules.<sup>7</sup>

<sup>5</sup> Finnis, John. *Natural Law and Natural Rights*. Clarendon Press, Oxford: 1980, p. 23.

<sup>6</sup> *Ibid.*, 18.

<sup>7</sup> Braybrooke, David. *Natural Law Modernized*. University of Toronto Press, Toronto: 2001, p. 23.

Two questions naturally arise in response to the empirical aspect of this theory. First, to what extent is *natural law* dependent on generalizing from a descriptive approach to humans (the fallacy of induction), and second how can an *ought* be derived from a descriptive claim about human nature? Finnis does argue that sociological investigation can play a part in furthering natural law theory: “Descriptive knowledge thus can occasion a modification of the judgments of importance and significance with which the theorist first approached his data, and can suggest a reconceptualization. But the knowledge will not have been attained without a preliminary conceptualization and thus a preliminary set of principles of selection and relevance drawn from some practical viewpoint.”<sup>8</sup> But this does not mean that natural law is a set of matter of fact claims about what humans do. Rather, Finnis introduces an important aspect of contemporary theory by stating that it is based on self-evident principles about the good and not on descriptions of human nature.

It is simply not true 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’. . . . 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.<sup>9</sup>

The skeptic will ask how these self-evident principles are known. If they are indemonstrable, and not inferred from sense data, then how can they be known? The short answer is that “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>10</sup> The skeptic will most likely see this as “spooky” ethics without any way to analyze the so-called results that follow from such an approach. Mortimer Adler provides a better description of how these self-evident principles are known:

It is by reference to our common human needs that we claim to know what is really good for all human beings. Knowing this, we are also justified in claiming that we can determine the truth or falsity of prescriptions or injunctions. . . . No one, I think, would question man’s need for knowledge or the truth of the prescription that everyone ought to want and seek knowledge. That truth comes to us as the conclusion of reasoning that rests on two premises.

The first is a categorical prescription or injunction: We ought to desire (seek and acquire) that which is really good for us.

<sup>8</sup> Finnis, 17.

<sup>9</sup> *Ibid.*, 33.

<sup>10</sup> *Ibid.*, 34.

The second is a statement of fact about human nature: Man has a potentiality or capacity for knowing that tends toward or seeks fulfillment through the acquirement of knowledge.<sup>11</sup>

Here Adler not only provides an answer to how self-evident truths are known, but addresses another form of this same question which asks how the practical rationality of natural law can operate without categorical truths:

The truth of the categorical prescription that underlies every piece of reasoning that leads to a true prescriptive conclusion is a self-evident truth. Anyone can test this for himself by trying to think the opposite and finding it impossible.

We simply cannot think that we ought to desire that which is really bad for us or that we ought not to desire that which is really good for us. Without knowing in advance which things are in fact really good or bad for us, we do know at once that 'ought to desire' is inseparable in its meaning from the meaning of 'really good.'<sup>12</sup>

Once categorical truths about the good have been established hypothetical imperatives can be deduced to provide the content of the natural law. Robert George states that knowledge of universal practical truths is knowable precisely because we can grasp basic underived practical principles.<sup>13</sup>

The second question that must be addressed is the "is/ought" problem that many accuse natural law theory of having violated. Finnis builds on his view of self-evident truths to answer this problem. "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 (though not innate)."<sup>14</sup> The reason that there is no "is/ought" problem is that the moral imperatives of the natural law theory are not derived from facts but from self-evident "oughts" about the good. Adler voiced similar thoughts in the quotes above. A major part of the project for each of the thinkers presented here is to define precisely what it is for humans to flourish, and what is the good that is necessary for such flourishing. But all agree that the theory can begin with something like these "self-evident" goods that then provide the framework for practical rationality.

Once the method employed by natural law is defined, how can it be filled in with content? There are some important differences between

<sup>11</sup> Adler, Mortimer J. *Six Great Ideas*. Collier Books, New York: 1982, p. 79.

<sup>12</sup> *Ibid.*, 80.

<sup>13</sup> George, Robert P. *In Defense of Natural Law*. Oxford University Press, Oxford: 1999, p. 3.

<sup>14</sup> Finnis, 33.

the thinkers presented here as to the specific content, but how that content is arrived at is very similar.

As I understand the natural law, it consists of three sets of principles: first, and most fundamentally, a set of principles directing human choice and action toward intelligible purposes, i.e., basic human goods which, as intrinsic aspects of human well-being and fulfillment, constitute reasons for actions whose intelligibility as reasons does not depend on any more fundamental reasons (or on sub-rational motives such as the desire for emotional satisfactions) to which they are mere means; second, a set of 'intermediate' moral principles which specify the most basic principle of morality by directing choice and action toward possibilities that may be chosen consistently with a will toward integral human fulfillment and away from possibilities the choosing of which is inconsistent with such a will; and third, fully specific moral norms which require or forbid (sometimes without exceptions) certain specific possible choices.<sup>15</sup>

Or consider a comparable passage from Braybrooke: "There are three main lines of thought on which the empirical grounds can be seen to be operating: (1) observations about one or another aspect of human nature, which can be pieced together to establish an empirical perspective; (2) the attention given to the need to adapt the laws to different circumstances, which implies that circumstances must be taken into account both before and after any specific adaptation; and (3) reasoning from the essence of the human species."<sup>16</sup>

The content is filled in through the use of hypothetical imperatives, or practical rationality, building on the self-evident truths of human well-being. The skeptic was right to raise an eyebrow to the idea of self-evident truths concerning human flourishing. It seems that once these are conceded practical rationality takes over and provides moral content. The main issue will therefore be "what are these goods of human flourishing?" Where Finnis and Braybrooke differ as to their view of sexual morality they first differ about what the self-evident truths are that should be employed to settle such disputes. Considering this in much depth would take us too far afield, and it does not affect the fact that practical rationality is central to contemporary natural law thinking.

One final note of importance is that these contemporary natural law thinkers approach their theory without relying on theistic metaphysics. Some of them are more explicit in this than others, and some more consistent in this than others. Finnis and George see religion as a basic human good, and Finnis even speculates that friendship with God might be the highest good. But Braybrooke does not believe that mention of God is necessary in natural law. "The core theory does not invoke the will of God to establish the content of the moral rules

<sup>15</sup> Finnis, 102.

<sup>16</sup> Braybrooke, 37.

that it upholds or to confer upon them their standing as natural laws.”<sup>17</sup> Generally this is not seen as a hindrance to this form of natural law being accepted because if one wants to include God then Finnis and George are ready to offer their approach, and if one wants a purely secular version Braybrooke is ready at hand.

Having seen how contemporary thinkers define natural law theory, it will be helpful to consider alternatives to this theory in order to better define its boundaries as well as to determine if a recovery in natural law thinking is beneficial. Four major systems stand out as alternatives and opponents to natural law theory: ethical relativism, positivism, deontology, and consequentialism. Each of these, in one form or another, has been put forward as a viable theory in the last two centuries while natural law has largely been out of favor. The following will consider each of these by considering how they order the central concepts of ethics (the good, virtue, happiness), how this contrasts with natural law, and why natural law has more promise in its approach. The outcome will be that not only have we clearly defined natural law and its opponents, but have also given reasons why natural law is best able to provide a consistent ethical theory.

That we can ask if the return of natural law theory is beneficial implies that natural law theory has been absent, and that other theories have been dominating the scene. One such theory is ethical relativism. This theory argues that the central concept in ethics, “the good,” is not the same for all persons, or it cannot be known what is good, and therefore each individual person’s belief about what is good for themselves is equal to any other person’s belief about the good. Perhaps the first philosopher to hold this position was the Greek Sophist Protagoras, who claimed that man is the measure of all things. Contemporary thinkers holding versions of this view include Goodman, Putnam and Rorty. A similar view that will be coupled with relativism in this paper is ethical skepticism held by such thinkers as J.L. Mackie.

People can arrive at this position for a number of reasons. For instance, it could be the outcome of an epistemological method. If the method adopted is empiricism, and it is noticed that people make differing and often contradictory claims about what is good, then it might be concluded that as a matter of fact what is good is relative. Another approach that could lead to relativism is the assumption that what each person desires is what is good for himself/herself. This approach seems to believe that the satisfaction of desires is good, and since desires differ from person to person, so will the good. It could also be the result of metaphysical commitments. For instance, evolutionary theory may lead a person to believe that human nature is

<sup>17</sup> Braybrooke, 9.

changing and therefore what is good at one point in time may not be good at another. Or, if a person believes that death is the end of their existence he/she may also believe that one should do whatever will make him/her happy in this life and that therefore the good is relative. Also, post-modernism asserts that the good is relative by noting that in the past the concept of “the good” has been used by those in power to oppress others and therefore this concept must be deconstructed in order to illuminate ways it has been used and in order to give greater freedom to the individual to determine what is good for themselves.

Whether a person is an ethical relativist for one of the above reasons, or for a reason that has not been considered here, this view is an alternative to natural law theory and its proponents would resist a resurgence in natural thinking if it meant the decline of ethical relativism. Both ethical relativism and natural law theory cannot be true. This is because they make contradictory claims about human nature. Specifically, ethical relativism claims either that human nature cannot be known, or it is different for each individual and therefore there is no such thing as “human nature” that is common to all. In contrast, natural law theory presupposes that there is something called “human nature” that is the same for all, is knowable at least in part, and therefore what is good for human nature can also be known at least in part.

In claiming that human nature is not knowable, ethical relativism is making a 2<sup>nd</sup> order claim. There may be a number of reasons as to why this conclusion is reached, as noted above. In contrast, natural law theory often makes the 2<sup>nd</sup> order claim that human nature, at least in part, is knowable. One of the 1<sup>st</sup> order claims about human nature is that it includes rationality broadly construed as the ability to think and draw inferences through the use of the laws of thought (identity, non-contradiction, excluded middle). Is it possible to consistently deny that humans have the property of rationality? Ethical relativism cannot claim *a priori* that humans are not rational without being self-contradictory, nor can it claim this is an *a posteriori* truth. In contrast, natural law theory places as one of its foundations the realization that there is a common human nature central to which is the capacity for rationality. In this sense a resurgence of natural law theory to replace ethical relativism should be welcomed.

Another popular ethical and legal theory has been that of positivism. This view claims that all human norms, whether legal or moral, are constructs of human society. It is not full-blown relativism in that the individual does not have the moral or legal ability to determine what is good; the good is determined by society at large in connection with its tradition. However, it is relativistic in that it disconnects law and ethics from human nature and must concede that different societies and traditions will have and do have different norms. It



often disconnects the concepts of morality and law, and focuses on the practical reality that law is determined by social facts. Contemporary thinkers that hold this position include Austin, Hart, and Kelsen.

A person often takes this position after realizing that there are diverse legal and ethical systems in the world, and this seems to contradict the idea that humans share a common nature that should give rise to common legal and moral systems. Like ethical relativism it must deny that there is a human nature in order to be consistent. If it is acknowledged that there is a common human nature then it follows that there is a common good for human nature: what is good for human nature in me will be good for human nature in you because it is the same thing. Therefore the discussion above is also relevant to show that the return of natural law is a benefit if it replaces this kind of thinking in either relativism or positivism.

There are two other aspects of positivism that are worth thinking about. The first is the form that claims the law, moral or legal, is given by tradition or divine command. This will be called heteronomy. This view looks to ground the law in an unchanging source but disconnects that source from human nature. Assuming that the claim of heteronomy is not that there is no human nature (see above discussion) but instead that the law is given apart from human nature it can only make sense if the heteronomous law is still consistent with human nature. For instance, God, as the creator of human nature, would be the one who best knows what is according to human nature. If we take the meaning of the term "good" to be "that which is according to human nature" then for a law to be good it must be according to human nature (by definition). To say otherwise would be to assert that God commanded something that is not good and that is contrary to the human nature He created. In contrast, natural law theory can be consistent with divine command theory in maintaining that God commands that which is according to human nature. This avoids the problems of heteronomy and the disconnect it produces between law and human nature; in natural law theory the law cannot conflict with what is good (a law that does so is no law at all).

The second problem faced by heteronomous theories is that they separate the law from reason and rationality. The law is known through tradition or command rather than through the use of reason. This both denies a central aspect of human nature and raises questions about responsibility. If the law is knowable only through acquaintance with a given text or tradition then those without access cannot be held accountable. In contrast, natural law theory maintains that because human nature is knowable, and the law is based on human nature, responsibility applies to all. Because part of being human is the potential for the use of reason, all humans can use reason to know the law and know what they ought to do.

A third alternative to natural law is deontology. Deontology's best-known representative is Immanuel Kant. Unlike the views just considered, deontology places rationality at the center of its theory and emphasizes the use of reason to direct the will. In this sense it is often very similar to natural law theory. The difference that will be focused on here is that deontology emphasizes the concept of virtue, duty as the moral absolute (that by which an action is determined to be morally right or wrong), while natural law theory focuses on the concept of the good as the moral absolute. Unless this difference is explicitly brought out it could go unnoticed and a person might be tempted to think these theories are similar. Virtues (as the means to the good) and the good (as the end in itself) are different and not to be confused. Once this distinction is brought out it will be seen to make a world of difference.

Deontology is an attractive position because it emphasizes the rational aspect of human nature, and looks to establish a universal moral law in contrast to ethical relativism and positivism. Its focus on the universal was important for war-torn Europe that had witnessed years upon years of rivalry and bloodshed based on tradition and religious difference. In contrast, deontology looks to demonstrate that all humans should obey a universal categorical imperative, and should do so regardless of how they feel about the matter. In fact, it calls a person to act only based on the rational will and not based on other considerations. However, it finds its universality by focusing on virtue and in doing so disconnects the moral law from the good. Natural law theory does not do this, and keeps the good at the center of its theory. By doing so it can also properly define virtue and provide categorical imperatives that are aimed at the good.

Deontology focuses on the will. It advocates that one should base one's action on what can be universalized. Or, more specifically, on what one does not want universalized. For instance, no person would want harming others to be universalized, and so each individual person should abstain from harming others. This norm applied to all the various areas of life will produce a person who is virtuous, whose actions are in accord with the categorical imperative. What it has not addressed is how a person knows what actions to desire as universal and which should not be universal. It is often presented as if a person has this knowledge intuitively, and this might be satisfactory within one social group. But once we look outside a relatively small group we soon find vast differences about what is intuitively desirable. We might find a group that prides itself on how many persons from a neighboring community they have harmed. Intuitively they might say this should be universalized. The result will be that deontology is based on intuitions and cannot provide a universal system of moral laws. This becomes a *reductio ad absurdum* argument against deontology.

In contrast, natural law theory can provide a universal system of moral laws. It also asks people to universalize, but not based on what virtues they would want others to exhibit, but rather based on the equality of human nature. Virtues, defined as the means to the good, can only be named after the good has been defined. What is virtuous is that which will get one the good, and therefore virtue separated from the good is empty. There are different types of virtues, such as moral (perhaps what we think of first when hearing this term), natural (talent of various kinds), and material (money, a car, etc). Whether something is a virtue or a vice depends on whether it is used toward the good (money is an easy example). Deontology asks humans to live the virtuous life, to choose action based on what is virtuous, but does not give a means for defining virtue. Natural law theory provides a solution to the problem by giving humans a way to define virtue. One should not harm others because it is contrary to human nature, and this is universally applied to all humans. Harming others keeps oneself and others from achieving the good. Thus, abstinence from violence, a virtuous act, should be done because it helps oneself and others get the good. Natural law theory preserves the distinction between the good and virtue, and offers the ability to define virtue appropriately by placing it in relationship to the good. It is therefore to be preferred over deontology.

The final alternative to be considered here is consequentialism. While deontology focuses on virtue as the moral absolute, consequentialism focuses on happiness. It asserts that the action whose consequence is the greatest amount of happiness for the greatest number, all things considered, is the correct action. There are important nuances to how one is to determine which action will have the greatest happiness for the greatest number, and these nuances determine different versions of consequentialist thinking. But the important point here is that this approach treats happiness as the moral absolute rather than the good. Consequentialism is found in Hobbs, Spinoza, Mill, Bentham, Moore, and Sidgwick.

A person may become a consequentialist for a number of reasons, including hedonistic considerations as well as altruistic considerations. A person might think that his or her own happiness is the goal of life and that the best way to achieve personal happiness is by there being a general happiness in society. Or a person might believe that the best life is the life of service and that by giving themselves to the community to bring out a general happiness this will in turn provide a rich and abundant life of self-sacrifice. For whatever reason a person is a consequentialist, happiness stands as the absolute value and determines which actions are correct and which incorrect.

There is an intuitive sense in which consequentialism is appealing. It does appear that the person who works for the happiness of others is a good person. But where consequentialism fails is in its analysis of

the relationship between happiness and the good. As noted above in the discussion on deontology, the good must be defined prior to virtue being defined. This is because virtue is properly understood as the means to the good. Similarly, happiness is properly understood as the effect of possessing what one believes to be good. That is, a person is happy when they possess what they believe to be good, and unhappy when they do not or cannot possess what they believe to be good. Further, what actually is good would provide lasting happiness, while a mistaken good would only provide temporary happiness. Everyone is aware of having believed something to be good, attained that thing, and then eventually tired of it and looked elsewhere for contentment. If happiness were the moral absolute then in such cases it would have been misleading. People often report having wanted something that they later realized they should not have wanted, or having been happy from possessing something that they later realized caused them harm. In these cases happiness was present but it was not the good. If a consequentialist were to argue that only some kinds of happiness are the good, then this concedes the point that some other element must be present, and not just happiness, in order for a person to achieve the good. If one has the good then they will be happy and where one is not happy they do not have the good.

In contrast, natural law theory first defines what is good based on human nature. The correct definition of the good is that which will provide persons with lasting happiness. It is true that insofar as they do not believe what actually is good to be good they will not find themselves happy in possessing it but it is questionable whether a person could have the good and not know it. This means that there is necessarily a cognitive aspect to the good. But this consideration does not override the fact that until they possess what is actually good they will not be lastingly happy, and that while they continue to pursue happiness itself apart from coming to know what is actually good they will never achieve lasting happiness. Happiness, as an effect of possessing what one believes to be good, cannot be achieved directly. It is always achieved indirectly by coming to have what is good. Natural law theory avoids the mistake of making happiness the moral absolute and instead makes the good the moral absolute. All other moral judgments, about virtue or happiness, are relative to the good.

The above has considered four alternatives to natural law theory and shown how natural law theory is better suited for dealing with ethical and political issues. Before concluding it will be worthwhile to consider three possible objections to natural law theory and the approach taken in this paper. The first is that the consideration offered here of alternatives has been too brief and has not fairly represented the strength of these alternatives or the weaknesses of natural law theory. In one sense this is a fair assessment, but in

another it unfounded. It is fair in that this study has not claimed to deal with all possible variations of these alternatives, nor to offer a definitive account of how they approach ethical and political issues. However, it is the assertion of this paper that such a study would only further support what has been said here. At the same time, this objection is unfounded in that what this paper has attempted to do is present the central belief around which the rest of each moral theory is developed. If this has been done correctly than comparison can be made to natural law theory to determine which best solves the ethical questions without having to deal with all aspects of a theory.

A second objection is that natural law theory is too broad and never actually provides any solutions that can be universally accepted. If true this objection would be devastating because what natural law purports to provide is a universal law that seeks the good for all. And yet natural law has been used as support for conservative and liberal agendas, for revolutionary and reactionary regimes. While an initial answer might be that natural law provides different answers in different circumstances and is therefore responsive to human need, this does not satisfactorily answer the problem because it is also used to justify both sides of a dispute at the same time and in the same situation. The response here will be two-fold: the less convincing answer is that we do not abandon an approach because its adherents have made mistakes, for instance science has been used to justify both sides of disputes and we do not consider abandoning the scientific enterprise; more convincing is that there does need to be a corrective mechanism in natural law theory as there is in science. Where science can hypothesize and falsify and thus correct itself, natural law needs a similar tool. Specifically, the different positions that natural law is used to support ultimately differ in their hypothetical imperatives because they differ as to what it means for humans to flourish. As noted above it was this kind of difference that lead to a disagreement between Finnis and Braybrooke over sexual morality. Therefore while two sides of a dispute may be using natural law in the sense of applying hypothetical imperatives to achieve certain goods, when they disagree about what these goods are one or both of them is not truly using “natural law” just as phrenology was not truly empirical science. The central issue is “what is the good,” and the answer to this can be the corrective tool used by natural law to repair mistaken applications of this theory.

And this gives the third and strongest objection: contemporary natural law theory has not given a satisfactory definition of the good and therefore will fail in its attempts to provide hypothetical imperatives. Granting the answers given above to the skeptic and relativist, and that the is/ought problem has been solved, this objection threatens the very framework of natural law. Natural law proceeds by defining the good and then offering hypothetical

imperatives, practical rationality, directed at the good. But what is the good? Finnis offers a plurality of goods, as do most other contemporary thinkers. This raises another problem: if there is more than one good, and therefore more than one hypothetical imperative that governs a given situation, then practical rationality cannot help us decide which action to pursue. As far as practical rationality goes we would be frozen in action. This objection has thus undermined the self-evident goods of human flourishing and the reliance on hypothetical imperatives.

Because the thinkers considered above have rested with a pluralistic view of the good, direct answers to this objection are not forthcoming. But taking the liberty to speculate about how natural law theorists might respond we can see that this objection is not insurmountable. Specifically, the good must be given a formal definition that grounds the good in human nature and unifies the good in the face of pluralistic accounts. For instance, the good is the moral absolute (as opposed to virtue or happiness) and therefore many of the “goods” named by Finnis turn out to be either means to the good or the effect of possessing the good (“life” is a means to the good, practical rationality is a means to the good, “play” is a means to the good, friendship is a means to the good, etc.). This answers the pluralist problem and the possibility of being rationally frozen between choices. It also creates problems for those natural law thinkers that have been operating with numerous goods and deducing their hypothetical imperatives from these. Different sets of goods with different emphases placed on different parts would yield the result of natural law theory being used to justify contradictory positions. But can natural law actually define the good and not fall into calling either virtue or happiness the good? If it cannot then it will most likely fail again and become a lifeless relic alongside its medieval cousin. We already have deontology and consequentialism, what recommended natural law was that it placed the good (and not virtue or happiness) as the moral absolute. However, if natural law theory can actually define the good then it will be a powerful force in ethical and political theory and make significant contributions to humanity’s knowledge in these areas.

In conclusion, this paper has looked at contemporary natural law theory toward the end of deciding if its return should be welcomed. By looking first at a general definition of the theory, and then at specific thinkers in this recent project, natural law theory was seen to be: (i) the belief in universal laws based on human goods and human flourishing; (ii) a focus on practical rationality directed toward the goods of human flourishing; (iii) an empirical method of discovering what it is for humans to flourish. This was then contrasted with four alternative approaches. These were found to be less attractive than natural law theory because they either denied that human nature is

knowable, that the moral law is connected to human nature, or that the good is the moral absolute. Because natural law theory avoids these problems it is much better than these other views that often actually utilize natural law principles inconsistently. After this three objections were considered. While answers are readily available for the first two, the third remained open. Will natural law theory be able to correctly define the good? Or will it continue to offer a plurality of goods (most of which are means or effects and not actually ends in themselves) and thus undermine its method of practical rationality? This paper recommends that we welcome the return of natural law theory and work to provide a definition of the good and the practical requirements of achieving the good, in order to provide human life with meaning.

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