

10

Natural Law, God, and Human Dignity

ROBERT P GEORGE*

ABSTRACT

What is natural law? What is the natural law theory of human dignity? What is the natural law theory of human rights? Do ideas and beliefs about God and the divine will play a role in natural law theory? What, if anything, distinguishes the “new natural law theory” from other theories or accounts of natural law? How are natural law theories similar to, and different from, other leading theories of morality, especially utilitarian and Kantian (“deontological”) theories? Are natural law theories fundamentally concerned with rules or with virtues? This essay addresses all of these questions.

I INTRODUCTION: KNOWLEDGE OF NATURAL LAW

One’s knowledge of natural law, like all knowledge, begins with experience, but it does not end or even tarry there. Knowing is an activity – an intellectual activity, to be sure, but an activity nonetheless. We all have the experience of knowing. But to know is not merely to experience. Knowing is a complex and dynamic activity. The role

* McCormick Professor of Jurisprudence, Princeton University.

of experience in the activity of knowing is to supply data on which the inquiring intellect works in the cause of achieving understanding. Insights are insights into data. They are, as Bernard Lonergan brilliantly demonstrated by inviting readers to observe and reflect on their own ordinary intellectual operations, the fruit of a dynamic and integrated process of experiencing, understanding, and judging.¹

So what are the data supplied by experience that are at the foundation of practical judgments, that is to say, insights that constitute knowledge of natural law? They are the objects of intelligibly choice worthy possibilities – possibilities that, inasmuch as they provide reasons for acting of a certain sort (that is, more-than-merely-instrumental reasons), we grasp as opportunities.

In our experience of true friendship, for example, we grasp by what is ordinarily an effortless exercise of what Aristotle called ‘practical reason’ the intelligible point of having and being a friend. We understand that friendship is desirable not merely for instrumental reasons – indeed a purely instrumental friendship would be no friendship at all – but above all for its own sake. Because we grasp the intelligible point of having and being a friend, and we understand that the fundamental point of friendship is friendship itself, and certainly not goals extrinsic to friendship to which the activity of friendship is merely a means, we reasonably judge that friendship is intrinsically valuable. We know that friendship is a constitutive and irreducible aspect of human well-being and fulfillment, and that *precisely as such* friendship provides a reason for action of the sort that requires for its intelligibility as a reason no further or deeper reason or subrational motivating factor to which it is a means.

¹ See Bernard J F Lonergan, *Insight: A Study in Human Understanding* (Philosophical Library, 1955).

The same is true if we shift our focus to our experience of the activity of knowing itself. In our experience of wonder and curiosity, of raising questions and devising strategies for obtaining correct answers, of executing those strategies by carrying out lines of inquiry, of achieving insights, we grasp (by what is again for most people in most circumstances an effortless exercise of practical reason) the intelligible point of searching for truth and finding it. We understand that knowledge, though it may have tremendous instrumental value, is intrinsically valuable as well. To be attentive, informed, thoughtful, clear headed, careful, critical, and judicious in one's thinking and judging, is to be inherently enriched in a key dimension of human life. We reasonably judge the activity of knowing, then, to be an intrinsic (or 'basic') human good – a constitutive and irreducible aspect of our flourishing as human beings. Like friendship and a number of other types of activity, knowledge provides a reason for choice and action that requires for its intelligibility as a reason no further or deeper reason or subrational source of motivation to which it is a means.

Knowledge of natural law, then, is not innate. It does not swing free of experience or of the data provided by experience. Even when it is easily achieved, practical knowledge (ie, knowledge of natural law) is an achievement. It is the fruit of insights which, like all insights, are insights into data, data which are supplied by experience. The insight – the knowledge – that friendship or knowledge itself is intrinsically humanly fulfilling is ultimately rooted in our elementary experiences of the activities of friendship and knowing. Apart from those experiences, there would be no data on which practical reason could work to yield understanding of the *intelligible point* (and, thus, of the value) of friendship or knowledge and the judgment that these activities are intrinsic fulfillments of the human person and, as such,

objects of the primary principles of practical reason and basic precepts of natural law.

Of course, not all practical knowledge is, strictly speaking, moral knowledge (that is, knowledge of moral norms or their correct applications), though all moral knowledge is practical knowledge – it is (or centrally includes) knowledge of principles for the direction and guidance of action.² Yet knowledge of the most fundamental practical principles directing action towards the basic human goods and away from their privations, though not strictly speaking knowledge of moral norms, is foundational to the generation and identification of such norms. That is because moral norms are principles that guide our actions in line with the primary practical principles integrally conceived. Norms of morality are specifications of the integral directiveness or prescriptivity of the various aspects of human well-being and fulfillment that together constitute the ideal of integral human flourishing. So, if the first principle of practical reason is, as Aquinas says, ‘the good (*bonum*) is to be done and pursued, and the bad (*malum*) is to be avoided,’³ then the first principle of morality is that ‘one ought always to choose and otherwise will in a way that is compatible with a will towards integral human fulfillment.’⁴ And just as the first principle of practical reason is specified, as Aquinas makes clear, by identifying the various irreducible aspects of human well-being and fulfillment (namely, friendship, knowledge, aesthetic

² Inasmuch as the first and most basic practical principle directing human choosing towards what is intelligibly worthwhile and away from its privations are foundational to the identification of moral knowledge, there is a sense in which knowledge of those principles is incipiently moral knowledge.

³ St Thomas Aquinas, *Summa Theologiae*, I-II, Q 94, A 2.

⁴ On the first principle of morality and its specifications, see John Finnis, Joseph M Boyle and Germain Grisez, *Nuclear Deterrence, Morality and Realism* (Clarendon Press, 1987) 281-87.

appreciation, skillful performance, religion, and so forth), so too the first principle of morality is specified by identifying the norms of conduct that are entailed by an open-hearted love of the human good (that is, the good of human persons) taken as a whole.

II NATURAL LAW AND HUMAN RIGHTS

A natural law theory is a critical reflective account of the constitutive aspects of the well-being and fulfillment of human persons and the communities they form. Such a theory will propose to identify principles of right action – moral principles – specifying the first and most general principle of morality, namely, that one should choose and act in ways that are compatible with a will towards integral human fulfillment. Among these principles are respect for rights people possess simply by virtue of their humanity – rights which, as a matter of justice, others are bound to respect, and governments are bound not only to respect but, to the extent possible, also to protect.

Natural law theorists of my ilk understand human fulfillment – the human good – as variegated. There are many irreducible dimensions of human well-being. This is not to deny that human nature is determinate. It is to affirm that our nature, though determinate, is complex. We are animals, but rational. Our integral good includes our bodily well-being, but also our intellectual, moral, and spiritual well-being. We are individuals, but friendship and sociability are constitutive aspects of our flourishing.

By reflecting on the basic goods of human nature, especially those most immediately pertaining to social and political life, natural law

theorists propose to arrive at a sound understanding of principles of justice, including those principles we call human rights. In light of what I've already said about how natural law theorists understand human nature and the human good, it should be no surprise to learn that natural law theorists typically reject both strict individualism and collectivism. Individualism overlooks the intrinsic value of human sociability and tends mistakenly to view human beings atomistically. It fails to account for the intrinsic value of friendship and other aspects of human sociability, reducing all relationships to means by which the partners collaborate with a view to more fully or efficiently achieving their individual goals and objectives. Collectivism compromises the dignity of human beings by tending to instrumentalise and subordinate them and their well-being to the interests of larger social units – the community, the state, the *volk*, the fatherland, the *führer*, the future communist utopia. Individualists and collectivists both have theories of justice and human rights, but they are, as I see it, highly unsatisfactory. They are rooted in important misunderstandings of human nature and the human good. Neither can do justice to the concept of a human **person**, that is, a rational animal who is a locus of intrinsic value (and, as such, an *end-in-himself* who may never legitimately treat himself or be treated by others as a mere *means*), but whose well-being intrinsically includes relationships with others and membership in communities (beginning with the family) in which he or she has, as a matter of justice, both rights and responsibilities.

Human rights exist (or obtain) if it is the case that there are principles of practical reason directing us to act or abstain from acting in certain ways out of respect for the well-being and the dignity of persons whose legitimate interests may be affected by what we do. I certainly believe that there are such principles. They cannot be overridden

by considerations of utility. At a very general level, they direct us, in Kant's phrase, to treat human beings always as ends and never as means only. When we begin to specify this general norm, we identify important negative duties, such as the duty to refrain from enslaving people. Although we need not put the matter in terms of 'rights,' it is perfectly reasonable, and I believe helpful, to speak of a right against being enslaved, and to speak of slavery as a violation of human rights. It is a right that people have, not by virtue of being members of a certain race, sex, class, or ethnic group, but simply by virtue of our humanity.⁵ In that sense, it is a **human** right. But there are, in addition to negative duties and their corresponding rights, certain positive duties. And these, too, can be articulated and discussed in the language of rights, though here it is especially important that we be clear about by whom and how a given right is to be honoured.

Sometimes it is said, for example, that education or health care is a human right. It is certainly not unreasonable to speak this way; but much more needs to be said if it is to be a meaningful statement. Who is supposed to provide education or health care to whom? Why should those persons or institutions be the providers? What place should the provision of education or health care occupy on the list of social and political priorities? Is it better for education and health care to be provided by governments under socialised systems, or by private

⁵ By the phrase 'our humanity,' I refer more precisely to the nature of humans as rational beings. The nature of human beings is a rational nature. So in virtue of our human nature, we human beings possess a profound and inherent dignity. The same would be true, however, of beings other than humans whose nature is a rational nature, if indeed there are such beings. In the case of humans, even individuals who have not yet acquired the immediately exercisable capacities for conceptual thought and other rational acts, and even those who have temporarily or permanently lost them, and, indeed, even those who do not possess them, never possessed them, and (short of a miracle) never will possess them, possess a rational nature.

providers in markets? These questions go beyond the application of moral principles. They require prudential judgment in light of the contingent circumstances people face in a given society at a given point in time. Often, there is not a single, uniquely correct answer. The answer to each question can lead to further questions; and the problems can be extremely complex, far more complex than the issue of slavery, where once a right has been identified its universality and the basic terms of its application are fairly clear. Everybody has a moral right not to be enslaved, and everybody an obligation as a matter of strict justice to refrain from enslaving others; governments have a moral obligation to respect and protect the right and, correspondingly, to enforce the obligation.⁶

What I've said so far will provide a pretty good idea of how I think we ought to go about identifying what are human rights. But in each case the argument must be made, and in many cases there are complexities to the argument. One basic human right that almost all natural law theorists would say belongs in the set is the right of an innocent person not to be directly killed or maimed. This is a right that is violated when someone makes the death or injury of another

⁶ Having said this, I do not want to suggest a sharper difference than can be justified between positive and negative rights. Even in the case of negative rights, it is sometimes relevant to ask how a right should be honoured and who, if anyone, has particular responsibility for protecting it. Moreover, it can be the case that there is not a uniquely correct answer to questions about what place the protection of the right should occupy on the list of social priorities. Consider, for example, the right not to be subjected to assault or battery. While it is obvious that individuals have the obligation to respect this right, and equally obvious that governments have an obligation to protect persons within their jurisdiction from those who would violate it, different communities reasonably differ not only as to the means or mix of means that are used to protect persons from assault and battery, but also as to the level of resources they allocate to protect people against violations of the right. I am grateful to Allen Buchanan for this point.

person the precise object of his action. It is the right that grounds the norm against targeting non-combatants, even in justified wars, and (in my view) against elective abortion, euthanasia, the killing of hostages, and so forth. Of course, in the case of abortion, some people argue that human beings in the embryonic or fetal stages of development do not yet qualify as persons and so do not possess human rights; and in the case of euthanasia, some argue that permanently comatose or severely cognitively disabled people do not (or no longer) qualify as rights-bearers. I think that these claims are mistaken, but I won't here go into my reasons for holding that the moral status of a human being does not depend on his or her age, size, stage of development, or condition of dependency. I've presented this argument in great detail in numerous places, including my book *Embryo: A Defense of Human Life* (with Christopher Tollefsen).⁷ Here I will say only that people who do not share with me the conviction that human beings in early stages of development and in cognitively disabled conditions are rights-bearers, may nevertheless agree that **whoever** qualifies as a person is protected by the norm against the direct killing of the innocent.

III NATURAL LAW AND HUMAN DIGNITY

The natural law understanding of human rights I am here sketching is connected with a particular account of human dignity. Under that account, the natural human capacities for reason and freedom are fundamental to the dignity of human beings – the dignity that is protected by human rights. The basic goods of human nature are the goods of a rational creature – a creature who, unless impaired or

⁷ Robert P George and Christopher Tollefsen, *Embryo: A Defense of Human Life* (Witherspoon Institute Press, 2nd ed, 2011).

prevented from doing so, naturally develops and exercises capacities for deliberation, judgment, and choice. These capacities are God-like – albeit, of course, in a limited way. In fact, from the theological vantage point they constitute a certain sharing – limited, to be sure, but real – in divine power. This is what is meant, I believe, by the otherwise extraordinarily puzzling Biblical teaching that man is made in the very image and likeness of God. But whether or not one recognises Biblical authority or believes in a personal God, it is true that human beings possess a power traditionally ascribed to divinity – namely, genuine agency: the power of an agent to cause what the agent is not caused to cause. This is the power to envisage a possible reality or state of affairs that does not now exist or obtain, to grasp the intelligible point – the value – of bringing it into being, and then to act by choice (and not merely by impulse or on instinct, as a brute animal might) to bring it into being. That state of affairs may be anything from the development of an intellectual skill or the attainment of an item of knowledge, to the creation or critical appreciation of a work of art, to the establishment and maintenance of a friendship. Its moral or cultural significance may be great or, far more commonly, comparatively minor. What matters for the point I am now making is that it is a product of human reason and freedom. It is the fruit of deliberation, judgment, and choice.

Of course, a further question will present itself to the mind of anyone who recognises the God-likeness of our capacities for rationality and freedom, capacities that are immaterial (and, thus, one can say spiritual) in nature. That question is whether beings capable of such powers could exist apart from a divine source and ground of their being. So one finds in the affirmation of these powers a decisive ground for the rejection of materialism, and one discerns the basis of an openness to, and even the roots of an argument for, theism. But more on that point later.

Now, what about the authority for this view of human nature, the human good, human dignity, and human rights? Natural law theorists are interested in the intelligible reasons people have for their choices and actions. We are particularly interested in reasons that can be identified without appeal to any authority apart from the authority of reason itself. This is not to deny that it is often reasonable to recognise and submit to religious or secular (eg, legal) authority in deciding what to do and not do. Indeed, natural law theorists have made important contributions to understanding why and how people can sometimes be morally bound to submit to, and be guided in their actions by, authority of various types. Think, for example, of Yves Simon's work⁸ and John Finnis'.⁹ But even here, the special concern of natural law theorists is with the **reasons** people have for recognising and honouring claims to authority. We do not simply appeal to authority to justify authority.

One might then ask whether human beings are in fact rational in anything more than an instrumental sense. Can we discern any intelligible reasons for human choices and actions? Everybody recognises that some ends or purposes pursued through human action are intelligible at least insofar as they provide means to other ends. For example, people work to earn money, and their doing so is perfectly rational. Money is a valuable means to a great many important ends. No one doubts its instrumental value. The question is whether some ends or purposes are intelligible as providing *more than merely instrumental* reasons for acting. Are there intrinsic, as well as instrumental, goods? Skeptics deny that there are intelligible ends or purposes that make possible rationally *motivated* action. Natural law theorists, by contrast,

⁸ See Yves R Simon, *A General Theory of Authority* (University of Notre Dame Press, 1962).

⁹ See John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 2nd ed, 2011) 59–127.

hold that friendship, knowledge, critical aesthetic appreciation, and certain other ends or purposes are intrinsically valuable. They are intelligibly “choice worthy,” not simply as means to other ends, but as ends-in-themselves. They cannot be reduced to, nor can their intelligible appeal be accounted for exclusively in terms of, emotion, feeling, desire, or other subrational motivating factors. These basic human goods are constitutive aspects of the well-being and fulfillment of human persons and the communities they form, and they thereby provide the foundations of moral judgments, including our judgments pertaining to justice and human rights.

Of course, there are plenty of people today who embrace philosophical or ideological doctrines that deny the human capacities I maintain are at the core of human dignity. They adopt a purely instrumental and essentially non-cognitivist view of practical reason (eg, Hume’s view that reason is nothing more than ‘the slave of the passions’)¹⁰ and argue that the human experience of deliberation, judgment, and choice is illusory. The ends people pursue, they insist, are ultimately given by non-rational motivating factors, such as feeling, emotion, or desire. ‘The thoughts are to the desires,’ Hobbes has taught them to suppose, ‘as scouts and spies, to range abroad and find the way to the thing desired.’¹¹ Truly rationally motivated action is impossible for creatures like us. There are no more-than-merely-instrumental reasons for action – no basic human goods. Now, if proponents of this non-cognitivist and subjectivist view of human action are right, then it seems to me that the entire business of ethics is a charade, and human dignity is a myth. But I don’t think they are right. Indeed, I don’t think

¹⁰ David Hume, *A Treatise of Human Nature* (Clarendon Press, 1888) bk II, pt III, § III, 415.

¹¹ Thomas Hobbes, *Leviathan* (Hackett Publishing Company, 1994) 41.

that they can give any account of the norms of rationality to which they must appeal in making the case against reason and freedom that is consistent with the denial that people are capable of more-than-merely-instrumental rationality and true freedom of choice. I do not deny that emotion figures in human action – obviously it does, and on many occasions it (or other subrational factors) does the main work of motivation. But I maintain that people can have, and often do have, basic reasons for their actions – reasons provided by ends they understand as humanly fulfilling *and desire precisely as such*. These ends, too, figure in motivation.¹²

IV HUMAN IMPERFECTION AND MORAL FAILING

Now, if I and other natural law theorists are correct in affirming that human reason can identify human rights as genuine grounds of obligation to others, how can we explain or understand widespread failures to recognise and respect human rights and other moral principles? As human beings, we are rational animals; but we are imperfectly rational. We are prone to making intellectual and moral mistakes and capable of behaving grossly unreasonably – especially when deflected by powerful emotions that run contrary to the demands of reasonableness. Christians have a name for this: sin. And another name: fallenness. We suffer weakness of will and darkness of intellect. Even when following our consciences, as we are morally bound to do, we can go wrong. A conscientious judgment may nevertheless be

¹² I offer a detailed critique of Humean skepticism, and a defense of my own view of the relationship of reason to feeling, emotion, and the like, in Robert P George, *In Defense of Natural Law* (Oxford University Press, 1999) ch 1. See also, John Finnis, *Reason in Action* (Oxford University Press, 2011) ch 1 ('Practical Reason's Foundations').

erroneous. Of course, sometimes people fail to recognise and respect human rights because they have self-interested motives for doing so. In most cases of exploitation, for example, the fundamental failing is moral, not intellectual. In some cases, though, intellectual and moral failures are closely connected. Selfishness, prejudice, partisanship, vanity, avarice, lust, ill-will, and other moral delinquencies can, in ways that are sometimes quite subtle, impede sound ethical judgments, including judgments pertaining to human rights. Whole cultures or subcultures can be infected with moral failings that blind large numbers of people to truths about justice and human rights; and ideologies hostile to these truths will almost always be both causes and effects of these failings. Consider, for example, the case of slavery in the antebellum American south. The ideology of white supremacy was both a cause of many people's blindness to the wickedness of slavery, and an effect of the exploitation and degradation of its victims.

V NATURAL LAW AND GOD

Let us turn now to the question of God and religious faith in natural law theory. Most, but not all, natural law theorists are theists. They believe that the moral order, like every other order in human experience, is what it is because God creates and sustains it as such. In accounting for the intelligibility of the created order, they infer the existence of a free and creative intelligence – a personal God. Indeed, they typically argue that God's creative free choice provides the only ultimately satisfactory account of the existence of the intelligibilities humans grasp in every domain of inquiry.¹³

Natural law theorists do not deny that God can reveal moral truths

¹³ See, eg, John Finnis, *Religion and Public Reasons* (Oxford University Press, 2011), especially ch 1 ('Darwin, Dewey, Religion, and the Public Domain').

and most believe that God has chosen to reveal many such truths. However, natural law theorists also affirm that many moral truths, including some that are revealed, can also be grasped by ethical reflection apart from revelation. They assert, with St Paul, that there is a law ‘written on the hearts’ even of the Gentiles who did not know the law of Moses – a law the knowledge of which is sufficient for moral accountability. So the basic norms against murder and theft, for example, though revealed in the Decalogue, are knowable even apart from God’s special revelation.¹⁴ The natural law can be known by us, and we can conform our conduct to its terms, by virtue of our natural human capacities for deliberation, judgment, and choice. The absence of a divine source of the natural law would be a puzzling thing, just as the absence of a divine source of any and every other intelligible order in human experience would be a puzzling thing. An atheist’s puzzlement might well cause him to re-consider the idea that there is no divine source of the order we perceive and understand in the universe. It is far less likely, I think, to cause someone to conclude that our perception is illusory or that our understanding is a sham, though that is certainly logically possible.

The question then arises: Can natural law – assuming that there truly are principles of natural law – provide some measure of common moral and even political ground for people who do not agree on the existence or the nature of God and the role of God in human affairs? In my view, anybody who acknowledges the human capacities for reason and freedom has good grounds for affirming human dignity and basic human rights. These grounds remain in place whether or not one adverts to the question: “Is there a divine source of the moral order

¹⁴ See Aquinas (n 3) I-II, Q 91, art 2, Q 100, art 1.

whose tenets we discern in inquiry regarding natural law and natural rights?" I happen to think that the answer to this question is "yes," and that we should be open to the possibility that God has revealed himself in ways that reinforce and supplement what can be known by unaided reason. But we do not need agreement on the answer, so long as we agree about the truths that give rise to the question, namely, that human beings, possessing the God-like (literally awesome) powers of reason and freedom, are bearers of a profound dignity that is protected by certain basic rights.

So, if there is a set of moral norms, including norms of justice and human rights, that can be known by rational inquiry, understanding, and judgment even apart from any special revelation, then these norms of natural law can provide the basis for a common understanding of human rights – an understanding that can be shared even in the absence of religious agreement. Of course, we should not expect consensus. There are moral skeptics who deny that there are moral truths. There are religious fideists who hold that moral truths cannot be known apart from God's special revelation. And even among those who believe in natural law, there will be differences of opinion about its content and implications for certain issues. So it is, I believe, our permanent condition to discuss and debate these issues, both as a matter of abstract philosophy and as a matter of practical politics.

VI CHALLENGES TO NATURAL LAW PHILOSOPHY

It is sometimes regarded as an embarrassment to natural law thinking that some great ancient and medieval figures in the natural law tradition failed to recognise – and indeed have even denied – human rights that are affirmed by contemporary natural law theorists, and even

regarded as fundamental. Consider, for example, the basic human right to religious liberty. This right was not widely acknowledged in the past, and was even denied by some prominent natural law theorists. As Professor Finnis has observed, they wrongly believed that a wide conception of liberty in matters of faith presupposed religious relativism or indifferentism, or entailed that religious vows were immoral or non-binding, or the comprehensive subservience of ecclesial communities to the state.¹⁵ It is interesting that when the Catholic Church put itself on record firmly in support of the right to religious freedom in the document *Dignitatis Humanae* of the Second Vatican Council, it presented both a natural law argument and an argument from specifically theological sources. The natural law argument for religious liberty is founded on the obligation of each person to pursue the truth about religious matters and to live in conformity with his conscientious judgments.¹⁶ This obligation is, in turn, rooted in the proposition that religion – considered as conscientious truth-seeking regarding the ultimate sources of meaning and value – is a crucial dimension of human well-being and fulfillment. It is among the basic human goods that provide rational motivation for our choosing. The right to religious liberty follows from the dignity of man as a conscientious truth-seeker.

This right, and other human rights, are denied and attacked today from various quarters, and in many parts of the world are routinely violated. The ideological justification for their denial and violation can be religious or secular. In some parts of the world, religious freedom and other basic human rights are denied in the name of theological truth.

¹⁵ See John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (The Catholic University of American Press, 1991) 26 and n 50.

¹⁶ Second Vatican Council, *Declaration on Religious Liberty: Dignitatis Humanae* (1965) § 2–3, reprinted in Vatican Council II, *The Conciliar and Post Conciliar Documents* (Austin Flannery, OP ed, rev ed, 1988) 800-801.

In other parts of the world, the threats are from secularist ideologies. Where secularist ideologies are liberal in form, it is often claims to an overarching right to autonomy (or a corrupted version of the true right to have one's equal dignity respected) that are asserted to justify choices, actions, and policies that natural law theorists believe are unjust and undermine the common good. If the natural law view of these matters is correct, then it is moral failings conspiring with intellectual errors that sustain ideologies that compromise human rights. In a certain sense, the failings are at opposite poles. Yet, from a natural law vantage point partisans of the competing ideologies make valid criticisms of each other. Militant religious fundamentalists, for example, harshly condemn the decadent features of cultures in which the "me-generation" ideology of "if it feels good, do it" flourishes. On the other side, ideological liberals denounce the subjugation of women and the oppression of religious dissenters where religious fundamentalism holds sway.

As natural law theorists see it, threats to human dignity and human rights exist because all of us, as human beings, are imperfectly reasonable and imperfectly moral. To put it in Christian terms, we are fallen creatures, sinners. At the same time, hope exists because we really do possess the capacities for reasonableness and virtue; truth – including moral truth – is accessible to us and has its own splendor and powerful appeal. We will never, in this vale of tears, grasp the truth completely or in a way that is entirely free from errors. Nor will we fully live up to the moral truths we grasp. But just as we made progress by abolishing the evil of slavery, by ending legally sanctioned racial segregation in the United States and elsewhere, by recognising the right to religious freedom, and by turning away from the eugenics policies once favored by so many respectable people, natural law theorists hope that we can make progress, and reverse declines, in other areas.

Of course, people who reject the natural law understanding of human dignity and human rights will differ from natural law theorists on questions of what constitutes progress and decline. From certain religious fundamentalist points of view, the type of religious freedom defended by natural law theorists will be regarded as licensing heresy and religious irresponsibility. Natural law ideas will be seen as just a rhetorically toned down form of western liberal secularism. By contrast, from the perspective of certain secularist ideologies, natural law ideas about abortion, sexuality, and other hot-button moral issues will be regarded as intolerant and oppressive – a philosophically gussied-up form of religious fundamentalism. In the end, though, natural law ideas – like the ideas proposed by any school of thought, be it religious or secularist – will have to stand or fall on their merits. Anyone who wonders whether they are sound or unsound will have to consider the arguments offered in their support and the counterarguments advanced by their critics.

VII THE “NEW” NATURAL LAW THEORY

As I observed earlier, there are competing accounts of natural law and natural rights among people who are or have been regarded, or who regard themselves, as natural law theorists. I have in various writings associated myself with what is sometimes called, the ‘new natural law theory’ of Germain Grisez and John Finnis. But whether there is anything much that is really new in our approach is questionable. The core of what Grisez, Finnis, and I say at the level of fundamental moral theory is present, at least implicitly, in the writings of Aristotle, Thomas Aquinas, and other ancient, medieval, and early modern thinkers. Some commentators have insisted that what we say is fundamentally

new (and, from the point of view of our critics within the natural law camp, wrongheaded) because we are resolute about respecting the distinction between description and prescription and avoiding the fallacy (as we see it) of proposing to derive normative judgments from *purely* factual premises *describing* human nature. An example of the fallacy is the putative inference of the value of knowledge from the fact that human beings are naturally curious and desire to know. But here we are being faithful to the methodological insights and strictures of Aquinas. Contrary to what is sometimes supposed, he recognised that what would later come to be called ‘the naturalistic fallacy’ is indeed a fallacy, and was far stricter about avoiding it even than was David Hume, who is sometimes credited with “discovering” it.¹⁷

If, standing on the shoulders of Aristotle and Aquinas, we have been able to contribute something significant to the tradition of natural law theorising, it is founded on Professor Grisez’s work showing how what he calls ‘modes of responsibility’ follow as implications of the integral directiveness of the most basic principles of practical reason – principles that direct human action towards basic human goods and away from their privations. The modes of responsibility are intermediate in their generality between the first and most general principle of morality (“always choose in ways that are compatible with a will towards integral human fulfillment”) and fully specified moral norms that govern particular choices. The modes include the Golden Rule of fairness and the Pauline Principle that acts that are in themselves evil (*mala in se*) may not be done, even for the sake of good consequences. They begin to specify what it means to act (or to fail to act) in ways that are compatible with a will oriented positively (or, at least, not negatively) towards the well-being of all human beings in

¹⁷ See Finns (n 9) 33-48.

all the respects in which human beings can flourish – integral human fulfillment.

Our account of the modes of responsibility helps to make clear the ways that natural law theories are both like and unlike utilitarian (and other consequentialist) approaches to morality, on the one hand, and Kantian (or “deontological”) approaches on the other. Like utilitarian approaches, and unlike Kantian ones, natural law theories are fundamentally concerned with human well-being and fulfillment and, indeed, identifying principles directing our choosing towards basic human goods, and away from their privations, as the starting points of ethical reflection. Unlike utilitarian approaches, however, they understand the basic forms of human good (as they figure in options for morally significant choosing) as incommensurable in ways that render senseless the utilitarian strategy of choosing the option that overall and in the long run promises the net best proportion of benefit to harm (however ‘benefit’ and ‘harm’ may be understood and defined). Natural law theorists share with Kantians the rejection of aggregative accounts of morality that regard the achievement of sufficiently good consequences or the avoidance of sufficiently bad ones as justifying choices that would be excluded by application of moral principles in ordinary circumstances. Unlike Kantians, however, they do not believe that moral norms can be identified and justified apart from a consideration of the integral directiveness of the principles of practical reason directing human choosing towards what is humanly fulfilling and away from what is contrary to human well-being. Natural law theorists do not believe in purely “deontological” moral norms. Practical reasoning is reasoning about both the ‘right’ and the ‘good,’ and the two are connected. The content of the human good shapes moral norms inasmuch as such norms are entailments

of the basic aspects of human well-being and fulfillment considered integrally.

Such a view presupposes, of course, the possibility of free choice – that is, choosing which is the pure product neither of external forces nor internal but subrational motivating factors, such as sheer desire. So a complete theory of natural law will include an account of principles of practical reason, including moral norms, as principles for the rational guidance of free choices, and a defense of free choice as a genuine possibility. This entails the rejection of strict rationalism, according to which all phenomena are viewed as caused. It understands human beings – some human beings, at least sometimes – as capable of causing realities that they bring into existence for reasons by free choices. On the natural law account of human action, freedom and reason are mutually entailed. If people were not really free to choose among options – free in the sense that nothing but the choosing itself settles what option gets chosen – truly rationally motivated action would not be possible. Conversely, if rationally motivated action were not possible, the experience we have of freely choosing would be illusory.¹⁸

Another feature of the natural law account of human action that is stressed by those of us who are regarded as “new” natural law theorists is the set of distinctions between various modes of voluntariness. We understand morality as fundamentally a matter of rectitude in willing. In sound moral judgments and upright choices and actions, the will of the agent is oriented positively towards the human good integrally conceived. In choosing and acting, one is not, of course, pursuing every human good – that is not possible – but one is pursuing

¹⁸ In defense of freedom of choice (or freedom of the will) as described here, see Joseph M Boyle, Jr, Germain Grisez and Olaf Tollefsen, *Free Choice: A Self-Referential Argument* (University of Notre Dame Press, 1976).

at least one basic human good well, and if one is choosing and acting in a morally upright way one is respecting the others. Yet, is it not obvious that many upright choices – choices of good ends sought by morally good means – have some bad consequences? For example, do we not know with moral certainty that by constructing a system of highways on which drivers of automobiles are authorised to drive at a speed of, say, 65 miles per hour we are permitting a circumstance to exist in which several thousand people each year will be killed in driving accidents? Indeed, we do. But according to the natural law understanding of human action, there is a real and sometimes morally critical distinction between intending harm to a basic human good (and thus to a person, since human goods are not mere abstractions, but are aspects of the well-being of flesh-and-blood human beings) and accepting foreseen harm as a *side-effect* of an otherwise morally justified choice. One can intend harm in two different ways: as an end-in-itself or as a means to some other end. One intends harm as an end when, for example, one seeks to injure or kill someone out of hatred, anger, or some similarly powerful emotion. One intends harm as a means when, for example, one seeks to kill a person in order to recover on the victim's life insurance policy. The key thing to see is that intending death (whether as end or means) is distinct from accepting death as a side-effect (even if the side effect is clearly foreseen, as we foresee, for example, the deaths of motorists and passengers on the highways in ordinary accidents).¹⁹

¹⁹ Although the distinction between intending, on the one hand, and accepting bad side effects, on the other, is often pertinent to moral evaluation on a natural law account, one should not suppose that it is impossible to violate moral norms in accepting side effects. On the contrary, one may behave *unjustly*, for example, in accepting bad side effects, even where one has not run afoul of the norm against intending, say, the death or injury of an innocent human being. See, eg, George (n 12) 106.

VIII CONCLUSION: NATURAL LAW AND MORAL VIRTUE

Let me conclude with one more proposition stressed by natural law theorists, namely the fact (or in any event what we believe to be the fact) that by our choices and actions we not only alter states of affairs in the world external to us, but also at the same time determine and constitute ourselves – for better or worse – as persons with a certain character.²⁰ Recognition of this self-shaping or “intransitive” quality of morally significant choosing leads to a focus on virtues as habits born of upright choosing that orient and dispose us to further upright choosing – especially in the face of temptations to behave immorally. People sometimes ask: Is natural law about rules or virtues? The answer from the point of view of the “new natural law” theory is that it is about *both*. A complete theory of natural law identifies norms for distinguishing right from wrong as well as habits or traits of character whose cultivation disposes people to choose in conformity with the norms and thus compatibly with a what we might call, borrowing a phrase from Kant, a good will, viz, a will towards integral human fulfillment.

²⁰ See, eg, Aristotle, *Nicomachean Ethics*, 1113b5–13.