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**The Normative Role of “Basic Goods”
in the
Natural Law Jurisprudence of John Finnis:
A Critical Assessment**

A DISSERTATION

Submitted to the Faculty of the

Department of Theology

of The Catholic University of America

In Partial Fulfillment of the Requirements

For the Degree

Doctor of Philosophy

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William J. Wagner

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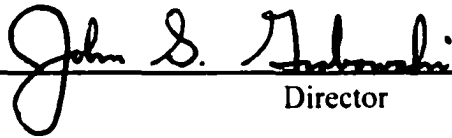
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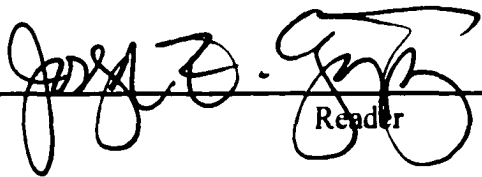
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This dissertation by William J. Wagner fulfills the dissertation requirement for the doctoral degree in Theology.

This dissertation was approved by John Grabowki, Ph. D., as Director, and by Joseph Capizzi, Ph. D., and Russell Hitinger, Ph. D., as Readers.



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INTRODUCTION

John Finnis's work in ethics and jurisprudence has revived contemporary interest in natural law. Finnis has authored a substantial body of writings, and his early volume *Natural Law and Natural Rights*¹ has become a standard reference. Commentators generally accord him an importance equal to that of any other figure now writing on law and morality. Through a remarkably consistent application of his method in moral reasoning, he has assumed a highly visible place, both in England and the United States, in public discourse over matters of societal policy, as well as within Roman Catholic moral debate over matters of individual ethics. In both realms, public and ecclesiastic, Finnis has drawn attention, less to the longer historical tradition of natural law discourse, than to his own distinctive system of thought, as in itself, possibly offering an occasion for the revival of a revised form of natural law theory.

Finnis is known for his natural law defense of certain universally binding concrete moral norms, which he premises on the idea of intrinsically evil acts.² He proposes this defense based on a normative concept of obligation which he legitimates in relation to a "metaphysically austere" concept of "basic goods," conceived by him as a set of self-evident ends of human action.³ Especially in Roman Catholic circles, Finnis is known for this ethical theory, which he has elaborated in collaboration with several other

¹ Oxford: Clarendon Press, 1980 (425 pp.).

² John Finnis, *Moral Absolutes: Tradition, Revision and Truth* (Washington, D.C.: The Catholic University of America Press, 1991), 58-83.

³ The term "metaphysically austere" as applied to John Finnis's concept of basic goods originates with Robert George. R. George, "Forward," in *Natural Law Theory*, (Oxford: Oxford University Press, 1992), vi.

Catholic ethical theorists including Germain Grisez.⁴ Those who compile contemporary options in ethical reasoning consider the “basic goods” approach, as Finnis and his collaborators advance it, a basic alternative among contemporary modes of ethical reasoning. Commentators in both ecclesiastical and secular circles debate the cogency of Finnis’s ethical theory, generally, and in ecclesiastical circles, they debate its conceptual and historical continuity with the Catholic tradition.

In contrast to most other contemporary ethical theory, Finnis offers his theory of ethics as part of a more comprehensive system of thought, also embracing, as a basic concern, the topic of civil law. Finnis thus also proposes a theory of jurisprudence. In so doing, he starts from a concept of moral obligation arising in connection with “basic goods” and arrives at a notion of the “common good” conceived by him as a set of essentially procedural considerations binding the individual in relation to others as a matter of individual moral agency.⁵

In offering a single schema of justification for individual choice and action and for laws and governmental institutions, Finnis implicitly asserts the inherently public status of moral norms, and he also gives the moral agent a reason for attributing moral meaning to law. These dimensions of Finnis’s thought make it of interest as an alternative to the liberalism generally setting the terms of contemporary political discussion. At the same time, Finnis appears to have gained admission to the circles of public and academic debate about law and morality within which liberalism predominates and which generally

⁴ e.g., Grisez, Germain, and Joseph Boyle. “Practical Principles, Moral Truth, and Ultimate Ends,” *American Journal of Jurisprudence* 32 (1987): 99-151.

⁵ Finnis, *Natural Law and Natural Rights*, 134-60.

remain closed to thinkers in the thomistic tradition. A reason might lie in the nature of the distinction Finnis makes between practical and speculative reason, since it permits Finnis's natural law jurisprudence to function without overt reference to metaphysics, and this relative freedom from metaphysics permits him to enter more easily into dialogue with liberalism. As a student at Oxford, he found a mentor in H.L.A. Hart, a liberal legal theorist.⁶ These several factors call into question the more precise relation which Finnis's thought bears to liberalism.

Finnis himself asserts that his continuity is, not with liberalism, but with the pre-modern tradition of St. Thomas Aquinas, and he seeks to persuade other natural-law theorists that his own metaphysically austere concept of obligation was already implicit in Aquinas's writings with metaphysics and ontology there forming, at most, extraneous elements which can now be set aside.

The thesis of this dissertation is that a comparison of Finnis's thought with the modern alternative of liberalism and the pre-modern option of Aquinas will demonstrate that the concept of "basic goods" cannot sustain the normative role that Finnis assigns it generally in ethics, or, more specifically, in jurisprudence, because, deprived of Aquinas's metaphysics and ontology, it does not account for the interpersonal and transcendent dimensions of human reality which the phenomena of moral obligation and civil law implicate.

⁶ Hart was Finnis's tutor at Oxford, and he proposed that Finnis write *Natural Law and Natural Rights*, and helped with the practical arrangements of its completion. See John Finnis's comments at the Association of American Law Schools' Workshop on "Jurisprudence and Legal Philosophy and Their Application to the Basic Curriculum," March 20-22, 1986, Philadelphia, Pennsylvania, *Journal of Legal Education* 36 (1986): 492-93.

I. METHODOLOGY

Anglo-American moral philosophy and jurisprudence lack a consensus on the meaning of basic terms, so that contemporary legal and ethical discourse enjoy little common ground for the unselfconscious interpretation or justification of theory.¹ This circumstance makes the clarification of methodological postulates a preliminary step necessary to comparing alternative theoretical foundations, and to ensuring as well that contradictions arising in discourse do not enter into one's terms, arguments or basic viewpoint.²

Anglo-American debate over politics and law often embodies a liberal presumption in the form of procedural obstacles to certain forms of normative or theoretical argument.³ This bias offers a second reason for consciously accounting for one's methodology at the outset of any inquiry. Methodological self-awareness helps ensure that the operative commitments of contemporary institutions do not short-circuit open-minded comparison among theories of law, justice and morality.

This chapter expressly addresses the question of this study's methodological postulates. It considers common methodological assumptions and decides which will guide the present study. It integrates these within a unitary approach resting upon the ideas of Bernard Lonergan, S.J. and Hans Georg Gadamer. Finally, it frames concrete steps to direct the dissertation's inquiry.

¹ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* ed. (Notre Dame: University of Notre Dame Press, 1988), 6-26.

² Hans Georg Gadamer, *Truth and Method* (New York: The Seabury Press, 1975), 274-305. Gadamer does not want a "naive methodologism" modeled on natural sciences, but one which is properly justified by reference to the linguistic connection between subjectivity and the text delivered from the past. *cf.*, 417-421, 463.

³ Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 134-162.

A. The Choice of Suitable Methodological Postulates

John Finnis's jurisprudence is "foundationalist" in the strong sense. He espouses normative first principles for moral philosophy and jurisprudence, and he locates them in first-order ethical reflection.⁴ His normative arguments do not, by their terms, invite analysis under any meta- or second-order framework that could simultaneously structure comparison with other theories.⁵ The goals of the present inquiry would not, in any event, permit the adoption of Finnis's second-order methodological assumptions, if he had any, for doing so would interfere with the study's goal fairly and without bias comprehending and appraising Finnis's first-order normative first principles and the justification he advances on their behalf.

In fact, to adopt any methodology that derives justificatory significance from meta-level considerations would preempt the study of Finnis's foundations on their own terms. At best, it would unacceptably shift the focus of the study to *whether* Finnis's foundations

⁴ John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 23-55.

⁵ A development in the latter half of the nineteenth century is pivotal in identifying basic alternatives in Anglo-American moral philosophy and jurisprudence. Ethicists supplemented their use of "first-order" methodology of the early modern period, relating innate ideas, empirical sentiments or the like with concrete moral judgments or other conditions with "second-order" methodology, aligning competing first-order methodologies. Henry Sidgwick's *The Methods of Ethics*, appearing in 1874, was the first work to apply this form of reasoning, eventually to be known as "meta-ethics."

Differences in second-order ethical method explain alternative comparative approaches. Differing generic terms or concepts mediate comparative understandings of first order ethical theories. They classify individual ethical theories by the content they give to generic terms or concepts; the procedures they follow in applying them; and the contrast they offer to other ethical theories on both counts. Meta-ethics group theories by "types" based on systematic roles they assign these terms, concepts and procedures.

Leading meta-level frameworks serve to supply normative or justificatory direction to first-order ethical theory, leading to other salient distinctions. Meta-ethical methodologies may be distinguished by their mode of deriving or justifying these conclusions and applying them to first-order ethical discourse.

One may, thus, differentiate methodological options in Anglo-American moral philosophy in three ways: 1) the linguistic or conceptual terms mediating comparison; 2) sources of normative or justificatory significance found at the level of second-order reflection; and 3) the normative consequences of such reflection for first-order reasoning.

can be reduced to the terms of another theory in this way. For these reasons, this study will not employ the terms of classical cognitive meta-ethics,⁶ noncognitive meta-ethics,⁷ the good-reasons school,⁸ Rawls's reflective equilibrium⁹ or McIntyre's incommensurability thesis,¹⁰ although each has currency in contemporary discourse.

⁶ Sidgwick gave classical cognitive meta-ethics its basic outlines. It accords common ethical terms such as the "good," the "right," and "obligation" invariant cognitive content, whether naturalistically or by intuition, and it seeks to show how each particular ethical theory employs these standard terms. This school utilizes a single set of concepts both to explain the particular theory and to bridge the comparative grasp of other theories. It places certain normative significance on the coherent use of ethical concepts.

⁷ Noncognitivist meta-ethics mediates comparisons between ethical theories through linguistic analysis. It seeks to show how each ethical theory's "grammatical" structure variably expresses "noncognitive" meaning. It understands first-order meaning as an expression of emotion, preference or attitude. To count as ethical, first-order terms must satisfy second-order grammatical rules defining what is to suffice as a "moral" statement. In this view, ethical terms are "prescriptions" of attitudes the speaker recommends that another assume, and moral because "universalizable" in form. Ethical terms may also include secondary "reasons" in "commendation" of primary prescriptive judgments. This form of moral philosophy denies the cognitive significance of ethical terms, and it makes justificatory foundations impossible.

⁸ The good reasons schools arose in an effort to "commensurate" first-order methodologies descriptively without either predetermining justificatory foundations or eliminating their possibility. It is associated with theorists such as Baier, Nielsen, Toulmin and Singer. It views ethical reasoning to be like the reasoning of a judge adjudicating among reasons as grounds for deciding a case. The moral agent, like the judge, must choose responsibly to be considered moral. The pool of "reasons" from which the agent selects is composed of the plural moral principles proposed for his consideration by competing ethical theories. To be "moral," the agent must establish that the reasons he adopts are "good" in the sense of being "warranted."

Reasons satisfying the standard include "universalizability," "impartiality" and "other-regardingness." An ethical theory often employs a master criterion to distinguish reasons that do not satisfy the standard from those which do. Candidates for this role may be difficult to distinguish from such first-order ethical principles as utility. Germain Grisez, whose work John Finnis adapts as the basis of his theory, appears to have been influenced by the good reasons school in originally formulating his approach. Grisez, however, transposes the terms of analysis from second order to first order reasoning, since for Grisez, as for Finnis, there is only one set of good reasons.

⁹ An influential methodological alternative seeking to preserve both meta-level or linguistic orientations and a commitment to moral justification, while declining the meta-level "foundationalism" of the good-reasons school, is John Rawls's "reflective equilibrium." Rawls proposes a form of justification he deems holistic rather than foundational. According to it, the agent assumes the adjudicatory stance of the good-reasons school, but does not justify his choice of reasons by any, even meta-level, "foundational" procedure. Instead, he accepts, as justified, those reasons that "fit" coherently with his "principles" and "considered moral judgments." The agent adds and deletes principles and concrete judgments until he arrives at a "considered" cognitively satisfying equilibrium.

¹⁰ Alasdair McIntyre denies the possibility of a descriptive "commensuration" of terms within any meta-ethical frame of reference, taking a stance radically opposed to moral theory from Sidgwick to Rawls. His "incommensurability thesis" is that ethical terms have a meaning only within the tradition in which they arise. In this view, the project of meta-level comparison itself becomes a particular tradition of "first-order" moral reasoning which MacIntyre terms "encyclopaedist." Important meta-level descriptive tasks, nonetheless, remain. They include identifying the "traditions" of moral philosophy within which ethical terms fit. There is also the

"First-order" foundationalist theories, such as Finnis's, draw conclusions about the nature and source of justification in moral philosophy from meta-level reflection. But, they accord justificatory significance only to what can be known through first-order reflection or experience. They derive no justificatory significance from the analysis of linguistic, conceptual or psychological features of ethical terms remaining constant across ethical theories.¹¹ They ground their justificatory conclusions instead in first-order insight into the intrinsic requirements of nature, character, practical reason, virtuous or rational action, or the like.¹² Erecting their "foundations" within first-order experience, they are more strictly "foundationalist" in the sense of being less relativist, than any methodology deriving justificatory criteria from moral psychology, linguistics or other "constants" in pluralist discourse.¹³

No one form of foundationalism finds general acceptance. Each must take notice of arguments repudiating its own first-order normative principles, and each recognizes the necessity of some way of mediating between positions based on opposing first principles. For lack of a better term, the comparative methodologies such approaches employ may be termed "dialectical." Unfocused at times, this dialectical methodology brings relevant theories into rough alignment. While generally stressing methodology in their first-order

justificatory significance of tradition as a meta-level concept. The critic evaluates concrete ethical judgments by how well the tradition in which it stands supports it.

¹¹ Gewirth, "Meta-ethics and Normative Ethics," *Mind* 69 (1960): 187-205.

¹² e.g. Alan Gewirth, *Reason and Morality* (Chicago and London: The University of Chicago Press, 1978), 1-47; Peter Geach, *The Virtues* (Cambridge: Cambridge University Press, 1977), 1-19; and Ralph McInerney, *Ethica Thomistica*, (Washington, D.C.: The Catholic University of America Press, 1982), 1-10.

¹³ Norman Daniels, "Reflective Equilibrium and Archimedean Points," *Canadian Journal of Philosophy* 10 (1980): 102.

inquiry, they generally avoid formal methodologies for integrating terminological borrowings or otherwise validating comparisons and contrasts across theories. Working within the space created by their own first principles, ethicists such as Alan Gewirth contrast their own patterns of reasoning with those perceived as somehow comparable in opposing theories.¹⁴ The purpose and effect of such reasoning is to amplify, strengthen or reinforce the theorist's own position.

The dialectical approach is obviously not a methodology that could sustain the present comparative study. One would need to give a presumption to Finnis's own first-order foundational principles, or even less satisfactorily, to those of an opposing school of thought. Either strategy would, therefore, defeat the goal of open-minded comparison. Moreover, it would make unlikely to persuade of anyone committed to a competing theory. Even if Jean Porter is correct that MacIntyre overstates his "incommensurability thesis,"¹⁵ MacIntyre is right that commentators often badly underestimated¹⁶ the abyss dividing ethical theories. Robert George documents the failure of Finnis's critics to understand his terms.¹⁷ Theorists can, through the lens of their first principles, falsify elements in the theories they seek to interpret. Conversely, they may fail to control implications of the meta-ethical vocabulary they employ sporadically.

¹⁴ Gewirth employs the term "dialectical" to designate his methodology. Gewirth, *Reason and Morality*, 42-47.

¹⁵ Jean Porter, *The Recovery of Virtue: The Relevance of Aquinas for Christian Ethics* (Louisville: Westminster/John Knox Press, 1990), 57.

¹⁶ MacIntyre, *After Virtue*, 6-22.

¹⁷ Robert George, "Recent Criticism of Natural Law Theory," *University of Chicago Law Review* 55 (1988): 1371-1429.

The comparativist strategies of first-order foundationalist theories, however, offer clues toward a workable comparative methodology. They bridge dissimilar approaches, for example, by borrowing common linguistic or conceptual terms from the second-order methodologies so far considered, but without adopting their justificatory implications.

Without going as far as to adopt MacIntyre's notion of tradition-dependence, first-order foundationalists sometimes also make history a matrix for interrelating diverse moral philosophies and forms of jurisprudence. They compare theories in relation to a pattern of progress discerned in the unfolding of a historical type. Michael Bertram Crowe describes an evolutionary pattern cohering around an array of theories in "natural law" type attaining its characteristic form in the thirteenth century. His effort resembles that of Heinrich Rommen. Alan Donagan's identification of generic elements of moral theory traceable in Western intellectual history offers another parallel.

Contrasting theories may be related to one another by references to a single philosophical problem of historical importance. Henry Veatch's "structural history" so aligns the terms of contending moral theories in *For an Ontology of Morals*.¹⁸ As "first-order" foundationalists, such thinkers do not derive justificatory significance from historical patterns of similarity and difference. Their use of history to mediate descriptive comparisons may, however, be followed by an unacknowledged slide into the implicit use of history as normative warrant. They may rely for their credibility on their adherence to the tradition of Aristotle, or Saint Thomas, or to the "Western tradition."¹⁹ Yet, Joseph Boyle speaks

¹⁸ Evanston, Ill.: Northwestern University Press, 1971, 3-18.

¹⁹ McNerny, *Ethica Thomistica*.

for first-order foundationalists when he asserts that in principle, the validation of history can be no stronger than philosophical arguments adducible for the position which recurs within history. Finnis himself rejects the idea that a critic can evaluate his approach validly by charting its historical connection with other "natural law" theorists as such.²⁰

The present study's methodology must make Finnis's terms intelligible to some acceptably-wide range of participants in contemporary discourse. The dialectical strategies of first-order foundationalists offer two possible leads towards the construction of the desired methodology. One is the use of history as a matrix of comparison, as long as one does not import with it an assumption of progress immanent in history.²¹ Historical genealogy may not be allowed to pre-empt a fair analysis of the express justificatory arguments of the authors being compared.²² Nor may one consider a pattern of similarities and differences with antecedent approaches, to be in itself an adequate description of distinctions essential to the position being studied.

Still, first-order foundationalists such as Crowe and Veatch appear correct in according history a secondary role in mediating a comparison to moral theories. Joseph Boyle, for example, cites "tradition of intellectual inquiry" as supplying a basis for the comparative analysis of ethical theories, while he reserves the evaluation of their truth is for philosophical argument.²³ Historical causes, connections, similarities, or differences within

²⁰ Finnis, *Natural Law and Natural Rights*, 24-25.

²¹ R.G. Collingwood, *The Idea of History* (New York: Oxford University Press, 1956), 321-334.

²² Boyle, "Natural Law and the Ethics of Traditions," 15.

²³ Boyle, "Natural Law and the Ethics of Traditions," 15; John Finnis is in accord. *cf.* *Natural Law and Natural Rights*, 24-25.

a "tradition of inquiry" can contribute to the description of a theory, on condition that one considers them in relation to questions, posed philosophically.²⁴ So understood historical comparison will be incorporated as an element of this study's methodology.

In addition, first-order foundationalists offer the lead of selective reliance on comparative concepts borrowed from meta-level methodologies. This second lead will also be a basis of the present study's methodology, but with two conditions. The study will not import the justificatory implications of the source theories, e.g. it will utilize C.D. Broad's concept of teleology but not his interpretation of moral obligation as an intuition of fittingness.²⁵ And, it will not adopt Finnis's own foundations which are the object of study, as the source of its integration or coherence.

The insights of classical cognitive meta-ethics suggest, for instance, that one may describe a theory, without prematurely deciding for or against it, by adopting generic concepts and procedures, rather than a historical or genetic scheme of reference, as starting point. Noncognitive meta-ethics, for its part, seems right to deny that such generic concepts and procedures have invariant cognitive content, and to propose linguistic usage as an alternative source of the generic concepts and procedures bridging different ethical theories. Both the theorists of the good-reasons school and John Rawls allow for a comparative analysis based on linguistic analysis without adopting the specific presuppositions of Hare. They appear to be justified in refusing to adopt Hare's skeptical justificatory stance. Some generic regard for morality can support meaningful comparison of diverse justificatory

²⁴ Collingwood, *The Idea of History*, 330-334.

²⁵ C.D. Broad, *Five Types of Ethical Theory*, 278, 282.

arguments, without committing one to the hermetically meta-ethical framework MacIntyre critiques as "encyclopaedism."²⁶

B. A Unifying Conception of Method Drawn from the Works of Bernard Lonergan, S.J. and Hans Georg Gadamer

If one is successfully to integrate the valid comparative strategies of first-order foundationalism, one needs to substitute some unifying conception for the presumption that the first-order foundationalist gives his own terms. Bernard Lonergan, S.J. and Hans Georg Gadamer offer such a conception. Lonergan's work on method supplies its general outlines. Gadamer's hermeneutical gives it theoretical depth.

In *Method in Theology*, Bernard Lonergan offers a conception of methodology committed to theoretical foundations but open heuristically to new data and competing theoretical models.²⁷ As such, it satisfies what is needed here. It promises both unbiased description and fair evaluation of first-order foundational principles.

Lonergan grounds his methodology "transcendentally" which is to say in the undifferentiated intentionality to know belonging to the human subject.²⁸ Through introspection, Lonergan identifies invariant stages in the mind's progress from ignorance to knowledge. Based on these stages, he develops functional specialties assisting the subject to advance towards an informed decision about the truth of any matter of concern.²⁹

²⁶ Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry* (Notre Dame: Notre Dame, 1990), 170-195.

²⁷ New York: Herder and Herder, 1972.

²⁸ *Ibid.*, 13-20.

²⁹ *Ibid.*, 11-12; 125-133.

Lonergan's method organizes and applies the diverse methodological postulates selected for incorporation above. Lonergan's transcendental desire to understand, know and decide coordinates comparison even while the party inquiring holds his judgment about the truth of first principles in abeyance. In this approach, faith in the ultimate possibility of foundational principles is compatible with an interim suspension of such principles in order to advance comparative understanding.³⁰

Lonergan's functional specialties include four that are analytic: 1) research, 2) interpretation, 3) history and 4) dialectic; and four that are synthetic: 1) foundations, 2) doctrine, 3) systematics and 4) communications.³¹ Lonergan considers each specialty to be an intrinsic stage in the transit from ignorance to knowledge.

The first step in integrating the methodological postulates above into the Lonerganian framework, is to correlate functional specialties with the stages of present project. Lonergan's first analytic specialty, research, corresponds to the inquiry preceding the analysis³² undertaken in the pages of this dissertation. His second analytic specialty, history, seeks to settle what was going forward in the past.³³ Even when it concerns itself with "historical perspectives," this study never seeks to decide causal connections between events. The questions confronting the present study fall principally, then, within Lonergan's

³⁰ Ibid., 15-16.

³¹ Ibid., 127-132.

³² Ibid., 149-151.

³³ Ibid., 187.

remaining two functional analytical specialties: "interpretation" and "dialectic."³⁴ Lonergan's synthetic specialty of "foundations" has a role to play, where to progress, "dialectic" depends on the adoption of specific commitments about conversion or decision about the first-order criteria of evaluation.

This study's goal extends to both "description" and "evaluation." Lonergan allocates "description" and "evaluation" among functional specialties of "interpretation," "dialectic," and "foundations." He places the "description" of ideas within interpretation and dialectic, interpretation being the understanding of ideas on their author's terms,³⁵ and dialectic the comprehension of the salient points distinguishing one set of ideas from pertinent alternatives.³⁶ He sees "evaluation" as dialectic insofar as it entails criticizing ideas both for their relative internal consistency and academic merit.³⁷ Where the thinker reaches the point of conversion to a new horizon of meaning or value, Lonergan considers him to begin the constructive phase of foundations.³⁸

Lonergan's transcendental dynamism permits descriptive analysis, without needing to assume the fact-value dichotomy, which in one form or another, yields the justificatory bias of the second-order methodologies considered earlier. A separate descriptive, comparativist phase of analysis, in Lonergan's scheme, avoids implying any particular

³⁴ *Ibid.*, 153-173; 235-266.

³⁵ *Ibid.*, 160-161.

³⁶ *Ibid.*, 246.

³⁷ *Ibid.*, 250.

³⁸ *Ibid.*, 131-132.

relation of language, concepts, or discursive moral speculation to value. Instead, it treats it as an integral moment in a dynamism grounded in interiority.³⁹

1. Interpretation

Lonergan borrows this concept of interpretation from Hans Georg Gadamer. Gadamer sets out his interpretive theory in *Truth and Method*.⁴⁰ The richer appreciation of Lonergan's concept may be obtained directly from Gadamer's book. Gadamer's method of interpretation is one of consciously aligning the reader's point of view with the author's.⁴¹ To accomplish this alignment, the reader adopts some set of heuristic concepts, meaningful to himself but also applicable to the author's text.⁴²

Gadamer views the reader as beginning with the author's words. He then selects which of the possible meanings the author means to convey.⁴³ It is at this point that one can insert the analysis of linguistic usage cited earlier as of value for comparative study. Analytical philosophy makes the focal meaning of ordinary usage its starting point. The reader seeks to relate the author's usage to the focal meaning he knows.⁴⁴ To this idea, Gadamer adds an important distinction. The focal meaning of the word within the reader's experience cannot be assumed to be the focal meaning for the author.⁴⁵

³⁹ Ibid., 16.

⁴⁰ New York: Seabury Press, 1975.

⁴¹ Ibid., 345-351.

⁴² Ibid., 333-341.

⁴³ Ibid., 404-408.

⁴⁴ Finnis, *Natural Law and Natural Rights*, 9-11.

⁴⁵ Gadamer, *Truth and Method*, 422.

Gadamer considers understanding to arise within "horizons" comprised by the subject's interests, knowledge and commitments.⁴⁶ The reader's horizons on coming to a text, constitute the "hermeneutical situation."⁴⁷ Interpreting the text is a matter of choosing a focal meaning within the reader's own horizons and investigating whether this meaning is the author's. As the reader radically discerns the true focal meaning within the author's horizons, his interpretation becomes more accurate.⁴⁸

The reader, then, begins with his own experience, and proceeds with an openness to learning that some other meaning might better fit within the author's horizons. In this view, interpretation is not so much objective comparison, as a personal conversation.⁴⁹ A true interpretation has been reached when the reader adequately understands the author's distinctive horizon, so that the reader and the author's perspectives merge or "fuse."⁵⁰

The present study will, then, proceed by seeking to understand literal terms, taken from Finnis's texts, from an initial perspective defined by the horizons of "hermeneutical situation" of contemporary discourse. The common or generic terms used here to align ethical theories are not assumed to have independent and invariant meaning. Rather, they are merely heuristic constructs. When the study reaches the point, in Gadamer's terms, of approaching "fusion" with Finnis's horizons, its original heuristic questions should, in

⁴⁶ Ibid., 269-270.

⁴⁷ Ibid., 236-240.

⁴⁸ Ibid., 358.

⁴⁹ Ibid., 345.

⁵⁰ Ibid., 358.

principle, no longer control the interpretation. Rather, Finnis's own horizons should have been grasped sufficiently well for the reader to be able to appreciate him on something like his own terms.

Concretely, then, to develop the tools of its analysis, the study must define its hermeneutical situation. From this situation, it must derive generic questions about the meaning of concepts and procedures found in Finnis's texts. This will not be a matter of identifying the writer's, or to any particular prospective reader's horizons, but of identifying those of the putative participant in current moral discourse. As a contemporary author, Finnis shares these horizons. The distinctive horizons, of his own interests, knowledge and commitments go beyond the common situation, transforming it in some way which this study seeks to uncover.

2. Dialectic

The functional specialty of dialectic sharpens and extends the understanding of an author's ideas, completing, classifying, comparing and critiquing them, with the goal of forming a "comprehensive viewpoint" grounded in "some single base or some set of related bases."⁵¹ Dialectic is primarily descriptive until the stage of critique, when it becomes primarily evaluative.⁵²

Assuming that the interpretive moment of the study makes Finnis's "standpoint" essentially intelligible, the phase of dialectic can uncover how Finnis's positions differ from those of other key thinkers, as answers to questions arising with some "base" or "set

⁵¹ Lonergan, *Method in Theology*, 129.

⁵² *Ibid.*, 130.

of bases, " with the end result that the reader attains a "comprehensive viewpoint" regarding Finnis in relation to relevant alternatives.

To advance dialectic, the subject "assembles, compares, reduces, and classifies" the author's position together with competing points of view. Dialectic's descriptive purpose is to show how an author differs from alternatives within the most comprehensive viewpoint possible.⁵³ Here, one can graft in the historical references of a Crowe or a Veatch. One can move from a simple abstract interpretation of Finnis to analyze, assemble and catalogue his similarities and differences within a larger tradition of intellectual inquiry.

Dialectic also offers a moment of evaluation. To start, Lonergan envisions initial evaluation excluding some standpoints as "counterpositions," rather than admitting them as positions.⁵⁴ This phase of evaluation precedes the dialectical comparison, reduction, and classification undertaken in the pages of the dissertation itself, and does not figure in its discussion. In Lonergan's schema, "positions" studied are subject to critique.⁵⁵ This critique looks both for inner coherence and for coherence in relation to criteria derived from other positions.⁵⁶

⁵³ Ibid., 249-250.

⁵⁴ Ibid.

⁵⁵ Ibid., 240.

⁵⁶ Ibid., 240.

3. Foundations

Unlike merely "perspectivist" approaches, Lonergan not only allows evaluation, he requires it. Lonergan assumes that human intentionality is inclined towards intellectual and moral conversion. Where the good-reasons school utilizes linguistics and John Rawls, moral psychology, to commensurate theories, Lonergan does not commensurate theories, rather he articulates irreducible first-order differences, critically evaluating their relative adequacy and consistency. He holds the terminus of the analytical process to be conversion to the truth of some position considered, which becomes a foundation for theory.⁵⁷

Lonergan's method can support open-minded evaluation of a moral theory's normative foundations and its use in jurisprudence. There is nothing in Finnis's theory to suggest that it is not amenable to being studied by means of Lonergan's method.⁵⁸

C. Concrete Methodological Steps to Guide the Present Study

A concrete set of procedures, rather than general methodological principles, is to structure the present inquiry. Such steps ought to follow, in sequence, from Lonergan's three relevant functional specialties: interpretation, dialectics and foundations.

⁵⁷ Ibid., 238-240.

⁵⁸ Although Finnis disagrees with Lonergan's approach to moral reasoning, Finnis cites Lonergan's approach to science, interpretation, and common sense approvingly. See John Finnis, *Fundamentals of Ethics* (Washington, D.C.: Georgetown University Press, 1983), 42-44.

1. The Functional Specialty of Interpretation

The interpretive phase of this study will explore the focal meaning of linguistic terms found in Finnis's work. This task calls for three preliminaries. One must select the terms for analysis; define the hermeneutical situation; and derive questions to guide interpretation.

a. The Language in Finnis's Moral Theory Which is to be the Focus of Interpretation

A fair reading of John Finnis's writings on jurisprudence discloses three phrases, as most central merely at the linguistic level, to the pattern of his work. The first of these is basic goods;⁵⁹ the second, practical reason;⁶⁰ and, the third (not surprisingly,

⁵⁹ In *Natural Law and Natural Rights*, Finnis entitles Chapter One, devoted to the substantive exposition of his theory of jurisprudence, "*A Basic Form of Good: Knowledge*." A chapter in *Fundamentals of Ethics*, entitled "Desire, Understanding and Human Goods," culminates in a section devoted to "the identification of basic human goods." The chapter of *Moral Absolutes: Tradition, Revision, and Truth*, dedicated to "clarifications," defines "intelligible goods" as "basic purposes, basic benefits of human action, basic human goods." A key chapter of *Nuclear Deterrence, Morality and Realism*, entitled "A Sounder Theory of Morality," builds decisively on a section called "Which are the Basic Human Goods?" In a seminal article, "Practical Principles, Moral Truth, and Ultimate Ends," Finnis and his co-authors entitle a pivotal section "Basic Goods as Reasons Underlying Purposes."

⁶⁰ Finnis states that his purpose in writing *Natural Law and Natural Rights*, his principal work on jurisprudence, was "primarily to assist the practical reflections of those concerned to act." Finnis devotes an important part of the book to explicating the "requirements of practical reasonableness." *Fundamentals of Ethics*, the primary statement of Finnis's moral theory, opens with a chapter on "the practicality of ethics." In the book, he explores "practical reasonableness" as a concept at the root of ethics. In *Moral Absolutes: Tradition, Revision, and Truth*, an excursus into moral theology, Finnis sets out integral human fulfillment as "the ideal of practical . . . reasonableness." In *Nuclear Deterrence, Morality, and Realism*, a co-authored work dealing with issues of law and public policy, he returns to the "principles of practical reason." In a co-authored article on moral methodology, "Practical Principles, Moral Truth, and Ultimate Ends," the "first principles of practical reasoning" form a central concept.

since the focus here is Finnis's jurisprudence), law.⁶¹ Taken together, the three terms form a triad that takes in essentially the whole of Finnis's corpus.

b. The Hermeneutical Situation

In these three central terms, basic goods, practical reason and law, the contemporary reader sees answers to the following questions: 1) What is the meaning of the good?; 2) What is the nature of ethical reasoning?; and 3) What is the character of civil law? The "hermeneutical situation" in which these questions arise for that reader may be termed that of "late modernity." A way of understanding the world comprises this situation. The point of view still has roots in the shift in metaphysics and epistemology marking the advent of modernity, and accounting, for example, for modern philosophy's emphasis on method.⁶² It reflects, as well, the assumption of pluralism underlying the rise of meta-ethics, and it harbors "post-modern" doubt, of more recent origin, about the capacity of either theory or method to unite fragmentary or plural perspectives in common discourse.⁶³

⁶¹ Admittedly, "law", even as in the phrase "natural law", is not central to Finnis's moral philosophy. In a work like *The Fundamentals of Ethics*, for example, the word law almost never appears and when it does it stands in contrast to moral philosophy. However, in his works relating to jurisprudence and law and policy, "law" becomes a central linguistic term. The index to *Nuclear Deterrence, Morality and Realism* verifies that Finnis considers "international law" an important point of reference. Finnis's title, *Natural Law and Natural Rights*, obviously contains reference to "law." Finnis opens that book's first chapter, "Evaluation and the Description of Law," by declaring his object to be to identify those morally significant purposes which "only . . . the institutions of human law" can satisfy. Another important chapter, "Law", refers to "[t]he central case of law and legal system."

⁶² See Eric Voegelin, *The New Science of Politics* (Chicago: University of Chicago Press, 1952), 1-26, 107-132.

⁶³ E.g., Richard Rorty, *Philosophy and the Mirror of Nature* (Princeton: Princeton University Press, 1979).

(1) Contemporary Situational Horizons Relevant to the
Meaning of Basic Goods

Each of the three terms, under discussion, relates to other more specific horizons of meaning. By bringing these horizons into focus, one can discover pertinent interpretive questions. A survey of contemporary ethical literature indicates that its reader would assume that the term basic goods refers to the good in some more generic sense. Beyond this assumption, that literature reflects radical disagreement on the nature of the good. Amid the diversity of opinion, there is a further common thread⁶⁴ Nearly all positions understand the good understood as the object of human action. This aspect of the good is traceable to Aristotle's *Nicomachean Ethics*. Aristotle says: "The good has rightly been declared to be that at which all things aim."⁶⁵ Here he means the focal case to be that at which human action aims, if it is to be virtuous. The term "good" has this moral connotation. The "good," signifying the "morally significant" "formal goal of choice and action," thus, both aligns diverse ethical theories for common comparison and highlights the basic differences among them.

The contemporary reader will assume that further important differences divide approaches to the "good," according to the normative value they give to the actual attainment of the end undertaken. Those theories that do not place normative significance on the attainment of the end are deontological. Kantian ethics is the outstanding

⁶⁴ See MacIntyre, *After Virtue*, 6-26.

⁶⁵ Ethics I, I. 1094a3. Noting its fundamental ambiguity, Finnis cites this term in its Latin formulation, "*quod omnia appetunt*." See *Fundamentals of Ethics*, 43-45.

example.⁶⁶ Those theories attaching normative value to the attainment of the end action are known as "teleological."⁶⁷ The contemporary reader divides these latter theories further. Some such theories hold that attainment of the end has normative value because of the end's subjective importance to the agent; other such theories assert that the attainment of the end has an objective value. "Subjectivists" may put normative value on the attainment of ends because they are willed by the agent,⁶⁸ or because it engenders the feelings of approval in the observer, or because of its usefulness in bringing about feelings of happiness or pleasure.⁶⁹

By contrast, "objectivists" derive normative value from reasons independent of the agent's or the observer's preferences or feelings.⁷⁰ Such reasons include: a good moral character; a happy life; the fulfillment of natural human inclinations or faculties; or the fulfillment of God's plan for human action.

Commentators generally view deontological approaches like Kant's, and subjectivist teleologies, as being characteristically modern.⁷¹ They consider objectivist approaches as being associated with pre-modern essentialism or early-modern

⁶⁶ See, for example, Immanuel Kant, *Fundamental Principles of the Metaphysic of _Morals*, trans. T.K. Abbott (1873), section 1.

⁶⁷ C.D. Broad, *Five Types of Ethical Theory*, 278.

⁶⁸ E.g. In defining the *ethical good*, William James states, for example: "In seeking for a universal principle we universally are carried onward to the most universal principle--that *the essence of good is simply to satisfy demand.*" *Essays on Faith and Morals* (New York: 1943), 205.

⁶⁹ The ethics of David Hume provide an example of an *approval theory of the good*. *A Treatise of Human Nature*. ed. L.A. Selby-Bigge (Oxford: Clarendon Press, 19), Book 3; An example of the usefulness theory is the universal hedonism of Henry Sidgwick. Broad, *Five Types of Ethical Theory*, 154-158.

⁷⁰ Finnis, *Fundamentals of Ethics*, 68-69.

⁷¹ Leo Strauss, *Natural Right and History* (Chicago and London: University of Chicago Press, 1953), 35-80.

rationalism.⁷² In distinguishing among ethical theories, conceptions of "the good," the contemporary reader tends to rely on the scale of subject-object polarity so absorbing modernity.

The contemporary reader assumes that the characteristically modern approaches in ethics, Kantian deontology and subjectivist teleologies, share two features in common. They allege that the natural world or world of objects can generate facts, but is opaque to values. They equate ethical problems with dilemmas over egoism and altruism. Further, deontology tends to resolve such dilemmas through respect for the formal moral equality of all agents,⁷³ while subjectivist teleologies, such as utilitarianism, tend to do so by requiring that society maximize aggregate satisfaction.⁷⁴

The contemporary reader seeking to understand a conception of the good will, thus, inquire into whether it is deontological or teleological; into its character as a response to the subject-object and fact-value dichotomies of modern thought; and, into its mode of resolving conflicts between egoism and altruism.

(2) Situational Horizons for the Meaning of Practical Reason

Within the hermeneutical situation, the contemporary reader would seek to understand Finnis's term, practical reason, as a form of ethical reasoning. That reader would conceive of the end of such reasoning to be "justification." Bernard Williams

⁷² See Henry Veatch, *For an Ontology of Morals*, 3-18; and Finnis, *Natural Law and Natural Rights* 42-50.

⁷³ Kant, *Fundamental Principles of Metaphysics of Morals* (the second formulation of the categorical imperative).

⁷⁴ Broad, *Five Types of Ethical Theory*, 154.

develops the latter concept in *Ethics and the Limits of Philosophy*.⁷⁵ Williams observes that the notion of moral justification assumes that a rational or moral necessity exists for there being a single determinate, unified and universally applicable vantage point from which one may, by determinate methodological steps, establish the rational or moral necessity of any given choice, attitude or action.⁷⁶

The necessity at stake, at both the level of the ultimate vantage point and of particular judgment, can generally be signified as "obligation." "Justification" seeks to demonstrate the obligatory character of both a particular mode of moral reasoning and of the given choices, attitudes or action which it gives rise.⁷⁷

Williams shows that justification, considered as a quest for an archimedean point in moral reasoning, goes back to Plato and Aristotle.⁷⁸ He suggests that the insistence on a unitary methodology of justification enters with modernity.⁷⁹ Various "first-order" moral methodologies, some more deductive, others inductive, emerged with the Cartesian turn of the seventeenth century. As we have seen, these first-order methodologies eventually were joined in the nineteenth and twentieth by second-order, meta-level methodologies.

⁷⁵ Cambridge: Harvard University Press, 1985.

⁷⁶ *Ibid.*, 22-29. The scope of competency claimed for a justificatory procedure may vary. Rawls, for instance, assumes a degree of insurmountable pluralism in individual assessments of what is justified. Only a "thin theory of the good" allowing a moral endorsement of the distribution of instrumental means to private ends can be given common moral validation. Finnis, "Justice: The Contemporary Debate," *Month* 9 (Sept. 1976): 304.

⁷⁷ *Ibid.*, 7-8.

⁷⁸ *Ibid.*, 30-53.

⁷⁹ *Ibid.*, 54-70.

The contemporary reader seeking to understand an ethical theory asks how it forms a more particular conception of "justification."⁸⁰ Where a theory does not correspond to justification, in its modern sense, then that reader will tend to describe it, by way of contrast, as either pre-modern virtue ethics or post-modern skepticism.

(3) Situational Horizons for the Meaning of "Law"

A survey of jurisprudence literature indicates that the typical reader approaches the term "law" from the paradigm of civil law. More particularly, the typical reader presumptively understands civil law as a sanction-backed set of restrictions on individual freedom, on the one side, or restrictions on governmental power, on the other,⁸¹ although he may also understand it as an instrument for advancing chosen forms of economic and social organization.⁸²

The typical reader presupposes further a bifurcation of descriptive from normative jurisprudence, and he gives a priority to the descriptive variety.⁸³ He assumes, as well, that reasoning about law will proceed by asserting a foundation for, if not by merely assuming, this bifurcation.

⁸⁰ Ibid., 174-202.

⁸¹ Robert Kraynak, *History and Modernity: The Thought of Thomas Hobbes* (Ithaca and London: Cornell University Press, 1990), 165-186; Roberto Unger, *Law in Modern Society: Toward a Criticism of Social Theory* (New York: The Free Press, 1976), 178-180.

⁸² Bruce Ackerman, *Reconstructing American Law* (Cambridge and London: Harvard University Press, 1984), 1-5.

⁸³ Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System*, 2d ed. (Oxford: Clarendon Press, 1980), 230-238. Where normative theory is given priority, it usually confesses some intrinsic restriction on the scope of direction it can give to legal structures. See John Rawls, *A Theory of Justice* (Cambridge: Belknap Press, 1971), 395-399.

The thinking of early-modern thinker, Thomas Hobbes, serves as the root model for this vantage point. The central moral problem law poses for Hobbes is how to justify the subordination of individual freedom to the power of the state. Hobbes's solution to this problem is to assert that individual survival justifies the individual's relinquishment of his freedom to state power.⁸⁴ His "consent" to the state for survival's sake justifies the legitimacy of state power.⁸⁵

Hobbes denies that moral reasoning can reach an intrinsically just resolution of conflicts between individuals. The will of the sovereign, by force of law, alone can do so.⁸⁶ Beyond his initial argument for the legitimacy of law grounded in the social contract, Hobbes reasons about law without reference to moral justification. If an exercise of power is within the definition of law, it is per se morally justified. Legal validity takes the place of moral justification. The focus of jurisprudence is on the criteria of legal validity, their scope, and their concrete application.⁸⁷

Positivist understandings of law, influential during the last century and a half, share Hobbes' bifurcation of law and morality. But they often go beyond Hobbes by deleting reference to moral justification entirely. They view law as the subordination of individual freedom to state power, without regard to an original act of consent, or to the

⁸⁴ Thomas Hobbes, *Leviathan*, (chapter xvii in) *Hobbes Selections* (ed. Frederick Woodbridge) (New York: Charles Scribner's Sons, 1930), 335-340.

⁸⁵ *Ibid.*, chapter xviii, 340-356.

⁸⁶ Voegelin, *A New Science of Politics*, 162-189.

⁸⁷ Hobbes, *Leviathan*, 403-406.

utility of law for survival. Law becomes purely a tool of social control of any power, able to obtain compliance with a standard of legal validity.⁸⁸

During this period, normative jurisprudence has tended to concern itself with individual immunity from law in protected areas, in the liberal tradition dominant in England and the United States.⁸⁹ Such immunity may be conceived of in Lockean,⁹⁰ or utilitarian terms.⁹¹

The contemporary reader would consider the horizons of meaning, sketched here, as the presumptive basis of the meaning of "law." But he would also be aware of two viewpoints challenging their relevance. He would be aware of the viewpoint of "recoverists" wishing to eliminate the bifurcation between normative and descriptive reasoning, attributing to the essence of law's morally substantive ends.⁹² He would likewise be conscious of the viewpoint of "postmodernists," challenging these presumptive horizons in a different direction, by contesting the assumption that even "legal validity" or "individual rights or immunities" can be defined from any universal descriptive or evaluative vantage point.⁹³

⁸⁸ See Hans Kelsen, *General Theory of Law and State*, trans. Anders Wedberg (Cambridge, Mass, 1943).

⁸⁹ See Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (Oxford and New York: Oxford University Press, 1965), 118-172.

⁹⁰ Leo Strauss, *Natural Right and History*, 202-251.

⁹¹ See J.S. Mill, "On the Connection Between Justice and Utility," chapter v in *Utilitarianism*.

⁹² E.g. Hadley Arkes, *First Things: An Inquiry into the First Principles of Morals and Justice* (Princeton: Princeton University Press, 1986).

⁹³ E.g. Richard Rorty, *Philosophy and the Mirror of Nature*; generally see David Hollenbach, "Religion and Political Life," *Theological Studies* 52 (1991): 89.

**c. The Basic Interpretive Questions
To Be Here Applied**

One must now select questions to guide the interpretive phase of inquiry into John Finnis's natural-law jurisprudence. Two sets of such questions concern the meaning of basic goods and practical reason, and a third regards the relationship between the two terms. A fourth relates to the meaning of "law." There are four sets of questions to be posed as follows:

(1) How does the conception of basic goods give further intelligible content to the concept the "good," taken to signify the goal of human action? What specific moral relevance does the conception of basic goods accord to the attainment of the good, formally defined as goal of human action? Is this intelligible content and normative significance properly viewed as subjective or as objective? Chapter 2 will address these questions in its first section.

(2) How does the conception of practical reason give content to the concept of "justification," when the latter term is taken as the activity of ethical theory? More particularly, what formal vantage point for the normative evaluation of human choice and action does this term identify, and what is the rational or moral necessity for its adoption? From the perspective of this formal vantage, what concrete moral methodology does Practical Reason prescribe, and what rational or moral necessity is there for its adoption? The second section of Chapter 2 treats these questions.

(3) To what extent do Finnis's basic goods function within his conception of Practical Reason in a manner describable as "teleology?" To the extent that basic goods

function teleologically, to what extent, if at all, they ground moral obligation in relation to a *telos* that can be considered an objective in nature? Whether or not it functions teleologically, to what extent does the conception of basic goods entail a form of egoism requiring correction through some countervailing principle of altruism? The third section of Chapter 2 explores these questions.

(4) How, if at all, does Finnis's conception of "law" express the concept of law as a sanction-backed restriction on individual freedom or governmental power? To what extent does he bifurcate normative and descriptive reasoning about law? To the extent that he does not, how does it justify a more unitary form of reasoning? In either case, what does Finnis propose as the distinctive problems law poses for normative theory? What solutions does he offer to them? What rational or moral necessity does he offer for accepting them? Chapter 3 will address these questions.

2. Dialectic

The first phase of Lonergan's functional specialty of dialectic aims at description. According to Lonergan's dynamism, the subject cannot be content with simple interpretation. He progresses to analyze meaning dialectically within a more fully comprehensive viewpoint. The only prerequisite to this dialectic is the selection of a concrete "base" or "related bases" of a comprehensive viewpoint.⁹⁴ One base in the context of this study is the set of questions guiding its interpretive stage. On the level of dialectic, the study will intensify, and then, in Lonergan's terms, "complete" its answers

⁹⁴ Lonergan, *Method in Theology*, 129.

to these questions.⁹⁵ The purpose is to press the statement of the author's ideas to the point of greatest possible coherence. The discussion of Chapters 2 and 3 aims to move beyond single interpretation to completion in this sense.

But, then, the study requires other, collateral bases "assembling" viewpoints for comparison with Finnis's. The hermeneutical situation giving rise to the interpretive questions to supply these.⁹⁶ One derives from the tradition on morality and law predominant in the hermeneutical situation known as recoverism. Recoverists seek to "recover" essential aspects of pre-modern moral philosophy. Finnis, for instance, states that he wishes to revive aspects of Aristotle and Saint Thomas, and so invites identification as a "recoverist."⁹⁷ Another trend is that of "liberalism" or, in the vocabulary of some, "modernism."⁹⁸ Finnis, for example, relies upon David Hume's naturalistic-fallacy argument seemingly placing him with the liberals and moderns.⁹⁹ The interpretive questions set out above to guide this study, in fact, relate closely with the assumptions of liberalism.

In Lonergan's terms, Finnis's relationship to these two schools is necessarily either one of genetic evolution or dialectical opposition. These two alternatives would place Finnis on one or the other side of major fault lines in contemporary discourse,

⁹⁵ Ibid., 250.

⁹⁶ Ibid.

⁹⁷ Finnis, *Fundamentals of Ethics*, 12.

⁹⁸ Not to be mistaken for theory of modernism

⁹⁹ See McInerney, *Ethica Thomistica*, 50-59.

defined by continuity with or opportunities to pre-modern thought, on the one hand, and liberalism and modernism on the other. Chapter 4, thus, analyzes the contrasts and continuities defining the relation of Finnis to the Aquinas.¹⁰⁰ Chapter 5 examines continuities and differences between Finnis and a leading exemplar of the liberal/modern tradition, positivist H.L.A. Hart.¹⁰¹

In its second phase, Lonergan's dialectic turns to evaluation and critique. It tests for a position's coherence internally, and in relation to other positions.¹⁰² The reader may uncover incoherence or incompleteness in the position on its own terms or in relation to other positions. A critique of Finnis, in these senses, structures a significant portion of Chapter 6. In pursuant of this goal, this final chapter assembles and analyzes an ancillary dialectic made up of critiques others offer of Finnis.

3. Foundations

In Lonergan's method, dialectic terminates in decision. In this context, the pertinent decision regards truth.¹⁰³ Where the truth, on which the reader arrives at decision, is basic, as it is with respect to the truth of Finnis's claims, the reader's conversion moves him out of the Lonerganian specialty of dialectic and into that of foundations.¹⁰⁴ Judgments reached dialectically become "foundations" supportive of

¹⁰⁰ Crowe, *The Changing Profile of the Natural Law*, 166-191.

¹⁰¹ Neil MacCormick, *H.L.A. Hart* (Stanford: Stanford University Press, 1981).

¹⁰² Lonergan, *Method in Theology*, 130.

¹⁰³ *Ibid.*, 238.

¹⁰⁴ *Ibid.*, 268.

"mediated" or synthetic discourse.¹⁰⁵ In Lonergan's sequence of steps, evaluative critique, thus, tends to move beyond the perspectivism of dialectic to foundational commitment. The final portion of Chapter 6, accordingly, concludes by identifying the principles the study concludes are true, and, upon which, it stakes its evaluation of Finnis's natural-law theory.

¹⁰⁵ *Ibid.*, 267.

II. FINNIS'S ETHICAL THEORY

The first chapter selected the terms "basic goods" and "practical reason" as suitable starting points for interpreting Finnis's system of thought because of their centrality within it, even as a matter of mere linguistics. The present chapter interprets these terms. Their formal scope coincides with what generally is meant by "ethical theory" so that their interpretation, in effect, states that portion of Finnis's system.

As will be seen in the next chapter, Finnis's jurisprudence can fairly be viewed as his ethical theory, applied to law, a configuration not customary in contemporary jurisprudence. His ethical theory may be explicated therefore apart from his jurisprudence, but not the reverse. His jurisprudence depends on principles taken from his ethical theory. This chapter on ethical theory is thus groundwork for the chapter on jurisprudence that follows.

It interprets the two terms it explores, separately, and, then, in relationship to each other, by reference to the heuristic questions of Chapter 1. By establishing the terms' interrelationship, it, in effect, clarifies the "normative role" of "basic goods," in Finnis's ethical theory, and, thereby, makes a contribution to realizing the dissertation's ultimate object, which is understanding the role of basic goods in the author's jurisprudence.

As was noted above, Gadamer suggests that a text may be experienced on some approximation of the author's own terms when the reader reaches a fusion of horizons with the author. With this in mind, the present chapter concludes with a succinct statement of Finnis's own distinctive horizons of reference relating to "basic goods" and "practical reason," leaving aside the heuristic categories of the chapter's order of discovery.

A. The Meaning of Basic Goods

The meaning of "basic goods" becomes intelligible to the contemporary reader as a more particular conception of the heuristic concept of "the good," as seen in the last chapter: "the morally relevant" "goal of human choice or action." The question to be answered here, then, is, what more particular content Finnis's conception of "basic goods" gives to the concept of the good as the morally relevant goal of human choice or action.

In keeping with the underlying subject-object dichotomy of modern thought, the contemporary observer will tend to distinguish conceptions of the good according to their subjectivity or objectivity. The more specific task here, then, is to identify the grounds, respectively, for treating the conception of the "good" reflected in the term "basic goods" as subjective, and what grounds exist for treating it as objective. The goal is to state the conception which the term "basic goods" offers of "the good" intelligible to readers presupposing, to one degree or another, subject-object polarity.

1. Basic Goods: A Subjective Reality?

A cursory glance at Finnis's work is enough to establish that the term, basic goods, gives content, in some sense, to the generic concept of the good, taken to mean the morally relevant goal of choice or action.¹ That content can be called subjective if it corresponds to some reality within the agent's consciousness as subject. Unambiguously subjective

¹ John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 59-80.

conceptions of the good exist, for example, the formal preference of the will, and the subject's subjective desire for pleasure, satisfaction or happiness.²

Finnis wishes to be known for his objectivism,³ but it is not to be overlooked that his theory is, also, in some significant sense subjectivist, as he acknowledges: "there is not one straightforward contrast to be made between 'objective' and 'subjective'."⁴ The "object or end" that he makes the foundation of reasoning in ethics is, in fact, a cognitive reality lying within the agent's consciousness as subject. Significant portions of what Finnis means by basic goods may be explicated in terms of this subjective reality without any direct reference to any extramental reality.

Finnis presents this starting point in reasoning about ethics, as a cognitive apprehension of the "point" or "reason" underlying intelligible choice and action.⁵ Finnis variously labels the cognitive act in question, the grasp of: a "point,"⁶ "reason,"⁷ "good,"⁸

² John Finnis, *Fundamentals of Ethics* (Washington, D.C.: Georgetown University Press, 1983), 80-82.

³ John Finnis and Germain Grisez, "The Basic Principles of Natural Law: A Reply to Ralph McInerny," *American Journal of Jurisprudence* 26 (1981): 25.

⁴ Finnis, *Fundamentals of Ethics*, 62.

⁵ Finnis, *Natural Law and Natural Rights*, 59-61; Germain Grisez, Joseph Boyle, and John Finnis, "Practical Principles, Moral Truth, and Ultimate Ends," *American Journal of Jurisprudence* 32 (1987): 105.

⁶ Finnis, *Fundamentals of Ethics*, 34.

⁷ Grisez, "Practical Principles," 105.

⁸ *Ibid.*, 103.

"motive,"⁹ "end,"¹⁰ "value,"¹¹ "appeal,"¹² "principle,"¹³ "category,"¹⁴ "general form [of good],"¹⁵ "judgment,"¹⁶ "rational ground,"¹⁷ "insight,"¹⁸ "basic premise,"¹⁹ and "intellectual perception."²⁰

The apprehension in question is said by him, in turn, to undergird cognitive/volitional realities termed "purposes,"²¹ "plans"²² and "projects."²³ Its content is said by him to be "that about a purpose" which makes it choiceworthy.²⁴ He defines purposes for their part as "that for the sake of which something is done."²⁵ Purposes have content in the form of

⁹ Ibid., 102.

¹⁰ Finnis, *Natural Law and Natural Rights*, 101.

¹¹ Ibid., 60-61.

¹² Grisez, "Practical Principles," 103.

¹³ Ibid., 102, 106; Finnis, *Natural Law and Natural Rights*, 59.

¹⁴ Grisez, "Practical Principles," 120.

¹⁵ Finnis, *Natural Law and Natural Rights*, 61.

¹⁶ Grisez, "Practical Principles," 105.

¹⁷ Ibid., 106.

¹⁸ Ibid., 108.

¹⁹ Ibid., 119.

²⁰ Finnis, *Fundamentals of Ethics*, 52.

²¹ John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington, D.C.: The Catholic University of America Press, 1991), 42; Grisez, "Practical Principles," 102-103.

²² John Finnis, Joseph M. Boyle, Jr., and Germain Grisez, *Nuclear Deterrence, Morality and Realism* (Oxford: Clarendon, Press, 1987), 289.

²³ Ibid., 288; Finnis, *Natural Law and Natural Rights*, 100.

²⁴ Grisez, "Practical Principles," 103.

²⁵ Ibid., 102.

envisioned contingent, concrete state of affairs that can be brought to be through the agent's choice or action.²⁶ By plans and projects Finnis appears to mean complex purposes. He assumes purposes underlie all reasonable action and choice.

According to Finnis, the intelligibility of choice and action, and the purposes informing them, depends on the "commendation" of an abstract cognitive judgment about what is choiceworthy.²⁷ Such underlying judgments are in the form of "guiding" propositions that some "possibility" is an object or end of choice and action.²⁸

Such judgments on closer examination are of two kinds. The intelligibility of the one depends upon the other, a secondary judgment about why it, in turn, is choiceworthy. This first sort grasps instrumental or derivative ends.²⁹ The other, by contrast, requires no further reference to sustain its intelligibility, and, thus, is termed "basic"³⁰ or "ultimate."³¹ It makes basic purposes intelligible.³² Finnis observes that to deny that such basic or ultimate reasons would be to condemn reasoning about action to an infinite regress.³³ These ends or reasons,

²⁶ Ibid.

²⁷ Finnis, *Nuclear Deterrence*, 277; Grisez, "Practical Principles," 104.

²⁸ Ibid., 105; Finnis, *Fundamentals of Ethics*, 34.

²⁹ Finnis, *Nuclear Deterrence*, 278; Grisez, "Practical Principles," 103, 111 (Examples: winning, being free to do as one pleases, or having wealth).

³⁰ Finnis, *Moral Absolutes*, 42.

³¹ Finnis, *Natural Law and Natural Rights*, 62; Grisez, "Practical Principles," 106, 133.

³² Finnis, *Moral Absolutes*, 42.

³³ John Finnis, "Practical Reasoning, Human Goods and the End of Man," *Proceedings of the American Catholic Philosophical Association* 58 (1984): 24.

give final meaning, either directly or indirectly to the "good" as the morally relevant goal of human action: Finnis calls them "basic goods."³⁴

The cognitive act which grasps basic goods has an invariant structure. It is in the form of an injunction of what is to be done and pursued as worthwhile, that "x is a good to be done and pursued."³⁵ In its negative statement, it proposes that "what destroys, damages or impedes" x is to be avoided.³⁶ As such, it coheres as a unified and definite insight offering a reasonable basis for action. This remains true although the agent may well perceive a complex of distinguishable aspects within the good.³⁷ When reason considers the array of goods advanced in a single act it subsumes all, however diverse, ultimately into just one basic reason for acting.³⁸

The cognitive judgment represented by a basic good has at least three further formal characteristics that are morally relevant, although these are surely less emphasized by Finnis. Each is "diachronic" in grasping that a form of fulfillment to be pursued at any one time is equally a form of fulfillment when pursued at another.³⁹ Each, therefore, entails the principle, "If x is a good now, it is a good always." Each is grasped as being intrinsically

³⁴ Grisez, "Practical Principles," 103.

³⁵ Finnis, *Natural Law and Natural Rights*, 63.

³⁶ Finnis, *Moral Absolutes*, 54.

³⁷ Finnis, *Natural Law and Natural Rights*, 88.

³⁸ Finnis holds that more particular wants can be subsumed under "generic conceptions." Finnis, *Fundamentals of Ethics*, 45.

³⁹ *Ibid.*, 141.

"personal" in that it is what fulfills the "person as a whole."⁴⁰ And, each is comprehended as inter- or transpersonal,⁴¹ being grasped in a judgement that entails the principle that "If x is a good for me who am a moral agent, it is equally a good for all others who are moral agents."

The array of such judgments have invariable substantive content, moreover, constituting numerically limited set of "forms" of conceiving of human fulfillment. Finnis outlines the array as follows:

- a. life in its maintenance and transmission, health, and safety;⁴²
- b. knowledge and aesthetic experience;⁴³
- c. excellence in work and play;⁴⁴
- d. harmony between persons⁴⁵ or sociability⁴⁶ or friendship, peace, and fraternity;⁴⁷
- e. inner peace;⁴⁸

⁴⁰ Finnis, *Moral Absolutes*, 11; Grisez, "Practical Principles," 104.

⁴¹ *Ibid.*, 115.

⁴² Finnis, *Natural Law and Natural Rights*, 86; *idem*, *Fundamentals of Ethics*, 51; Grisez, "Practical Principles," 107.

⁴³ Finnis, *Fundamentals of Ethics*, 51; *idem*, *Natural Law and Natural Rights*, 38 (Finnis once listed "aesthetic experience" as a separate good); and Grisez, "Practical Principles," 107.

⁴⁴ Finnis, *Moral Absolutes*, 42; *idem*, *Fundamentals of Ethics*, 51; *idem*, *Natural Law and Natural Rights*, 87; and Grisez, "Practical Principles," 107.

⁴⁵ *Ibid.*, 108.

⁴⁶ Finnis, *Natural Law and Natural Rights*, 88; *idem*, *Fundamentals of Ethics*, 51.

⁴⁷ Finnis, *Nuclear Deterrence*, 280.

⁴⁸ Grisez, "Practical Principles," 108.

- f. peace of conscience⁴⁹ or self-integration of feelings with practical intelligence and judgment;⁵⁰ practical reasonableness;⁵¹ and
- g. religion⁵² or peace with God⁵³ or harmony between humans and the wider reaches of reality or reality's sources, principles and grounds⁵⁴ or peace with whatever more-than-human source of reality, meaning and value.⁵⁵

The judgment that each of these enumerated "forms" of fulfillment is "something to be done and pursued" is indemonstrable and underivable.⁵⁶ Each is grasped in a simple act of non-inferential understanding.⁵⁷ No judgment respecting any one form of fulfillment may be derived from any other.⁵⁸ No one of them may be derived from any further or deeper judgment.⁵⁹

They are, whether singly or taken together, irreducible to any "master" principle or point of action.⁶⁰ They do not derive their intelligibility from any instrumental or other sort

⁴⁹ Ibid.

⁵⁰ Ibid.; Finnis, *Nuclear Deterrence*, 280.

⁵¹ Finnis, *Natural Law and Natural Rights*, 88-89.

⁵² Ibid., 89; Finnis, *Fundamentals of Ethics*, 51.

⁵³ Grisez, "Practical Principles," 108.

⁵⁴ Finnis, *Nuclear Deterrence*, 280.

⁵⁵ Finnis, *Moral Absolutes*, 43; Grisez, "Practical Principles," 108.

⁵⁶ Finnis, *Natural Law and Natural Rights*, 65.

⁵⁷ Ibid., 34.

⁵⁸ Grisez, "Practical Principles," 110.

⁵⁹ Ibid.

⁶⁰ Ibid., Finnis, *Nuclear Deterrence*, 279.

of relationship to an empirically verifiable, behavioral goal such as pleasure.⁶¹ Nor do they derive their intelligibility from an underlying metaphysical objective, whether the *telos* of human nature proposed in aristotelian philosophical anthropology or a platonic *eidos* of the "good."⁶² As a consequence, the intrinsic intelligibilities of such diverse cognitive judgments are incommensurable.⁶³

They are alike only in that the agent grasps each as an end of or reason for human choice and action.⁶⁴ Whenever Finnis speaks in the singular of "the end of human action," he alludes to the formal structure of the human act, which as will be seen below the mind grasps as the first principle of practical reasoning. Orientation to an end is a formal characteristic of all choice and action. This orientation reflects the unity of the will as appetite for what reason judges to a good⁶⁵ and provides a kind of grounding for the basic goods in a community of intelligibility.⁶⁶

When Finnis speaks of the good in any substantive sense, he speaks, by contrast, in the plural only. He believes that there is no substantive intelligibility in "the good," only in a basic array of "goods." Substantively, each of these can be grasped as, at most, analogous

⁶¹ Finnis, *Natural Law and Natural Rights*, 66.

⁶² *Ibid.*, 33-34.

⁶³ Grisez, "Practical Principles," 110.

⁶⁴ *Ibid.*, 135.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

to the others, the analogy being dependent on a common formal relationship to the agent's will and intellect.⁶⁷

Finnis's set of goods is subject to division into "substantive" goods instantiated in external states of flourishing, and "reflexive" goods, instantiated in intangible states of the will. But this division does not reflect any intrinsic relationship, hierarchical or otherwise, between or among the ends.⁶⁸ The agent experiences awareness of the basic goods abstractly in relation to his or her own options as a "circle"⁶⁹ or "horizon."⁷⁰ His intelligible purposes may be oriented to multiple intelligible ends, either concurrently or in relationship of means to ends. These relationships posited among ends may be experienced cognitively as unifying.⁷¹ The relationship, however, is not intrinsic.

The agent also may be reminded by substantial qualities as "dignity" and "self-respect" coming to be in the person who chooses and acts effectively, of the judgments of the choiceworthy that preceded action.⁷² The moral requirements which situations bring into play, moreover, align the basic goods with one another within moral problems the agent must resolve. As will be seen, such requirements cede priority to "reflexive" goods over "nonreflexive" ones and to the reflexive good of "peace of conscience" over the other

⁶⁷ Finnis, *Moral Absolutes*, 53; Finnis, "A Reply to Ralph McInerney," 28; Grisez, "Practical Principles," 110.

⁶⁸ Finnis, *Fundamentals of Ethics*, 51.

⁶⁹ Finnis, *Natural Law and Natural Rights*, 93.

⁷⁰ *Ibid.*, 100.

⁷¹ Finnis, *Nuclear Deterrence*, 289; Grisez, "Practical Principles," 108.

⁷² Finnis, *Moral Absolutes*, 11; *idem*, *Nuclear Deterrence*, 278; Grisez, "Practical Principles," 112.

reflexive goods.⁷³ The various relationships which may be experienced by the agent among basic goods in a moral problem derive in fact from the unifying operation of the agent's choice itself or from such requirements of morality applicable within the situation. They are not grounded in any intrinsic or common nature.

Each basic good has the character of a "guiding judgment" directing the agent's will.⁷⁴ A concrete proposal structured around a basic good motivates the will to action. The agent submits his will to reason's description of a choiceworthy act.⁷⁵ The directiveness originates in reason, without being derived from knowledge of any reality beyond reason, whether conceived metaphysically or empirically.

Although the basic good constitutes an awareness of some sort of human fulfillment to be experienced extramentally, the knowledge in question remains ineluctably a subjective reality, for it is not derived from verifying states of such fulfillment, retaining always an epistemological priority.⁷⁶ The cognitive judgment makes the realization intelligible, not vice versa.

The experience of this intrasubjective reality can be termed cognitive participation in value. The formulation by the mind of value is underived and original.⁷⁷ It is a cognitive

⁷³ Finnis, *Moral Absolutes*, 53; idem, *Natural Law and Natural Rights*, 93; and Grisez, "Practical Principles," 137-139.

⁷⁴ Ibid., 105.

⁷⁵ Finnis, *Fundamentals of Ethics*, 45; Grisez, "Practical Principles," 105.

⁷⁶ Ibid., 115.

⁷⁷ Ibid., 104; Finnis, *Natural Law and Natural Rights*, 63-4; idem, *Moral Absolutes*, 29.

reality which directs concrete actions but cannot be exhausted by them.⁷⁸ The agent neither discovers nor invents, but rather "develops" this directiveness within the intrasubjective deliberation of practical reasoning anticipatory of choice and action.⁷⁹ The directiveness points to a "possibility" that "is to be" through its own intelligible character within the mind, rather than to an object existing outside of it.⁸⁰ Its own prior intrasubjective reality makes subsequent "objective" fulfillment through human action possible.

This directiveness allows the agent to choose and act for a point or rationally, distinguishing and rejecting pointless behavior.⁸¹ Reason distinguishes the basic goods as identifying, from among the diverse de facto patterns of human behavior, the exhaustive range of intelligible action.⁸² In contrast to the pull of subrational desire, the directiveness of basic goods allows action subject to intelligible description. But, it does not permit a distinction between moral and immoral conduct or between acts that are morally obligatory and those that are not. The directiveness of the basic goods is morally relevant and, so, is "pre-moral," but not yet "moral."⁸³

Ethical theory takes a turn of paramount importance when it has established that a purpose can be called good because it *ought* to be the end or object of human choice or

⁷⁸ Finnis, *Nuclear Deterrence*, 277; idem, *Natural Law and Natural Rights*, 63-4; and Grisez, "Practical Principles," 103.

⁷⁹ Ibid., 115.

⁸⁰ Ibid., 104.

⁸¹ Finnis, *Moral Absolutes*, 43.

⁸² Finnis, *Moral Absolutes*, 43; idem, *Fundamentals of Ethics*, 11-12 (Finnis says he here means "'good' in an informal, idiomatic sense . . . not tied to 'morality'" but to "practical" thinking).

⁸³ Grisez, "Practical Principles," 126.

action, not just because it *is* so. In Finnis's terms, the judgment that an action advances a basic good does not in itself make it normatively good or bad. For Finnis, such a normative indorsement can be conferred only on a concrete proposal for action within a determinate context. The "moral relevance" of the basic good only becomes clear within a concrete proposal for action. That relevance lies in the measure it provides for the openness of the will to the intelligible fulfillment overall and in the long run.⁸⁴

Where the overall quality of the act respects this measure, Finnis says the act's reasonableness is complete. This complete reasonableness is what Finnis means by morally good action. Finnis holds that the moral evaluation of a concrete proposal for action can be explored, in meaningful part, within an essentially subjective frame of reference.

As will be developed a discussion of practical reason, Finnis considers that an action can be considered completely reasonable and thus moral, *only* by orientation to a self-evident rational ideal of coherence in choice and action.⁸⁵ As subsequent discussion develops, the agent's grasp of this ideal is in the form of an underived and indemonstrable insight that reason intrinsically requires that broader patterns of moral agency be pursued with consistent respect for *all* implicated criteria of intelligible action, i.e. all relevant basic goods.⁸⁶ This ideal endorses whatever unique set of purely subjective, "self-creating" preferences the agent elects out of the inexhaustible supply of purposes in quest of basic goods under changing

⁸⁴ Finnis, *Fundamentals of Ethics*, 69; idem, *Nuclear Deterrence*, 283; idem, *Natural Law and Natural Rights*, 23, 61, and 101; Grisez, "Practical Principles," 106, 121.

⁸⁵ *Ibid.*, 125.

⁸⁶ Finnis, *Nuclear Deterrence*, 281.

circumstances, so long only as the ideal's formal requirements are satisfied.⁸⁷ Frequently, the choice of a basic good in the form of a particular concrete purpose is moral, without any further need of justification, since the ideal's requirements are often "underdetermined."⁸⁸

Where the ideal demands more of a concrete purpose than mere intelligibility, its requirements are, as will be developed below, themselves known as self-evident cognitive judgments, and, as such, are "subjective." A concrete purpose may implicate a requirement of the ideal which, under circumstances, can be applied without direct reference to extramental realities, whether conceived as human nature or as empirically verifiable consequences.⁸⁹ And, even where an action's moral assessment depends on its effects, Finnis understands this assessment as revolving around the act's *a priori* description, rather than the concrete or empirical states of affairs it brings about.⁹⁰ Thus, in Finnis's view, the normative, no less than the intelligible good can be seen as a subjective reality.

2. Basic Goods: Objective Reality?

Essential aspects of Finnis's conception of basic goods, nonetheless, exclude their being seen as subjective *simpliciter*. One such aspect is the invariant nature of the subjective cognitive features of basic goods thus far considered. Another are the extramental states of

⁸⁷ Ibid.

⁸⁸ Grisez, "Practical Principles," 140-41.

⁸⁹ For example, the modes of responsibility which Finnis terms a coherent plan of life and conformity with conscience. Finnis, *Fundamentals of Ethics*, 75.

⁹⁰ Finnis, *Moral Absolutes*, 68.

affairs which successful choice and action presuppose, have as their accompaniment, or bring about.

a. The Invariant Character of Reasons Guiding Human Choice and Action

Finnis asserts the "objectivity" of his ethical theory based on the invariant character of the basic goods guiding choice and action.⁹¹ It is on this, rather than any speculatively metaphysical basis, that he asserts continuity with premodern, objectivist thinkers, like St. Thomas Aquinas, since he consistently distinguishes his approach from those relying on objective or speculative knowledge about human nature whether empirical or metaphysical.⁹²

Finnis follows Wiggins in defining objectivity as "ratiocination towards the truth" and truth as "validation moving towards correspondence." Objectivity, in this view, is not conceived of apart from the thought process of the knower, but it is, rather, the thinker's assurance of validity in the reasoning by which he posits the existence of things.⁹³ Finnis asserts the objectivity of the basic goods based on the rationally compelling nature of the judgments they represent. The grasp of this rational compellingness represents a cognitive participation in a value.⁹⁴ He claims that his is "a thoroughly objectivist theory of value."⁹⁵

Finnis concurs with Foot in holding that the good is a question of "interests," but, unlike her he finds such interests to be necessary rather than accidental.⁹⁶ Finnis considers

⁹¹ Finnis, *Fundamentals of Ethics*, 56-79.

⁹² *Ibid.*, 7, 10, 31; Finnis, *Natural Law and Natural Rights*, 52; and Grisez, "Practical Principles," 101.

⁹³ Finnis, *Fundamentals of Ethics*, 63.

⁹⁴ *Ibid.*, 46; Finnis, *Natural Law and Natural Rights*, 96; and Grisez, "Practical Principles," 103.

⁹⁵ Finnis, "A Reply to Ralph McInerny," 25.

⁹⁶ Finnis, *Fundamentals of Ethics*, 62.

them to be "anthropocentric" without thereby being morally relative.⁹⁷ The objectivity he claims for the basic goods is, no more or less, than what Wiggins means by terming a practical proposition objective when it both is "objectively discriminable" and "impinge[s] upon practical appreciation and judgment."⁹⁸

It can be shown by introspection that all deliberation about choice and action, regardless of how sophisticated⁹⁹ or simple, morally correct or flagrantly immoral,¹⁰⁰ depends on a grasp of the same recurring basic reasons for choice and action, i.e. the same "basic goods." All reasoning about choice and action begins and ends with such basic reasons as invariant points of reference.¹⁰¹ Such reasons are not contingent on individual human psychology or historical accident.¹⁰²

Will, inclination, desire or emotion do not alter the intelligibility of the ends of human action.¹⁰³ The agent has control over the ends he chooses, power over how he develops means towards the accomplishment of purposes oriented around such ends, and even freedom to give reign to subrational inclination and emotion rather than to act intelligibly at all.¹⁰⁴ Within the limits of morally correct action, he may elect and specify a

⁹⁷ Grisez, "Practical Principles," 107.

⁹⁸ Finnis, *Fundamentals of Ethics*, 66.

⁹⁹ Grisez, "Practical Principles," 107.

¹⁰⁰ *Ibid.*, 121.

¹⁰¹ Finnis, *Natural Law and Natural Rights*, 91.

¹⁰² Grisez, "Practical Principles," 107.

¹⁰³ Finnis, *Fundamentals of Ethics*, 30-7; *idem*, *Moral Absolutes*, 43.

¹⁰⁴ Grisez, "Practical Principles," 123-5.

substantive pattern of agency of his own morally un- or underdetermined choosing.¹⁰⁵ He has no power, however, to alter the nature of the underlying principles making possible intelligible description of possible human actions. The range of ends guiding human action has a certain and definite scope which cannot be altered. The invariability of these ends preempts the strongest emotions and desires aimed at overturning it. It persists in the face of willful decisions to ignore it. The basic reasons for choice and action are constant "like it or not."¹⁰⁶

The range of "interests" enjoying this objective or invariant intelligibility is considerably narrower than the full spectrum of interests designated by "the good" in ordinary usage, i.e. generally, any object of interest or desire.¹⁰⁷ Pleasure and the avoidance of pain are not reasons for action in Finnis's view. The only possible rational role in intelligible choice of these and many other such emotional goals is as instruments advancing one of the basic goods.¹⁰⁸ This narrowing distinguishes Finnis's notion of the good as the morally relevant goal of human action from those definitions of the good which purely subjectivist theories entertain as being the formal preference of the will or the subjective experience of satisfaction, pleasure or happiness.¹⁰⁹

¹⁰⁵ *Ibid.*, 132-33.

¹⁰⁶ Finnis, *Natural Law and Natural Rights*, 72.

¹⁰⁷ Finnis, *Nuclear Deterrence*, 277; Grisez, "Practical Principles," 107.

¹⁰⁸ *Ibid.*, 105.

¹⁰⁹ Finnis, *Fundamentals of Ethics*, 31.

For Finnis, "objectivity" lies in the invariance of reason's demand in the face of the subjective inclinations of the sentient or purely volitional dimensions of the acting person.¹¹⁰ The difference between the objective or reasonable proposal for action and a nonrational goal of the will or emotions is the intelligible description of the end as a basic good entailed in the former.¹¹¹ Many emotional goals find no reasonable justification in any intelligible basis for action. Finnis believes that this is Plato's distinction when he says that we desire something because it seems good to us, and that it does not seem good to us because we desire it.¹¹²

Finnis considers it self-evidently true that the basic goods correspond to reality, but not to anything that already "is" apart from the plans and projects of the agent, rather to the prospective reality which "is to be" through human choice and action.¹¹³ Because Finnis's basic reasons do not correspond to reality in the first sense, empirical evidence about the natural world, anthropology or external consequences cannot demonstrate their truth, nor, can deduction in metaphysics or philosophical anthropology. Empirical data and metaphysical speculation provide at most "reminders" of reasons already known to the subject. The basic reasons for action known *a priori* are necessary to understanding the outcome of human action or states of affairs experienced as human flourishing, not vice versa.¹¹⁴

¹¹⁰ Grisez, "Practical Principles," 99-100.

¹¹¹ Finnis, *Fundamentals of Ethics*, 45, 51-52.

¹¹² Finnis, *Natural Law and Natural Rights*, 70; idem, *Fundamentals of Ethics*, 44.

¹¹³ Grisez, "Practical Principles," 115.

¹¹⁴ Finnis, *Natural Law and Natural Rights*, 66, 83.

In premising the objectivity of his ethical theory on the invariability of the underlying cognitive judgments of basic goods, Finnis is not averse to comparison with Immanuel Kant who identifies an invariant reason for human choice and action in the maintenance or preservation of a good will. Finnis equates this Kantian reason for action with his own good of peace of conscience, stipulating only that his own is simply the richer and more adequate description.

In Kant, this end is both apprehended cognitively without reference to the external noumenal world. Granting differences in conceptual underpinnings, not here examined, the same is true of Finnis's theory. For Kant, maintaining a good will is the exclusive end of moral action, while Finnis postulates six other parallel ends defining diverse avenues of intelligible fulfillment. Finnis accords each the same cognitive character and status as Kant's end of the good will.¹¹⁵

b. Correspondence with Extramental States of Affairs

An objectivity may be claimed for the basic goods beyond the invariability of their cognitive role within deliberation about choice. According to Finnis, certain states of affairs are necessarily presupposed by the grasp of the basic goods; accompany their pursuit; are anticipated by knowing them; or result from action and choice on their behalf. Finnis assumes that these exist independently of subjective consciousness, and so they may be considered objective. Each can be understood as lending the basic goods a particular kind of objectivity, in keeping with its character and its particular nexus to the basic goods.

¹¹⁵ Finnis, *Fundamentals of Ethics*, 74, 110; idem, *Nuclear Deterrence*, 288.

As *a priori* judgments, the basic goods are intelligible as "forms"¹¹⁶ or "fields"¹¹⁷ or "possibilities"¹¹⁸ of fulfillment. Each is said to be the perfection possible through a distinctive kind of human flourishing or opportunity of being.¹¹⁹ Each points to an "aspect of personality," either of the agent or another.¹²⁰ Once instantiated through action, each will enrich an aspect of some person's being.¹²¹ The instantiation of a basic good represents the completion through freedom and practical reason of the human nature experienced, at the outset, in subrational inclination and knowledge of abstract basic goods.¹²² Each corresponds to an objective, however prospective, reality subject to coming to be through choice and action. Such flourishing is not "*deduced by us* from a prior knowledge of human nature. Rather, it *discloses to us* a form of human fulfillment and thus an aspect of human nature" (emphasis added).¹²³ Finnis sees the Kantian notion of a good will as one such basic sort of flourishing, and suggests that Kant erred only in overlooking concurrent forms of knowing

¹¹⁶ Ibid., 72.

¹¹⁷ Finnis, *Nuclear Deterrence*, 278; idem, *Moral Absolutes*, 10.

¹¹⁸ Finnis, *Fundamentals of Ethics*, 51.

¹¹⁹ Ibid., 41; Finnis, *Natural Law and Natural Rights*, 23, 67, 87, 103, 144; Grisez, "Practical Principles," 107.

¹²⁰ Finnis, *Nuclear Deterrence*, 282.

¹²¹ Ibid., 277-78; idem, *Moral Absolutes*, 10.

¹²² Ibid., 107, 116, 127.

¹²³ Finnis, *Moral Absolutes*, 29; Grisez, "Practical Principles," 103; Finnis, *Natural Law and Natural Rights*, 63-64.

other substantive and relational aspects of human flourishing. These categories correspond to the reality of what "can be," *not* to the structures of the mind.¹²⁴

There are two ways to consider the "objectivity" of these forms of flourishing coexisting with the subjectivity of the basic goods already brought out, in what is, considered from the perspective of the subject-object polarity of Modernity, a paradox. One may look to the encounter with reality providing the occasion for the agent's conceiving the *per se nota* judgment that a possibility of human flourishing exists which is a reason to act. And, one may look to the states of affairs constituting *a posteriori* instantiations of the flourishing which reason had perceived *a priori* as a basic reason for action.

Beginning with the reality occasioning the *per se nota* judgment that "x is a good to be done and pursued," Finnis assumes that the agent has reliable knowledge of his natural drives, inclinations and emotions, understood as the disposition of the agent's parts and powers towards actualization, or as the agent's sensory appetites including aversions.¹²⁵ These inclinations point to satisfactions possible through the accomplishment of various objective states of affairs. Speculative or theoretical reason can know desire and satisfaction. They occasion reason's grasp of abstractly intelligible possibilities of human fulfillment, i.e. the basic goods.

Finnis insists that the basic goods may not, however, be derived from or demonstrated by means of these dispositions, appetites and aversions. As evidence to this effect, Finnis points to the fact that *two* or more natural drives may call attention to just *one*

¹²⁴ Finnis, *Natural Law and Natural Rights*, 66; Grisez, "Practical Principles," 117.

¹²⁵ *Ibid.*, 120.

intelligible good, as, for example, the two desires of self-preservation and copulation occasion recognition of a single good in the form of life and health.¹²⁶ Other drives focusing on "death, pain, joylessness, trash, hatred, destruction of others, incoherence and other forms of human ruin" may point to no intelligible reason for action at all.¹²⁷ Thus, the subrational drives and inclinations derive their meaning in relation to the original and underived starting points of practical reason.¹²⁸

Finnis does not, however, claim that the basic goods are intuitions independent of sense experience.¹²⁹ The agent's natural dispositions, appetites and aversions stimulated by sense experience *occasion* the apprehension by practical reason of ends in themselves self-evident and indemonstrable values.¹³⁰ The consciousness of inclinations triggers reason's self-evident and indemonstrable grasp of corresponding intelligible ends. The subject, thus, needs an experiential basis to recognize that a given form of human fulfillment is possible. His recognition that life or health are goods for example depends on the experience of his subrational inclination towards natural goals of survival and procreation. And, his grasp of a reflexive good like peace of conscience depends on the prior experience of both some

¹²⁶ Finnis, *Natural Law and Natural Rights*, 84-86.

¹²⁷ *Ibid.*, 91.

¹²⁸ *Ibid.*, 66; Grisez, "Practical Principles," 127.

¹²⁹ Finnis, *Fundamentals of Ethics*, 22; Grisez, "Practical Principles," 106.

¹³⁰ Finnis, *Moral Absolutes*, 94; *idem*, *Natural Law and Natural Rights*, 19, 34, 60-61; *idem*, *Fundamentals of Ethics*, 30-7.

nonreflexive, substantive basic good like life or health and the practical possibility of contradiction or disorder in patterns of agency in its pursuit.¹³¹

Concrete proposals for action, moreover, require theoretical knowledge, moreover, of the defining characteristics of behaviors instantiating a basic good. Such proposals may relate, for example, to the fulfillment of a biological or natural drive.¹³² Acting to advance a basic good calls for theoretical knowledge of the agent's actual abilities, skills and resources, as well as of the challenges and opportunities of the real world, including those states of affairs providing the conditions necessary for instantiating a basic good, or producing means instrumental to its advancement.¹³³

Speculative reason, for its part, correlates natural inclination and the value grasped by practical reason.¹³⁴ The states of affairs reason seeks to bring about, or merely presupposes when it adopts purposes intelligible by reference to basic goods, are subject to external description including their relevance to these same drives and inclinations.¹³⁵

Natural inclinations, their satisfaction and the conditions and means contributing to their satisfaction can be empirically described. Finnis acknowledges that these empirically knowable states of affairs have a relation to the basic goods, stating that "what is to be" presupposes "what is."¹³⁶ Speculative knowledge does not contribute to the grasp of the basic

¹³¹ Finnis, *Natural Law and Natural Rights*, 65, 269.

¹³² *Ibid.*, 109, 111, 114.

¹³³ *Ibid.*, 109, 111, 116.

¹³⁴ Grisez, "Practical Principles," 114.

¹³⁵ *Ibid.*, 107, 114.

¹³⁶ Finnis, *Nuclear Deterrence*, 279.

values directing human action, since reason apprehends these as underived starting points, but it is the source of the external description of the choices, actions and purposes in pursuit of them. Thus, Finnis classifies the seven basic goods by correlation with type of natural inclination: 1) inclinations belonging to an animate being (life and health); 2) inclinations belonging to a rational being (knowledge and aesthetic experience; 3) inclinations belonging to a being both animate and rational (skilled performances in work and play); and 3) inclinations belonging to a relational being (harmony between persons; peace of mind; and religion).¹³⁷

States of affairs manifesting, *a posteriori*, the flourishing at which a choice aims, are distinguishable by the degree of involvement of the agent's intellect and will. Finnis terms these states of affairs "benefits," and the outcome of acting for "purposes," grounded cognitively in basic goods.¹³⁸ Such states of affairs "instantiate" the basic goods, which themselves are purely cognitive insights.¹³⁹ Flourishing, through choice and action, can thus be envisioned as a hypothetical state of affairs in prospect or, reasoning back from existing states of affairs, the effect of the agent's cognitive proposal.

The intelligible proposal for action may aim at the action as an end in itself, or a state of affairs distinguishable from the action. Even where the proposal aims at an action as an end in itself, it will incidentally produce various states of affairs. One or more of these states of affairs, of necessity, serves as "goal" of the agent's emotions and subrational inclinations

¹³⁷ *Ibid.*; Finnis, *Moral Absolutes*, 42; Grisez, "Practical Principles," 107.

¹³⁸ *Ibid.*, 102, 104, 120.

¹³⁹ *Ibid.*, 103, 107; Finnis, *Moral Absolutes*, 42; *idem*, *Natural Law and Natural Rights*, 63.

which the prospect of executing a rational action arouses.¹⁴⁰ Where such states of affairs happen as well to be the object of the agent's purpose in acting, the action's aim is an instrumental good intelligible as a means of participating in one or more basic goods.¹⁴¹

The empirical states of affairs, which action may seek as an instrumental good, or that may be an incidental concomitant of instantiated basic goods, include tension reduction and emotions of subjective enjoyment (including pleasure) flowing from the satisfaction of drives and appetites. Finnis views these states of affairs as "aspects" of the fulfillment pointed to by the basic good but as offering in themselves ultimately no rational basis for acting.¹⁴² Whether or not such feelings form part of the agent's proposal for action, or even find themselves among his or her emotional goals, they may, nonetheless, arise with the action by virtue of the incidental gratification of natural drives and appetites. Inversely, negative feelings and experiences of deprivation may arise with the action where the agent denies himself the satisfaction of drives and appetites for an intelligible end.¹⁴³ Finnis views both kinds of feelings as "aspects" of the good,¹⁴⁴ subject to empirical description.

Where the agent undertakes an action for its own sake, rather than to create any instrumental state of affairs, the "benefit" for which he acts is the act itself.¹⁴⁵ The action's

¹⁴⁰ Grisez, "Practical Principles," 104-105.

¹⁴¹ Finnis, *Nuclear Deterrence*, 278, 289; Grisez, "Practical Principles," 104, 112.

¹⁴² Finnis, *Natural Law and Natural Rights*, 95-97; idem, *Fundamentals of Ethics*, 37-48 (Finnis relies on Nozick's experience-machine thought experiment to make his point); idem, *Nuclear Deterrence*, 279; Grisez, "Practical Principles," 111-112.

¹⁴³ Finnis, *Moral Absolutes*, 79; Grisez, "Practical Principles," 112.

¹⁴⁴ Ibid., 79; Finnis, *Fundamentals of Ethics*, 41-42, 44; idem, *Nuclear Deterrence*, 279.

¹⁴⁵ Grisez, "Practical Principles," 103.

external accomplishment or execution, in this case, can also be empirically described. For example, actions for the substantive ends of life, knowledge and excellence in performance constitute benefits by virtue of what they bring empirically or objectively into being within "a field in nature or culture which the agent cares for, expands and passes on to others."¹⁴⁶

The act of an olympic diver executing a flawless dive for the sake of the good of "excellence in performance" can be captured in a photograph. Although dependent for its intelligibility on practical reason's grasp of the basic good, speculative reason can analyze the perfection of the dive according to criteria specified by kinesiology and aero- or hydrodynamics in conjunction with aesthetics. Physiologists affixing sensors to the diver's body can register complex bodily events underlying and accompanying the dive.

In the case of reflexive goods, the benefit arising from the action cannot be described in any merely empirical terms. A central feature of the benefit is an intangible relationship of harmony, such as the bond of friendship. This harmony resides in the will's election of the choice itself, that is, in its exercise of freedom in accord with practical reason.¹⁴⁷ Fulfillment of this kind cannot be measured, although the physical behavior instantiating it can be. A physical gesture of affection may be measured, even though the bond of friendship uniting the minds and wills of the friends cannot.¹⁴⁸

The agent's cognition that an end has come to be instantiated through completed action must be distinguished from the feelings arising with the action. Unlike these feelings,

¹⁴⁶ Finnis, *Nuclear Deterrence*, 279; Grisez, "Practical Principles," 107, 114.

¹⁴⁷ *Ibid.*, 101, 107, 117; Finnis, *Fundamentals of Ethics*, 47; *Idem*, *Moral Absolutes* 20; *idem*, *Nuclear Deterrence*, 280-82.

¹⁴⁸ Finnis, *Nuclear Deterrence*, 289.

this cognition represents participation in the core “instantiation” of the good.¹⁴⁹ One imagines an agent standing before a museum’s newly acquired painting a moment before its scheduled unveiling, who with an intention properly intelligible as oriented to the good of “knowledge and aesthetic experience” beholds the covered canvas. The agent experiences not only feelings of pleasure, satisfaction or joy when the veil falls and an Old Master appears (the instantiation of knowledge or aesthetic experience), but also cognition of the fact of the fulfillment of his purpose. The cognition in question has the form of “‘this’ is what I meant to bring about” and tells the agent that the action is complete. This knowledge is the instantiation of the good of practical reasonableness.

Finnis holds that nothing regarding the nature of the good can be derived from this knowledge of the good attained, beyond at most a reminder of the judgment of value present at the outset. The judgment that “x is a good which is herewith instantiated” contains nothing about the nature of the basic good beyond the original *a priori* judgment that “x is a good to be done and pursued.”¹⁵⁰ What is new is merely the speculative knowledge of the reality of the instantiated fulfillment. Because this instantiation occurs only with the assist of concurrent or contributing external causes, the quality of the instantiated good may have a certain surprising character.¹⁵¹ Practical experience can enhance the agent’s capacity to understand practical situations as conducive or not to the realization of a basic good.

¹⁴⁹ Finnis, *Moral Absolutes* 72; idem, *Fundamentals of Ethics* 47; Grisez, “Practical Principles,” 118-119.

¹⁵⁰ Grisez, “Practical Principles,” 118-119 (Finnis and his co-authors give examples of knowledge, health and marriage).

¹⁵¹ Ibid., 143.

In Finnis's scheme, the inmost participation in the good chosen, however, occurs through the exercise of freedom.¹⁵² This willing may be thought of as a state of affairs within the agent's identity, but is not one that can be verified empirically. It entails, in every case, a fulfillment that Finnis identifies as an "aliveness" of the will to the good chosen.¹⁵³ No matter how immoral, each rational act opens the will to at least some intelligible good even if it closes it to others. Each act successfully "instantiating" a basic good reinforces the "aliveness" of the agent's will to the end in question.¹⁵⁴ The ongoing attachment of the will to a good as it pursues its various purposes is termed by Finnis, "an interest."¹⁵⁵ The fulfillment attained in a particular act may also include an aliveness to the separate good of the peace of conscience. Ideally, the volition in each choice goes even further and embodies a completeness or integrity in its aliveness or openness to all the basic goods implicated in the options before the agent. Finnis speaks of this unrestricted aliveness or openness as rectifying the will.¹⁵⁶ In this case, an action is not just intelligibly, but morally good. This complete openness frequently, although not always, entails considerations of extramental factors relating to cause and effect.

¹⁵² Finnis, *Moral Absolutes*, 22; Finnis defines the will as "simply the capacity to act in order to preserve or respect, realize or participate in goods which may . . . be apparent only to intelligence." He considers "one's own character or identity" to be the most "fundamental of one's accomplishments." *idem*, *Fundamentals of Ethics*, 40, 47.

¹⁵³ Grisez, "Practical Principles," 106.

¹⁵⁴ Grisez, "Practical Principles," 106.

¹⁵⁵ *Ibid.*, 106.

¹⁵⁶ *Ibid.*, 132.

As will be developed below in connection with practical reason, the fulfillment of peace of conscience, when moderated by attention to this ideal of integrity, becomes "transparent" to the full spectrum of all intelligible possibilities for action. The integral fulfillment of the will authentically pursuing peace of conscience is not a describable state of affairs even by introspection. It cannot be "seen," "even out of the corner" of the agent's eye.¹⁵⁷

Finnis, nonetheless, conceives of this form of fulfillment or its absence, empirically unverifiable, as it is, as perduring indefinitely in the agent's will except where specifically repented of.¹⁵⁸ Each choice contributes to the permanent moral identity or state of being of the person since one's will is simply oneself as an acting subject: "One *becomes* what, seeing reason to, one chose: what one intended."¹⁵⁹ The goodness of the will is not understood here as merely a commitment to the moral equality of agents, as it is in Kant, but as an openness to all fields of fulfillment reality offers the agent.¹⁶⁰

The basic goods can be considered objective because knowledge of them is occasioned by empirical states of affairs. The agent's volitional participation in their instantiation can be considered "objective" because perduring in the will. This in turn can be understood as participation in divine goodness, as the transcendent source of value.¹⁶¹

¹⁵⁷ Finnis, *Fundamentals of Ethics*, 71.

¹⁵⁸ *Ibid.*, 51, 140, 150-2; Finnis, *Moral Absolutes*, 72; *idem*, "Practical Reasoning, Human Goods, and the End of Man," 33.

¹⁵⁹ Finnis, *Moral Absolutes*, 72.

¹⁶⁰ As will be brought out later, the requisite "openness" of the will, however, requires reference to the equality principle. Finnis, *Nuclear Deterrence*, 275-76.

¹⁶¹ Grisez, "Practical Principles," 135.

Nevertheless, the locus of the fulfillment remains ineluctably within the will of the subjects, and, thus, to this same degree appears "subjective."

Finnis asserts that the instantiation of basic goods through successful action occurs in a way more unambiguously objective. He holds that every instantiated intelligible good *contributes*, in some manner more or less adequate, to the "creation" of an objective world of the fulfillment of persons.¹⁶² Where an intelligible good is instantiated through normatively correct action, that is, in accord with the first principle of morality, it contributes objectively to a world of integral human fulfillment.

The world of human fulfillment brought about objectively through choice and action can, where flourishing with integrity, perhaps, best be conceived as an "ideal community" of moral agency.¹⁶³ In it, persons in all times and places act for and otherwise participate in the substantive human goods of life, knowledge, aesthetic enjoyment and excellent performances, as well as for reflexive human goods of friendship, inner peace, moral integrity, and religious bonds with the universe.¹⁶⁴ Their participation in these goods yields indirectly the enhancement of their dignity or worth and insofar as they are conscious of their fulfillment dignity their self-respect.¹⁶⁵

The integrity of this fulfillment manifests itself in the uprightness of individual wills, the integrity of mutual commitments of friendship and the morally upright religious

¹⁶² Ibid., 104.

¹⁶³ Ibid., 128.

¹⁶⁴ Ibid., 128, 131.

¹⁶⁵ Grisez, "Practical Principles," 112.

commitments of individuals and groups.¹⁶⁶ It manifests itself further in coherent patterns of individual and common respect for conscience, coherent individual life stories, coherent patterns of moral reciprocity between and among individuals, and a common commitment to the maintenance of the basic conditions of moral agency.¹⁶⁷ In short, it entails a world in which the objective benefits of choice and action are hierarchically ordered according to Finnis's principle of consistency or coherence in moral agency.¹⁶⁸

This world of intelligible, integrally moral, fulfillment is not accessible to speculative reason's analysis of what "is" *apart* from human choice. Knowledge of this realm of fulfillment depends for its intelligibility on the prior cognitive apprehension of the basic ends of human action and a prior grasp of the ideal of integral human fulfillment which directs their completely reasonable pursuit. Equipped with knowledge of these principles, the agent evaluates situations as more or less approximating the ideal kingdom. Even then, however, the shape of the kingdom, as it actually is, remains in itself unknowable by reason, for several reasons. The moral dimensions of identity, attitude, commitment, character and relationship largely comprising it are not subject to direct empirical verification. The human freedom it presupposes means that its content remains open-ended and cannot be specified in advance of free and open choices by agents.¹⁶⁹ The fact that it is co-extensive with the

¹⁶⁶ *Ibid.*, 139.

¹⁶⁷ *Ibid.*, 115, 135.

¹⁶⁸ *Ibid.*, 139.

¹⁶⁹ Finnis, *Nuclear Deterrence*, 283-4; Grisez, "Practical Principles," 132.

personal existence of all agents in all times and places gives it a scale entirely beyond the reach of human reason.¹⁷⁰

To conclude this interpretation of "basic goods," Finnis's conception of the morally relevant goal of human choice and action cannot accurately be described, in any simple sense, as simply either objective or subjective. Basic goods may be considered "objective," in that the goal of human action is intelligible as such and is morally good also, where such is the case, for reasons holding true regardless of any subjective wishes of the agent to the contrary. They may also be considered objective because natural drives and inclinations occasion the recognition of intelligible ends of action, and because the accomplishment of the ends of actions, but especially morally good actions, allows the agent to participate in and contribute to transsubjective world of human fulfillment although empirical verifiability of most important aspects of this fulfillment is impossible.

At the same time, they may be considered subjective because the ends defining the intelligible structures of human actions are self-evident, underivable starting points in the consciousness of the subject reasoning about action. And, they may be considered subjective because they do not presuppose a *telos* intrinsic to human nature, or the like, which could give rise to moral obligation. In place of such a *telos*, Finnis allows the agent's subjective preferences to have free play in selecting a pattern of agency to his own liking, restrained only by the enumerated requirements of a moral ideal of consistent reasonableness.

The particular straddle Finnis assumes on the subject/object dichotomy of modernity can be succinctly described this way: the agent enjoys underived starting points for

¹⁷⁰ Ibid.; Finnis, *Moral Absolutes*, 105-6.

intelligible and even moral action within his subjective consciousness so that there is no derivation of morality from objective reality whether known empirically or metaphysically, and yet awareness of objective features of the agent's situation occasions the grasp of these starting points, and by acting upon them the agent causes objective, and even to some degree empirically verifiable, states of human fulfillment. In due course, it will have to be asked whether this "straddle" is sustainable.

B. The Meaning of Practical Reason

Other perhaps than "basic goods," no term is as central to Finnis's work as "practical reason." By way of interpretation, it will here be asked what more particular conception the term represents of "justification," taken to be ethical theory's salient activity. The preceding chapter established the meaning of justification by reference to a stipulated contemporary hermeneutical situation, as follows:

the demonstration or explicitation of the rational or moral necessity of a single, unified, determinate and universally applicable vantage, from which, by applying some determinate methodological steps, the rational or moral necessity of choices, attitudes and actions is established.

One may fairly interpret Finnis's term by means of this, in itself, extrinsic concept. The author's principal exposition of practical reason occurs in *Natural Law and Natural Rights*,¹⁷¹ where employing the methodology of British analytic philosophy, he offers as his starting point in the project, the "ordinary meaning" of the word "obligation." Finnis states the word's focal meaning as "obligations to other persons deriving from particular roles, arrangements or relationships," but suggests that this focal meaning presupposes an

¹⁷¹ Oxford: Clarendon Press, 1980.

underlying "cultural particularity" assigning "obligation" a generic meaning of the rational or moral necessity of choosing or acting one way rather than another.¹⁷² Finnis states his objective as being "rational foundations" for moral judgments about obligatoriness in the latter sense. Elsewhere, he describes this undertaking as a "strictly philosophical enterprise" with autonomy vis-a-vis theology.¹⁷³

Finnis describes his approach to rational foundations for moral obligation as a retrieval of a certain understanding of "practical reason,"¹⁷⁴ and he declares his intention of establishing a set of "requirements of practical reasonableness" which can serve as a "methodology" for judgments in particular cases.¹⁷⁵ Adequate internal evidence exists to conclude that the meaning Finnis ascribes to "practical reason" is susceptible of interpretation by means of the concept of justification set out here.

Analytically, two phases may be distinguished within justification: 1) the description of a formal vantage for assessing the rational or moral necessity of any given choice, action or attitude, along with the demonstration or explication of its rational or moral necessity; and 2) the elaboration of a methodology for use in this assessment, and the demonstration or explication, in turn, of its rational or moral necessity.

¹⁷² Finnis, *Natural Law and Natural Rights*, 297-8. Elizabeth Anscombe is well known for questioning whether this sense of obligation or the correlated sense of justification discussed here is meaningful detached from belief in divine justice. Elizabeth Anscombe, "Modern Moral Philosophy," in *Ethics, Religion and Politics*, vol. 3, *The Collected Philosophical Papers of G.E.M. Anscombe* (Minneapolis: University of Minnesota Press, 1981), 26-42.

¹⁷³ *Ibid.*, 25, 48-9; Finnis, *Moral Absolutes*, 41.

¹⁷⁴ Grisez, "Practical Principles," 99; John Finnis, "Justice: The Contemporary Debate," *Month* 9 (sept. 1976): 304.

¹⁷⁵ Finnis, *Natural Law and Natural Rights*, 23.

1. The Formal Vantage and Its Rational or Moral Necessity

Finnis's concept of "practical reason" affords a formal vantage--single, determinate, unified and universally applicable--for deciding the moral or rational necessity of choice, attitude or action. Indeed, Finnis considers ethics to be nothing other than reasoning of this kind.¹⁷⁶

In his earlier writings, Finnis depicted this form of reasoning as embodying one of the basic goods. This good, which, in his now modified understanding, he terms peace of conscience, at that time, he called "practical reasonableness." In his earlier presentation, the moral vantage he outlined was found in the procedures intrinsically realizing that particular form of basic fulfillment: the bringing of "intelligent and reliable" order in one's "choices bearing on action, lifestyle, and character."¹⁷⁷

A single, invariant value, this good was said by Finnis to encompass not only pre-moral notions of "reason" and "freedom," but moral ones of "integrity" and "authenticity." The pursuit of this basic good, and, therewith, of Finnis's moral vantage, required further reference to two additional underived cognitive principles: a "first principle of practical reasoning" and a "first principle of morality." Finnis's formal moral vantage, thus, cohered around an interplay of three underived starting points: the basic good of "practical reasonableness," the first principle of practical reasoning and the first principle of morality. The particular sort of fulfillment offered by the basic good of practical reasonableness provided the unity in the interplay of these principles.

¹⁷⁶ Finnis, "Justice: The Contemporary Debate, 300; idem, *Fundamentals of Ethics*, 11.

¹⁷⁷ *Ibid.*, 52, 70; Grisez, "Practical Principles, 108.

In subsequent writings, Finnis altered his explanation of his justificatory vantage. He no longer understands any one basic good as implying moral criteria applicable to choice and action generally. In his subsequent exposition of his position, the interplay of the same three elements comprises his justificatory vantage but that vantage possesses a different principle of unity. That principle, as Finnis now explicates his vantage, arises from the quest for complete rationality under the first principle of morality, while the other two elements continue to give descriptive meaning to deliberation about choice and action.

As will be more fully explained below, the first principle of morality requires the agent to pursue the basic good of peace of conscience, as one, at least secondary dimension, of every proposal for choice and action. The basic intelligibility of each such proposal presupposes, also, the first principle of practical reasoning. These two elements are, therefore, necessarily already in play when the first principle of morality enters into an agent's deliberation. The basic good of peace of conscience, by contrast, can be pursued without reference to the first principle of morality. And as a necessary aspect of all deliberation about choice or action, the first principle of practical reasoning will be in play where neither of the other two elements are referenced. The unity of the vantage, and therewith the distinctive interplay of its components, emerge, therefore, with the agent's cognitive grasp and volition of the first principle of morality.

Finnis, finally, finds a fourth principle in the cosmic good of religion which is not part of his vantage because it does not alter any concrete moral norm based on the first three principles, but which enhances the vantage of practical reason by giving it a supplemental

context which is cosmic and complete. This fourth principle is of paramount importance in comparing Finnis to any system of religious ethics.

To understand the formal nature of the justificatory vantage Finnis offers in his concept of "practical reason," one must explicate the first principle of practical reasoning, the basic good of peace of conscience, and the first principle of morality. By explicating the first principle of morality, which, by its nature, includes a description of the other two elements, at the third and last phase of this process, one sets out succinctly the fullness of "practical reason," and, with it, Finnis's justificatory vantage. As an all important postscript, one must inquire to the contextuality offered by the good of religion.

a. The First Principle of Practical Reasoning

According to Finnis, reason begins from an invariant first principle, or starting point, in all deliberation about choice and action. This principle is a cognitive judgment about practical truth. Finnis terms it, "the first principle of practical reasoning," and its form is: "the good is to be done and pursued."¹⁷⁸ The principle structures every judgment that something is a source of fulfillment through choice and action, i.e. it structures every basic good. The structure, then, of all basic goods has the same invariant form: "x is a good to be done and pursued."¹⁷⁹

Without itself being a premise of reasoning, this principle makes all reasoning about human choice and action intelligible. All human actions, choices, projects and commitments are intelligible by reference to one or more basic goods. Substantively, each such good

¹⁷⁸ Ibid., 119.

¹⁷⁹ Ibid.

differs radically because underivable, noninstrumental, an unrelated ultimate end, in itself, but all have a directiveness formally identical, expressed by the first principle of practical reasoning.¹⁸⁰

An agent is able to act rationally because his reason implicitly apprehends this fundamental principle. The principle is at work in all rational action. It has priority over all more concrete premises in reasoning about choice and action, and excludes pointlessness from intelligible choice. It requires that every deliberate action be undertaken for a benefit intelligible in relation to at least one basic good. Any conduct or behavior not informed by this principal is not intelligible as action or choice.¹⁸¹

Finnis asserts that the practical directiveness of the principle may be analogized to that of the first principle of speculative reasoning, i.e. reasoning about "what is": the principle of noncontradiction. The first principle of practical reasoning like the principle of noncontradiction is a judgment that reality cannot be inconsistent. Both are said, by Finnis, to make thinking consistent, as reality is consistent.¹⁸²

The directiveness of the principle of noncontradiction supports all speculative reasoning, regardless of what more particular norms apply in distinguishing valid from invalid outcomes in thought within any particular discipline. Speculative thought may lose sight of the principle, but when it does it becomes "nonsense."¹⁸³ In parallel fashion,

¹⁸⁰ Ibid.

¹⁸¹ Ibid., 119-120; Finnis, *Moral Absolutes*, 43.

¹⁸² Grisez, "Practical Principles," 119.

¹⁸³ Ibid.

practical reasoning which loses sight of the first principle of practical reasoning becomes pointless.

Finnis admits that speculative reason, and, along with it, the principle of noncontradiction, contribute to reasoning about action, at any number of points. Most actual human reasoning is both speculative and practical.¹⁸⁴ And, he concedes that an agent's or ethicist's mistaken metaphysics or anthropology can block reflective understanding of what authentic participation in human goods entails and thereby interfere with the first principle of practical reasoning's full directive role.¹⁸⁵

But, theoretical or speculative reason is incapable, in Finnis's view, of supplying reasoning about action with its practical or obligatory direction, for this latter reasoning is concerned not with "what is" but "what is to be." Thinking about action may be coherent according to the principle of noncontradiction, and yet pointless and invalid according to practical reason.¹⁸⁶ Finnis considers this point to have been decisively established by the argument against the "naturalistic fallacy."¹⁸⁷ For Finnis, propositions about the nature of "what is" are, as a matter of basic logic, devoid of practical or moral direction for ethics.

In Finnis's view, truth, thus, has two radically diverse senses: the practical and the speculative. While there is only one human intellectual faculty, this faculty is said by Finnis

¹⁸⁴ Finnis, *Fundamentals of Ethics*, 11; idem, "Natural Law and the 'Is'-'Ought' Question: An Invitation to Professor Veatch," *Catholic Lawyer* 26 (1981): 272.

¹⁸⁵ Finnis, *Fundamentals of Ethics*, 22.

¹⁸⁶ Grisez, "Practical Principles," 120.

¹⁸⁷ Finnis, "An Invitation to Professor Veatch," 272; Grisez, "Practical Principles," 102.

to perform different operations, where its objectives differ.¹⁸⁸ The relationship between the human mind and its objects is opposite in the two cases. Truth in both is conformity to the mind of God, i.e. God causes each to be true. But, in the case of practical truth, human knowing and choosing enter as a particular type of secondary causality.¹⁸⁹ The grasp by the mind of the truth of speculative reason is caused by what is, while the grasp by the mind of the truth of practical reason causes what is to be. In Finnis's view, grasping this distinction clears the way for grasping the true basis of direction in ethics, orientation to the first principle of practical reasoning.

In short, the guidingness of the first principle of practical reasoning is experienced as practically directive. It puts the agent's cognitive judgments of all the basic goods to work, directing that reason build concrete proposals for action advancing them. It orients the mind to awareness of concrete opportunities for following through and instantiating basic goods within the agent's concrete situation, as well as to awareness of ways of framing instrumental means for pursuing these effectively. But the directiveness of this principle is not in any way morally obligatory. It does no more than open a realm of intelligibility within which the agent remains free to do and pursue any intelligible benefit grasped in relation to any basic good.¹⁹⁰

¹⁸⁸ Finnis, *Fundamentals of Ethics*, 10-11; idem, "An Invitation to Professor Veatch," 272.

¹⁸⁹ Grisez, "Practical Principles," 117; Finnis, "Practical Reasoning, Human Goods, and the End of Man," 32.

¹⁹⁰ Grisez, "Practical Principles," 119-21.

b. The Architectonic Good: Peace of Conscience¹⁹¹

Among the diverse basic goods giving substantive content to the first principle of practical reasoning, one in Finnis's view has a formal role in structuring the operations of practical reason -- this is peace of conscience. This basic good has the character of order or harmony among the agent's judgments, choices and, as far as contingent circumstances permit, performances. Because the fulfillment promised lies within the agent's volition per se, Finnis refers to it as reflexive.¹⁹²

Like other basic goods, and unlike the other two principles comprising the moral vantage of practical reason, peace of conscience is a principal of reasoning about what is to be chosen and done.¹⁹³ The pursuit of peace of conscience requires that the first principle of practical reasoning be made explicit where such is not the case with the other basic goods. Awareness of harmony among judgments, choices and performances as an intrinsically choiceworthy end of action requires an explicit awareness of the formal structure of practical judgments and thus of the first principle of practical reasoning. Unlike the other basic goods, this good entails not only reasoning about ends but reasoning about reasoning about ends.¹⁹⁴

¹⁹¹ "Practical reasonableness . . . is architectonic: directive, in charge . . ." Finnis, *Fundamentals of Ethics*, 70.

¹⁹² "So among the basic goods are certain forms of harmony. The instantiation of these goods . . . we call . . . REFLEXIVE." "Practical Principles," 107.

¹⁹³ "Moreover, one's choices can conflict with one's judgment and one's behavior can fail to express one's inner self. The corresponding good is harmony among one's judgments, choices, and performances -- peace of conscience and consistency between one's self and its expression." Grisez, "Practical Principles," 120.

¹⁹⁴ It concerns reasoning about whether one's moral choices and performances are actually in harmony with one's judgments about what is truly worthwhile. Finnis, *Moral Absolutes*, 43.

Peace of conscience places a value on a particular sort of order which is intelligible, then, only by explicit reference to the first principle of practical reasoning. This is the value of consistently executing performances in relation to underlying choices, and of consistently arriving at choices in relation to the agent's knowledge of all available goods. These relationships ultimately are intelligible in relation the first principle of practical reasoning.

The insight that such order in the exercise of choices is a reflexive good presupposes an awareness of potential for disorder in the agent's quest of substantive goods. Virtually every situation implicates more than one basic good. The multiplicity of goods implicated may arise merely from the richness of opportunities in the moment of choice, given the agent's abilities and the diverse possibilities in his world. Or, it may arise from the agent's awareness of "diachronic" possibilities for action in relation to the past and future. Or, it may arise from more than one agent's fulfillment or nonfulfillment being implicated in the situation.¹⁹⁵

The possibility of choosing, in a way contradicting some good which the situation implicates, arises with the multiple relationships any given choice bears to available basic goods. Intelligible by reason of some basic good, a given proposal for choice may yet contradict the first principle of practical reasoning in some other such judgment the action happens to implicate. Circumstances attendant on the pursuit of substantive, nonreflexive goods like health, life, knowledge, aesthetic experience, and skill in play and work present the agent "willy-nilly" with opportunities for self-contradiction, by confronting him with

¹⁹⁵ E.g., "The basic goods which motivate actions can be realized in all those acting, but need not." Grisez, "Practical Principles," 114.

possibilities of human fulfillment which he may be tempted to treat as though they were not.¹⁹⁶ Peace of conscience is a premoral form of fulfillment found in formally avoiding such contradiction.¹⁹⁷ It orders choices and performances in relation not just to some one basic good but consistently in relation to *all* of the agent's existing judgments as to basic goods implicated in the situation of choice, either immediately, or by implication of the agent's past and future or the interests of other agents which he has a duty to respect.

Consistent respect for the diverse goods implicated indirectly as well as directly in each proposal for action in this way calls for adhering to some principle beyond the first principle of practical reasoning. The required supplemental principle must be of a kind capable of coordinating, without contradiction, the directiveness of the first principle of practical reasoning as it manifests itself in each and all the basic goods implicated, so that the agent may arrive at "harmony" among judgments, choices and performances.¹⁹⁸

The cognitive apprehension of the basic good of peace of conscience does not, in itself, specify what this supplemental principle is to be. Nor is the principle in question derivable from any ultimate or unifying *telos* in relation to which all the basic goods could be subordinate as means. Finnis considers the existence of such a *telos* is inconsistent with

¹⁹⁶ "If one considers this harmony amorally, one can try to realize it by bringing one's judgments as well as one's performances into conformity with one's choices." Ibid., 137.

¹⁹⁷ "However, if one considers this good morally --- that is, with practical reason unfettered -- one sees that the only way to realize it consistent with integral human fulfillment is by making sure that one's judgments are morally true, conforming one's choices to them, and striving to make one's performances carry out one's choices as perfectly as possible." Ibid.

¹⁹⁸ "Thus, specified by the first principles of practical knowledge, aliveness to the basic goods underlies one's various interests which in turn take specific form in the intention with which one chooses to act for purposes." Ibid., 106. The inclusive and unfettered respect of practical reason in relation to all specific goods Finnis terms its "transparency." Finnis, *Fundamentals of Ethics*, 73.

human freedom. To order his choices and performances consistently in relation to multiple implicated basic goods, the agent must articulate some principle to establish priorities to avoid conflict. The avoidance of conflict permits the agent to experience harmonious order of his agency.

Any principle for setting priorities may be observed as long as coherently formulated and consistently followed will allow the agent to attain peace of conscience. The good in question, like all basic goods, is premoral, so that the principle utilized to attain it may or may not be morally justified. The premoral good may, for example, be attained by such devices as simply conferring priority on those available goods which coincide with the agent's de facto choices and performances, or suppressing difficult-to-integrate goods when the situation in fact implicates them.¹⁹⁹

c. The First Principle of Morality

The first principle of morality is the element which completes and unifies practical reason's justificatory vantage. The agent knows this principle through an underived and self-evident cognitive judgment that the at least partial intelligibility of each proposal for action becomes complete, where the agent's volition, as a matter of secondary intentionality, is one of respect for an ideal of integral openness to all the diverse forms of choiceworthy goals reason discloses.

Finnis sets out the principle, as follows: "In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will towards integral human

¹⁹⁹ Grisez, "Practical Principles," 137.

fulfillment.²⁰⁰ Respecting the principle makes possible moral goodness by fully actualizing moral truth since the agent's actions thereby honor with integrity the directiveness of practical knowledge.²⁰¹ The evaluation of actions under this principle lies in its measuring the correspondence or lack thereof of a particular proposal for action to what is required for complete openness of the will to the good available in the situation.²⁰²

To act in conformity to this principle, the agent opens his will to the directiveness not just of the end giving his act its descriptive intelligibility, or formal coherence in the ordering of his choices and performances overall, but, in fact, to all basic ends however indirectly implicated in the circumstances of the act, as illumined by the ideal of completely reasonable choice.²⁰³ The principle allows the will an "openness" to the "first principles of practical knowledge" (the cognitive apprehension of basic goods) "working together" (in the practical reasoning of the agent) "harmoniously in full concert."²⁰⁴

The principle, in effect, requires the agent to bring to bear on every choice a set of "right attitudes" in his secondary intentionality. In relation to the agent's actions and choices, it is, however, a matter of "secondary" intentionality, since the basic intelligibility

²⁰⁰ Finnis, *Nuclear Deterrence*, 283; Grisez, *Practical Principles*, 121.

²⁰¹ *Ibid.*, 128, 132.

²⁰² *Ibid.*, 132.

²⁰³ The agent cannot follow the ideal as a "practicable goal." Rather, the agent as a first intention in each concrete purpose wills the basic goods "in the right way" according to a secondary orientation to the ideal. In doing so, the agent constitutes him or herself as a "good" person and attains "self-respect" by indirection. Finnis, *Fundamentals of Ethics*, 69, 142; *idem*, "Practical Reasoning, Human Goods and the End of Man," 30; *idem*, *Nuclear Deterrence*, 283; Grisez, "Practical Principles," 106, 112-113, 125.

²⁰⁴ *Ibid.*, 128.

of the act is derived from the basic goods, rather than from the first principle of morality.²⁰⁵ The effect of observing the principle is to rectify the agent's will. Finnis believes that Socrates expresses the ideal in saying that, "It is better to suffer wrong than to do it."²⁰⁶ The ideal safeguards the agent's full interest in the human good available through action.²⁰⁷ Finnis interprets Socrates to mean that it would be better not to act to secure a benefit for oneself, than in so doing to express contempt for another implicated good.

Where the moral agent has a religious motivation, adherence to this principle may express "love and reverence for God and conformity to reason (which discloses to us something of the mind of God)."²⁰⁸ This attitude can be considered one of "primary" intentionality when considered in relation to the agent's own moral identity and the agent's fundamental love of God and of others. It may also be taken as having the same meaning as Kant's fifth statement of the Categorical Imperative, "Respect the Humanity of Every Agent in Every Act," if by "Humanity" is meant not just formal equality but the opportunity to participate in all basic aspects of human flourishing.²⁰⁹

The *rational intelligibility* in the description of any particular action becomes a *moral directiveness* when considered with a commitment to this first principle of morality, termed by Finnis "the ideal of integral human fulfillment." The good becomes a moral good,

²⁰⁵ Ibid., 115, 135.

²⁰⁶ Finnis, *Moral Absolutes*, 47-51; idem, *Fundamentals of Ethics*, 7-8; idem, *Nuclear Deterrence*, 282; Grisez, "Practical Principles," 128.

²⁰⁷ Finnis, *Moral Absolutes*, 46.

²⁰⁸ Finnis, *Nuclear Deterrence*, 284.

²⁰⁹ Finnis, *Fundamentals of Ethics*, 120-4; idem, "Catholic Faith and the World Order: Reflections on E.R. Norman's 'Christianity and the World Order'," in *Clergy Review* 64 (Sept. 1979): 316.

because it now contributes to "integral" human fulfillment.²¹⁰ The directiveness of the ideal derives from the basic goods, but is intensified to the point of moral difference by completing the agent's reasonableness considered from the pattern of his agency overall, after the fashion of part to whole.²¹¹

The attitude of the will satisfying the first principle of morality is integral openness to the fulfillment reason discloses in all the basic goods. This attitude can be defined with greater specificity by analyzing what it requires when confronted with the recurring challenges to complete reasonableness of the human situation. Finnis holds that such an analysis yields an array of invariant intermediate principles he terms the "requirements of practical reasonableness" or "modes of responsibility."²¹²

The first principle of morality becomes a self-evident requirement of completely reasonable agency when one discovers the possibility of disorder in relating judgments, choices, and performances even where the agent attains the basic good of formal coherence of conscience in his actions. This disorder appears when an act contradicts the cumulative truth about choiceworthy possibilities for human fulfillment actually available. It is incurred when the agent elects a particular proposal for action at the cost of accepting a contradiction of some aspect of the intrinsic directiveness of reason.²¹³

²¹⁰ Grisez, "Practical Principles," 132.

²¹¹ *Ibid.*, 121, 125.

²¹² Finnis, *Natural Law and Natural Rights*, 100; Grisez, "Practical Principles," 127.

²¹³ *Ibid.*, 109.

The possibility of such contradiction arises, in part, from mere human finitude. The agent can do only so much. He cannot undertake every possible project. No possibility can be chosen without setting aside some reason not to choose it.²¹⁴ But finitude alone cannot explain the contradiction. Subrational drives, emotions and inclinations are the decisive cause of this. They motivate the will to disregard reason's judgment about the available good, as a way of evading the self-restraint required by human finitude.²¹⁵ The directiveness of the first principle of morality goes beyond that of the basic goods themselves, by distinguishing between those pursuits of a basic good which contribute order and those which contribute disorder to the agent's overall pattern of response to reason.

The first principle of morality has special ramifications for the good of peace of conscience, since it directs the agent to bring order to his overall pattern of judgments, choices and performances. The first principle of morality requires that the good of peace of conscience be pursued not by any convenient set of abstract priorities, de facto pattern of choices and performances, or suppression of unintegrated judgments of value, but with a will open to the fullness of what reason discloses to the agent about available basic goods. The first principle of morality, thus, places peace of conscience, now in a fully normative sense, in an architectonic relation to the other, even reflexive goods, such as religion and inner peace.²¹⁶

²¹⁴ *Ibid.*, 110; Finnis, *Nuclear Deterrence*, 281, 285.

²¹⁵ *Ibid.*, 285.

²¹⁶ Finnis, *Moral Absolutes*, 58.

When the agent honors the first principle of morality, the basic good of peace of conscience can take charge with full reasonableness and direct the agent's participation in all basic goods with more than formal coherence. It can direct them in complete accord with the objective requirements of reason. Peace of conscience, as pursued with respect for the first principle of morality, puts reason's judgments about all available goods fully or completely "to work."²¹⁷ It insists that the will's choices must always fit reason's judgments, and not vice versa.²¹⁸

The pursuit of peace of conscience in accord with the first principle of morality does not, however, add any substantive intelligibility to the other basic forms of fulfillment.²¹⁹ Instead it contributes in a transparent way as it integrates individual choices into an overall way of acting that is fully responsive to reason.²²⁰ Finnis's moral vantage does not rely on a last end, but instead on the attitude with which human action, its intelligibility a premoral given, is undertaken. It seeks to bring complete reasonableness to "find, develop and use" all diverse "opportunities to pursue human fulfillment through chosen activities."²²¹

The point of morality then is not "to be" in any sense other than "to act for all goods with complete reasonableness." Nor does it seek to impose any sort of external standard.²²² Its point is self-constituting choices which participate integrally in available basic human

²¹⁷ Grisez, "Practical Principles," 119-120.

²¹⁸ *Ibid.*, 121.

²¹⁹ Finnis, *Fundamentals of Ethics*, 70-74.

²²⁰ Grisez, "Practical Principles," 132.

²²¹ *Ibid.*, 121.

²²² Finnis, *Fundamentals of Ethics*, 72.

goods. The meaning of each action for the personal identity of the agent derives from the moral attitudes implied by the agent's definition of the action's external object.²²³ Its point becomes "personal authenticity" and "living contact with reality," attained by an attitude of complete respect for reason's practical judgments.²²⁴ Morality exercises freedom in full adherence to what reason discloses about goods.²²⁵

The first principle of morality's requirements are often underdetermined, offering no normative limits on a proposed choice. In such cases, the contingent commitments which the agent has formulated, in response in part to the ideal, may well offer relevant moral direction.²²⁶ Where such commitments are, in turn, underdetermined, the agent's options will be practically directive but morally neutral. He may choose in either direction without compromising his adherence to the ideal.²²⁷

The intermediate requirements of the ideal of integral human fulfillment may not be underdetermined. And if they are, then the agent's contingent commitments may, in turn, not be. These requirements sometimes give rise to precepts or norms requiring or prohibiting action. Moral evaluation is not directed to evaluating external states of affairs as good or bad.²²⁸ Precepts of right and wrong flow from what respect for the directiveness of the basic reasons for human action requires. Negative precepts prohibit what destroys,

²²³ Finnis, *Moral Absolutes*, 70.

²²⁴ *Ibid.*, 52; Grisez, "Practical Principles," 127."

²²⁵ Finnis, *Moral Absolutes*, 76-77.

²²⁶ Grisez, "Practical Principles," 138.

²²⁷ *Ibid.*, 140-141.

²²⁸ Finnis, *Fundamentals of Ethics*, 78.

damages or impedes reason's capacity to direct to intelligible human fulfillment.²²⁹ Their scope extends only to free human choices: "Irresistibly compulsive behaviors, spontaneous behavior and poor outcomes due to bad luck and honest mistakes" cannot violate such norms, any more than can the destruction of a desirable state of affairs independent of human agency.²³⁰

Some of these negative precepts are exceptionless, since Finnis holds that circumstances exist which, if included in the description of an act, make it destructive regardless of its further specification.²³¹ Such exceptionless precepts are deemed by Finnis to be "absolute" in their unqualified requirement of specific attitudes. From a religious world view, the unqualified or absolute nature of a required attitude makes sense "as specification|| of . . . love of God and of every human person made in his image."²³²

Reference to human freedom is essential to understanding the distinctive meaning of the *necessity* implicated in moral obligation, whether positive or negative. Freedom exists, Finnis holds, where the agent has two intelligible options both rational descriptions of human action but neither of exclusive rational necessity, and where nothing rationally determines which course to take other than the agent's election.²³³

²²⁹ Finnis, *Moral Absolutes*, 54.

²³⁰ Finnis, *Nuclear Deterrence*, 281.

²³¹ *Ibid.*, 293.

²³² Finnis, *Moral Absolutes*, 99.

²³³ *Ibid.*, 22-23; Finnis, *Nuclear Deterrence*, 281; Grisez, "Practical Principles," 100.

The moral criterion for the correct options must be compatible with human freedom, and the integrity of reason. Finnis insists that conformity with a single *telos* of human nature would be inconsistent with freedom. He, therefore, locates the criterion of the morality in the "completeness" of one option's rationality over the "partialness" of the other, not merely for the moment only, and only as far as the agent's immediate purpose goes, but everything considered within an anticipated lifetime of agency.²³⁴

In action that is not in accord with this criterion, the element that the agent has not been allowed to be, still is "to be." To choose this contradiction compromises the openness of the agent's will to integral human fulfillment. The requirement of reason in this regard is unqualified and in this sense absolute.²³⁵ Its necessity is "objective" within the meaning of the modern philosophical idiom of objectivity, since it is true without regard to the agent's decisions, conventions of language or community custom.²³⁶ Finnis concedes that this is not objectivity in every sense of the term, for it does not concern relations of things "to-each-other-and-not-to-us, particularly relations which are a concern of natural sciences." But, Finnis rejects objectivity in the latter sense as unwarranted "scientism."²³⁷

Finnis seeks to explain the psychology of immoral choices. He observes that the agent experiences knowledge of normativity of a completely reasonable course of action as a pull, demand, or force towards compliance and away from an alternative. He reasons that

²³⁴ Ibid., 126; Finnis, *Fundamentals of Ethics*, 137-9; idem, *Natural Law and Natural Rights*, 23.

²³⁵ Grisez, "Practical Principles," 123-4.

²³⁶ Finnis, *Fundamentals of Ethics*, 8.

²³⁷ Ibid., 61-2.

the motive for disregarding the moral option in favor of the immoral one is the emotional or sentient part of the person which may be inclined to only partly reasonable descriptions of action. The will can adopt, as if the whole, a part of reason's directiveness preferred by emotion.²³⁸ The agent experiences a normativity or moral necessity of a choice as cognitive awareness of complete rationality²³⁹ contrasting to the merely partial rationality of alternatives insisted on by emotion.²⁴⁰

A morally good purpose may originate in reason, or it may be the reasonable appropriation of a proposal offered by emotion.²⁴¹ A morally bad proposal for action originates in the emotions and is adopted by the will at the cost of contradicting the fullness of reason's directiveness towards human fulfillment. In its proposals for action, emotion proposes descriptions of actions fulfilling the agent's sentient part alone.²⁴² These motivate without providing a reason. Such motivation is always an element of the human act, with the emotions focusing on the imaginable and concrete purpose, while reason focuses on the value. Emotional motivation becomes a problem when it leads to action without sufficient reason or in contravention of reason. An "action" without reason is really behavior rather than action in the true sense, and, as such, is neutral and without moral significance. The

²³⁸ Finnis, *Nuclear Deterrence*, 285-7; Grisez, "Practical Principles," 105, 123.

²³⁹ *Ibid.*, 123; Finnis, *Moral Absolutes*, 44-45.

²⁴⁰ Grisez, "Practical Principles," 100.

²⁴¹ When the will chooses according to a object originating in reason, it is operating as a "rational appetite." Finnis, *Fundamentals of Ethics*, 47.

²⁴² Finnis, *Moral Absolutes*, 44, Grisez, "Practical Principles," 121-2.

agent is not “acting” humanly when he simply turns to use the restroom without conscious deliberation about reasons.²⁴³

An immoral act occurs when the will consciously allows the promptings of emotion to lead it to adopt a proposal for action in violation of the first principle of morality. An example would be the adoption of harm to another person to advance the rational purpose of social harmony, justice, or inner peace. Once emotion leads the agent wrongly to absolutize a commitment, the will may twist reason into yielding only a truncated description of the real good available: “Feelings which impair rational guidance of action, fettering reason, limiting directiveness, harnessing it as feelings’ ingenious servant.”²⁴⁴ In such cases, reason becomes rationalization. The point of practical reasonableness can be understood as avoiding enslavement by desire.²⁴⁵

Various deviations in an agent's broader moral stance may be outlined.²⁴⁶ On the plane of greatest disintegration and immorality, reflexive goods may be rejected and a quest undertaken for immediate self-gratification through substantive goods. On that of somewhat lesser disintegration, the agent integrates his or her agency within an ultimate concern for some reflexive good other than peace of conscience. The agent may place harmony with others first (as a member of the mafia or a fanatical member of the Third Reich), or harmony within the self (centering on the satisfaction of the agent's own subrational inclinations). Or,

²⁴³ Ibid., 105.

²⁴⁴ Ibid., 123-4; Finnis, *Fundamentals of Ethics*, 126.

²⁴⁵ Finnis, *Moral Absolutes*, 44; Grisez, “Practical Principles,” 122.

²⁴⁶ Finnis contemplates the possibility of the agent losing the use of “ethical reason” through the morally bad use of freedom. Grisez, “Practical Principles,” 124.

the agent might place religion first (perpetuating practices such as human sacrifice that practical reasonableness cannot affirm).²⁴⁷ Finally, the agent may attempt to integrate all of his choices in actions in pursuit of peace of conscience, but do so in keeping with an inadequate ideal, e.g. egoism.

Practical reason's vantage for assessing the moral or rational necessity of choices and actions has now been described in some detail, relying speculative reason, and the categories of ethical theory. But, Finnis insists that the reality to which this description corresponds subsists in a universally available, self-evident set of cognitive judgments about the possibility of fulfillment through human choice and action. From a vantage of complete reasonableness, the point of explicating the pertinent portions of Finnis's ethical theory is to allow the agent to act well.²⁴⁸

d. The Cosmic Good of Religion

Finnis emphasizes that the vantage for moral evaluation which he proposes in the form of practical reason can, in all essentials, be completely described and justified without reference to God.²⁴⁹ No concrete moral norm derived from his moral vantage is altered in the least if religion is left out. To argue otherwise would be, for Finnis, to violate the autonomy of reason.

²⁴⁷ Ibid., 109, 145.

²⁴⁸ Ibid., 111.

²⁴⁹ Finnis, *Natural Law and Natural Rights*, 48-49; Grisez, "Practical Principles," 109, 126, 145.

The value of religion as a supplemental principle lies in the serenity, resolve and peace it adds to the ethical life. Finnis notes that his "metaphysically austere,"²⁵⁰ "anthropocentric"²⁵¹ basic justificatory approach supports no more than the simple affirmation that moral duties are true relative to him and to other agents. It offers no basis for connecting the meaning of the agent's actions to any meaning in either his drives and inclinations or the factual contingencies deciding whether his efforts succeed. As such, practical reason may seem entrapped within self-love and "self-cultivation,"²⁵² or it may be burdened by crippling anxiety over the trustworthiness of reason.²⁵³

The good of religion permits the agent to relate morality to a cosmic order. The order of practical reason, and, no less, the order of external cause affecting the agent's success can be understood as products of an "Uncaused Cause" causing all contingent states of affairs.²⁵⁴ Finnis argues for the existence of the Uncaused Cause as an implication of human reasoning towards explanations.²⁵⁵

Finnis suggests that philosophical agreement supports no more than the posited Uncaused Cause, as a "state of affairs," when he designates as "d."²⁵⁶ He holds, once one is convinced of the existence of "d," that the good of religion necessarily is conceived of as

²⁵⁰ R. George, "Forward," in *Natural Law Theory*, (Oxford: Oxford University Press, 1992), vi.

²⁵¹ Finnis, *Fundamentals of Ethics*, 145.

²⁵² *Ibid.*, 148.

²⁵³ Finnis, *Moral Absolutes*, 58-59, 74; *idem*, *Natural Law and Natural Rights*, 371-373.

²⁵⁴ *Ibid.*, 382-88.

²⁵⁵ *Ibid.*, 388.

²⁵⁶ Grisez, "Practical Principles," 135.

harmony with "d." He assumes that it is not unreasonable to conceive of "d" as having an analogy with human beings' intentionality. So conceived, the Uncaused Cause may be thought of as the "source, mover and goal" of the moral life.²⁵⁷

Finnis says that the vocabulary of Eternal and Natural Law of St. Thomas accurately sets out this role of religion in relation to practical reason.²⁵⁸ But, he denies that the concept of the eternal law can comprehensively express God's causative relationship with all the orders of creation. He notes four intelligible orders are manifest in human experience. Practical reason is only one of these. Any reliable image of God would have to draw an analogue to the other three orders. The image of God, the lawgiver, unmodified, Finnis views as distorted and inclining to volunteerism.²⁵⁹

Finnis is willing to accept St. Thomas's concept of practical reason as a "participation in Eternal Law," as long as this is understood as meaning merely, "caused by God," and not as meaning any kind of mystical knowledge.²⁶⁰ Acknowledging God as that source of the principles of practical reason adds no new knowledge to morality. Its confirmatory value lies exclusively in the deepening of commitment and steadying of judgment.

Religion can deepen commitment and steady judgment by giving the agent a motif to organize a coherent life plan.²⁶¹ This motif will be a commitment to some kind of

²⁵⁷ Finnis, *Fundamentals of Ethics*, 146; idem, *Natural Law and Natural Rights*, 393-403.

²⁵⁸ Ibid., 389.

²⁵⁹ Ibid., 380, 390.

²⁶⁰ Ibid., 399.

²⁶¹ Ibid., 406; Finnis, *Moral Absolutes*, 58-59.

relationship with the divine intentionality inferred behind the Universe. The religious motif not only provides a principle of unity for the moral life, but a way of relating individual moral choice to a cosmic context. One notes that God does not serve as an "end" of action, in this view. In accord with his view of Christianity, Finnis considers that knowledge about God is available as divine gift, but not as man's natural end.²⁶²

Finnis offers two illustrations of religion's contribution to practical reasonableness. Each illustration depends on an analogy to a basic good. Finnis takes one illustration from the basic good of excellence in play. Finnis employs the platonic image of a divine puppetmaster and the golden thread of reason as a metaphor for how religion can unify the experience of the moral life. The first principles of practical reason can be felt transcending human understanding as tugs on strings pulled by the Uncaused Cause of all things in what amounts to a divine "game." It is like a game in that it is a "free but patterned expression of life and activity, meaningful though with no point beyond itself, yet in no way frivolous but rather a glorious manifestation of the goodness of the source of all goods whatever." The agent's practical reasonableness can be viewed as cooperation in a performance, including God in his dealings with the agent, but also with all of the Universe.²⁶³

A second illustration makes use of an analogy with the good of friendship, since revealed religion depicts God as a friend of the acting person. The facticity of the world receives a moral meaning because it is seen as expressing the wishes of a Divine Friend.

²⁶² Grisez, "Practical Principles," 135.

²⁶³ Finnis, "Practical Reasoning, Human Goods, and the End of Man," 34; idem, *Fundamentals of Ethics*, 148; Idem, *Natural Law and Natural Rights*, 4007-410.

Seemingly random events influencing the outcome of action need not be seen as absurd. According to Finnis, a human being cannot act for God as end, but he can act for God's will, out of "regard and affection" for God, and he can see the goodness of his own actions as expressing cooperation with the Creator.²⁶⁴

e. Rational or Moral Necessity of Adopting the Vantage

Finnis supports the rational or moral necessity of his formal justificatory vantage, as explicated here, with a primary argument, and several dialectical arguments.

(1) Primary Supporting Argument

Finnis's primary argument for the rational or moral necessity of his version of practical reason as the vantage for evaluating the obligatoriness of choices, actions and attitudes, breaks down into arguments for the self-evidence of each of the three cognitive judgments that together comprise it. Each is known *per se nota*.²⁶⁵ Foundational and normative ethics explicate each, but cannot demonstrate their truth, for each is indemonstrable. Their explication relies upon introspection into the reader's own practical reasoning.²⁶⁶

The directiveness of the first principle of practical reasoning is, according to Finnis, known and followed "willy-nilly," by every human agent who makes intelligible choices.²⁶⁷ Introspection is offered to allow the reader to verify the truth of this claim. Substantive

²⁶⁴ Finnis, *Fundamentals of Ethics*, 149-150; Grisez, "Practical Principles," 144-145.

²⁶⁵ *Ibid.*, 106; Finnis, *Natural Law and Natural Rights*, 32.

²⁶⁵ *Ibid.*, 64-66.

²⁶⁷ *Ibid.*, 72.

knowledge of particular basic ends also occurs by introspection. The basic good of peace of conscience with its architectonic role in the vantage of morality is so known along with others. The only condition to its grasp is the agent's prior experience of one or more substantive goods and exposure to the possibility of disorder in the relationship among judgments, choices and performances reached in its or their pursuit, as was described above.

To say that something is known *per se nota* is to say that to know its terms' meaning is to know that it is true.²⁶⁸ To know the meaning of the terms of the first principle of practical reasoning and of the basic good of peace of conscience is thereby to know their truth, by reference only to one's own experience in practical reasoning. To discover the first principles of action (basic goods), including the good of peace of conscience, the reader merely need consider the full range of his actions or purposes and ask, "what for?"²⁶⁹ This methodology reflects the "radically practical nature" of practical reason.²⁷⁰ Each of these basic goods is known as entailing the first principle of practical reasoning. To state this principle abstractly is to make explicit the rational appeal of the end of acting for ends implicit in all basic goods.

Finnis, then, does not claim support for either the first principle of practical reasoning or for the basic goods including the good of peace of conscience by derivation from any such middle term as its being a part of the deep structure of the mind, or ineradicable from the

²⁶⁸ *Ibid.*, 72.

²⁶⁹ Grisez, "Practical Principles," 106-7.

²⁷⁰ Finnis, "An Invitation to Professor Veatch," 274.

human psyche or unique to humans or common with animals.²⁷¹ They are self-evident principles or starting points for reasoning about what action to take.

The criterion of the truth of the principle and of the basic goods including peace of conscience can be described as "adequation," an idea Finnis borrows from St. Thomas. According to this idea, a proposition is true if it corresponds to the reality it describes.²⁷² In the case of the cognitive judgments entailed in practical reason, the reality described is not one existing as a matter of fact apart from human action and its fruits, but rather is one which comes to be in the very fulfillment that can be brought into existence through action. As Finnis puts it, "What is known has reality not prior to knowledge but through it."²⁷³

More specifically, the adequation of the truth of the first principle of practical reasoning is found in its correspondence to the fulfillment that is to be attained through action not just for the end of peace of conscience itself, but for any and all intelligible ends of human action, i.e. all the basic goods.²⁷⁴ The adequation of the truth of each basic good is to be found in its correspondence to the fulfillment unique to it.

Finnis asserts that the first principle of morality, like the first principle of practical reasoning, is self-evident and known *per se nota*. The only conditions for recognizing this principle are knowledge of some substantive basic good and something of the practical exigencies naturally restricting the agent's ability both to posit concrete acts and to preserve

²⁷¹ Finnis, *Nuclear Deterrence*, 279; Grisez, "Practical Principles," 106.

²⁷² *Ibid.*, 115, 117.

²⁷³ *Ibid.*, 115.

²⁷⁴ *Ibid.*, 115.

his will's openness to the integral fullness of what reason discloses about some fulfillment. Its truth is not demonstrable through theoretical knowledge of empirical reality.²⁷⁵

Finnis considers the adequation, or criterion, of the truth of the first principle of morality to be its correspondence to the integral directiveness of practical reason.²⁷⁶ This integral directiveness is what "is to be" through the will's integral response to the diverse first principles of action or basic goods. In a certain sense, the first principle of morality can said to be derived by extension from these first principles or basic goods.²⁷⁷

All three judgments contributing to the moral vantage of practical reason are true, only by analogy to the truth of speculative propositions corresponding to what is.²⁷⁸ The truth of practical reason is not true by conformity to anything that is. It is true by its anticipation of the realization of that which is possible through acting in conformity with itself.²⁷⁹ Finnis finds indirect evidence supportive of his argument for the first principle of practical reasoning and the basic goods embodying it in "reminders" contained within the findings of anthropology and other sciences.²⁸⁰ He locates indirect support for his argument for the first principle of morality in "reminders" drawn from the history of moral philosophy which offers a record of various primary moral principles proposed by other philosophers.

²⁷⁵ *Ibid.*, 116.

²⁷⁶ *Ibid.*, 126.

²⁷⁷ The ideal is "specified by" the integral appetizability of all the basic goods. *Ibid.*, 125, 132.

²⁷⁸ *Ibid.*, 131.

²⁷⁹ *Ibid.*, 116-117.

²⁸⁰ Grisez, "Practical Principles," 113.

He concludes that each such principle is a partial and inadequate expression of the ideal of integral human fulfillment.²⁸¹

Such essentially is Finnis's argument for the rational or moral necessity of the vantage he proposes for moral reasoning. Its brevity stems from the nondemonstrable nature of the first principles it means to sustain. Finnis's arguments for all the basic goods including the good of peace of conscience, the first principle of practical reasoning and the first principle of morality are no more than explanations facilitating the introspection that offers the true mode of confirming their existence and character.

(2) Dialectical Arguments in Support and Defense

Finnis supplements his primary argument with supporting or defensive dialectical arguments, on the ground that when demonstration is not possible, dialectical arguments may still affirm a proposition by relating it coherently to other knowledge or by showing unacceptable consequences in denying it.²⁸²

(a) Analogy to Speculative Reason

A first of Finnis's dialectical arguments is that speculative reason, no less than practical reason, requires nondemonstrable starting points. "In every field, there is at some point an end of derivation and inference. We find ourselves in the face of self-evidence making possible all subsequent inferences."²⁸³ Every reasoning process which terminates in non-hypothetical truths presupposes self-evident first principles. While Finnis sharply

²⁸¹ Ibid., 113; Finnis, *Fundamentals of Ethics*, 70, 121; idem, *Natural Law and Natural Rights*, 102.

²⁸² Ibid., 111.

²⁸³ Finnis, *Natural Law and Natural Rights*, 32, 70; idem, *Fundamentals of Ethics*, 52-3.

distinguishes practical reason from speculative reason--the former knows the truth of what can be through human action, the latter the truth of what is--, they are alike in depending on undemonstrable first principles.

He cites, for instance, the following as examples of indemonstrable first principles in reasoning in natural science: 1) the norms of deductive reasoning; 2) the principle of sufficient reason; 3) the principle that self-defeating theses ought to be set aside; 4) the principle that observed phenomena should be treated as real unless a reason is shown for considering them illusory; 5) the principle that a full description is preferable to a partial one; 6) the principle that successful past interpretations ought to be drawn upon in explaining recurring events; and 7) the principle that explanations are to be preferred in proportion to their simplicity and their predictive and explanatory power.²⁸⁴

(b) Refutation of Skepticism

Finnis makes a defensive dialectical argument against skeptics who would falsify his perspective ultimately by attacking the "internal point of view" it presupposes. This internal point of view can only be described in terms of a number of theses of metaphysics and philosophical anthropology, including the following: 1) human intelligence is not reducible to material reality, i.e. brain function; 2) moral action is distinguishable from technical proficiency in bringing about states of affairs; 3) an uncaused cause for these principles exists; 4) moral action is possible, i.e. there is freedom, and 5) cognition and volition cannot be reduced to the level of sense, imagination and feeling.²⁸⁵ The intrinsic intelligibility of

²⁸⁴ Finnis, *Natural Law and Natural Rights*, 68.

²⁸⁵ *Ibid.*, 70; Grisez, "Practical Principles," 100.

the structures of practical reason does not depend on a justification of these theses. However, the refutation of these theses would show that intelligibility to be illusory.²⁸⁶

The skeptic asserts that the principles comprising Finnis's vantage point are projections or objectifications of feelings, and asserts that the same is true of the beliefs defining the internal point of view allowing discussion of them. And, yet, the self-evident principles upon which Finnis builds are experienced by agents as preemptively critiquing feelings rather than the other way around.²⁸⁷

Finnis says that the burden is on the skeptic here since free choice is not contrary to immediate experience or logically incoherent. He alleges that beyond raw assertion, the skeptic offers no convincing reason for abandoning these common-sense beliefs. He says this skepticism is irrational, not only because it fails to carry its burden, but because it refutes itself by participating in one of the very intrinsic ends whose existence it denies (the quest for intellectual truth).²⁸⁸

He states that the skeptic's argument from "queerness," for its part, goes too far to be tenable. Moral judgment is no "queerer" than any other perception of meaning or act of understanding it. This view of knowledge contradicts the simplest facts about intention, meaning and truth instantiated in every one of the skeptic's own assertions. Finnis alleges that if one were to concede this argument one "would be left with a conceptual scheme which would not even have the expressive resources to pick out extensions of 'real', 'chair'

²⁸⁶ Finnis, "An Invitation to Professor Veatch," 276-77.

²⁸⁷ Finnis, *Natural Law and Natural Rights*, 69; Finnis, *Fundamentals of Ethics*, 58.

²⁸⁸ Finnis, *Natural Law and Natural Rights*, 73-5; idem, *Fundamentals of Ethics*, 137.

'earthquake', 'person' or 'force'.²⁸⁹ Finnis objects further that a discredited version of the correspondence theory of the truth underlies the skeptic's reductivist program, since the skeptic claims to have some privileged means of knowing cognitive moral judgments are "really" just emotion or desire.²⁹⁰

He argues that the skeptic wrongly assumes that "fact" is accessible to reason but that "value" is not so, when "no clear distinction" can be said to exist between fact and value: "for no clear sense can be given to 'factual' other than 'objective and true,' and many value judgments are objective and true."²⁹¹ Finnis incorporates secondary arguments in support of this position from thinkers such as Foot, showing that rules of language necessarily relate prescriptions to concepts of harm, advantage, benefit and importance,²⁹² and from thinkers such as McDowell, to the effect that grasping a reason to act virtuously cannot be reduced to desire but rather reflects a "distinctive way of seeing situations."²⁹³

The skeptic's second argument is from the cross-cultural relativity of moral norms. This argument relies on inadequately analyzed data, according to Finnis. Cultural differences in moral precepts are better explained by the distortion which an even imperfect grasp of an intermediate principle of morality causes across the whole range of concrete moral norms. Human ingenuity overlays such distortion with rationalizations which must

²⁸⁹ Ibid., 57-60.

²⁹⁰ Ibid., 64.

²⁹¹ Ibid., 66.

²⁹² Ibid., 28.

²⁹³ Ibid., 64.

be discounted. This second argument, moreover, misunderstands the nature of ethics. Because the subject matter of ethics is human desire, attaining objectivity in the field of ethics is intrinsically more difficult than in other areas. Unlike solutions in natural science, no single correct answer may be assumed to exist for every problem in ethics.²⁹⁴

(c) Refutation of Attempts to Derive Obligation
from Speculative or Theoretical Knowledge

Finnis aims an offensive dialectical argument against the idea that speculative knowledge of any state of affairs in nature can create an alternative vantage for deciding questions of morality or obligation. Asserting the naturalistic-fallacy argument which G.E. Moore borrowed from David Hume for use against the English Utilitarians, Finnis alleges that descriptive premises cannot yield conclusions with respect to what ought to be. He asserts that: "no inference is possible from natural givenness, facticity, or *Gegebenheiten* of human faculties to norms protecting their finality." Arguments to the contrary smuggle undemonstrated conclusions into their premises.²⁹⁵

Finnis extends this argument to a critique of sixteenth- and seventeenth-century voluntarists, eighteenth-century rationalists who in accepting the Enlightenment's critique of voluntarism sought to derive moral obligation from patterns in nature, and modern utilitarians who derive moral obligation from preference or satisfaction of preference.²⁹⁶ He

²⁹⁴ Ibid., 76-77; Finnis, *Natural Law and Natural Rights*, 29, 83.

²⁹⁵ Finnis, *Moral Absolutes*, 41; Grisez, "Practical Principles," 102; for a critique of the overly broad application of the argument, see W.K. Frankena, *The Naturalistic Fallacy*, in *Readings in Ethical Theory*, 2d ed., ed. Wilfred Sellars and John Hospers (Englewood Cliffs, N.J.: Prentice-Hall, 1970), 54-62.

²⁹⁶ Finnis, *Natural Law and Natural Rights*, 35-48.

extends it also to the modern followers of St. Thomas and Aristotle who would derive moral norms from notions of philosophical anthropology.²⁹⁷

Finnis rejects each of a variety of speculatively accessible "states of affairs" which have been proposed as candidates for the source of speculative derivation of moral obligation. He alleges, for example, that the will of God can explain human capitulation to heteronomy, but cannot justify the rational necessity of a human action. He finds proof of this in the infinite regress which commences with the question of why one should obey God's will.²⁹⁸ For its part, the aristotelian "end" of the human being as such, even if it could be shown to exist, which Finnis disputes, fails as a source of moral obligation, for the same reason.²⁹⁹ Not even integral human fulfillment can be the end of a human act, because it is not realizable as a state of affairs that can be the object of a single human act.³⁰⁰ Nor can God be instantiated in an action, for human will is a human appetite tending to human actualization, with the result that an instantiation of divine goodness would not fulfill human nature.³⁰¹ Neither can a human person serve as the intelligible end of a human act, since a human act cannot cause a person.³⁰² Although human happiness can be a concrete purpose

²⁹⁷ Finnis, "An Invitation to Professor Veatch," 266-77; idem, "Practical Reasoning, Human Goods, and the End of Man," 23-36; idem, *Moral Absolutes*, 24-5.

²⁹⁸ *Ibid.*, 41.

²⁹⁹ Finnis, "A Reply to Ralph McNerny," 30.

³⁰⁰ Finnis, *Nuclear Deterrence*, 284.

³⁰¹ Grisez, "Practical Principles," 115, 133-5.

³⁰² *Ibid.*, 135.

for acting, it cannot be an abstract, intelligible reason.³⁰³ In asserting his own continuity with St. Thomas, Finnis is careful to specify that Thomas's metaphysics and philosophical anthropology are no more than an irrelevant schematization intruding on his ethics.³⁰⁴

Finnis distinguishes modes of theoretical or speculative reasoning which remain applicable within the project of morality. As was pointed out in connection with the question of the objectivity of basic goods above, theoretical knowledge of the qualities of the agent and of the agent's objective situation occasion his grasp of basic goods and are relevant to his ability to define projects for action.³⁰⁵ False metaphysical postulates can interfere with the agent's ability to attend to the judgments of practical reason.³⁰⁶ Finnis also acknowledges that theoretical or speculative reason may study both practical reason as an aspect of human nature, and the capacities and natural inclinations of human nature occasioning practical reason's underived grasps of relevant intelligible ends and other practical principles. As was also mentioned above, such study indirectly supports Finnis's enumeration of the basic ends of action which the agent's introspection establishes, by uncovering "reminders" of the truth of judgments which the agent knows *a priori*.³⁰⁷

Finnis is careful to say that the ineligibility of philosophical anthropology and metaphysics as sources of normative direction for human choice and action neither

³⁰³ Ibid., 112.

³⁰⁴ Finnis, *Natural Law and Natural Rights*, 35.

³⁰⁵ Grisez, "Practical Principles," 111.

³⁰⁶ Ibid., 22.

³⁰⁷ Grisez, "Practical Principles," 107, 113; Finnis, *Fundamentals of Ethics*, 51.

invalidates either as a discipline, nor invalidates the extension of their scope to cover the moral nature of human beings. Finnis claims only that the valid starting point of a metaphysics of moral action remains the external object of human action. From this starting point, metaphysical reasoning may move to the judgments underlying these objects and ultimately to the human capacities or potentialities underlying those judgments.³⁰⁸ He can concede without departing from his perspective on ethics, that the sequence in the ontological order is reversed, with the essence of the soul grounding potency, potency acts, and acts knowledge of the act. In Finnis's view, ethics is the indispensable *preliminary* to full and sound knowledge of human nature, not the reverse.³⁰⁹

(d) Refutation of Contemporary Options Distorting
Authentically Moral Attitudes

Finnis dialectically critiques modern instrumentalist theories which, whether or not they are open to criticism for deriving the "ought" from the "is," offer what Finnis considers seriously distorted understandings of the moral attitudes required by respect for the intrinsic ends of human action. To a degree, all the modern theories of ethics with wide currency appear to belong to the group of theories Finnis here critiques. He notes that according to Hare, such contemporary options are actually utilitarian. They place ethics within a model of rationality based on technical assessment and judgment arising in the Enlightenment.

³⁰⁸ Finnis, "Practical Reasoning, Human Goods, and the End of Man," 24; idem, *Fundamentals of Ethics*, 21.

³⁰⁹ Ibid., 1-6, 12, 20-21; Grisez, "Practical Principles," 107; "An Invitation to Professor Veatch," 273-77.

Following thinkers like Bentham and Marx, they see rationality in terms which the ancients rejected as a basis for ethics, *techne*.³¹⁰

In this vein, for example, Finnis critiques John Rawls's "thin theory of the good," with its emphasis on goods which are of instrumental or quasi-instrumental use in the pursuit of rationally autonomous plans of life regardless of their more particular content. Examples are liberty, opportunity, income, wealth and self-respect. Finnis counters that the self-evident thrust of practical reason entails respect not for the merely instrumental, but for the truly and intrinsically worthwhile. Finnis disparages Rawls for treating moral agents as no more than "machines for having experiences."³¹¹

Finnis directs his more concerted attention against the variety of contemporary ethical theory known as consequentialism. Consequentialism proposes as the proper ethical attitude a readiness to subordinate the immediate desire or object of choice to concern for the optimal balance of its good over its bad foreseeable consequences.³¹² Of such theories, Finnis singles out proportionalism for sustained criticism, a school evaluating the morality of an act by whether its net negative consequences undermine either the end or value the agent means to pursue in the act or undermines an end or value "associated" with it.³¹³

³¹⁰ Finnis, *Moral Absolutes*, 13, 58-59, 100; idem, "The Rights and Wrongs of Abortion," in *The Rights and Wrongs of Abortion* (Princeton: Princeton University Press, 1974), 94-96.

³¹¹ J. Finnis, "Justice: The Contemporary Debate," *Month* 9 (Sept. 1976): 300-307; Finnis, *Fundamentals of Ethics*, 48-50; idem, *Natural Law and Natural Rights*, 82-3.

³¹² Finnis, *Fundamentals of Ethics*, 80-108; idem, *Nuclear Deterrence*, 281.

³¹³ Finnis, "Reflections on an Essay in Christian Ethics--Part Two: Morals and Method.," *Clergy Review* 65 (Feb. 1980): 87-93; idem, *Fundamentals of Ethics*, 87, 100; idem, *Moral Absolutes*, 12, 14.

From among the many detailed criticisms Finnis makes of proportionalism, several may be selected as providing special dialectical support for his own position. The most fundamental of these is that proportionalism is mistaken in shifting the criterion of right action away from the intrinsic implications for the goodness of the agent's will of the immediate descriptive proposal for choice, to the evaluation of the "outcome" or consequences of the agent's action, something external to moral choice and identity.³¹⁴

As grounds for rejecting proportionalism, Finnis highlights data relevant to moral choice which proportionalism places beyond consideration. Among these data are the agent's own moral commitments which help determine the options confronting him before any consequences emerge to be tallied. Attitudes of arbitrariness, unfairness and fanaticism are rightly viewed as immoral, but defining moral choice as a weighing of net aggregate benefits and harms rules out critiquing these immoral attitudes.³¹⁵

Proportionalism's claim to be able to compare diverse effects flowing from one act and to compare the outcomes of two or more acts contradicts the rational incommensurability of basic goods, as well as the rational incommensurability of concrete instantiations of these ends.³¹⁶ Finnis charges, moreover, that proportionalism is incoherent in assuming that an "objective" description of alternate worlds flowing from competing options in action can be constructed without referencing the agent's own interests and commitments.³¹⁷

³¹⁴ Finnis, *Moral Absolutes*, 14; idem, *Fundamentals of Ethics*, 112.

³¹⁵ Ibid., 270; Finnis, *Moral Absolutes*, 20-21; Finnis, *Nuclear Deterrence*, 282.

³¹⁶ Finnis, *Nuclear Deterrence*, 281; idem, *Moral Absolutes*, 53, idem, *Fundamentals of Ethics*, 86-90; Grisez, "Practical Principles, 110.

³¹⁷ Finnis, *Moral Absolutes*, 50; idem, *Fundamentals of Ethics*, 92; idem, "Morals and Method," 90.

Proportionalism's commensuration of incommensurable realities actually proceeds through arbitrary or unacknowledged commitments.³¹⁸ The range of consequences it surveys is not knowable with the certainty the theory requires.³¹⁹ And, even it were so knowable, the "ripple effect" which the theory assumes to neutralize unforeseen consequences, in fact, logically entails a long-range cancellation of even the most immediate foreseen consequences, so that the only sensible conclusion is that in the long-enough run, "everything is permitted."³²⁰

Injustice to other persons is, according to Finnis, violates a duty intrinsically owing to others, and yet proportionalism excludes such an acknowledgment. For proportionalism, injustice arises only when an aggregate disproportion of harms to the agent and third parties, as well as to any person alleged to have been unjustly treated, outweighs benefits including gains to the agent.³²¹ Proportionalism can, thus, not make sense of Socrates' aphorism, "It is better to suffer wrong than to do it."³²²

By placing the criterion of right action outside the attitudes implicated in the agent's immediate proposal for action, the proportionalist incurs various other consequences for moral theory Finnis finds untenable. These include the necessary consequence that proportionalism itself should be alternately applied and abandoned as changing aggregations

³¹⁸ Finnis, *Moral Absolutes*, 17-19; 96; idem, *Fundamentals of Ethics*, 89, 91-92, 126-127.

³¹⁹ Ibid., 88.

³²⁰ Ibid., 94-99; Finnis, *Moral Absolutes*, 15-16.

³²¹ Ibid., 50.

³²² Ibid., 47-51; Finnis, *Fundamentals of Ethics*, 105, 112-20.

of consequences required.³²³ By ignoring what Finnis terms the transparent "I" in moral statements, proportionalism's conclusions take the form of third-party statements without a justification for why any particular agent should adopt them in the particular case.³²⁴ By his critique of proportionalism, Finnis seeks to reinforce his own claim that provides for the intelligible structure of human choice, and not any external product of choice vantage appropriate to discerning the obligatoriness of actions.

(e) Refutation of "Virtue" as a Fundamental Vantage
for Moral Evaluation

Finnis critically explores and rejects the idea that virtue or character offers a viable moral vantage which can replace his own. Defining virtue as "a character trait organizing various aspects of the complex human personality" and as a "modality of response to value,"³²⁵ Finnis concludes that to draw obligation from "character traits" or "modalities of response" is itself to incur the naturalistic fallacy. This is no the less true where the pattern of virtue is a truly good person's.³²⁶ In such cases, the assessment of the moral goodness of the virtue necessarily relies on pre-existing starting points in the observer's knowledge of intrinsically choiceworthy objects of action, and on the requirements of practical

³²³ Finnis, *Moral Absolutes*, 50-51.

³²⁴ Finnis, *Natural Law and Natural Rights*, 113.

³²⁵ Grisez, "Practical Principles," 129.

³²⁶ Finnis, *Moral Absolutes*, 102-104; according to Finnis, this approach inaccurately equates the pursuit of moral action with the making of a physical object by an artist. Grisez, "Practical Principles," 129-130.

reasonableness. At most, virtuous character is a reminder of what peace of conscience discloses when pursued with respect for the first principle of morality.³²⁷

Finnis classifies the cultivation of virtue, defined by him as "bringing one's inner drives and inclinations into harmony within the self," as a basic good. As such, he credits it with fundamental intrinsic directiveness.³²⁸ This directiveness has the form of a guiding judgment that harmonious balance among traits and modalities of response within the self is a good to be pursued. Such directiveness does not include any necessary relation to integrity in choosing which could allow it to serve in an architectonic role in pursuit of morality.

The harmony sought can be attained by reference to the unity provided by any social structure or religious outlook. Placing this good in an architectonic role in the moral life would deny the agent a basis for discriminating between alternate moralities, or even for settling on any one consistent exhaustive ordering of judgments, choices and performances. Where the good of harmony within the self is elevated above peace of conscience, it leads, in fact, to the suppression of goods which are inconvenient and, thus, leads to immorality.³²⁹ Peace of conscience, where pursued with respect for the first principle of morality, critiques the moral integrity of concepts of virtue; but no concept of virtue could critique any concept of peace of conscience.

Where an agent pursues harmony within the self, i.e. virtue, which architectonic direction from the good of peace of conscience, with complete reasonableness, Finnis

³²⁷ Finnis, *Moral Absolutes*, 102-103.

³²⁸ Grisez, "Practical Principles," 108.

³²⁹ *Ibid.*, 108, 137-138.

acknowledges that his character traits and modalities of response to values will take shape in morally distinctive ways. His catalogue of true moral virtues includes: "determination, enthusiasm, sobriety, farsightedness, sensitivity, and steadfastness." His list of true intellectual virtues, they include: "truthfulness, openmindedness, courage in the face of inner and outer pressures, self-discipline." Finnis considers true virtue to be "aspects of a person (more or less) wholly integrated with moral truth, and that only such a person can live a morally good life." He sees these virtues as realizing all of the reflexive goods, including peace of conscience, and as such to be oriented to moral truth.³³⁰

Peace of conscience, when pursued in keeping with the first principle of morality, provides an overall program for harmony in the soul of the agent. As was noted in connection with the objectivity of basic goods, the agent's appetites and emotions align themselves to support and reinforce a will integrally open to the first principle of practical reasoning through respect for the peace of conscience and the first principle of morality. Morally-validated traits and modalities of response bring emotions and appetites into harmony with the requirements of a good will.

The morally mature agent arrives at authentic practical judgments that are in keeping with his virtuous character. Finnis concedes that such virtues may contribute in a minor way to cognition about moral action. They may motivate the agent to, and they may enhance the agent's capacity to discriminate in the choice worthiness of alternate choices.³³¹

³³⁰ Finnis, *Fundamentals of Ethics*, 5-6.

³³¹ Grisez, "Practical Principles," 130-131.

2. Finnis's Moral Methodology and Its Moral or Rational Necessity

The heuristic concept of "justification" covers, in addition to the general moral vantage, methodologies for assigning a moral status to particular choices. Finnis conceives of his moral methodology as a bridge between the first principle of morality's abstract requirements and concrete situations. At a general level, it consists of intermediate principles. At a more specific one, it is made up of concrete moral norms.

a. The Requirements of Practical Reasonableness

The first principle of morality calls for the agent to act with a will open to integral human fulfillment. Finnis's key formulation of the principle, as recited earlier, is as follows:

"In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will towards integral human fulfillment."

As noted above, the mind grasps this principle upon encountering the possibility of contradiction or disintegrity in the pursuit of basic goods. To conform his choices to the first principle of morality, the agent must have recourse to one or another intermediate principle proportionate to the *particular* recurrent challenge to integrity before him.³³²

The mind grasps each intermediate principle, as a *self-evident* cognitive demand of integrity in action.³³³ Each is known as a "requirement"³³⁴ or "mode of responsibility."³³⁵

³³² Finnis, *Fundamentals of Ethics*, 53; idem, *Moral Absolutes*, 44; Grisez, "Practical Principles," 129.

³³³ Kant was wrong to suppose that the requirements of a good will could be expressed in what was essentially the single principle of universalizability. Finnis, *Nuclear Deterrence*, 266.

³³⁴ Finnis, *Natural Law and Natural Rights*, 100.

³³⁵ Finnis, *Nuclear Deterrence*, 287.

All express the integral directiveness of the same primary principle, and they may overlap in scope.³³⁶ Additional requirements may come to awareness, as self-evidently required, as yet unarticulated challenges to integrity in action emerge.³³⁷

Finnis suggests that the agent may depart from the path of integrity in several distinctive ways: he may refuse, without adequate cause, to act, when he encounters an opportunity for fulfillment,³³⁸ or he may act for a form of fulfillment, when doing so entails a disregard for, or even an overt attack on, a second form of fulfillment simultaneously available.³³⁹ He may fail to integrate his action within a coherent overall plan of agency;³⁴⁰ he may fail to acknowledge that fulfillment for himself is equally so for others;³⁴¹ or he may refuse to contribute to the community's resources while himself drawing upon this same communal fund;³⁴² or he may willingly accept a spurious appearance of fulfillment,³⁴³ treat instrumental resources as though they are not such,³⁴⁴ or willingly substitute convention for

³³⁶ Finnis, *Fundamentals of Ethics*, 76; Grisez, "Practical Principles," 128.

³³⁷ Finnis, *Fundamentals of Ethics*, 76.

³³⁸ *Ibid.*, 75; Finnis, *Natural Law and Natural Rights*, 109.

³³⁹ *Ibid.*, 286-7; Finnis, *Moral Absolutes*, 56-7.

³⁴⁰ Finnis, *Fundamentals of Ethics*, 75; *idem*, *Natural Law and Natural Rights*, 103.

³⁴¹ Finnis, *Nuclear Deterrence*, 284; *idem*, *Fundamentals of Ethics*, 75.

³⁴² *Ibid.*; Finnis, *Natural Law and Natural Rights*, 125, 134-160.

³⁴³ Finnis, *Fundamentals of Ethics*, 40-41, 75-76.

³⁴⁴ *Ibid.*, 7; Finnis, *Natural Law and Natural Rights*, 111.

his own practical reasonableness.³⁴⁵ Many, if not all, of these departures from upright choice can be summed up as a rejection of mutuality with others.³⁴⁶

A shorthand account of Finnis's "modes of respect" countering these several forms of disintegrality might read as follows: respect for the distinctiveness of reasons for acting, i.e. respect for the incommensurability of the basic goods;³⁴⁷ for the incommensurability of concrete opportunities for action;³⁴⁸ for the agent's capacity for moral judgment, i.e. conscience;³⁴⁹ for integrity of life;³⁵⁰ for the moral equality of others;³⁵¹ and for the common fund of resources conducing it to effective moral agency.³⁵²

Such requirements may be given implicit respect. Even when authors state them expressly, they generally do not systematically catalogue or relate them to their master principle,³⁵³ the first principle of morality. Finnis asserts that the history of moral philosophy can be read as the adoption of one after another of these intermediate principles as though it were the leading principle of morality. One-sided, considered separately, earlier moral theories offer helpful reminders of particularized demands of the first principle of

³⁴⁵ *Ibid.*, 125; Finnis, *Fundamentals of Ethics*, 75.

³⁴⁶ Grisez, "Practical Principles," 145.

³⁴⁷ *Ibid.*, 110.

³⁴⁸ *Ibid.*

³⁴⁹ Finnis, *Fundamentals of Ethics*, 75; *Idem*, *Natural Law and Natural Rights*, 125.

³⁵⁰ *Ibid.*, 103; Finnis, *Fundamentals of Ethics*, 75.

³⁵¹ *Ibid.*, 75; Finnis, *Natural Law and Natural Rights*, 106.

³⁵² *Ibid.*, 125, 134-160; Finnis, *Fundamentals of Ethics*, 75.

³⁵³ Finnis, *Natural Law and Natural Rights*, 102-103.

morality when taken together. As examples, Finnis, gives the "universalizability" of Kant and even of the prescriptivists; the "authenticity" of the existentialists; the "detachment" of the stoics; and even the "cost-effectiveness" of the utilitarians.³⁵⁴

Finnis aims at formulating "foundational" concepts enabling critical reflection on moral action's universal requirements. He sets these out in a generic form open, he says, to refinement by the description of normative ethics.³⁵⁵ Each of Finnis's requirements of practical reasonableness or modes of responsibility can be set out as responding to a particular recurring challenge to integrity they are as follows:

(1) The diachronic character of the basic goods, their irreducible multiplicity, the multiplicity and conflicting character of human drives and emotions, bring with themselves the possibility of incurring inconsistencies in choices over a lifespan. In response, practical reason grasps the requirement that:

One Ought to Adopt a Coherent Plan of Life

One ought to choose to pursue particular actions according to a coherent plan of life. Doing so requires a harmonious set of orientations, purposes and commitments or, stated another way, this requirement calls for adopting long-term commitments to some pattern of basic values. The pattern of commitments which is maintained ought to reflect some harmony among the ends pursued as well as within the agent's orientation to them overall. The principle, which is one of coherence or harmony, is substantively open to being satisfied in an inexhaustible variety of combinations, emphases and modes of specialization.

A life plan ought to be selected from the hypothetical perspective of the moment of anticipated death. In organizing commitments, the agent ought not to value participation in goods as of any one moment in life more highly than

³⁵⁴ Ibid., 126-127.

³⁵⁵ Grisez, "Practical Principles," 101.

in another. The plan should be open to adjustments called for by the contingent uncertainty of passing circumstances. The form of commitment called for is then a heuristic orientation towards developing possibilities, rather than an absolute insistence on outcomes.

To insist on an outcome as strictly necessary would violate the value of self-determination which is realized in the mere attempt. However, choices which comparison with the agent's life plan discloses as irrational, wasteful, meaningless or unintegrated can be excluded as immoral.³⁵⁶

(2) More than one basic possibility for human fulfillment may be simultaneously available, with the consequence that the agent may sacrifice one for another. The emotions tend, moreover, to impel choice without full reasonable consideration of available alternatives. In response, practical reason grasps the requirement that:

One Should Not Arbitrarily Prefer One Value to Another

Under the finite conditions of human action, the choice of any one value may entail foregoing the pursuit of other values. The preference for one value over another, however, may never be arbitrary. Finnis has also formulated the requirement in this way: "do not leave out of account or arbitrarily discount or exaggerate any of the basic human goods." Preferences expressed by the agent in action should follow from rational grounds. Such grounds may exist in the agent's capacities, circumstances or tastes. They do not exist in attachments to instrumental or derivative goods or in emotional goals. Although subordinating one value to another for the relative purpose of a rational project or commitment can be justified, going beyond this limited form of subordination "to speak or act as if values are not real forms of good apart from their merely subjective appeal" cannot be.³⁵⁷

(3) The basic goods have a transpersonal character, but people have a tendency to undue egoism. In response, practical reason grasps the requirement that:

One Ought to Have No Arbitrary Preferences Among Persons

Any intrinsically choiceworthy end is such without respect to the identity of the one choosing it. Fundamental impartiality is required of the agent between and among persons seeking to participate in basic ends. Finnis

³⁵⁶ Ibid., 103; Finnis, *Fundamentals of Ethics*, 75.

³⁵⁷ Ibid., Finnis, *Natural Law and Natural Rights*, 105.

formulates the requirement this way: "Do not leave out of account or arbitrarily discount or exaggerate the goodness of other people's participation in human goods." In other ethical systems, the requirement is formulated as one of "universalizability." The principle's classic statement is the "Golden Rule." It rules out "unreasonable respect for persons, egoism, group bias" or "unreasonable particularism." It calls for the agent to determine that accepting negative side-effects or the risk of negative side-effects for others in the outcome of his or action is not an undue self-preference.

Preference as such is not excluded, only unreasonable preference. One overriding reason the agent has for preferring one person to another is that self-preference is entailed in every action shaped within the agent's frame of reference on values. Self-determination and self-realization form an implicit frame of reference within the pursuit of integral human fulfillment. And, yet the objectivity of the goods implies the equality of persons in the pursuit of fulfillment. This equality is a limiting principle in the agent's pursuit of his own participation in the good. Impartial respect for lifeplans is required of the agent. But, impartiality in the face of any repudiation of a basic good is not required, since it would necessarily violate the second requirement prohibiting arbitrary preference among basic values.

In charting the demands of this requirement, the agent inescapably must consult factors "more or less peculiar" to him or herself, e.g. "prior commitments, differentiated feelings towards various goods and bads concretely remembered or experiences imagined." Heuristic devices such as the idea of the "Impartial Observer" facilitate the necessary discernment, as does consulting wise counselors or "prudentes."³⁵⁸

(4) People tend to absolutize their own projects unjustifiably, i.e. to give way to "immoderate and one-eyed enthusiasm." In response, practical reason grasps the requirement that:

One Ought to Remain Detached from Practical Success

Volition in favor of any course of action must be moderated according to what it is within the agent's power licitly to bring about. Finnis states the requirement as follows: "do not attribute to any particular project the overriding and unlimited significance which only a basic human good and a general commitment can claim." The more general the commitment or project the more unqualified the volition which may reasonably be given to

³⁵⁸ Ibid., 106; Finnis, *Nuclear Deterrence*, 284; idem, *Fundamentals of Ethics*, 75.

it. The more narrow or specific it is, the more detached the agent ought to be with respect to its accomplishment. Absolutizing any particular outcome implicitly contradicts the value of self-actualization inhering in the mere attempt at successful action. To treat the realization of the purpose in acting as of absolute importance is to deny the value of the exercise of freedom and rationality found in the attempt. This requirement and the following one, when taken together, are reminiscent of the device of the "mean" employed by St. Thomas and Aristotle.³⁵⁹

(5) External circumstances resist effective human action, and people tend to "apathy, inertia, and laziness." In response, practical reason grasps the requirement that:

One Ought to be Committed to Purposes

One ought to sustain one's commitments to projects and not abandon them without adequate reason. Finnis has formulated this requirement as being, "pursue one's general commitments with creativity and do not abandon them lightly." The more central the project is to the agent's life plan, the less ready he or she ought to be to abandon it. Such commitment should be distinguished from complacency. It can be realized by a willingness to seek creative ways to follow through on commitments when circumstances make them difficult to realize. This requirement functions in a special relationship of tension with the previous one.³⁶⁰

(6) Inattention in choosing instrumental means may cause, in response, practical reason grasps the requirement that:

One Ought to Favor Efficiency Within Reason

Actions may be undertaken as ends in themselves or they may be undertaken as means to advancing some more basic end. Where an action is undertaken as a means, this requirement demands that the agent not waste his or her opportunity by using needlessly inefficient methods or overlooking foreseeable bad consequences of the choice. Good intentions are not enough. Means ought to be ordered as efficiently as is reasonable, to the advancement of the ultimate end of the act. The judgment of efficiency depends upon a ratio between the degree of participation in the ultimate good the act appears

³⁵⁹ Ibid.: Finnis, *Natural Law and Natural Rights*, 109.

³⁶⁰ Ibid., Finnis, *Natural Law and Natural Rights*, 109.

to make possible and the amount of instrumental means or empowerment expended in reaching it. This calculation is not to be confused with efficacy, real or envisioned, in bringing about the ultimate human end and good.

One difficulty in stating this ratio lies in the assignment of a weight to the degree of basic good in which the agent ultimately expects to participate. Another lies in assigning comparative weights to one end in relation to another since Finnis assumes that each such good and each instantiation thereof are incommensurable. Such difficulties are not insurmountable, but they do limit the application of the requirement of efficiency to application within a "reasonable" range.³⁶¹

(7) Basic goods and their concrete instantiations are incommensurable and yet human emotions tend to override one basic good for another. In response, practical reason grasps the requirement that:

One Ought to Respect Every Basic Value in Every Act

One can morally seek to participate in one value for the sake of another, but one may not morally sacrifice or attack one basic value for the sake of any other. Any choice which has as its immediate description the destruction, damage or impeding of an instantiation of any basic good is morally inadmissible. Injury, for example, may not be met with injury. The classical expression of this requirement is: "the ends do not justify the means." Kant stated it as: "always act so that Humanity is the end and not the means." St. Paul did the same in admonishing, "Do not do evil that good may come of it."

This requirement applies to the choice of means. As long as the immediate description of the act itself aims at a good, then harmful consequences may be treated as indirect side-effects. Accepting negative side-effects does not violate this principle. It may, however, violate another such as the second or the third. The so-called principle of double effect both enables the agent to determine whether the harm threatened is a "side-effect" and whether its acceptance violates one of these other requirements.³⁶²

³⁶¹ Ibid., 111; Finnis, *Fundamentals of Ethics*, 75.

³⁶² Ibid., 118; Finnis, *Nuclear Deterrence*, 286-287, 289-290, 292; idem, *Moral Absolutes*, 56-7; idem, *Fundamentals of Ethics*, 72.

(8) The moral agency depends on a fund of common resources, and yet people tend to place private interest over common needs. In response, reason grasps the following requirement that:

One Ought to Favor and Foster the Common Good of the Community

One ought to join with others in contributing to the realization of the common good. This good can be defined as "as a set of conditions which enable the members of a community to attain for themselves reasonable objectives or to realize reasonably for themselves the value(s) for the sake of which they have reason to collaborate with each other in community." In other words, one ought to cooperate with others where this contributes to advancing both instrumental and ultimate ends.

The good in question is partial when it pertains to groups less extensive than to society generally, complete when it pertains to society as a whole. In the latter case, it may be termed the general welfare or the public interest. As such it is "an order of rights and duties which are recognized and established to secure the welfare of each member of the community."

This requirement has a special relationship to, and yet can be distinguished from the substantive good of friendship or harmony with others. Rather than a restatement of the principle that friendship or harmony with others is a good to be pursued, it is a directive requiring that cooperation with others be undertaken to ensure that all goods, not just friendship, are real possibilities for the agent and others. The requirement does not presuppose any particular configuration of outcomes. As Finnis puts it, respect for this requirement is not like "baking a cake." There are an inexhaustible number of variations on what a particular partnership, group or society might view as advancing the ideal of the common good.

No particular attainable state of affairs could ever be deemed definitively to fulfill the requirement. In its positive reach, the requirement is open-ended. In its negative reach, it is specific enough to rule out some forms of laws and some political concepts. It acknowledges that human goods are realized and protected by the action of groups and by group members acting in their capacity as such. It does not offer a basis for commensurating otherwise incommensurable goods or instantiations of goods.³⁶³

³⁶³ Ibid., 75; Finnis, *Natural Law and Natural Rights*, 125, 134-160.

(9) People tend to conform uncritically to social convention. In response, practical reason grasps the requirement that:

One Ought to Follow One's Conscience

The agent ought to accord his or her own spontaneous moral judgments *prima facie* respect. Such judgments should not be violated unless reason specifically demonstrates them to be mistaken. Practical reason moves from an often implicit cognitive grasp of ends, moral requirements and facts, to spontaneous judgments about the morality of particular actions, choices, and dispositions. Each such judgment has a value as an instantiation of personal fulfillment in the intrinsic good of peace of conscience. Until it is replaced by a better-informed judgment, it is the agent's only authentic source of immediate direction in moral matters, although it of itself provides no reasons.

Where an agent has inclinations that are generous, open, fair and steady in their orientation to goodness and where his or her assumptions have been shaped by morally reliable social mores, such spontaneous moral judgments may be reliable. But, spontaneous moral judgments are not always reliable because the agent's own inclinations or his or her society's mores may not be morally sound. The critique of spontaneous moral judgments is the work of practical reason both as a matter of individual moral reflection and as conscious or academic philosophy.³⁶⁴

(10) The senses are fallible and human emotions are ready to accept spurious satisfactions. In response, practical reason grasps the requirement that:

One Ought Not Choose Apparent Goods

The agent should not choose apparent goods knowing them to be only the simulations of real goods, even when the simulation brings real emotions, experiences or a sense of satisfaction.³⁶⁵

³⁶⁴ Ibid., 125; Finnis, *Fundamentals of Ethics*, 75; idem, "Conscience, Infallibility and Contraception," *Month* 11 (Dec. 1978): 410-417, 410.

³⁶⁵ Finnis, *Fundamentals of Ethics*, 40-41, 75-76.

B. The Formulation of Concrete Moral Norms

Finnis envisions an intermediate stage in ethical reasoning, to be understood after the requirements of practical reasonableness are stated, but before concrete ethical situations are addressed. The purpose of this midpoint analysis is to define concrete moral norms applying the requirements of practical reasonableness to general descriptions of human acts.

Such norms can frequently be stated only *ut in pluribus*, because adding even one additional circumstance to the specification of any act may remove it from the scope of the norm. When such is the case, the norm holds *semper sed non ad semper*. Concrete moral norms may call for action or they may prohibit it. Positive injunctions, Finnis holds, always bind only *semper sed non ad semper*.³⁶⁶

Some negative norms are, Finnis holds "absolute," that is, their demands are exceptionless. They bind *semper et ad semper*.³⁶⁷ Examples include "ordinary moral principles about murder, stealing, promisekeeping, and calumny."³⁶⁸ Although relatively few in number, such exceptionless norms are said by Finnis to be both uniquely associated with the foundations of morality and of decisive importance for "conscience, conduct and civilization."³⁶⁹ In view of the importance Finnis attributes to exceptionless moral norms, it is fitting that they form the final topic of this investigation into Finnis's conception of ethical justification.

³⁶⁶ Finnis, *Moral Absolutes*, 27-28.

³⁶⁷ *Ibid.*, 3-6, 47, 99.

³⁶⁸ Finnis, *Fundamentals of Ethics*, 74.

³⁶⁹ Finnis, *Nuclear Deterrence*, 294; *idem*, *Moral Absolutes*, 59.

Finnis holds that the upright moral agent begins his deliberations by first excluding from all options violating specific moral norms, i.e. necessarily entailing injustice, unchastity or any other form of disrespect for basic human goods. Such negative limits stimulate the agent constantly to explore new ways of fulfilling morality's positive injunctions.³⁷⁰

A handful of peremptory negative moral principles correspond to the handful of basic aspects of human flourishing. Finnis derives them exclusively from his seventh requirement: *One Ought to Respect Every Basic Value in Every Act*. The force of this requirement gives the concept of basic goods special immediacy in Finnis's derivation of concrete moral norms.³⁷¹ The third requirement of universalizability might seem, at first, to give rise to absolute moral norms, but it does not. The norms arising under that requirement give rise only to restricted act descriptions.³⁷²

In Finnis's view, the concrete moral norm forms the conclusion in syllogism, in which the major premise is a requirement of practical reasonableness, and the minor premise is the description of an action contradicting the major premise. The syllogism's conclusion is a prohibition of the conduct described. Where the minor premise include a contradiction of the good, which is fixed and not subject to alteration by specifying further circumstances, then the prohibition of the syllogism's conclusion is exceptionless. The syllogism's minor

³⁷⁰ Ibid., 17, 82-83.

³⁷¹ Finnis, "The Rights and Wrongs of Abortion," in *The Rights and Wrongs of Abortion* (Princeton: Princeton University Press, 1974), 93-96.

³⁷² Finnis, *Nuclear Deterrence*, 287, 293; idem, *Moral Absolutes*, 4.

premise is, thus, what reason presents to the will as the proposed action. This proposal embraces an "envisaged end" and "selected means" to reaching it.³⁷³

The analysis of the description of the act is key in the formulation of concrete moral norms. If an intended action entails even one facet damaging a basic good, the act is morally excluded: *Malum ex quocumque defectu*.³⁷⁴ The intentional structure of the proposed act must be examined. How does the intention regard available basic goods? If the agent adopts damage to a good as a direct means to his end, he embraces harm to a basic good as such, so that the act is immoral. Indirect benefits, however sincerely intended, cannot make the act moral. In such cases, the act necessarily takes its meaning from the offending means.³⁷⁵

Most actions bring in their train both benefits and losses. In describing the action, the ethicist must decide which benefits or harms are morally relevant. Any harm the agent directly embraces is morally relevant and makes the action morally evil. Finnis's methodology never permits the intending of even a pre-moral evil.³⁷⁶ The election of some proposals for action, causes the agent to lose his integrity. A secondary or indirect

³⁷³ Ibid., 290-291; Finnis, *Moral Absolutes*, 40. Given the structure of practical reason, these restrictions may not be legalistically manipulated. Ibid., 85, 87; Finnis does not wish his approach to be confused with certain later distinctions between *finis operis* and *finis operantis*. Ibid., 66. See also idem, "The Act of the Person," in *Persona Veritas et Morale: Atti del Congresso Internazionale di Teologia Morale* (Rome: Citta Nuova Editore, 1987), 168.

³⁷⁴ Finnis, *Moral Absolutes*, 17.

³⁷⁵ Casuistry is needed to distinguish the cases in which harm is directly intended. Thus, one cannot justify shooting a hostage in a bargain under which, as in the standard hypothetical, the hijacker or terrorist in return agrees to spare several others, since the sparing of several lives hinges on the intervening choice of the hijacker to stand by the promise. Conversely, however, the responsibility of another's intentionality for an attack on the good impinging on the experience of the agent may allow the agent to embrace the evil for a good purpose without willing it as such: thus martyrdom is distinguishable from suicide. Finnis, "Rights and Wrongs," 97-100; idem, "The Consistent Ethic--A Philosophical Critique," in *A Consistent Ethic of Life* (Kansas City: Sheed and Ward, 1988), 147-150.

³⁷⁶ Ibid., 76.

intention, *voluntas intendans*, of a good does not redeem the action, because neither goods nor their instantiations are morally commensurable.³⁷⁷

Whether a harm is part of the proposal for action or a side-effect depends on the agent's intention and on the causal structure of the behavior. The difficult case is one in which an action entails the physical causation of harm as an unintended incidental side-effect. If the side-effect is fairly viewed as undesired, then it is outside of the agent's proposal for action, and ordinarily may be ignored.³⁷⁸

A proposal for action may satisfy Finnis's seventh requirement, and yet conflict with another one of practical reason's requirements. A typical example would be an act that does not directly turn against a good undertaken with a willingness to accept "side-effects" disproportionate to the fulfillment the act promises. The acceptance of such a disproportion itself violates one or more requirements of practical reasonableness.³⁷⁹

C. The Role of Basic Goods in Practical Reason

The discussion, thus far, suffices to establish that the meanings of "basic goods" and "practical reason" are interrelated. For example, each basic good is intelligible in terms of

³⁷⁷ Ibid., 3-4, 66.

³⁷⁸ The principle of double effect was developed to help in this assessment. Finnis himself elaborates several criteria to help in making the distinction (an interpreting the principle of double effect). These are: 1) whether the agent can be said not to wish the harmful dimension of the behavior; 2) whether the agent can be said not to be intervening to distribute the beneficial aspect to one person and the harmful one to another; 3) whether the harmful aspect can be said to come about through the agent's omission rather than active commission; and 4) whether the person suffering the harm put him or herself in the way of this harm through the violation of some duty. Finnis, "Rights and Wrongs," 105-110.

³⁷⁹ In the absence of consciousness of such a disproportion, neither the harmful nor beneficial side-effects of an act figure in its moral assessment because they do not figure in the intelligible structure of what the will elects in acting, for Finnis postulates a fundamental difference in the moral meaning of intending and permitting. Ibid., 291; Finnis, *Moral Absolutes*, 76. As to the other requirements which may be violated, see Ibid., 71, 81; Finnis, *Nuclear Deterrence*, 292.

the first principle of practical reasoning. As a formal vantage, practical reason, relies critically on a basic good: peace of conscience. The first principle of morality takes its meaning from all the basic goods "in concert."

This chapter's final interpretive step will be to understand the interrelationship in question. Chapter 1 defined the most basic of the heuristic questions about this interrelationship to be whether "teleology" aptly describes the role of "basic goods" within "practical reason." Another, it defined, as whether the role of "basic goods" in "practical reason" lends moral obligation objectivity. It defined a third as whether the role of "basic goods" in "practical reason" entails individualism or egoism requiring correction through some side-constraint.

1. Is the Role of Basic Goods a Teleological One?

C.D. Broad defines teleology as a meta-ethical type in *Five Types of Ethical Theory*. Broad asserts that ethical theories can be classified by the systematic priority they give to "value" or to "obligation," and he identifies teleological theories as those giving the priority to value.³⁸⁰ In his schema, teleological theories take value as their unifying theme and from it they derive obligation.

Finnis asserts that his theory does not fit the "grand bifurcation" of ethical theories into "teleological and deontological,"³⁸¹ but, this assertion needs to be put to the test for the contemporary reader who tends to assume that if the good figures at all in the derivation of

³⁸⁰ C.D. Broad, *Five Types of Ethical Theory* (New York: Harcourt, Brace and Company, 1930), 276-85.

³⁸¹ Finnis, *Nuclear Deterrence*, 276; idem, *Fundamentals of Ethics*, 84; Grisez, "Practical Principles," 101.

obligation, the explanation *must* in some sense be teleological, since deontology treats the good as irrelevant to the judgment of right and wrong.

Practical reason, for Finnis, entails three distinct cognitive judgments, all original and underived: the intelligible premoral structure of the human choice or act as such; peace of conscience, the architectonic basic good; and the ideal of integral human fulfillment. Each intelligible in a relationship to the basic goods which may be described as teleological.

a. The First Principle of Practical Reasoning

Finnis believes that choice is literally unthinkable except in terms of the first principle of practical reasoning. Every human act is formally intelligible only because of a reason, end or value making it choiceworthy. This goal orientation is teleological, if only in a trivial sense. One or another specific basic good provides the act with its substantive telos.³⁸²

These substantive ends are not known as objective states of affairs observable empirically. They are the agent's *a priori* cognitive anticipations of what can be through a contemplated choice or action. Nonetheless, they are targets or "teloi" at which the agent's intention aims in formulating concrete proposals for action.

In Finnis's system moral obligation is often underdetermined. At such points, the agent is morally free to pursue actions with reference solely to the simple "teleology" of the basic good at which he aims. Finnis assumes that this moral latitude allows the agent, not just to take one or another particular action, but to act for some overall pattern of benefits

³⁸² Finnis is willing to say that his theory is to this degree "teleological." Finnis, *Nuclear Deterrence*, 283; He also says that the "teleological conception of nature as made plausible, indeed conceivable, by analogy with the introspectively luminous, self-evident structure of well-being, practical reasoning, and human purposive action." *Idem*, *Natural Law and Natural Rights*, 52.

over time which so satisfies all of his aspirations that he is left with no reason to act, other than to maintain and preserve the pattern attained. This pattern, Finnis means to describe is what is commonly meant by happiness.³⁸³

Finnis does not believe that happiness, in this sense, can be the end of the efficacious will, but it may, he asserts, be sought as a "supreme benefit" through a sequence of actions for various reasons or ends.³⁸⁴ In the frequent case in which the ideal of integral human fulfillment provides no specific moral imperative, given act may, in addition to its immediate goal-orientation to one or another basic good, without moral objection, be sought with the secondary "pre-moral" intention of attaining the supreme benefit of happiness. The finitude of life will lead the agent to "settle" for something less than happiness.³⁸⁵ The teleology of happiness gives a unifying emotional focus to all of the agent's choices and actions. The agent pursues the "telos" of happiness without moral fault, it is a telos which cannot be directly willed and which cannot be the source of moral obligation.

b. The Architectonic Good: Peace of Conscience³⁸⁶

The basic good of peace of conscience has an architectonic role within practical reason. It represents reason's judgement that harmoniously coordinating one's attitudes towards basic goods is itself a choiceworthy end. The ordering of choices envisioned offers a telos of "consistency" that unifies moral agency. Its pursuit gives secondary shape to the

³⁸³ Grisez, "Practical Principles," 112, 132.

³⁸⁴ Ibid., 112, 132, 135.

³⁸⁵ Ibid., 112, 132, 135, 140-141.

³⁸⁶ "Practical reasonableness . . . is architectonic: directive, in charge . . ." Finnis, *Fundamentals of Ethics*, 70.

agent's choices of other basic goods, and it orchestrates the agent's pattern of agency overall. Still, because it is, in Finnis's words, transparent to all of the other basic goods, neither connecting or grounding them in themselves, it does not hierarchically order values. The harmony it promises is a quality within the agent's will, without a *summum bonum* as object. It points to the possibility of unity in the agent's will, not in the cosmos.

c. The First Principle of Morality

Under the first principle of morality, reason grasps the reasonableness of an "integral" orientation to all of reason's plural directives. The agent grasps that integral fulfillment requires a synthetic appreciation for all the basic goods "acting in concert." The form of this apprehension is that of an ideal, "the ideal of integral human fulfillment."

Neither the first principle of morality, nor the ideal it expresses, can in Finnis's view be a reason or telos giving basic intelligibility to particular choices or actions. According to the intrinsic and invariable structure of the human act, the will's object remains always the basic goods.³⁸⁷ Neither principle nor role offers an empirically knowable or metaphysically specifiable end-state that can serve as a telos from which moral obligation can be derived. The rules and requirements arising from the First Principle of Morality do not derive from any natural or metaphysical givens, nor does any such given systematically unify Finnis's ethical theory.

But, the first principle of morality and the Ideal of Integral Human Fulfillment do provide a kind of telos to which the will or intentionality of the agent must be "ideally" or secondarily oriented, as it pursues basic goods as its primary ends, and peace of conscience,

³⁸⁷ Ibid., 132.

as the architectonic principle specifically ordering agency. Although "unrealizable" by human agency, the Ideal of Integral Human Fulfillment, as the first principle of morality offers "the morally true ultimate natural end of both individuals and communities."³⁸⁸ As such, it "teleologically" unifies Finnis's moral vantage and serves as the basis of obligation in his system.

Finnis derives moral obligation from the first principle of morality. The agent is obliged to act or refrain from acting, according to what the intelligible object of his will implies for the integrity of his attitude towards the possibilities of agency overall, in relation to all those affected and for a lifetime.³⁸⁹ This secondary orientation "rectifies the will" in relation to what reason discloses in toto about choiceworthy possibilities of human agency.³⁹⁰

Among the moral requirements, which Finnis derives from the first principle of morality, there is the requirement of the agent's own pro-active formulation of conceptions of value, and these conceptions substitute, in a sense, for the metaphysical or empirical elements in conventional forms of teleology. The role of these conceptions in the derivation of moral obligation, further extends the teleological pattern in Finnis's system.

Beginning with the underived starting points of reasoning about choice and action, the basic goods, the agent formulates these conceptions as ideal configurations of fulfillment to indirectly guide actions and give thematic unity to the life of moral agency. The

³⁸⁸ *Ibid.*, 133, 135. Finnis asserts that the material for the realization of the integral human fulfillment is "formed" in human lives, but is not completed until a point beyond history through the action of God. *Ibid.*, 11.

³⁸⁹ Grisez, "Practical Principles," 131-132.

³⁹⁰ *Ibid.*, 132.

requirement that the agent act according to some such conception is a necessary one, but the content of the conception is left unspecified and is left open to the agent's self-determination.

Ideal conceptions give content to the first principle of morality's intermediate requirements in at least three areas: a coherent plan of life; just relations between individuals; and the common good at all levels of social organization. Of the several conceptions of the good required by morality, probably the one that has the greatest scope in Finnis's vision is the requirement of a coherent plan of life.³⁹¹ It is according to the agent's plan of life that he comprehensively arranges his commitments, projects and plans of action, and uniquely contributes to the respect for justice and the common good.³⁹² Finnis envisions that the agent may formulate a plan of life in one of two ways, either within the limits of practical reason, or with the supplemental insight and motivation of religion.

The merely moral approach aims at the pattern of benefits the agent would prefer to have pursued from the vantage of the anticipated moment of death.³⁹³ This pattern is intelligible by reference to the agent's *a priori* cognitive grasp of basic goods. In its instantiation, it is fully objective and, at many points, is empirically verifiable. It could be

³⁹¹ Similar to the conception of a coherent life plan, Finnis requires the agent to act according to a conception of a just society. The requirement of acting according to a conception of just regard for others necessitates stipulating the acceptable degree of harmful unintended side-effects of our actions for others, a determination that can only be made in relation to some concrete vision of just relations between persons. The needs of survival (life and health) give rise to a duty in justice to realize the good of friendship in the form of family solidarity. Such solidarity makes obligatory certain shared patterns of benefits within marital and family relationships. Because practical reasonableness requires that one act for the common good, the agent must construct some framework of commonly recognized rights and duties fostering reasonable conditions for moral agency of all. Finnis, *Natural Law and Natural Rights*, 307. All of these requirements can be specified only with an overall construction of a just social order.

³⁹² *Ibid.*, 103; Finnis, *Fundamentals of Ethics*, 75.

³⁹³ Finnis, *Natural Law and Natural Rights*, 104.

called morally upright happiness or a truly happy life.³⁹⁴ Its moral uprightness follows from the agent properly observing the side-constraints of conscience, reasonableness, justice, and concern for the common good. Ideally, the agent organizes his life around some overriding purpose of his own choosing.³⁹⁵

The good life may be lived with supplemental insight, and motivation, derived from religion. Where this is the case, the agent's unifying purpose becomes the observance of the ideal of integral human fulfillment out of reverence and love for God.³⁹⁶ The abstract cognitive requirement of a coherent life plan receives its content by reference to an objective relationship with God (not the idea of God). The agent's secondary intention in every action becomes to please God and to avoid displeasing Him. Since the religious person places God's will above his or her own, the overarching intention in life becomes the avoidance of violations of the first principle of morality, considered as sins.³⁹⁷

While the merely moral conception of a good life makes sense only "relative to the agent and others who are similarly agents," the religious conception of the good life-plan by contrast allows the agent to make sense of the intelligibility of his or her own action or choice in relation to the cosmos as a whole, understanding it as a part in "a whole" overseen by Divine Providence tending towards the same ultimate fulfillment in an "all-encompassing

³⁹⁴ Grisez, "Practical Principles," 112, 132, 140-141.

³⁹⁵ *Ibid.*, 141.

³⁹⁶ *Ibid.*

³⁹⁷ *Ibid.*, 136, 146.

plan of divine wisdom."³⁹⁸ God can be seen as the ultimate end of the human person and human communities in that he is the source of the all of the causes of their fulfillment, including the agent's knowledge of the basic goods.³⁹⁹

Finnis asserts that there is a moral duty to seek religious truth, enhance what it appears to the agent to be, and to live by it, although Finnis does not clarify more precisely how this duty is grounded in relation to the ideal of complete rationality in moral agency.⁴⁰⁰ Whatever the grounding of the duty, it apparently does not extend to requiring that the central purpose in the agent's life plan be a religious one. An agent, however, who does go beyond the requirements of the duty and elevates religion to the overriding purpose of his life benefits. Finnis asserts that the agent ought to adopt the content of Christian revelation as the form of religion most harmonious with the inherent content of the ideal of integral human fulfillment.⁴⁰¹

It should not be lost sight of in this context that the requirement of a coherent life plan, which religion helps to satisfy is, itself, the product of morality operating autonomously from religion, nor should it be overlooked that this and the other requirements of morality flow from an ideal which reason proposes as fully reasonable. The ultimate end or object of the individual act (of the efficacious will) can, for its part, be nothing other than one or more basic goods.

³⁹⁸ Ibid., 142.

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid., 147.

d. Overview of the Teleological Pattern which "Basic Goods"
Lend Finnis's Vantage as a Whole

In sum, the formal teleological pattern of the agent's cognitive grasp of basic goods contributes a teleological character to Finnis's moral vantage, in the following ways -- First, the first principle of practical reasoning gives the intelligibility of every act a teleological structure. The agent frames concrete proposals for attaining the good. The abstract teleology of the basic goods translates into concrete proposals for action oriented teleologically to concrete benefits. Second, the first principle of morality requires the agent to make the basic good of peace of conscience an architectonic consideration in every act. This basic good aims at the end or *telos* of consistently ordering the agent's overall pattern of agency. Third, the Ideal of Integral Human Fulfillment which is the first principle of morality is an ideal orienting the morally upright will. At the level of personal identity, this ideal becomes a direct or primary, rather than secondary, end. The specific requirements of practical reasonableness require the agent to formulate of ideal conceptions of states of affairs to be pursued. These conceptions function teleologically, if not for the efficacious will, then, nonetheless, as a matter of secondary intentionality.

The *a priori* teleology Finnis sees in the structure of the human act offers no unifying end or goal for agency overall, but only multiple, particular points of departure for action. The first principle of morality can unify the moral life, because the agent's creatively constructs such a unifying end or *telos*. This creative activity proceeds, in part, by the sheer self-creating preferences of the agent, and in part by respect for procedural guidelines honoring the intrinsic directiveness of basic goods, considered "in concert."

e. Ways in Which Teleology Does Not Describe the Role of the Basic Goods Within the Vantage of Practical Reason

A careful examination of Finnis's approach can support an argument that deontology, not teleology, is the better description of Finnis's theory. Finnis's moral vantage assumes no metaphysically or empirically demonstrable *telos* of human agency or nature, so that it lacks the speculative or metaphysical unity generally possessed by teleological ethical theories. The *a priori* teleology Finnis finds in the structure of human reasoning about agency is, moreover, only premoral not moral. When one examines carefully the content of the *a priori* ends involved one finds that even these have a certain formal, deontological quality, akin to formal commands: "One may do whatever matches formal description x, y, or z." Some of these goods are constituted by the state of the will caused by morally good choice, a pattern also generally associated with Kantian deontology.⁴⁰²

The first principle of morality provides an ideal essentially of volitional consistency or integrity in relation to the intrinsic cognitive structure of reasoning about action. It can be argued, then, that morality in Finnis's view is essentially a matter of *formal* attitude towards the principles of reasonable action, rather than of any substantively or theoretically knowable state of being, even within the agent's identity or will.

For Finnis, peace of conscience has as its "point" a consistent respect for self-evident, categorical and sometimes exceptionless abstract principles and concrete rules providing underived starting points for moral evaluation. An argument may be made, certainly Finnis's consequentialist opponents believe, that obligation and not value predominates as

⁴⁰² Ibid., 107.

the overriding theme of his ethical theory, with the result that it is, fundamentally like that of Kant, deontological.

2. Is the Role of Basic Goods in Practical Reason Objective?

A second heuristic question asks whether basic goods ground moral obligation objectively, continuing the earlier inquiry into whether the basic goods were subjective or objective. The answer to this question helps determine whether Finnis's teleology should be classed with its modern or its pre- or early modern counterparts.

Finnis's endorsement of Hume's naturalistic fallacy argument definitely means to reject the sort of objectivity or naturalism associated with pre- and early-modern moral theories. For Finnis, no fact can give rise to a value, nor can speculative knowledge give rise to obligation. Empirical observation and metaphysical deduction are as such without normative significance. It is thus that Finnis eliminates a master *telos* from which obligation could be deduced.

Finnis extends this critique to modern forms of teleology drawing moral obligation from subjective desire, pleasure or satisfaction. He repudiates the modern circumvention of the is-ought problem by summing de facto satisfactions or experience. He confounds this typically modern gambit by conceding its arguments against pre- and early modern theories, and then turning them against it. In keeping with his concession to Modernity, Finnis rejects objectivity or naturalism in the "naive" sense characterizing some early modern moral philosophy. In all the ways that the basic goods were found to be "subjective," the derivation of obligation in Finnis is also subjective.

But, Finnis asserts an alternate objectivity in which values are not alleged to be "out there" but rather at the taproot of reasoning in underived cognitive judgments of moral truths. It thus claims "objectivity" with a certain difference, not objective rightness of one state of affairs over another, but objective intelligibility of one kind of motive for acting over another and objective completeness over incompleteness of intelligibility of one concrete option for choice over another.

This notion of objectivity appears to be distinguishable from the basis of moral certainty found in Kant in at least three ways, yielding a kind of objectivity compared to premodern theories of morality. First, knowledge of the basic goods is occasioned by reliable knowledge of objective states of affairs which satisfy drives and inclinations within the agent. Second, the basic goods point to forms of fulfillment through participation in substantive and relational realities outside of the individual will. Third, the agent can look at states of affairs produced by human choice and action and reliably infer cognition of relevant values as their efficient cause.

In sum, Finnis accepts as valid modernity's critique of some pre-modern and early-modern moral theories purporting to derive from empirical states of affairs and metaphysical concepts, the very values which the viewer projects onto them. As an alternative to emotivism, however, Finnis claims to retrieve ethics as found in an Aristotle or Thomas Aquinas. He stymies modern expectations by acknowledging that value originates in the mind of the agent, and yet claiming that 1) invariant and universal moral guidelines are knowable with content relating to human fulfillment; and 2) successful action under such guidelines tends to fulfill natural drives and inclinations.

3. Is the Role of the Basic Goods in Practical Reason Intrinsically Egoistical?

A third heuristic question asks whether basic goods function within the process of practical reason with inherent egoism or individualism. A correlary question is whether practical reason, if egoistical, requires some kind of correction through a separate duty of altruism or the like.

The function of Finnis's basic goods within practical reason would seem to some extent individualistic or egoistic. The basic good is contemplated by the deliberating agent as the intelligible point of possible individual acts. It is thus intelligible precisely as the value available for choice *by an individual agent*. Even when jointly undertaken with others, actions are, in this scheme, intelligible as an aggregate of individual purposes. The fulfillment available through action in accord with the fullness of practical reason is the enjoyment of an *individual* will of integral openness to potential fulfillment. Finnis seems to be subject to the modern individualism dramatically manifest in Kantianism.

To some degree, Finnis concedes this. The good of peace of conscience, pursued under the first principle of morality, can be viewed as "self-determination" or "self-realization." Practical reasonableness presupposes that the agent does and should prefer himself, at many levels, but notably through organizing his action around an individual plan of life, defined by his or her own choice of a unifying purpose and his or her own unique and creative pattern of commitments to basic goods, and where underdetermined permitting his or her individual "pursuit of happiness."

The individualism and preference for the self characterizing Finnis's ethical vision operate within a freedom which is morally underdetermined. The agent can do what he likes without moral liability. The limits of morality are encountered as principles and concrete rules which can be interpreted as limiting self-oriented preferences by demands of respect for the rights of other individuals and the community of action.

Not flowing from any ontological grasp of the agent's nature as a social being, these requirements are traceable instead to the transpersonal nature of each basic good grasped by the agent as an underived starting point. In grasping possibilities for choice and action, the agent simultaneously encounters the other as a moral equal. Parallels may be drawn here between Finnis and the function of Kant's categorical imperative. They may also arguably be drawn between Finnis and specifically modern teleologies requiring the satisfaction of individual desire, but requiring its subordination to the greatest good for the greatest number or to a calculus of proportionate gain extending to concern for the satisfaction of the desires of others. This tension between individual freedom to pursue self-interest and the restrictions of morality may be traced to the deepest level of Finnis's theory. At all three levels of cognition within practical reason distinguished above, the agent of good will is categorically to repudiate the demands of desire unmediated by reason. At the first level, this means repudiating behavior aiming at gratifying senseless desire, at the second, it means repudiating formally inconsistent conduct within the agent's framework of reasoning, and, at the third, it means repudiating rational action aiming at fulfillment with incomplete attention to all that rationality tells the agent about integral fulfillment.

Whether Finnis so intends it, the pervasive tension in his theory between desire and the demands of reason and morality can be interpreted as a pattern of individualism checked by concern for deontological limits: the moral agent is seen as self-creatively doing whatever he likes once having complied with a series of formal side-constraints. Within the range of moral freedom open to the agent, options are right or at least morally unobjectionable for no other reason than that the agent chooses them, this freedom being radically curtailed at the point that individual preference collides with the invariant limits announced by reason. In Finnis's approach, the structure of moral responsibility is individualistic. Surely, Finnis would say that this is loneliness implicit in moral freedom.

To stop here, would, be to distort Finnis's account of his theory. Many actions are jointly undertaken by co-agents. Actions may be taken by groups for third parties to the action.⁴⁰³ In both senses, action is joint rather than individual. The self-determination and self-realization which the fullness of practical reason seeks through the peace of conscience represents choice and action in pursuit of basic goods, some of which are forms of fulfillment *other than* self-fulfillment. Finnis asserts that each basic good is formally grasped as transpersonal, i.e. as equally good for all agents. A reason is equally a reason regardless of who benefits from its pursuit. Substantively, each basic good entails mutuality in human fulfillment. This mutuality is particularly important in the reflexive goods. The good of friendship is, for example, of its essence, concerned with mutuality. And, the good of religion orients the agent to a relationship with the cosmos.

⁴⁰³ Finnis, *Nuclear Deterrence*, 276, 288; Grisez, "Practical Principles," 114.

To conclude the question, Finnis's repudiation of an empirical or metaphysical vision of human nature, as the *telos* of the moral life, excludes viewing ethics as the fulfillment of a "social nature" eliminating egoism from the fundamentals of ethics. In fact, Finnis's metaphysically austere grounding of moral theory injects it with a considerable dose of individualism, generating conflicts between self-realization and the side-constraints of justice. Still, the intrinsic content of Finnis's basic goods ensures that peace of conscience has some reference to mutuality. The balance between egoism and mutuality in Finnis's theory is somewhat undetermined, and according to Finnis, it calls for further normative theorizing about whether egoism or altruism better fosters integral action for the basic goods: life, knowledge, work and play, friendship, interior harmony, practical reasonableness or peace of conscience, and religion.

D. Retrospective Critique of the Heuristic Path Adopted in Developing the Foregoing Interpretation of the Terms, Basic Goods and Practical Reasonableness

Having completed the circuit sketched in advance for interpreting Finnis's ethical theory, a final inquiry asks what set of questions best illumines Finnis's meaning within what now appear as his own horizons of understanding. Making these questions explicit permits an appreciation of Finnis's meaning within a horizon which, in Gadamer's sense, is "fused" with the author's.

At the conclusion of the foregoing heuristic exploration, the aptest horizon for understanding "basic goods," appears to be not "the morally relevant" goal of choice and action, abstractly defined, as heuristically employed here, but the agent's apprehension of

an intelligible difference between meaningful choice and action and spontaneous or senseless concrete behavior. Within Finnis's own horizon of meaning, the question that "basic goods" answers, then, is this: What invariant structure does reasoning follow explaining the agent's grasp of the distinction between intelligible or meaningful action and spontaneous or senseless behavior?

At the end of the heuristic investigation into the meaning of "practical reason," the more illuminating horizon of understanding appears to be not "justification," as the activity formally defining ethical theory, but the agent's, introspection of a distinction between action that is merely intelligible and action that is completely rational. Within Finnis's own horizon of meaning, the question which practical reason answers, then, is: What distinguishes action grasped as merely intelligible from action grasped as completely reasonable and thus moral?

Finally, at the conclusion of a heuristic examination of the relationship between basic goods and practical reason, the more appropriate horizon of understanding, in Finnis's own terms, appears to be, not an abstraction relating to teleology, nature or egoism, but the question of what distinctive *part* basic goods play, as underived starting points of reasoning, in the vantage of morality and what relation they have to other underived starting points of reasoning about action contributing to Finnis's cumulative moral vantage?

All of these elements distinguishing Finnis's terms from those of the heuristic definition can be summed up in Finnis's following words:

But anyone who considers that there are principles of natural law, in the sense . . . outlined, ought to see the importance of maintaining a distinction between discourse about natural law and discourse about a doctrine or doctrines of natural law. . . [The] principles of natural law have no history.⁴⁰⁴

⁴⁰⁴ Finnis, *Natural Law and Natural Rights*, 24-25.

III. FINNIS'S JURISPRUDENCE

"Law," after "basic goods" and "practical reason," is a third credible entré to John Finnis's thought. The term does not figure in the author's ethical theory but is central to his work, which has, as a principal focus, ethical theory's use in jurisprudence. With Chapter 2 as groundwork, the present chapter interprets Finnis's philosophy of law. It supplies this study's first direct answer to its basic inquiry: the role of "basic goods" in the natural-law jurisprudence of John Finnis.

This chapter relies on the definition of law set out in Chapter 1. It can proceed only a short way by the route of asking what particular content Finnis gives to the general heuristic concepts. Finnis's conception of law is more unlike than like the heuristic definition, so that it takes on its meaning in dialectical opposition to it. The chapter begins by setting out similarities between the heuristic definition and Finnis's conception of law. It then describes his critique of the heuristic concept, and gives his justification for an alternate concept which it sets forth in terms of the ideas proper to it, which are largely borrowed from his ethical theory: the "common good," "authority," "obligation," "justice" and "rights." The descriptive section of the chapter concludes by revisiting the relationship Finnis's concept of law bears to the heuristic definition.

Finnis's concept of law is value-laden. In its basic terms, it invites progress beyond description to evaluation of whether the law is "moral." Finnis's conception of law bears within itself a conceptual framework for the law's moral evaluation. Following through on that evaluation, however, entails posing several key jurisprudential questions: the nature of the "rule of law;" the moral constraints on state action; the ground of a law's legitimacy; and

the justification for the law's distributive and commutative allocations. The chapter will explore how Finnis asks and answers these questions.

In keeping with Gadamer's fusion thesis, the present chapter again concludes with a succinct statement of Finnis's terms, as these appear within his own horizons this time conveying his understanding of the role of "basic goods" in practical reasoning about law.

A. Law as Descriptive Term

The heuristic definition set out in Chapter 1 was "law is a sanction-backed restriction on either individual freedom or governmental power to limit individual freedom," and, in some versions, "an instrument for bringing about elective economic and social outcomes." Finnis, for his part, adopts essentially this same definition as his own point of departure for giving an explanation of his descriptive theory of law.¹

1. Finnis's Parallels to the Heuristic Definition

In order to establish the extent of the parallel between the heuristic definition and Finnis's conception of law, it makes sense to consider in turn, each of the heuristic definition's basic elements: "power," "freedom," "restriction," "immunity," "sanction" and "instrument." With important qualifications, they can be aligned with Finnis's conception of law for a partial, but not otherwise misleading account of that conception from the initial angle in the order of discovery.

One postulate of Finnis's descriptive conception of law will be familiar to the contemporary reader: the law arises from "the sheer fact of power."² Finnis holds that the

¹ John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 3-6.

² *Ibid.*, 250, 275.

possibility of law emerges when some agency has the power to win the community's acquiescence in its directives. The law's validity, in this view, hinges on the compliance of the law's subjects, rather than on the consent or on formal delegation.³

The reader will also recognize Finnis's emphasis on the freedom of the law's subjects. Finnis's moral agent, in a sense, can be said to experience law as a curtailment of his freedom.⁴ Finnis conceives of the law as an "exclusionary" reason overriding the agent's ordinary moral reasoning. Under the heuristic definition the law is a "restriction," but, under Finnis's it is a "stipulation."⁵ These two parallel terms can both be taken to signify a "rule." The central case of Finnis's term is the legal stipulation understood as a conditional proposition, that if certain *stated* conditions are present, a stated subject is to stand in a stated relationship of obligation to a stated act-description, with the relationship of obligation being expressed through a deontic "modal operator."⁶ The modal operator, in this definition, "restricts" the freedom of the subject. And, it is this element which the heuristic definition emphasizes. Finnis views the law, from one angle at least, as a system of rules restrictive of freedom. Each rule is intelligible as a source of invariant "exclusionary" or pre-emptive effect, and each presents itself within a positive framework of rules purporting to give

³ Ibid., 248.

⁴ Ibid., 314-319.

⁵ Ibid., 254, 361.

⁶ Ibid., 276, 324.

univocal direction in all conceivable circumstances.⁷ The heuristic definition lends itself to a similar systematic development as a framework of rules.

The role Finnis accords "immunity" resembles an equivalent term in the heuristic definition. He holds that legal rules can be stated in the "grammar and vocabulary" of rights.⁸ He draws on Wesley Hohfeld's terminology, to create that a rights-based grammar for law consisting of "immunities," "powers" and "liberties."⁹ An "immunity" shields an individual from governmental power, or from a power the law cedes to a private party. A "power" is the capacity to act upon the interests of the state or other private parties from legal restriction a "liberty" is a de facto freedom.¹⁰ In Finnis's concept of law, "immunities," but also "powers" and "liberties," can be understood as further specifications of what in the heuristic definition means by "immunities." Finnis relies on concepts of "liberty" or "immunity" especially to express normative limits on government power.¹¹

Sanctions have a place in Finnis's conception of law parallel, in a way, to the one they hold in the heuristic definition. He conceives of the law, as creating a coercive order.¹² Sanctions are not element of his descriptive definition of law as such, but they "buttress" the law's action-guiding effect by offering external motivation for the compliance which is

⁷ Ibid., 317.

⁸ Ibid., 209.

⁹ Ibid., 199-201.

¹⁰ Ibid., 199.

¹¹ Ibid., 362.

¹² Ibid., 261.

essential to the law's authority.¹³ For Finnis, the law's authority is, in principle, dependent on the lawgiver's readiness and ability to impose sanctions.¹⁴

Finnis's definition of law also parallels the element in the heuristic definition making the law an instrument of elective economic and social goals, for he treats law as an instrument coordinating joint action within the community. The coordination Finnis envisions is a moral, as opposed to material, but the law's role is, nonetheless, essentially instrumental.

Finally, neutrality regarding moral values is a feature of the heuristic definition. One notes, for example, that "power," "freedom," "restriction," "immunity" and "sanction" are all intelligible as "fact" without overt reference to value. Even here, Finnis's conception of law has parallels with the heuristic definition, at least from a certain angle. He rejects the notion, as would proponents of the heuristic definition, that "an unjust law is no law."¹⁵ He asserts that an unjust law is "analytically" and "sociologically" law. Law exists independent of whether one evaluates it as moral, according to Finnis.¹⁶ In contrast to pre-modern theories of law, Finnis's conception has a certain value-neutrality.

2. Finnis's Meta-Level Critique of the Heuristic Definition

The convergences noted notwithstanding, Finnis repudiates the heuristic definition, as it stands. Finnis alleges that, on its terms, this definition lacks rational justification,

¹³ *Ibid.*, 262.

¹⁴ *Ibid.*, 263.

¹⁵ *Ibid.*, 364-366.

¹⁶ *Ibid.*, 354-357

however much it has held sway in modernity. He critiques proponents like Bentham and Austin.¹⁷ He argues that no descriptive conception of law may simply be assumed. It must be validated through its explanatory power.¹⁸

Finnis observes that sociological or analytical jurisprudence relies on a general concept to find the ways to a general theory beyond a "lexography" of "multiple lists" of practices called law.¹⁹ The heuristic definition offers just such a general concept. Such a device allows the analyst to select societal phenomena which, together, make up a social institution, distinct from other such institutions, and found across societies. The concept provides meta-level criteria for what constitutes the institution.²⁰

One validates such criteria by demonstrating that they adequately describe, analyze and explain social phenomena. Invalid criteria yield a distorted understanding of social facts.²¹ According to Finnis, the heuristic definition rests on one of two invalid criteria for the existence of law: 1) a geometry-like clearness or definiteness in the features deemed recurring; or 2) a cross-cultural sameness in these features.²² Finnis argues that, there is no demonstrable reason to suppose that either criteria serves to identify functioning legal

¹⁷ Ibid., 4

¹⁸ Ibid.

¹⁹ Ibid., 14, 18.

²⁰ Ibid., 4-6.

²¹ Ibid., 5.

²² Ibid., 5-6.

institutions. Each is arbitrary, since many legal practices do not conform to it. Both leave essential aspects of the law out of account.²³

3. Finnis's Justification of Meta-Level Criteria for An Alternate General Concept

Finnis offers a justification for constructing a general concept of law based on alternate meta-level criteria. He begins with an account of meaning, which he asserts governs four orders: 1) biological or physical causation; 2) logical coherence; 3) cultural artifact, as in art or technology; and 4) human choice and action. The fourth order is that of Practical reason.²⁴ Any given law may derive its meaning, in part, from all four orders, but its specific intelligibility as law, rests, as does that of every societal institution, on the fourth order. The "point," "value," "significance" or "importance" of a societal institution lies in its constitutive "actions, practices, habits, dispositions, and . . . discourse."²⁵

Finnis departs from with the heuristic assumption that the law can be described apart from inherent purposes. He asserts that no social institution can be described in purely value-free terms, whether they be power, freedom or any other apparently neutral term. The roles which Finnis accords power and freedom in defining law are only apparently value-neutral. The jurist formulates these terms in a value-neutral way as a matter of legal technique. In fact, they figure in the institution of law in a manner linked to substantive purposes or values.²⁶

²³ *Ibid.*, 4-9.

²⁴ *Ibid.*, 136-139.

²⁵ *Ibid.*, 3; John Finnis, "On 'Positivism' and 'Legal Rational Authority'," *Oxford Journal of Legal Studies*, 5 (1985): 74-90, 89.

²⁶ Finnis, *Natural Law and Natural Rights*, 205, 249.

To find the purposes comprising law as a social practice, Finnis reviews its various manifestations, and the labels and conceptions people attach to them. Both practice and discourse are intelligible in terms of social function.²⁷ The understanding of the practice found in discourse may not be reliable. The motives individuals have for participating in the practice may be at odds with the practice's actual social purpose. According to Finnis, an institution's social function is rather to be inferred from the "internal point of view" of those responsible for the institution.²⁸ In contrast to Hart, Finnis ties the "internal point of view" to the internal motivation of the person. He concedes it is an interior attitude of respect for the law as a product of Practical reason.

Rather than simply to adopt some current conceptions of law, such as the heuristic definition, jurisprudence should construct a general concept which explains the social practice accurately from the "internal point of view." In selecting a general concept, the analyst must consult his own Practical reason in order to interpret the meaning of what others say and do.²⁹ The general concept that is desired is value-neutral, in the sense of being free of the analyst's bias, but value-laden, in the sense that it takes its meaning from the basic goods of practical reason. The investigator necessarily understands his own participation in his work by reference to the same goods. Description of social practice measures its failures as well as its successes in relation to the values and duties of Practical reason. The

²⁷ *Ibid.*, 138-141.

²⁸ *Ibid.*, 13

²⁹ *Ibid.*, 12-16.

investigator consults Practical reason to clear away "contingencies, misunderstandings and myths."³⁰

Finnis argues that his general concept is not to be conceived of as a particularly clear articulation of received ideas. It is a tool fashioned from the elements of Practical reason for exposing the function of social institutions; criticizing ideas offered in explanation of them; and judging their worth and integrity.³¹ Finnis considers his mode of concept formation to be like Weber's "ideal types" and Aristotle's *pros hen* or *aph henos*.³² Finnis formulates his general concept as a measure for assessing the validity of the heuristic or any other existing conception.³³

Finnis adopts the method of British linguistic philosophy to complete his formation of a general descriptive concept of the law. He says he seeks to identify the "central linguistic case" of law, based on the purpose or function explanatory of linguistic usage. The central case of a practice is the instance most fully realizing its purpose. Instances of the practice lacking the repleteness of the central case are to be seen as secondary or peripheral instances.

Finnis contrasts his general concept of law with what is essentially the heuristic concept employed here, with its universal invariant characteristics and geometry-like definitional qualities. He alleges that his concept is a tool adequate to understanding the

³⁰ *Ibid.*, 17.

³¹ *Ibid.*, 16-19.

³² *Ibid.*, 15-16.

³³ *Ibid.*, 15-16.

"rich and complex" nature of a social institution like law. It identifies the complexity and subtlety of the central case of the institution, without excluding borderline cases lacking some of those features.³⁴

4. Finnis's Descriptive Concept of Law

Finnis analyzes social practices designated as "law" as well as concepts of "law," including, but not limited to, the heuristic definition, to develop his own general descriptive concept of law. He finds that the social practice of "law" coordinates activities, resolves disputes and provides remedies. From the "internal point of view" of law's purveyors, which Finnis adopts hypothetically and analyzes in reliance on Practical reason as such, he identifies the purpose of law as the "fostering of the common good."³⁵ To explicate this general concept, one must set out: a) the meaning of the "common good;" and b) the value of the law in advancing it.

a. The Common Good

To understand Finnis's concept of the common good, one must return temporarily to his ethical theory. Specifically, one must revisit the eighth requirement of practical reason that the common good be favored and fostered. That requirement calls for the plural fulfillment in tandem of all diverse individuals considered together in community. The

³⁴ Ibid., 10-11; John Finnis, "On 'The Critical Legal Studies Movement'," *American Journal of Jurisprudence* 30 (1985): 21-42, 35-36. Finnis states that the jurispudent must, however, supplement the general concept by rationales explaining diverging peripheral cases.

³⁵ Finnis, *Natural Law and Natural Rights*, 147-148.

fulfillment sought is that of the self-constitution of individuals through choice and action in full accord with the First principle of morality.³⁶

Finnis's defines the "common good" as an obligation of moral duty. The agent is to coordinate his conduct with that of others to safeguard the *possibility* of fulfillment for all. The common good is thus conceived as a way of proceeding, a procedure, rather than a substantive end. Finnis describes the requisite interchangeably as one of "collaboration," "cooperation" or "coordination."³⁷

The agent is obligated to contribute to "the set of conditions which enables the members in a community . . . to realize reasonably for themselves the value(s) for which they have reason to collaborate with each other . . . in a community."³⁸ This goal implicates, in certain overlapping respects, the third requirement of Practical reason calling for impartiality among persons. A moral term by virtue of being a requirement of practical reasonableness, the common good has a pre-moral indicative meaning for Finnis in that all the basic goods are, "common," in the sense of being good for, and accessible to, all.³⁹ In addition, where the common good becomes the object of action, it is known as the good of Friendship, which, is found in respect for reciprocity with the other.⁴⁰

³⁶ Ibid., 168.

³⁷ Ibid., 138.

³⁸ Ibid.

³⁹ Ibid., 155

⁴⁰ Ibid., 154.

Finnis finds threefold "conditions" to be the basis of the common good. The first is the ensemble of material conditions of successful action by all, including physical items like a healthy environment, sufficient food and physical security,⁴¹ but also cultural and social supports for individual self-constitution.⁴² The law takes on its essential meaning in its role as such a support. The agent may elect to contribute to such conditions as an object of primary intention, as a matter of Friendship, but whether or not he does so, he must always and everywhere preserve an attitude of respect for the importance of such conditions, as a matter of secondary intention under the eighth requirement of practical reason.

As the second condition, Finnis cites the opportunity for successful moral agency for everyone. He holds that the common good is, in significant part, a "quality" of "jointness" or "cooperation" of "interaction."⁴³ The agent, thus, has a duty to uphold the possibility of joint or cooperative action. This duty is one of maintaining instrumentalities of joint action. The agent has a duty, under the eighth requirement of practical reason, to preserve or attitude of the respect for the conditions of action in common with the others, as a matter of secondary intention.

Finnis's final condition of the common good is that of joint commitment: the human relationships within, and for which, individuals live their lives.⁴⁴ The good such relationships, i.e. Friendship, may or may not be the object of the agent's action, but the agent's attitude as

⁴¹ Ibid., 154.

⁴² Ibid., 137.

⁴³ Ibid., 220.

⁴⁴ Ibid., 135.

a matter of secondary intention, must, always and everywhere, be one of respect for such relationships. The attitude required is one of justice or respect for the equality of others.

Finnis holds that the fostering of the common good requires respect for several kinds of relationships. Throughout all collisions of interests, every moral agents must observe common limits on his conduct, forbearing from direct interference with another individual, or with the common interest in health, morality and civil order.⁴⁵ Equality of opportunity marks the boundary between autonomy and interference. Respect for equality rectifies relationships, as a matter of secondary intention of the participants whether the relationship aims at ultimate or instrumental goods.

Finnis sees other relationships as part of the conditions of the common good. These are positive in character. One such relationship is the instrumental relationship aiming in common to obtain ad hoc means or the ensemble of standing conditions needed for successful action over time. Commercial contracts are the classic instance of such relationships. Finnis, terms them "relationships of utility."⁴⁶ Another form of relationship that is part of the conditions of the common good is joint action, as an end positive cooperation. If the parties to a relationship, even of "utility," value the "good play of the game," as an end in itself, then their relationship is of this kind. Finnis refers to such undertakings as "relationships of pleasure."⁴⁷ A third kind of cooperation, forming a part of the conditions of the common good is cooperation valued for its own sake. Such action is for the good of the other person. The

⁴⁵ Ibid., 138-139, 215-218.

⁴⁶ In doing so, he cites the tradition of Aristotle. Ibid., 139-140, 154.

⁴⁷ In a term he again borrows from Aristotle. Ibid., 140, 154.

motive may be love, beneficence or gratitude. Finnis terms these relationships "Friendships."⁴⁸

Where all the forms of relationships endure, Finnis considers them to give rise to an association with the status of a community. The identity of the community is found in the common purpose of its members, an the order of Practical reason.⁴⁹

b. The Law as a Means of Advancing the Common Good

Merely voluntary, ad hoc or impromptu acts cannot coordinate joint action as the common good requires in a community of any complexity. Some mechanism is needed to facilitate a pattern of collaboration throughout the community. Finnis's general concept of law treats law as the needed mechanism, functioning at a general level of social organization.⁵⁰

Finnis appeals to game theory to explain how the law is able to serve in this function. Game theory posits that social actors coordinate joint activity out of self-interest. The actor considers himself better off in an outcome that would not have been his first choice, as long as he is guaranteed that others will respect it. People voluntarily conform to precedent, convention, agreement, or the like, because of the advantage that lies in the predictability it offers regarding the actions of other. Patterns of common actions attainable without undue cost have the quality of "salience." Where the pattern make the actors better off, it is deemed "transitive."⁵¹

⁴⁸ He cites Aristotle. *Ibid.*, 141-144, 154.

⁴⁹ *Ibid.*, 153.

⁵⁰ *Ibid.*, 260.

⁵¹ John Finnis, "Law as Co-ordination," *Ratio Juris* 2 (March 1989): 97-104, 99-101; Finnis; " The Authority of Law in the Predicament of Contemporary Social Theory," *Journal of Law, Ethics & Public Policy* 1 (1984): 15-137, 126-127.

Unlike game theorists, Finnis is unwilling to reduce rationality to self-interest. He also observes that transitivity and salience are, practically speaking, often unobtainable.⁵² Thus, he moves beyond game theory to the informal social practice of promise-making for further direction in forming a concept of law as a mechanism of social coordination for the common good.⁵³

The informal practice of promise relies on shared linguistic signs, which society accepts as bringing into existence the very obligations they signify. Where the language of promise has been used, the community considers the promisor obliged to perform and, the promisee to have the right to the performance. Society considers itself entitled to blame the party in breach. The benefit of the practice is that it creates sufficient security in the form of predictability to warrant entry into mutual projects dependent upon future cooperation.

The basis for the promisor's obligation is that by keeping his word, he advances the common good. His own practical reasonableness requires that he acknowledge the obligation.⁵⁴ Under the terms of practical reason itself, the obligation offers an "exclusionary" reason overriding whatever other reasons the agent might otherwise have for taking a different course. Practical reason grasps the social convention of promise as entailing real moral obligation. Paradoxically, the social practice can give rise to actual moral obligation only once it is sufficiently broad-based effectively to coordinate behavior.⁵⁵

⁵² Finnis, *Natural Law and Natural Rights*, 101, 305.

⁵³ *Ibid.*, 298-308.

⁵⁴ *Ibid.*, 303-305.

⁵⁵ *Ibid.*, 254, 306.

As an informal practice, promise-making can coordinate only a small range of society's joint action. At a general level, a society needs a master coordination device to coordinate all lesser, partial forms of collaboration, including voluntary and involuntary exchanges, for the sake of the universal common good -- sociological, economical and political. The community must have a way of ruling out some options, and requiring others, from among those "rationally eligible but competing possible institutions, policies, programs, laws and decisions."⁵⁶ Law is the means to master coordination for the "public interest" or "general welfare."⁵⁷

In Finnis's view, there are prerequisites of the law's emergence: a) society must be capable of coordinating action through reciprocal compliance with signs signifying obligation; b) society must have the means of treating such signs as authoritative; c) such reciprocal compliance must occur on the level of the complete community; d) it must take supremacy over all competing modes of coordination; and e) it must "asortively" channel mechanisms for coordination functioning at lesser included levels of association.⁵⁸

As does the informed society practice of promise, the law offers its directives as obligatory, and as of invariant force, upon promulgation. Like the informal practice, legal obligation depends for its public meaning on the internal direction of practical reason.⁵⁹ Respect for law is for the common good because it coordinates joint activity effectively. This

⁵⁶ *Ibid.*, 210.

⁵⁷ *Ibid.*, 148-149.

⁵⁸ *Ibid.*, 148-149.

⁵⁹ *Ibid.*, 143; by means of what Finnis designates as "feedback," moral obligation lends legal obligation its intelligibility. *Ibid.*, 317-320.

compliance with the law fulfills a requirement of practical reason and thus, in turn, contributes to the agent's integral self-constitution.

Law distinguishes itself from informal practices, like promise-making, by its authority. It imposes moral obligation that goes beyond what morality already requires. Virtually everyone acquiesces to some other person's stipulations at times, as a way of solving a problem of joint action. Common undertakings do better when the participants comply with the directives of a single decision maker. More than one reasonable solution to a problem may exist, but everyone must join in a single solution. The realistic solution is to accept, as binding on all, the option proposed by the party in authority.⁶⁰ In Finnis's view, authority arises when: a) one party has the community's acquiescence in its stipulations; and b) its stipulations are intended for the common good and accepted as such by some core group of its subjects.

The law involves a paradox. It originates only from authority, but its authority exists only where it already accepted as law. Finnis uses international customary law to show that the circularity is only apparent. International customary law exists, based on sufficient compliance *opinio juris* with international custom, but compliance *opinio juris* can occur only once a nation makes an antecedent judgment that the custom is for the common good, and other nations sufficiently observe it to make its coordination effective. As a new custom begins to take hold, but before compliance is sufficiently general to give it the status of law, the practice has the character of a "game." Deference to the custom must at first be made on

⁶⁰ *Ibid.*, 233.

faith, and some must tender obedience before general acquiescence actually makes the custom authoritative.⁶¹

According to Finnis, the law's order is coercive. The law must assert its intrinsic action-guiding character by punishing deviance whether arising from "fraud, folly or high-minded recalcitrance."⁶² For the law to have authority, a sufficient number of its subjects must obey out of a true spirit of reciprocity. The law gives others the incentive to obey in the form of sanctions. The broader level of compliance ensured by sanctions assures law-abiding citizens that the law continues to have authority and, therefore, should be obeyed. Finnis adds that sanctions obtain supplemental justification for the requirement of justice that the law punish lawbreakers.⁶³

The central case of law is found at the general level of social organization, where it can best pursue this coordination, i.e. this the level of the "complete community." It is the level that is sufficiently central to allow all aspects of joint activity for the well-being and flourishing of the community to be coordinated in common. It must override all stipulations arising at inferior or extrinsic points of organization and, its scope must be comprehensively extend to every conceivable coordination problem. The law is, thus, for "public interest" or "general welfare," and it defines the domain of politics. Political science has the topic of identifying the criteria of the "complete community." Aristotle considers the *polis* to be the complete

⁶¹ *Ibid.*, 243, 305, 315.

⁶² *Ibid.*, 261.

⁶³ *Ibid.*, 262.

community. Most commentators treat the nation-state as such. Given global trends, Finnis sees it as increasingly located on the international plane.⁶⁴

c. Formal Characteristics of Law

A central power might provide the coordination, thus for discussed, by fiat. As Finnis puts it, it might take the form of "charismatic personal governance of a sovereign administering 'palm tree justice.'"⁶⁵ To be law, stipulations coordinating social life require more. According to Finnis, they must have the following additional features: 1) they must aim at a predictable common way of life; 2) they must premise their validity on due enactment; 3) they must provide means for creating or changing legal relations; 4) they must utilize the specific techniques of postulating present obligation by reason of past action; and 5) they must assume that a solution to every present coordination problem lies in some past enactment.⁶⁶

(1) Law Provides Predictability through Definition, Specification and Clarification.

Finnis terms legal enactments, "stipulations."⁶⁷ The term presumably encompasses "principles" and "standards," but "rule" is his central example. The rule's formal meaning is the imposition of obligation.⁶⁸ It seeks a statement of the *circumstances* needed for an obligation to arise, the *act-description* which is to be obligatory, the *subject* who is to be

⁶⁴ Ibid., 148-150.

⁶⁵ Ibid., 267.

⁶⁶ Ibid., 68-70.

⁶⁷ Ibid., 254, 361.

⁶⁸ Ibid., 276-280.

obligated, and the *modal-operator* defining the nature of the obligation binding the subject to the *act-description*.⁶⁹

In liberal societies, rules may be framed in terms of rights. Finnis views rights discourse as a grammar for positively expressing much of the content of legal rules.⁷⁰ He says a legal right exists where a rule recognizes, as belonging to a claimant and every other member of a class to which the claimant belongs, the benefit of one of the following:

- (a) a positive or negative requirement imposed on another, including the benefit of noninterference with the claimant;
- (b) the power to bring such a requirement into existence; or
- (c) an immunity from being subject to or being made subject to such a requirement in relation to another.⁷¹

Following Hohfeld, Finnis designates these three aspects of rights, respectively: claim-right, power, and immunity. As such, they are a subset of the analytical categories of modal-operators figuring in legal rules. The claim-right under (a), for example, implies a correlate *duty* on the part of the one who is subject to the requirement. The absence of a claim-right with its correlate duty leaves others with a *liberty* not to act as the correlate duty requires. The power enumerated under (b) allows its holder to create a claim-right and correlate duty, with the persons who may be placed under the duty being under a *liability* pending its arising. The

⁶⁹ Ibid., 276, 314.

⁷⁰ Ibid., 199-205.

⁷¹ Ibid., 205.

immunity enumerated under (c) exists where no power may exist to create a duty in the holder of the immunity, or any correlate claim-right in another.⁷²

**(2) The Law Premises Its Validity on Enactment and
Lack of Subsequent Repeal**

The law, according to Finnis, tends to inherently to regulate its own creation. It generates authoritative second-order rules, specifying when its first-order stipulations are to count as law and when, once created, they cease to be effective. The authority of each first-order rule is thus subject to another authoritative rule.⁷³ The law gives rise to institutions commissioned to enact and repeal law, as such second-order rules provide, so that rules and institutions exist in a circular loop.⁷⁴ The rule-generating institution under a legal system can be as simple as custom, with the relevant second-order rule stipulating merely that "custom suffices to create legal rules."⁷⁵ The agency establishing the initial first-order rules at the origin of a legal system does so based on the sheer fact of power and, without second-order authorization, but such agencies rapidly generate second-order rules to stipulate the form of future lawmaking.⁷⁶

**(3) The Law Supplies linguistic Signals Enabling Subjects
to Create and Alter Legal Relations of Right and Obligation**

The law's authority arises from its coordinating joint action in community, rather than from a global duty to maximize welfare. If it is to coordinate joint action in this manner, it

⁷² *Ibid.*, 199.

⁷³ *Ibid.*, 268.

⁷⁴ *Ibid.*, 276, 312.

⁷⁵ *Ibid.*, 238-245.

⁷⁶ *Ibid.*, 249.

must make possible a scope of action for individuals and private associations. Thus, by its nature, the law provides linguistic devices by which subjects have the authority to create their own rules to govern their freely chosen relationships. The private law of contract, wills and trusts are examples.⁷⁷

(4) The Law Resolves Present Disputes by Appeal to Past Acts

The legal rule connects past, present and future in a distinctive way, as it coordinates joint action. Its positive terms are drafted to render a vision of a future social order. They provide a professionally structured, stylized and manageable “drama” of “what is to be,” affecting the character of social life in many indirect, as well as direct ways.⁷⁸ The law serves as a template for interpreting the changing panorama of social life. It prescribes conduct in formulaic terms, characterizing given natural acts as of diverse normative status, e.g. an act of interference may be made a crime, a tort, or as an act of self-defense, and stipulating their manifold legal consequences. In adjudicating disputes, the law offers past legal decisions as reasons for resolving present disputes in one way rather than another.⁷⁹

(5) The Law Offers a Comprehensive Set of Solutions to All Problems Arising within the Community

The law proposes a closed system of rules within which every question or dispute has one and only one correct solution, under one and only one dispositive rule. The law allows

⁷⁷ Ibid., 268-269.

⁷⁸ Ibid., 269, 283-284.

⁷⁹ Ibid., 317.

a definitive judgment about whether a given act-description is obligatory for a given agent under given circumstances.⁸⁰

Having reviewed what Finnis has to say about the law's relation to the common good and its formal characteristics we are now in a position to set out his summary definition of his "multi-faceted" general concept of law:

[The term law. . . refers] primarily to rules made, in accordance with regulative legal rules, by a determinate and effective authority (itself identified and, standardly, constituted as an institution by legal rules) for a 'complete' community, and buttressed by sanctions in accordance with the rule-guided stipulations of adjudicative institutions, this ensemble of rules and institutions being directed to reasonably resolving any of the community's co-ordination problems (and to ratifying, tolerating, regulating, or overriding co-ordination solutions from any other institutions or sources of norms) for the common good of that community, according to a manner and form itself adapted to that common good by features of specificity, minimization of arbitrariness, and maintenance of a quality of reciprocity between the subjects of the law both amongst themselves and in their relations with the lawful authorities.⁸¹

4. Integrating an Understanding of the Points of Convergence Between the Heuristic Definition and Finnis's Concept of Law, Now Comprehensively Set Forth

Specific points of convergence with the heuristic definition provided entrée to Finnis's concept of law. However, closer examination of his descriptive definition of law has established that Finnis grounds the law's descriptive meaning in the value of the "common good," whereas the heuristic concept, in the *Hobbesian* tradition, does so through the law's capacity to channel power. Finnis conceives of legal obligation as a demand of an inner reasonableness contributing to the agent's integral self-constitution, while the heuristic definition conceives of obligation as the consequence of sanctions for the subject's freedom.

⁸⁰ Ibid., 269.

⁸¹ Ibid., 276-277.

In view of these differences, one will wish to know the meaning of the apparent similarities noted between Finnis and the heuristic definition at the onset.

At the beginning of this chapter, we noted that Finnis concurs with the heuristic definition that it is "the sheer fact of power," that makes law possible. Now we are in a position to add that this power in Finnis's conception of law, must be joined with moral authority. Thus, for Finnis, compliance by the law's subjects is not enough to give law validity. The law must be respected for its contribution to an order of basic reciprocity before it qualifies to law. At the opening of this inquiry, we observed that the "stipulation" of Finnis's definition resembles "restriction" of the heuristic definition. Now we are in a position to call the proviso that Finnis's stipulation is one of intellect, not will. His stipulation, while an "exclusionary" reason overriding his own preferences, is still a reason contributing to the agent's interior self-constitution.

For that matter, Finnis also departs from the heuristic definition grounding "freedom" and "immunity" in the value of reasonable self-constitution. Self-constitution for Finnis occurs through the agent's choice of the basic goods in a pattern of respect for the requirements of practical reason. Freedom takes as its meaning in relation to the possibility of integral fulfillment in and through all the basic goods, most strategically, through the good of peace of conscience. The value Finnis ascribes to immunity, for its part, lies in its usefulness for protecting reasonable self-constituting choice from external interference. Finnis also sees substantive value in freedom and immunity through their usefulness as concepts in a system of law, for advancing respect for mutuality.

As we saw at the onset, akin to the variation of the heuristic definition cited above, Finnis's concept of law functions as an instrument furthering elective ends. To function in this way, Finnis conceives of the law in terms of formal rules, social practices and as a language game, presenting itself as closed system, without reference to moral norms. It is this quality that is the most significant point in common between Finnis's concept and the heuristic definition. In the case of the other parallels so far revisited--power, stipulative character, freedom and immunity-- the underlying reference which Finnis maintains to the common good undercuts the apparent similarity. But, the parallel Finnis creates to the descriptive neutrality of the heuristic definition is of deeper significance. The law's neutral terms are not in fact, in Finnis's scheme, amoral. They are "as if" amoral, for the sake of a language game which is intrinsically parasitic on notions of moral obligation. Practical reason itself requires its bifurcation of legal from moral reasoning.

B. The Evaluation of Law

The central case of law for Finnis is a coordinating device for advancing the common good, not according to some contestable conception, but as correctly conceived by practical reason. Analytical or sociological (descriptive) jurisprudence, in this view, becomes the servant of its normative counterpart. Finnis's definition of law, thus, allows for a second, evaluative use of concepts. Such an evaluation seeks to answer whether law "as it is" is fully "law." But Finnis's definition of law, without more, excludes such evaluation because it rules out direct moral feedback. Finnis holds that the evaluation of law requires an extra-legal vantage.⁸²

⁸² Ibid., 319-320.

Finnis's employs intermediate concepts to mediate the application of his ethical theory to the evaluation of law. Principally, these include: the *common good*, *authority*, *obligation*, *justice*, *rule of law* and *rights*. Finnis begins to develop most of these in setting out his descriptive concept of law. But he completes them for the sake of his normative theory.⁸³

Finnis states that the law's moral evaluation is "bafflingly complex,"⁸⁴ and his normative concepts in the area, accordingly, overlap and intersect. He sees "justice," for example, as a comprehensive virtue expressing, in principle, all the demands of practical reason. It can outline all of the complex requirements of the "common good,"⁸⁵ including the element of law. Justice might be seen as the unifying concept in Finnis's evaluative jurisprudence, but such is not the case. Other concepts are more fundamental in Finnis's hierarchy of relevant concepts. The one concept which is the source of a unified and coherent exposition of Finnis's framework for the moral evaluation of law, because simultaneously the bridge between his ethical theory and his descriptive concept of law, is the concept of "authority."⁸⁶

1. The Authority of Law

Any stipulation that comprehensively directs joint action, at the level of the complete community is, Finnis holds, "law," analytically and sociologically, if acquiesced to as such.⁸⁷ Law has authority, however, only if those so acquiescing do so for the common good. If it

⁸³ Ibid., 155, 176.

⁸⁴ Ibid., 166.

⁸⁵ Ibid., 165.

⁸⁶ Ibid., 254, 352.

⁸⁷ Ibid., 244.

is without authority, law loses its moral, if not its analytical or sociological status, as "law."⁸⁸

In Finnis's scheme one moves from description to evaluation when one asks whether the law, in fact, has authority. A prerequisite is that the law is effective in obtaining the community's acquiescence. How much acquiescence is enough is a prudential judgment, drawing political science.⁸⁹ Acquiescence is a matter of external compliance. The law's subjects may acquiesce for any reason, pragmatic or principled, without, thereby, undermining the law's authority.⁹⁰

The law's authority, for Finnis, depends, however, not on consent, but on its being acquiesced to for the sake of the common good.⁹¹ The lawmaker must intend the law to be for the common good, rather than for a partisan purpose. (Finnis holds that partisan stipulations lack authority, whether or not they violate any overt constitutional requirement).⁹² And, a core number of the law's subjects good must obey out of respect for the common good, that is from the lawmaker's "internal point of view."⁹³ In fact, to be for the common good, Finnis holds, that the law must meet the following additional three requirements: it must be internally coherent; advance ends which are morally justifiable; and allocate benefits and burdens justly.

⁸⁸ Ibid., 354.

⁸⁹ Ibid., 246.

⁹⁰ Ibid., 246-247.

⁹¹ Ibid., 231, 246.

⁹² Ibid., 352.

⁹³ Ibid., 247.

a. Internal Coherence

To coordinate joint action in a community, Finnis holds that the law must be internally coherent. Internal incoherence is a normative defect, because it interferes with the coordination of the common good. Internal coherence is a matter of two things. It depends on of formal compliance with the second-order rules governing the making and administration of law, so that it avoids issuing stipulations *ultra vires*.⁹⁴ It is also a matter of the maintenance of a relationship of reciprocity between lawmaker and subjects. Finnis terms this second form of compliance, the "rule of law."⁹⁵

(1) Stipulations "Ultra Vires"

The law's authority flows from its having been enacted according to authoritative rules governing enactment. The existence of such "second-order" norms advance the common good by allowing law more effectively to coordinate joint action.⁹⁶ The value of distinctive second-order rules governing the law's creation lies in the predictability they create. This predictability advances the self-constitution of those who are subject to law.⁹⁷ Compliance with rules on promulgation is a necessary but not sufficient basis of the law's authority. A law may lack authority for other reasons, or a weightier practical reason for acting may pre-empt it in a particular case. Practical reason then denies the law authority, whether or not the legal system is capable of acknowledging its validity.⁹⁸ The constitution is not, as Finnis puts it,

⁹⁴ Ibid., 352-353.

⁹⁵ Ibid., 270.

⁹⁶ Ibid., 352-353.

⁹⁷ Ibid., 272.

⁹⁸ Ibid., 274.

quoting Hart, "a suicide pact." Departures from the letter of even constitutional terms may be allowed in an emergency.⁹⁹ Conversely, practical reason may recognize, as authoritative, a legal stipulation failing to satisfy the technical requirement of legal validity in its promulgation, where sufficient secondary reasons exist for doing so.¹⁰⁰

(2) The Rule of Law

Finnis defines the "rule of law," as the order of due reciprocity between lawmaker and subjects in the enactment and administration of law. The law is a set of dynamic relationships among people over time not just the sum of rules in the legal system. According to this order of reciprocity, the lawmaker must respect his subjects' self-constituting natures.¹⁰¹ Finnis adopts Lon Fuller's statement of the requirements of this respect in the guise of "procedural requirements of natural law." Fuller holds that the "rule of law" requires that legal rules: 1) be prospective; 2) not require the impossible; 3) be promulgated; 4) be reasonably clear in meaning; 5) form a coherent system; 6) be reasonably stable; 7) be made according to norms, themselves promulgated, clear, stable and relatively general; and 8) be issued by persons with authority who are accountable for administering the law consistently and in accord with its tenor as written.¹⁰² Finnis gives these requirements substantial weight, without considering them infeasible.¹⁰³

⁹⁹ Ibid., 275.

¹⁰⁰ Ibid., 275.

¹⁰¹ Ibid., 272-273.

¹⁰² Ibid., 270-271, 273-274.

¹⁰³ Ibid., 270 and 275.

b. Moral Justification of the Law's Ends

In Finnis's view, the common good can be considered the good of integral self-constitution taken as a common responsibility. As we saw above, Finnis considers this common responsibility to have three parts: material resources;¹⁰⁴ the conditions of joint actions;¹⁰⁵ and the maintenance of human relationships.¹⁰⁶ Finnis asserts that the lawmaker will necessarily advance these elements according to some distinctive common pattern or vision of human fulfillment¹⁰⁷ parallel to the requirement of practical reason that the individual moral agent act according to a coherent, life plan. Finnis holds that no such pattern is given *a priori*, and that it must be creatively envisioned and chosen.¹⁰⁸

Finnis holds that the role of law expands with a community's capacity for meaningful action. Where the members of the community are unable to complete action merely because of insufficient legal coordination, the failure in lawmaking is a failure in practical reasonableness (presumably of Practical Reason's fourth requirement of commitment to the pursuit of the good).¹⁰⁹

Finnis holds that practical reason leaves wide latitude in the election of a pattern of ends to be advanced by the law. The pattern must foster inner integrity of character and outer authenticity of action; it must provide for joint action in pursuit of utility, pleasure and

¹⁰⁴ *Ibid.*, 154.

¹⁰⁵ *Ibid.*, 155.

¹⁰⁶ *Ibid.*, 149.

¹⁰⁷ *Ibid.*, 219.

¹⁰⁸ *Ibid.*; Finnis, "The Authority of Law In the Predicament of Contemporary Social Theory," 121.

¹⁰⁹ Finnis, *Natural Law and Natural Rights*, 231.

friendship; and it must coordinate individual life plans and group associations. But all of these things may be done in diverse ways. Finnis holds, that even necessary societal associations like the family can be shaped in plural configurations.¹¹⁰

Finnis holds that the law binds all, notwithstanding that many will disagree with its particular elective vision of substantive fulfillment.¹¹¹ Those dissenting from the pattern of fulfillment the law elects still must obey it,¹¹² even where the law undercuts the subject's autonomy through paternalism.¹¹³ And yet, Finnis does set certain normative limits on the substantive ends the law may advance. He holds some conceptions of the common good as false: "[T]rash," "ignorance," "hatred," "group bias," "anarchic sexuality," "infantilism," or "hypocrisy." He holds others to be intrinsically worthwhile: "art," "culture," "reputation," "privacy," "property," "friendship," "respect for human personality," "property," and "education."¹¹⁴ He asserts that lawmakers are to avoid the first set of outcomes and to pursue the latter. He implicitly traces the intrinsic worth of the values in the latter set to the basic goods and the requirements of practical reason. Many of these terms seem morally ambiguous but Finnis treats them as univocal.

By analogy to individual moral choice, the law acts against practical reasonableness, when it acts for certain basic goods without adequately attending to the costs for others. Sub-

¹¹⁰ *Ibid.*, 219.

¹¹¹ *Ibid.*, 286.

¹¹² *Ibid.*, 221.

¹¹³ Finnis asserts that arguments against paternalism to suffer from self-contradiction, in that they seek to suppress an idea of the good with which they disagree. *Ibid.*, 220, 222.

¹¹⁴ *Ibid.*, 220.

rational emotional currents in the community may cause a failure of practical reasonableness.¹¹⁵ National Socialism's cultural agenda would be an obvious example.

Finnis derives other normative limits in the ends of law from the principle of the dignity of the human person. Practical reasonableness requires that the law allow its subjects to criticize it, so that the members of the community may consciously explore what is good as circumstances change.¹¹⁶ The legislature must show individuals equal respect as it enacts laws.¹¹⁷ It must allocate societal functions to the level of social organization as close as possible to those affected, respecting the proper roles of intermediate-level associations and individuals, in keeping with the principle of subsidiarity.¹¹⁸

Finnis does not envision any particular norms restricting the law's negative coordination, or even its positive coordination of relationships of utility. But he does consider that such norms restrict the law's positive coordination of relationships of pleasure and friendship. With the exception of political association, which is a kind of civic friendship, the principle of subsidiarity, for example, ordinarily requires that such relationships be left to informal social organization.¹¹⁹ The state has a positive duty to secure supply the requisite conditions for the flourishing of such relationships.¹²⁰

¹¹⁵ Ibid., 120.

¹¹⁶ Ibid., 220.

¹¹⁷ Ibid., 173.

¹¹⁸ Ibid., 144-47, 169. The meaning of the principle of subsidiarity as Finnis employs it shifts to reflect his unique de-ontological moral epistemology. He cites the papal use of the term in support for his own interpretation of it. Pius VI, *Quadragesimo Anno* (1931) no. 79, but he does not demonstrate that he and the Pope mean the same thing by the term.

¹¹⁹ Ibid., 149, 169-170.

¹²⁰ Ibid., 138.

Finnis asserts that practical reason sets normative limits on the valid methodological postulates the law may employ in formulating the law's substantive ends. Lawmakers must specify goals in the form of ideals, rather than concrete outcomes. Empirical evidence, cannot validate the normative status of these ideals.¹²¹ It is only secondarily relevant on issues of efficiency. Practically unreasonable devices such as a utilitarian calculus are not a legitimate basis for public policy, because the common good cannot be reduced to a sum or aggregate of benefits.¹²² As noted earlier, Finnis considers commensuration among basic goods impossible.¹²³ Beyond this, he rejects the possibility utilitarianism implies of an end-state or slice-of-time picture quantifying even the narrowly empirical aspect of human fulfillment. He argues that the flourishing of a community is continuous and cannot be frozen in a single moment.

Finnis finds a significant normative restriction on the law's formulation of means in the seventh requirement of practical reasonableness, barring any direct attack on a basic good. The per se prohibitions, explicated in Chapter 2, in relation to individuals, also apply to the state, which, may not engage in torture, lying or the direct killing of the innocent.¹²⁴

A lawmaker may find himself in a delicate conflict between the duty to advance a good, and a duty to repudiate the only existing means for doing so. At this pass, the lawmaker must engage in casuistry of "direct and indirect," "intentional and unintentional" and "means

¹²¹ *Ibid.*, 220.

¹²² *Ibid.*, 176-177.

¹²³ *Ibid.*, 192, 220.

¹²⁴ *Ibid.*, 223-225.

and ends" in order to make available all morally licit means. The lawmaker has greater flexibility in such casuistry, than does the individual moral agent. He can appeal to the state's special roles and to special relationships arising in the coordination of social life.¹²⁵ Finnis, thus, justifies the direct killing of individuals in war and capital punishment.¹²⁶

c. The Requirements of Justice

Finnis considers the law to be subjective to normative evaluation for whether it allocates benefits and burdens justly. Finnis develops his concept of justice to answer "what in outline is required for . . . [the] common good."¹²⁷ Thus, all the requirements of the common good discussed so far could be stated in terms of justice.¹²⁸ But, the strategic importance of justice in the law's critique lies in its value for judging the law's due allocation of benefits and burdens. Merely pursuing some pattern of basic goods does not ensure that the equality of persons will be honored. If they are to be practically reasonable, the Ideal of Integral Fulfillment requires that such allocations reflect the equality of persons.¹²⁹

Analytically, Finnis considers the concept of justice to consist of three elements: a) obligation; b) other-directedness; and c) equality between persons.¹³⁰ He acknowledges the

¹²⁵ John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington, D.C.: The Catholic University of America Press, 1991), 129-133.

¹²⁶ *Ibid.*, 225-226; John Finnis, *Nuclear Deterrence, Morality and Realism* (Oxford: Clarendon Press, 1987) 86-88, 317-318.

¹²⁷ Finnis, *Natural Law and Natural Rights*, 165.

¹²⁸ *Ibid.*, 163-164. For that matter, all the requisites of law's authority thus far considered can be translated into the terms of justice, if only the particular obligation is re-expressed as duty to others, with the emphasis shifting from the "what" or "how" to the "to" or "for whom." *Ibid.*, 161. Still, the concept of justice has no strategic role in their elaboration. *Ibid.*, 231-259, 297.

¹²⁹ *Ibid.*, 166, 178.

¹³⁰ *Ibid.*, 164-165.

terminology's academic provenance, but asserts that it aptly explicates the intrinsic demands of practical reason. He denies that the terminology carries baggage incompatible with the truth about practical reason.¹³¹ Finnis analyzes the problems of justice as of two kinds: "distributive" and "commutative."¹³²

(1) Distributive Justice

The law distributes advantages and disadvantages among its subjects. It does so through the direct conferral of benefits and subsidies, and through the indirect coordination of patterns of mutual non-interference. It also does so through the positive coordination of schemes of "property-holding, inheritance, contract and taxation."¹³³

Finnis asks two questions regarding the law's distributive allocations: what advantages and disadvantages may the law legitimately distribute, and what criteria determine a just distribution. In answer to the first, he justifies private property, concluding that property rights are not subject to state re-distribution. Generally the state is limited to the distribution of "common stock" and "incidents of communal enterprise."¹³⁴ Common stock consists of natural resources which are not "part of anyone" or "created by anyone." Solar energy, water, land, sea and the moon are examples, and so are the products of common enterprise," such as a "city wall, stock of weapons, a drainage system, a hospital, or a harvest in communal granaries."¹³⁵ In a critical move, Finnis declares the individual private property

¹³¹ Ibid., 161-162.

¹³² Ibid., 166, 179.

¹³³ Ibid., 192.

¹³⁴ Ibid., 166, 181.

¹³⁵ Ibid., 167.

holder is surplus resources to be common stock.¹³⁶ Finnis's basic rationale for denying the state the authority to redistribute property rights is the individual need for stability, sufficient to justify investing labor in material self-improvements and entering transactions of exchange.¹³⁷ He offers, as a second rationale, the tendency of the private property holder more effectively to conserve and exploit resources in the service of human fulfillment. When the property holders holdings surpass the quantity needed for their due purpose, Finnis holds that they can be considered surplus that is subject to redistribution.¹³⁸

Global redistribution exceeds the authority which Finnis accords the state under the principle of subsidiarity. Finnis allocates necessary distributive roles to individual choice and private association.¹³⁹ The law's legitimate allocations of a global kind are actually indirect and occur through the law's modes of coordinating private conduct.¹⁴⁰

Finnis also holds the "incidents of communal enterprise" to be subject to distribution by the state. These incidents include the "roles, responsibilities, offices, and burdens" arising in the course of common action.¹⁴¹ They include, as well, burdens allocated legislatively or adjudicatively to persons in voluntary and involuntary partnerships. The adjudicative allocation of these burdens also raises issues of commutative justice. The rule stating the

¹³⁶ *Ibid.*, 173.

¹³⁷ *Ibid.*, 169-170

¹³⁸ *Ibid.*, 170.

¹³⁹ *Ibid.*, 181.

¹⁴⁰ *Ibid.*, 192.

¹⁴¹ *Ibid.*, 167.

commutative obligation itself, however, represents a distributive choice advancing some desired overall pattern of joint action.¹⁴²

Distinct from issues of scope, Finnis also addresses the proper measure of distribution. The basic measure of distribution of benefits and burdens by law is, he asserts, equality of initial unbiased consideration in the assignment of shares. It is not a guaranteed outcome.¹⁴³ The lawmaker may, in Finnis's view, merely assign concrete shares according to any rational standard of proportion. Finnis suggests an array of general principles which might fairly serve as the lawmaker's standard of distribution. These are: 1) the need of the claimant, offset by any findings of laziness or desert of punishment); 2) function (the claimant's function within society may be preemptive of other criteria under special circumstances); 3) capacity (the claimant's capacity to benefit from a share, academic ability as criterion of an entitlement to education being an example); 4) deserts and contributions (based on the idea that gratitude is a good); and 5) fault or risktaking (the claimant's role in causing the burden that is subject to distribution).¹⁴⁴ These principles do not imply any determinate intrinsic hierarchy, so that they require lexical ordering and weighting, according to an elective vision of the good.¹⁴⁵ Such ordering and weighting is beyond critique because of the open-ended character of the requirements of practical reasonableness.¹⁴⁶

¹⁴² Ibid., 179.

¹⁴³ Ibid., 173-174, 177.

¹⁴⁴ Ibid., 173-175.

¹⁴⁵ Ibid., 219.

¹⁴⁶ With its rules against fraud on creditors, bankruptcy also illustrates for Finnis that distributive justice is to be measured in the real world with human nature as it is, not according to the speculative postulates of some stipulated anthropology. And, just as the bankrupt can work an injustice by manipulating bankruptcy rules, so

(2) Commutative Justice

In Finnis's formulation, commutative justice covers "relations and dealings between individuals and/or groups."¹⁴⁷ It governs the justice of transactions not governed by distributive justice,¹⁴⁸ both involuntary and voluntary.¹⁴⁹ The standard of commutative justice is that each be treated as he would wish to be treated by the other.¹⁵⁰ Commutative justice governs relationships among private individuals, but also relationships between private parties and government officials. Finnis observes, for example, that government officials have a duty in commutative justice to administer the law fairly, and the citizen has a like duty to avoid contempt of court and the like.¹⁵¹ Thus, duties in commutative justice may extend to pools of "more or less ascertained" individuals as well as to particular individuals. They also are owed to legal institutions and societal structures, ruling out exploitation and free-riding by individuals.¹⁵²

The law undertakes to correct violations of commutative justice.¹⁵³ In this regard some of the laws' terms restate the inherent requirements of practical reason. The contemporary penchant for re-couching the duties of justice in one-sidedly distributive terms Finnis considers

too the criteria of distributive justice will only work justice if they are employed with good will. *Ibid.*, 191.

¹⁴⁷ *Ibid.*, 166.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*, 178-179.

¹⁵⁰ *Ibid.*, 106-109, 179-180, 356.

¹⁵¹ *Ibid.*, 184; Finnis posits no commutative duty, however, to obey government officials as such. *Ibid.*, 359.

¹⁵² *Ibid.*, 183-184.

¹⁵³ *Ibid.*, 179.

legitimate as far as it goes, but he holds that the requirements of justice must, to some irreducible degree, be set out in commutative terms.¹⁵⁴ Society's elective pattern of common fulfillment will also generate some rights which are communicative in character.¹⁵⁵ Whether inherent in practical reason or enacted by civil law, rights receive positive content under law, including concrete scope and available forms of redress.¹⁵⁶ Finnis interprets criminal punishments as a deprivation of freedom to offset the criminal's measure of freedom at the expense of another. The offset is intended to equalize criminal and victim.¹⁵⁷

(3) Finnis's Reliance on Rights-Talk to Express to Requirements of Justice

Normative criticism of law and legal institutions often relies upon the language of rights. While justice and obligation, and not rights, are at the heart of his own thought, Finnis chooses, with certain key qualifications, to integrate this modern linguistic practice into his normative jurisprudence. To find entré to Finnis's use of rights-talk, one must first clear away those contemporary conceptions of rights which he rejects.

Finnis acknowledges that rights concepts derive from legal usage, but he rejects the idea that a right is no more than a legal entitlement correlated to a legal duty.¹⁵⁸ He asserts that rights can independently express the requirements of practical reason. In specifying the moral meaning of rights, moreover, he denies that they can properly be understood as a

¹⁵⁴ *Ibid.*, 320-325.

¹⁵⁵ *Ibid.*, 183.

¹⁵⁶ *Ibid.*, 178-180.

¹⁵⁷ *Ibid.*, 263.

¹⁵⁸ *Ibid.*, 198-199; Finnis, "On 'Positivism' and 'Legal Rational Authority,'" 80.

"branch of morality which is specifically concerned to determine when one person's freedom may be limited by another's freedom."¹⁵⁹ He repudiates the idea that rights are a guarantee of the right-holder's "choice" or of his or her power to waive, extinguish or enforce another's obligation.¹⁶⁰

Without endorsing the benefits theory of rights (typically seen as rivaling choice theory), Finnis denies that freedom alone exhausts the intelligibility of rights, even while he admits that rights, not only legally but morally, serve to guarantee freedom.¹⁶¹ He holds that rights, and the freedom they protect, ultimately derive their meaning from the basic goods and the requirements of practical reason. Finnis builds on "choice" theorist, H.L.A. Hart's concession, that rights fulfill essential *needs* supportive of the life, the security, the development, and the dignity of the individual.¹⁶² He defines rights as benefits, in the form of:

- (A) positive or negative obligation on the part of another owed to the right-holder;
- (B) the power to bring such an obligation into existence; or
- (C) an immunity from being made subject to such an obligation to another.¹⁶³

¹⁵⁹ Ibid., 204.

¹⁶⁰ Ibid. Finnis alleges that the "choice" theory of rights emerged from an unfortunate historical narrowing in the meaning of rights, beginning in the seventeenth century, when theorists came to see right as a "faculty" or "quality" of the person, rather than as a "claim" within an objective relationship of justice. Eventually, the faculty or quality was conceived of as a "power" or "immunity." Finnis rejects Hobbes as the extreme form of the faculty or quality view of rights as a kind of "lawless" freedom, by definition, irreconcilable with law and devoid of normative meaning. *ibid.*, 206-208.

¹⁶¹ Ibid., 210.

¹⁶² Ibid., 205.

¹⁶³ Ibid.

Rights, for Finnis are a vocabulary and grammar describing relationships of justice "[f]rom the point of view of the person(s) who benefit(s) from that relationship."¹⁶⁴ The benefits derive, in significant part, from the value of freedom, power and immunity. They are comprehensible as benefits in relation to moral obligation owed by others according to the requirements of justice.¹⁶⁵ For Finnis, rights-talk does not provide any new data. Its value lies in keeping alive concern for justice, where notions of duty have lost currency. And, it counters the often dominant utilitarian normative theories.¹⁶⁶

In Finnis's scheme rights have a certain undetermined character. Choices from among equally reasonable alternatives in the societal allocation of benefits and burdens are often morally indifferent, so that the specifications of moral obligations in terms of rights may differ

¹⁶⁴ Ibid., 205.

¹⁶⁵ Ibid., 162. Once the intrinsic reach of the right has been defined certain external restrictions must be defined to arrive at its precise reach. The rights of other individuals and, for that matter, the general welfare both go to the intrinsic reach of a right. Finnis argues, by contrast, that duties to uphold public order, public health and public morality represent diffuse common benefits not readily translatable into rights terms. All participants in the community have indistinguishable and unassignable shares in this benefit which are too diffuse for assignment to specific rights-holders. Therefore, these benefits are better treated as external constraints on the rights of others. Ibid., 218.

For example, public morality requires the ordered expression of sexuality to support conditions necessary to rearing children in a manner allowing them to achieve an integrated sexuality. One cannot express this requirement of practical reason in rights terms, because the benefit in question cannot adequately be shown to belong to assignable individuals. Instead the benefit is secured by an extrinsic limitation of the public interest. Ibid., 215-217.

Public order is needed to protect people in their physical vulnerability, and Finnis cites this as a second example. Finnis uses the term more narrowly than does the Second Vatican Council's, *Dignitatus Humanae*. Ibid., 217-218 Disturbances of public order cannot be stated as against merely assignable individuals. To impose responsibility for one, rights must, therefore, be extrinsically limited for the public interest rather than through the statement of rights. Finnis considers the freedom of speech illustrative. As basic a right as this is, the law limits it at many points for the sake of the public order, e.g. in patents and copyrights, contracts in restraint of trade, trade secrets, intellectual property, government secretes, truth in advertising, libel and slander, treason, conspiracy to commit crime, incitement to serious crime, and obscenity. Ibid., 220, 229.

¹⁶⁶ Ibid., 202-203. Finnis considers the conclusory character of rights-talk to require a special caution. It can disguise the rational process of "specification, assessment and qualification" necessary for morally justified rights. Ibid., 214.

in particulars, even assuming a shared conception of the common good. The scope of protection under a right will also shift as circumstances change.¹⁶⁷

To establish a normative defect in a law moral-rights analysis, one must, at root, show a violation of a requirement of justice. Such a showing depends on a subtle and highly contingent stipulation of facts, in all areas but the one marked by the third requirement of practical reason. As right without exception can be formulated only in relation to the prohibition a per se immoral act, e.g. murder, lying or torture.¹⁶⁸

2. The Significance for Untrammelled Practical Reasoning of a Failure of Legal Authority

A final issue in Finnis's normative jurisprudence is the significance of a failure of practical reason to endure the authority of some assertion of legal obligation. The question has two aspects. First, one must establish the grounds for concluding that a normative defect in a law so undermines its authority, that it ceases to function as an exclusionary reason, and ceases to be obligatory. Second, one must establish when a normative defect in lawmaking so undermines a particular government's authority, that it ceases to have authority and should be overthrown.

¹⁶⁷ *Ibid.*, 219.

¹⁶⁸ *Ibid.*, 223-225. Finnis asserts two methodological provisos regarding the translation of the requirements of justice into rights-talk. First, he notes that, in ordinary parlance, rights often assume no more than a relationship between one individual and an outcome, as an individual is said to have a right to "ten pounds under a contract." Finnis argues that a right must be stated in more suitably differentiated terms, if it is adequately to embody justice. At a minimum, it must refer to a relationship between one person, an act-description, and a second person. He adds that rights can be more fully specified by the mention of further terms. A right may, for example, set out the conditions under which the right-holder can lose or waive the right; the right-holder's concrete claim-rights, powers and liberties in the event of nonperformance of the duty owed him or her; or boundaries of the right-holder's liberties which are determined by the obligations he owes others. *Ibid.*, 201-202, 218-219. The right to ten pounds is thus adequately specified only once it is re-cast in a statement of one of the following kinds: A's right to be paid 10 pounds by B; A's right to be paid it by B's surety; or A's right to exercise of a procedural prerogative in the collection of the ten pounds from the one owing it.

a. Duty to Obey Law

The narrower question asks only when a normative flaw in a law absolves the moral agent from a moral duty of obedience, but leaves the authority of the legal system unchallenged. Finnis holds that a general moral duty to obey the law binds every moral agent who participates in the community whose law is at issue.¹⁶⁹ This duty derives from the mere fact of law, and does not depend on the intent of the lawmaker to import moral obligation into the law. It is not conditioned upon law's particular effect within the situation at hand.¹⁷⁰ The duty to obey flows from practical reason's requirement that one favor and foster the common good. More specifically, it flows from the community's need to coordinate joint action effectively,¹⁷¹ which, in turn, requires that the agent respect the law as morally obligatory.

The law relates the present to the past and future in a stable, if evolving, order, supportive of action in common with others.¹⁷² Legal obligation, intelligible in the first instance, as a convention, gives rise to moral obligation in fact, because treating it as actually obligatory fosters the common good. Finnis terms this relationship one of "feedback," analogizing it to the feedback between the informal social practice and the morality of promise.¹⁷³ Even as a descriptive matter, the law has moral significance, but the law may not itself acknowledge its intrinsically moral character if it is to function as law. Within the

¹⁶⁹ *Ibid.*, 319.

¹⁷⁰ *Ibid.*, 318; Finnis, "The Authority of Law in the Predicament of Contemporary Social Theory," 120; Finnis, *Natural Law and Natural Rights*, 319.

¹⁷¹ *Ibid.*, 319.

¹⁷² *Ibid.*, 268.

¹⁷³ *Ibid.*, 298-308.

practical reasoning of the law's subjects, however, the moral premise of legal obligation necessarily becomes explicit.¹⁷⁴

Finnis finds secondary reinforcement of the moral duty to obey law in practical reason's requirement of impartiality among persons. The law provides a framework for exposing the agent's attitude regarding the equal worth of others. Failure to obey the law ordinarily is to prefer oneself to others, since it places those who do comply with the law at a disadvantage.¹⁷⁵

In Finnis's scheme, legal obligation is intelligible as, in itself, a reasonable proposal for action, not because of any will or intention behind it.¹⁷⁶ A given agent may obey for a prudential reason.¹⁷⁷ But, where the agent is fully reasonable (i.e. where he chooses in full accord with the first principle of morality), he finds reason to obey merely in the law's value for common good.¹⁷⁸ As a matter of secondary intentionality, he will maintain an attitude of respect for law, regardless of the particular proposal for choice which he entertains as a way of complying with both the eighth and third requirement of practical reason. Under some circumstances, the agent may make obedience to law the object of an action. In that case, his

¹⁷⁴ *Ibid.*, 319.

¹⁷⁵ Finnis does not expressly develop the point, but given the relationship Finnis posits between the common good and the basic good of friendship, the choice to disobey can be viewed as the turning directly against the good of friendship, i.e. friendship in the civil community. If this is the case, the seventh requirement of practical reason prohibiting ever turning directly against any basic good is violated. *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*, 301-302.

¹⁷⁸ Finnis refers to this as the "third level of explanation" of legal obligation. *Ibid.*, 303, 305.

action will be for the basic good of (civic) friendship, or as a means to the basic good of peace of conscience.

Finnis hold that individual moral agents may best serve the common good, by honoring commutative duties of nurturance, kinship and professional life as a matter of morality and law.¹⁷⁹ Their limited knowledge of complex social interdependencies generally makes them incapable of calculating what is for the common good of the complete community in the totality of circumstances. Therefore, they are unable to second-guess the state's distributive and other judgements. They ordinarily can advance the common good most fully by obeying, rather than criticizing the law.¹⁸⁰

Finnis considers the "exclusionary reason" which law represents to be high in the hierarchy of moral reasons.¹⁸¹ It excludes the proposal the agent would have pursued but for the law. Deference to the judgment of the lawmaker is generally, for the common good. The agent can ordinarily assume that comparable disadvantages to others offset his own disadvantages of obedience.¹⁸² In any case, the individual cannot be an independent observer in his own case, so that he ordinarily must treat the law's judgement as final.¹⁸³ Finally, because the lawgiver has considerable discretion in envisioning what fairly counts as realizing

¹⁷⁹ *Ibid.*, 305.

¹⁸⁰ *Ibid.*, 305, 352.

¹⁸¹ *Ibid.*, 319.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

the common good, disagreement is usually a matter for politics, rather than a basis for justified civil disobedience.¹⁸⁴

Finnis considers the duty to obey law merely presumptive. Reasons of greater weight can override it, even where it is legitimate and just.¹⁸⁵ The law, moreover, is “open to being judged unjust” at many points.¹⁸⁶ A morally defective law ceases to be an exclusionary reason. A judge may be able officially to accommodate disobedience of an unjust law. The legislation is under moral duty to repeal one.¹⁸⁷

The clearly unjust law is one requiring participation in violations of a per se moral prohibition, like the ban on the direct killing of the innocent, lying or torture. In such cases, persons negatively affected by the immoral law have a claim-right to require the law’s repeal. Others have a liberty to disobey it.¹⁸⁸

In the case of laws whose injustice is premised on more complex or subtle lines of reasoning, Finnis offers little guidance on the duty of obedience. He states that answers are uncertain because of complex social, political, and cultural variables. He considers an individual with knowledge that a law is *ultra vires* free to disregard it with the provision that the moral agent is to presume a law *intra vires* until a judicial determination of its invalidity is researched.¹⁸⁹

¹⁸⁴ *Ibid.*, 286.

¹⁸⁵ *Ibid.*, 319.

¹⁸⁶ *Ibid.*, 356.

¹⁸⁷ *Ibid.*, 357, 362.

¹⁸⁸ *Ibid.*, 360, 362.

¹⁸⁹ *Ibid.*, 353, 360, 362.

Similarly, Finnis holds that the moral agent may disregard a law erected out of partisan intent, unless that is, the law incidentally serves the common good. Finnis believes that difficulty in proving intent mandates a special burden of proof in such cases.¹⁹⁰ The promulgation of a law, in violation of the rule of law, as considered above, might under circumstances, be reason to destroy it. Before the agent would be released from his duty to obey, however, Finnis asserts that the agent would have to weigh the violations against law's substantive contribution to the common good, the ability of other aspects of legal process to compensate for it,¹⁹¹ and the collateral costs of disobedience, such as scandal to observers.¹⁹² Finnis holds distributive injustice to justify disobedience of the law, if the violation is sufficiently great. If obedience to law would violate a proportionate duty in commutative justice, then Finnis allows the agent to disobey the law.¹⁹³

In the case of a gravely immoral law, Finnis would go beyond admitting disobedience to allow active interference with governmental functions, if several conditions were met. The agent must not, through the civil disobedience, make himself unavailable other indefeasible duties. He may not express his disobedience through any intrinsically immoral act. He may not express it in the direct use of force against a person. His act must lend itself to public interpretation as moral or political in character. In keeping with "the public interest and bonds of fairness," he must accept "arrest, fair trial, and lawful punishment."

¹⁹⁰ Ibid., 360.

¹⁹¹ Finnis refers to the criteria of the rule of law as "desiderata" and to successful compliance with them as "a matter of degree." Ibid., 270, 273.

¹⁹² Ibid., 361.

¹⁹³ Finnis, *Natural Law and Natural Rights*, 353, 360.

Finnis holds that disobedience becomes mandatory rather than merely permissible, when the law requires the performance of an immoral act. He considers the duty to disobey the law to vary with the weight, scope and defeasibility of reasons adduced for it.¹⁹⁴

b. Right of Rebellion

Finnis asserts that a lawmaking body can lose its authority altogether. Where this occurs, Finnis observes that its stipulations do not bind, since they lose the status of law. He sets out criteria for a regime's loss of its lawmaking authority. Here, he rejects criteria derived from the consent of the governed, since he does not believe that the subjects transfer sovereignty to the government.¹⁹⁵ He also rejects criteria deriving from a pedigree of succession harkening back to an original transaction of consent or the like.¹⁹⁶ He concedes both concepts of transmission and consent to have their place as constructs within legal systems, but to be incapable of legitimating a legal system as such.¹⁹⁷

Finnis derives his criteria from the requirement that the law be effective in advancing the common good. First of all, the government must be capable of obtaining the practical compliance of the populace with its stipulations. As long as the government can do so, Finnis seems to assume that at least some part of its stipulations will have the authority of law, if the subject follows them out of a intent to advance the common good. Finnis, for example, would seem to consider the legal stipulations of totalitarian governments as exclusionary reasons

¹⁹⁴ *Ibid.*, 360.

¹⁹⁵ *Ibid.*, 248.

¹⁹⁶ *Ibid.*, 248-249.

¹⁹⁷ *Ibid.*, 247.

binding on the practical reasoning of their subjects.¹⁹⁸ He holds the principle that the authority of lawmaking agency depends on its effectiveness to be a "scandalously stark principle."¹⁹⁹

Where a pattern of noncompliance emerges, the law's loss of legitimacy would appear to occur, in Finnis's view, not absolutely, but in relation rather to the rise of competing sources of social coordination. As insurgents become better able to rule than the government undergoing dissolution, Finnis would hold that authority shifts to the ascending power.

The lawmaker's authority also depends, on the second criterion of respect from "the internal point of view" for the law as a means to the common good. The belief that a particular government in a legitimate means to the common good may rest on various grounds. Finnis mentions "fear," "hope for profit," "respect for age or wisdom," "the fall of lot," "belief in charisms," "world-historical mission," adherence to "convention or custom" elevating respect for "blood lineage, lot or age."²⁰⁰ He holds that practical reason can select any of these in keeping with cultural preference.

Finnis concludes that the moral agent has a right, and even duty to overthrow a government, once it becomes fundamentally unjust. He believes the government to be subject to overthrow even while it retains a modicum of lawmaking authority. He appears to hold rebellion justified, once it has a sufficient probability of success in replacing the outgoing government as a superior mechanism for coordinating the common good.

¹⁹⁸ *Ibid.*, 258.

¹⁹⁹ *Ibid.*, 250.

²⁰⁰ *Ibid.*, 247.

C. Fusion of Horizons: Stating Finnis's Meaning Without Specific Reference to the Heuristic Definition

Gadamer suggests that the conversation between reader and author can eventually come to a fusion of horizons within which the reader understands what the author means, relying directly on the author's own terms. The heuristic definition of law that was derived from the stipulated hermeneutical situation of Chapter 1 will thus now be set aside as the framework of interpretation, and Finnis's jurisprudence will be succinctly re-sketched against the horizons intrinsically meaningful to him, so that his theory appears organically and, as far as possible, on its own terms. This sketch will be set out as an answer to the question which is the dissertation's ultimate object: "What is the role of basic goods in the natural law jurisprudence of John Finnis?"

As Chapter 2 established, basic goods are the point of departure Finnis proposes for his normative theory. By introspection into one's own practical reasoning, one validates the existence of these self-evident ends of human action. The present chapter has uncovered that references to value are essential in both the descriptive and evaluative phases of Finnis's jurisprudence. Finnis's jurisprudence is outlined coherently and according to its intrinsic unity by tracing how the basic goods can be said to sustain a line of normative reasoning ultimately supporting the meaning of law in both its descriptive and evaluative aspects.

1. The Role of Basic Goods in Grounding Finnis's Descriptive Jurisprudence

Finnis grounds his descriptive jurisprudence in the idea of a purpose making the law intelligible as a social practice. This purpose is comprehensible, in turn, by reference to the basic goods and the requirements of practical reason which the agent arrives at through a

fundamental insight, that if he is to be fully reasonable, he must be *integrally* open to all of the basic goods. The purpose of law is, thus, derived indirectly from the basic goods, namely from the requirement of practical reason that the common good be favored and fostered.

The role of the basic goods in establishing the intelligibility of law is, then, indirect. The basic goods occasion the grasp of the first principle of morality. It, in turn, occasions the formulation of the eighth requirement of practical reason, which, in turn, informs the purpose or function of law. The law is intelligible as a means to satisfy the eighth requirement of practical reason. It is understandable as "means" of coordinating joint action which the requirement makes obligatory.

The law, in the central case, is, thus, a means to orienting agents' secondary intentionality "lawfully" or "for the common good," even as their primary intentionality aims at instantiating one or another basic goods. In practical deliberation, it should be noted that the law will at times be instrumentally relevant to the attainment of basic goods on the plane of primary intention. On this level, obeying law may even have meaning as an end in itself where it instantiates friendship or peace of conscience. But its essential meaning is derived from its function within secondary intentionality.

As Chapter 2 showed, Finnis considers the basic goods themselves to be practically directive without being normative. They make human action intelligible, without themselves offering a basis for evaluating action. Only self-evident cognition of the first principle of morality, the principle of integral human fulfillment, occasioned by reason's grasp of all the basic goods, places the basic goods in a normative equation. Because the law is oriented to

one of the requirements of practical reason specifying an aspect of the First principle of morality, the law has an inherently normative or moral reference. It cannot be considered a pre-moral reality like the Basic goods themselves. Even less can it be considered an amoral or nonmoral reality in the sense ordinarily read into the terms of the heuristic definition.

Yet, Finnis, in part, proposes a "descriptive" as opposed to "normative" jurisprudence, the intelligibility of which depends on a distancing of if not eliminating of moral evaluation. If Finnis's descriptive jurisprudence cannot be called amoral or pre-moral, it could be termed "non-moral" because of this distancing quality. According to Finnis, law's "non-moral" character functions in three ways. First, the descriptive, analytical or sociological concept of law takes a moral requirement and fashions from it a concept which is used to describe, without strictly evaluating, existing social practice. It develops a statement of existing institutions according to a hypothetical purpose for the sake of understanding data about social practice and comparing diverse extant conceptions of that practice's meaning. The hypothetical distance taken to moral value generates a kind of neutrality. Law becomes a fact which can be empirically observed. But, value, however hypothetical, remains a central premise of the practice's intelligibility, and there is a moral justification for assuming this "non-moral" attitude. The analyst is accountable to practical reason, and he pursues analytical and sociological jurisprudence as a prelude to normative jurisprudence.

The second function of the law's "non-moral" character occurs within the law's operation as a mechanism of social coordination. The law insists on treating the obligation

it imposes as being self-authenticating without reference to moral reasoning, and as being invariant in its pre-emptive force. By its social function, law tends towards a detailed positive statement which aims at maximum clarity about the precise circumstances under which obligation arises. Law suppresses the fact of its moral derivation best to fulfill its function as a means of coordinating joint action for the common good. There is, thus, again a moral justification for the game of putting to one side the law's moral premise.

The third function of "non-moral" reasoning in law occurs within the structure of the agent's own practical reasoning. Where the law forms an element in the agent's primary proposal for action, as a means or end, then it is intelligible strictly as an occasion for realizing one of the "pre-moral" basic goods, e.g. friendship or peace of conscience. Its choice is now pre-moral, even though its intelligibility intrinsically refers to a normative meaning. The same normative meaning places an active and strictly moral role on the level of the agent's secondary intentionality. Here the "non-moral" nature of law's role follows not from a requirement of morality, but from the fact that human choice of a basic good is in itself even when it takes its content from pre-moral culture and human institutions.

2. The Normative Role of Basic Goods in Finnis's Evaluative Jurisprudence

In Finnis's evaluative jurisprudence, the raw fact of the power to bring about compliance is one of two essential criteria of law's authority or moral legitimacy. This requirement can be seen as a "reality" factor. An agent's fulfillment through the instantiation of basic goods is real, and the law cannot coordinate joint action for such goods, unless it, too, is real. The second requirement was that the law be "for the common good." Basic goods can be seen as playing three key roles in grounding the meaning of the common good.

First, the requirements of practical reason leave lawmakers wide latitude in the range of patterns of common fulfillment in the basic goods. No *telos* is given with the nature of the political community or human nature. The plan for the coordination of social life through law is created by the agency coordinating social life at large. In view of the absence of determinate application of the requirements of practical reason, an irreducible aspect of its intelligibility lies in the election of some array of specific basic goods.

Second, the principle of rectification of law is the principle of justice. The content of this principle is that of equality as expressed under the third and eighth requirements of practical reason. The equality principle is grounded in to the first principle of practical reason, which asserts that "the good is to be done and pursued." According to this formulation, the good to be done is conceived as equally good for all persons. The first principle of practical reason structures the agent's grasp of each basic good, so that each apprehension of a basic good occasions an awareness of the equality of persons.

Third, the seventh requirement of practical reason requires the lawmaking agency to respect every basic good in every act. The handful of exceptionless moral prohibitions which impose powerful constraints on the lawmaker all come into play practically speaking, in response to the lawmaker's apprehension that a practical choice he contemplates violates one or another of the basic goods.

IV. JOHN FINNIS and ST. THOMAS AQUINAS: SIMILARITY AND DIFFERENCE

This chapter seeks to understand Finnis's work from a more comprehensive viewpoint through a dialectic of comparison with St. Thomas Aquinas. The "collateral ground" for a comparison with Aquinas is a quest by some within the present hermeneutical situation to "recover" aspects of pre-modern moral philosophy. Aquinas offers a fitting comparison because he is perhaps the outstanding exemplar of pre-modern Western moral philosophy. Aristotle, whose philosophy Aquinas incorporates, would be the only other reasonable alternative. A sufficient ground for choosing Aquinas is that Finnis sees him as a precursor and model.¹

This chapter compares the ideas on law and morality of the *Summa Theologiae* with the parallel notions in Finnis.² The purpose is to discover whether Finnis's departures from the liberal or modern paradigm represent a retrieval of the pre-modern concepts of St. Thomas. It is also to judge how well Finnis's insights can be integrated within the Thomistic tradition. Where St. Thomas's thought sets a standard of adequacy or cogency, that standard will be of use ultimately in evaluating Finnis's work.

The chapter first compares the two authors' ethical theories. In keeping with the plan of Chapter 1, the chapter sets forth St. Thomas's distinctive idea of the "good," as "the

¹ John Finnis, "Natural Inclinations and Natural Rights: Deriving 'Ought' from 'Is' According to Aquinas" in *Lex et Libertas* (Studi Tomistici Series No. 30) (Vatican City: Pontificia di S. Tommaso e di Religione Cattolica, 1987); *Aquinas: Moral Political and Legal Theory* (Oxford University Press, 1998), viii-ix.

² All citations are to the Blackfriars Edition of the *Summa Theologiae* (New York: McGraw-Hill Book Company, and Eyre & Spottiswoode, London, 1964-)(61 vols.). Although this dissertation undertakes to analyze only the ethical theory of the *Summa*, the assumption is that in doing so, it gives an account of Aquinas's mature thought on the matters it addresses.

morally significant” “formal goal of human choice or action;” his idea of “justification,” understood as ethical theory's characteristic activity; and the role he assigns to the “good” within this latter activity. At each stage, the goal will be to identify difference and similarity between St. Thomas and Finnis, particularly with reference to reference to Finnis’s “Basic Goods.”

The chapter then compares the authors' respective theories of jurisprudence. It considers how St. Thomas's concept of law corresponds to, and departs from, the heuristic concept of law of Chapter 1, that is, the concept of a sanction-backed restriction on individual freedom or governmental power. It explicates the theoretical assumptions behind St. Thomas's departures from this definition. And, it outlines his methodology for subjecting law to normative evaluation. At each point in its consideration of the authors' theories of jurisprudence, the chapter pays specific attention to the significance, for the comparison, of Finnis's concept of “Basic Goods.”

A. St. Thomas's Ethical Theory

A comprehension of what the terms, “good” and “justification,” mean in the context of St. Thomas' thought provides a fair understanding of his ethical theory:

1. The “Good” in St. Thomas Aquinas

Chapter 1 identifies the “good” as the “morally significant” “formal goal of human choice or action,” and Chapter 2 analyzed Finnis's “Basic Goods” as a more particular

conception of this idea.³ This chapter seeks the conception of the idea as it appears in St. Thomas. The heuristic definition is deliberately broad. To be usefully applied in explicating St. Thomas's theory, its terms must be further refined.

St. Thomas stipulates that the goal of a choice or action has two more specific dimensions which need to be distinguished. It can be understood both as the interior end of the will,⁴ and as the object of the external action.⁵ Formally, the will adopts an end through an interior action and, materially, it embraces an object as the focus of the external action. To apply the heuristic definition validly to St. Thomas requires one to keep these separate meanings in mind.

A further distinction is in order. As part of the order of reason, both end and object of choice and action are morally significant. By contrast, the objects of the natural appetites are in the order of nature and, as such, are not, in themselves, morally significant. And, yet, because they can be embraced as the end or object of choice, they, too, acquire a moral significance which is merely indirect. Thus, it is also helpful in applying the heuristic

³ St. Thomas's thought lends itself to analysis in terms of the heuristic concept: "*Ex ideo primum principium in ratione practica est quod fundatur supra rationem boni; quae est, bonum est quod omnia appetunt*" ("Consequently the first principle for the practical reason is based on the meaning of the good, namely that it is what all things seek after.") *Summa Theologiae* I-II q. 94 a. 2 (v. 28, pp. 80-81 (1966)).

⁴ "[F]inis" *ibid.*, I-II q. 18 a. 4 (v. 18 pp. 16-17 (1966)). "*Ad primum ergo dicendum quod Finis est objectum voluntatis, non autem aliarum virium. Unde quantum ad actum voluntatis non differt bonitas quae est ex objecto a bonitate quae est ex fine, sicut in actibus aliarum virium*" ("The end is the objective of the will, but not of the other powers. That is why in the act of willing, unlike the acts of other powers, the goodness deriving from the objective does not differ from the goodness deriving from the end.") *Ibid.*, I-II q. 19 a. 2 (v. 18 pp. 52-53 (1966)).

⁵ "*Objectum*" or "*materia circa quam*," ("object" or "the material with which [the act] deals,") *ibid.*, I-II q. 18. a. 2 & 2 ad. 2 (v. 18, pp. 9-11 (1966)); and "*circa quod . . . actio exterior est objectum ejus*" ("[T]he objective . . . the external act is . . . engaged with,") *ibid.*, I-II q. 18 a. 6 (v. 18, pp. 24-25 (1966)).

definition to St. Thomas to remember that the object of a natural appetite can become morally significant when the will adopts it as the end or object of choice and action.

The subject/object duality of modernity obviously does not inform the thought of St. Thomas as such, but the present analysis relies on the dichotomy in the belief that it helps the typical reader distinguish St. Thomas and Finnis.⁶ By “subjective,” I mean belonging to psychological interiority. By “objective,” I mean of a character to exist independent of the agent’s self-awareness. Finnis himself makes much of the “objective” nature of Basic Goods. Thus, this section of Chapter IV sets forth St. Thomas’s conception of the “good,” as the “morally significant” “formal goal of human choice or action” first, in its “subjective” and then, its “objective” dimension.

a. The “Good” as the Formal Goal of Choice and Action:
Subjective Reality?

St. Thomas’s conception of the “morally significant” “formal goal of human choice or action,” receives its content in relation to three phenomena of consciousness: 1) the passions arising upon sensitive apprehension; 2) the precepts by which one rationally conceives of, assents to, and chooses the good; and 3) the passions and other interior movements arising

⁶ The purpose to which this distinction is applied is to bring both St. Thomas and Aquinas into alignment with contemporary starting assumptions. Closer scrutiny of the subjective distinction in Aquinas, on his own terms, would undoubtedly result in meanings somewhat foreign to contemporary assumptions. See, for example, St. Thomas’s distinction between the “subjective” and “objective” knowledge of God: “*Naturalis enim cognitio cujuslibet creaturae est secundum modum substantiae ejus: . . . Omnis autem cognitione quae est secundum modum substantiae creatae deficit a visione divinae essentiae, quae in infinitum excedit omnem substantiam creatam*” (“The knowing natural to any creature corresponds to what sort of thing it is; . . . Now all knowing according to a manner of created thing falls short of seeing what God really is for the divine infinitely surpasses every created nature.”) *Ibid.*, q. 5 a. 5 (v. 16, pp. 130-131 (1969)).

upon the completion of successful action. St. Thomas's conception of the good draws on each of these phenomena, in a subjective manner.

(1) The Passions Arising in the Sensitive Appetite on Apprehension of the Object

St. Thomas holds that the human person is a composite being with a nature both animal and rational, simultaneously embodied and possessed of an intellect and will.⁷ As an animal, his sensitive appetites inclines him to objects sustaining and completing his nature, and away from those harming or ending it.⁸ The sense perception of objects enhancing or threatening the agent's embodied well being move the sensitive appetite without reason's mediation.⁹

St. Thomas conceives of the sensitive appetites as passive powers, which objects move to feeling states.¹⁰ An object may move a sensitive appetite to feelings of love for,

⁷ “[I]ntellectus, qui est intellectualis operationis principium, sit humani corporis form” (“The intellect, is the source of intellectual activity, is the form of the human body.”) *Ibid.*, I q. 76 a. 1 (v. 11, pp. 40-41 (1970)).

⁸ “Bonum igitur hominis, quod est objectum amoris, concupiscentiae et delectationis, potest accipi vel ad sensum corporis pertinens” (“So then the good for man, which is the object of love, desire, and delight, may be such to the bodily sense.”) *ibid.*, I-II q. 60 a. 5 (v. 23, pp. 110-111 (1969)); “[s]ic igitur omnis passio concupiscibilis respectu boni est ut in ipsum, sicut amor, desiderium, et gaudium: omnis vero passio respectu mali est ut ab ipso, sicut odium, fuga seu abominatio, et tristitia” ([h]ence each of the affective emotions whose object is a good is a movement towards that good viz. Love, desire, and pleasure; and each of them whose object is an evil is a movement away from it, viz. Hatred, aversion or disgust, and sadness.”) *Ibid.*, I-II q. 23, a. 2 (19, pp. 22-25 (1967)); “inclinationem ad consequendum convenientia et refugiendum nociva” (“a bent towards what is beneficial and away from what is harmful”) *ibid.*, I q. 81 a. 2 (v. 11, pp. 208-09 (1970)). However, “una operatio animae . . . impedit aliam quod nullo modo contingeret nisi principium actionum esset per essentiam unum. Sic ergo dicendum eadem numero est anima in homine sensitiva et intellectiva et nutritiva” (“One activity of the soul . . . obstructing another. This could not occur unless there were one essential source of both activities. We must assert, then, that the soul in man is one in number, at once sensory, intellectual and nutritive.”) *Ibid.* I. Q. 76 a. 3 (v. 11 pp. 62-63 (1970)).

⁹ “Unde patet quod ratio passionis magis proprie invenitur in actu appetitus sensitivi quam intellectivi” (The emotions therefore belong rather to the functioning of the sensory orexis than to that of the intellectual.”) *Ibid.*, q. 22 a. 3 (v. 19, pp. 14-15 (1967)).

¹⁰ “[O]peratio autem virtutis appetivae per fititur in hoc, quod appetens inclinatur in rem appetibilem” (“the activity of an appetitive power is fulfilled when the lover is drawn by what is loved.”) *ibid.*, I q. 81 a. 1 (v. 11, pp. 204-205 (1970)).

complacency in and desire for, or hatred and aversion to itself. These movements are the concupiscible passions.¹¹ Sensible apprehension of the object causes a “form” in the appetite which is a “*complacentia appetibilis*.”¹² The object of complacency or love bears the aspect of the good.¹³ A harmony or connaturalness exists between the appetite and that which is apprehended as suitable.¹⁴ The agent experiences desire as a “*motus in the appetibile*” towards the object.¹⁵ If the object is one giving pleasure to the senses, the movement is one of “concupiscence.”¹⁶ By contrast, if the object is one opposing and destroying, or is repugnant

¹¹ “[*P*]assiones concupiscibili,” *ibid.*, I-II q. 23 a. 2 (v. 19, pp. 18 (1967)).

¹² “*Agens autem naturale duplicem effectum inducit in patiens: nam primo quidem dat formam, secundo autem date motum consequentem formam . . . Sic ipsum appetibile date appetitui, primo quidem quantum coaptationem ad ipsum, quae est complacentia appetibilis; ex qua sequitur motus ad appetibile*” (“Now where natural agencies are in question, the effect is two-fold: first a form is produced, then a movement arising from that form . . . Correspondingly, the effect produced in the orexis by a desirable object is a sense of affinity with it, a feeling of attractiveness, then this gives rise to a movement of the orexis towards the object.”) *Ibid.*, I-II q. 26 a. 2 (v. 19, pp. 66-67 (1967)); and “*Sed considerandum est quod cum omnis inclinatio consequatur aliquam formam . . . appetitus autem sensitivus . . . sequitur formam apprehensam*” (“Now, to continue, a bent follows from having some form . . . sensitive . . . appetite . . . from some form held in knowledge.”) *Ibid.*, I-II q. 8 a. 1 (v. 17, pp. 52-53 (1964)).

¹³ “[*O*]bjectum potentiae concupiscibilis est bonum . . . quaecumque ergo passiones respiciunt absolute bonum . . .” (“[T]he object of the affective faculty is the sense-good . . . The emotions of the affective orexis are therefore those which bear upon sense-good . . . pure and simple.”) *Ibid.*, I-II q. 23 a. 1 (v. 19, pp. 18-21 (1967)).

¹⁴ “*Sic igitur et in appetitu appetitu animali, . . . amor est consonantia quaedam appetitus ad id quod apprehenditur ut conveniens*” (“The same thing holds for the animal . . . orexis: love consists in the orexis’ feeling itself in harmony with something that is seen as agreeable.”) *ibid.*, I-II q. 29 a. 1 (v. 29, pp. 109-111 (1967)); and “*In appetitu autem naturali principium hujusmodi motus est connaturalitatis appetentis ad id in quod tendit, quae dici potest amor naturalis*” (“In the case of the natural orexis, this cause, which might be called ‘natural love’ is a sense of affinity with the object in question.”) *Ibid.*, I-II q. 26 a. 1 (v. 19, pp. 64-65 (1967)).

¹⁵ “[*E*]t ex hac complacentia sequitur motus in appetibile, qui est desiderium” (“[A] feeling of the object’s attractiveness . . . gives rise to an orectic movement towards the object, viz. *desire*.”) *Ibid.*, I-II q. 26 a. 2 (v. 19, pp. 66-67 (1967)).

¹⁶ “*Dicendum quod, sicut dictum est, bonum delectabile secundum sensum est communiter objectum concupiscibilis*” (“We have seen that the common object of the affective orexis is the sensorily pleasurable.”) *Ibid.*, I-II q. 30 a. 2 (v. 19, pp. 128-129 (1967)).

and hurtful to, the agent's being, a natural dissonance with the object arises in the appetite, in the form of hatred.¹⁷ In this case, the object bears the aspect of evil.¹⁸

The agent experiences another set of subjective emotions where the concupiscible passions encounter obstacles. Tending to approach or withdrawal, these are the "*passiones . . . irascibili*:" hope and daring, anger, fear and despair.¹⁹ Where the agent encounters an obstacle to an object desired, the passion of "*accessum*" ("movement towards" or approach) or that of "*recessum*" ("movement away from" or avoidance) despair.²⁰ Where he encounters an obstacle to preventing an evil, the passion of approach is daring and avoidance, fear. In the event that an evil overtakes the agent, the passion is simultaneously one of approach and avoidance, namely anger.²¹

Passion may trigger behavior in a human being causing involuntary behavior. The agent who like a sheep fears the wolf may spontaneously flee. Behavior of this kind is not amenable to moral analysis or evaluation.²² St. Thomas considers the agent through his

¹⁷ "*Sic igitur et in appetitu animali . . . odium vero est dissonantia quaedam appetitus ad id quod apprehenditur ut repugnans et nocivum*" ("The same thing holds for the animal . . . orexis: . . . hatred, in the orexis' feeling itself out of harmony with something that is seen as alien and harmful.") Ibid., I-II q. 29 a. 1 (v. 19, pp. 109-111 (1967)).

¹⁸ "*[I]ta omne repugnans, in quantum huiusmodi, habet rationem mali*" ("so anything disagreeable, precisely insofar as it is disagreeable, is what we call evil.") Ibid.

¹⁹ ("[S]pirited . . . emotions.") *ibid.*, I-II q. 23 a. 1 (v. 19, pp. 18 -21 (1967)).

²⁰ *Ibid.*, I-II q. 23 a. 2 (v. 19, p. 18 (1967)).

²¹ "*[I]ra.*" *ibid.*, I-II q. 23 a. 3 (v. 19 pp. 24-25 (1967)).

²² "*Huius modi autem immutatio hominis per passionem duobus modis contingit. Uno modo sic quod totaliter ratio ligatur, ita quod homo usum rationis non habet; sicut contingit in iis qui propter vehementem iram vel concupiscentiam furiosi vel amentes fiunt, sicut et propter aliquam perturbationem corporalem: huiusmodi enim passiones non sine corporali transmutatione accidunt. Et de talibus eadem est ratio sicut et de animalibus brutis, quae ex necessitate sequenter impetum passionis; in his enim non est aliquis rationes*

passions to be moved on behalf of real but partial goods, i.e. sources of actual human fulfillment.²³ The passion gives the agent a subjective awareness of potentially suitable objects. Reason merely disclosed its more universal significance, i.e. reason understands the wolf, which the sheep fears as a threat, in principle, to life. The agent rationally wills to escape this threat in a plan of flight.²⁴

motus, et per consequens nece voluntatis" ("There are degrees in being transformed by passion. It may go so far as to bind the reason completely, as happens when vehement rage of concupiscence makes a man beside himself or out of his mind, this may come also from some physical disorder. Passion, remember, goes with physiological change. In this condition men become like the beasts, driven of necessity by passion; they are without the motion of reason, and, consequently, of will.") Ibid. I-II q. 10 a. 3 (v. 17 pp. 92-3 (1970)); "*Si igitur secundum se considerentur, prout scilicet sunt motus quidam irrationalis appetitus, sic non est in eis bonum vel malum morale, quod dependet a ratione, ut supra dictum est*" ("Now intrinsically of course the emotions are simply movements of the non-rational orexis; one cannot therefore ascribe to them moral, good or evil, which we have shown to involve the reason"); "*Dicuntur autem voluntariae, vel ex eo quod a voluntate imperantur, vel ex eo quod a voluntate non prohibentur*" (They will be called voluntary to the extent that the will commands them or at least does not check them"); and "*Uno modo sec quod totaliter ratio ligatur, ita quod hom usum rationis non habet; . . . Et de talibus eadem est ratio sicut et de animalibus brutis, quae ex necessitate sequenter impetum passionis, in his enim non est aliquis rationis motus, et per consequens nec voluntatis*" ("It may go so far as to bind the reason completely, as happens when a man [is] beside himself or out of his mind") ibid. I-II. q. 24 a. 1 (v. 19 pp. 32-35 (1967)).

²³ "*Omnis autem appetitus non est nisi boni . . . nihil autem inclinatur nisi in aliquid simile et conveniens. Cum igitur omnis res, in quantum est ens et substantia, sit quoddam bonum, necesse est ut omnis inclinatio sit in bonum*" ("there is no appetition except for a good, because appetition is nothing other than a certain bent towards a thing that is wanted, a thing which is matching and complementary. What this thing is, as a being and a substance, is a definite good. So that every bent towards a thing is towards something good.") Ibid., I-II q. 8 a. 1 (v. 17 pp. 560-51 (1970)); "*Objectum potentiae concupiscibilis est bonum et malum sensibile simpliciter acceptum, quod est delectabile vel dolorosum*" ("the object of the affective faculty is sense-good and sense-evil sans phrase, i.e. the pleasurable or the painful.") Ibid., I-II q. 23 a. 1 (v. 19, pp. 18-19 (1967)); "*homo sit ex anima et corpore compositus, id quod confert ad vitam corporis conservandum aliquod bonum hominis est; non tamen maximum, quia eo potest homo male uti*" ("since man is, in fact, composed of soul and body, whatever conduces to preserve the life of the body is of value to man; though it is not his supreme good, because he can abuse it.") Ibid., I-II q. 59 a. 3 (v. 23 pp. 88-89 (1969)).

²⁴ "*[T]amen motus passionis, in quantum passio est, principium habet in ipso appetitu, et terminum in ratione, in ejus conformitatem appetitus tendit*" ("[T]he movement of passion, as passion, starts in the appetite and finishes in the reason, since the appetite tends towards conformity with reason.") Ibid., I-II, q. 59 a. 1 (v. 23 pp. 82-83 (1969)); and "*Unde ab ea natus est moveri in homine appetitus sensitivus. Ipsa autem ratio particularis nata est moveri et dirigi secundum rationem universalem*" ("So man's sense appetite naturally responds to [the particular reason]. But the particular reason in its turn is naturally responsive to the motion and guidance of rational understanding.") Ibid. I q. 81 a. 3 (v. 11 pp. 210-211 (1970)).

The psychology of action may begin in the subjective experience of passion. Reason consequently affirms the emotional inclination as pointing to a good rationally conceived. Conversely, an action, first rationally conceived, may in its election move the agent to feel passion.²⁵ In either case, passions often accompany deeds and may ease their execution.²⁶ St. Thomas envisions passions as testifying to an object's suitability for fulfilling human nature, in his language, to its character as a good. Of course, this witness is, lower than reason's and unaided, is insufficient to support rational choice. However, where habituated to virtue, the passions participate in the rational choice of the good.²⁷

In St. Thomas's view, the subject's complacencies, desires, aversions, hatreds, hopes, fears, daring impulses, discouragements, and rages have an equivocal moral status. These feelings arise through causation external to choice, i.e. out of sub-rational responses to environmental stimuli. But they reflect inherent inclinations of the agent's soul to natural goods really fulfilling rationally cognizable human needs. The passions, experienced subjectively are "forms" of, or movements advancing at least partial aspects of the agent's real fulfillment: "[r]es enim naturales appetunt quod eis convenit secundum suam naturam non per

²⁵ "*Alio modo se habent consequenter . . . Uno modo per modum redundantiae, quia scilicet cum superior pars animale intense movetur in aliquid sequitur motum ejus etiam pars inferior*" ("But when emotion is subsequent to rational judgement, . . . it may take the form of a kind of overflow: the higher part of the soul is so strongly bent upon some object that the lower part follows it.") Ibid., I-II, q. 24 a. 3 (v. 19, pp. 400-41 (1967)).

²⁶ "*Sicut enim bona propter delectationem promptius quaeruntur*" ("Good is more eagerly sought on account of pleasure.") *ibid.* I-II, q. 59 a. 3 (v. 23 pp. 90-91 (1969)); and "*Alio modo se habent consequenter . . . alio modo per modum electiones, quando scilicet homo ex judicio rationis eligit officii aliqua passione ut promptius operetur, cooperante appetitu sensitivo: et sic passio animae adit ad bonitatem actionis*" ("But when emotion is subsequent to rational judgment, . . . it may be the outcome of choice: i.e. a man may make a deliberate decision to be affected by an emotion so that he will act more promptly, thanks to the stimulus of the sensory orexis. In this case the emotion adds to the actions worth.") *Ibid.* I-II q. 24 a. 4 (v. 19 pp. 40-41 (1967)).

²⁷ "*[I]n ratione . . . conformitatem appetitus tendit*" ("the appetite tends towards conformity with reason.") *Ibid.*, I-II q. 59 a. 1 (v. 23 pp. 82-83 (1969)); and "*Sed secundum quod sunt rationales per participationem, ut obedientes rationi, sic sunt propriae hominis. Et hoc modo possunt esse subjectum virtutis humane*" ("Yet inasmuch as [the irascible and concupiscible powers] are rational by participation, as obeying reason they are thus proper to man, and in this way can be a seat of human virtue.") *Ibid.*, I-II q. 56 a. 4 (v. 23 pp. 30-31 (1969)).

*apprehensionem propriam sed per apprehensionem instituentis naturam, ut dictum est: cum una quae que habeat connaturalitatem ad id quod est sibi conveniens secundum suam naturam.*²⁸ Reason does not replace the evidence the passions offer, but selectively endorses it within a larger universal vision.²⁹

(2) The Principles of Practical Reason

St. Thomas observes that man, a rational being, possesses intellect and will. He knows reality “*per participationem intellectualis virtutis.*”³⁰ Through the will, he acts for those aspects of reality which reason discloses fulfill his being. Human choice and action are then an operation of the will, the agent’s “*appetitus . . . rationalis.*”³¹ The will is the appetite for personal fulfillment as reason discloses it.³²

²⁸ (“For an inanimate entity ‘wants’ the things that accord with its nature, not through its own knowledge of them, but through that possessed by the author of its nature as we have shown for everything has a built-in sense of affinity with whatever accords with its nature.”) *ibid.*, I-II q. 26 a. 1 (v. 19 pp. 63-65 (1967)).

²⁹ St. Thomas understands the direction reason lends the passions as being one of “*politico et regali*” (“like a constitutional monarch.”) *ibid.*, q. 81 a. 3 (v. 11 pp. 212-13 (1970)), channeling by enlightening rather than with consequence that a good, rationally conceived, virtually contains that which is experienced as sensitive or nutritive: “*Sic igitur anima intellectiva continet in sua virtute quidquid habet anima sensitiva brutorum et nutritiva plantarum*” (“In this way the intellective soul has among its capacities everything the sense-soul of animals and the nutritive soul of plants have.”) *ibid.*, I, q. 76 a. 4 (v. 11, pp. 62-63 (1970)).

³⁰ (“[A]s participating the power of understanding.”) *ibid.*, I q. 7 a. 4 (v. 11, pp. 158-59 (1970)).

³¹ “*[V]oluntas nominat rationalem appetitum*” (“will means rational appetite.”) *ibid.*, I-II q. 6 a. 2 (v. 17, pp. 12-13 (1970)); and “*Principium autem bonitatis et malitiae humanorum actuum est ex actu voluntatis*” (“Now moral good and bad in human acts is from their issuing from an act of will.”) *ibid.*, I-II q. 19 a. 2 (v. 18, pp. 52-53 (1966)).

³² “*Prima est quia, cum unumquodque appetat suam perfectionem, illud appetet aliquis ut ultimum finem, quod appetit, ut bonum perfectum et completivum sui ipsius ad rationem voluntarii requiritur quod principium actus sit intra cum aliqua cognitione finis*” (“First, because in all things whatsoever there is an appetite for completion, the final end to which each move marks its own perfect and fulfilling good that its principle should be within the agent and . . . it should go with some knowledge of its aim is . . . of the very means of voluntary activity.”) *ibid.* I-II. Q. 6 a. 2 (v. 16, pp. 20-21 (1969)).

Unlike the sensitive appetites, which are oriented towards concrete objects, the will is oriented to reason's concept of the fulfillment an object offers, taking into account all dimensions of the agent's being for a lifetime or even eternity.³³ Reason provides the will with universal principles of human fulfillment, and it recognizes matter in particular circumstances suited to realizing such fulfillment through concrete choices and actions.³⁴ The will by its nature, depends upon the insight of reason.³⁵ It can elects its fulfillment and put that election into effect, only by the mediation of reason's principles and reason's capacity for interpreting what can concretely realize them.

The will, no less than the sensitive appetites, is a passive power which a suitable object moves to its response. Sensible apprehensions move the sensitive appetites, but the intellect's presentation of a principle moves the will.³⁶ The will is moved to its proper operation by

³³ *"Dicendum quod ultima et perfecta beatitudo non potest esse nisi in visione divinas essentiae. Ad cujus evidentiā . . . Primo quidem, quod homo non est perfecte beatus quantum restat sibi aliquid desiderandum et quaerendum"* ("There can be no complete and final happiness for us save in the vision of God. The evidence? Consider first, that man is not perfectly happy, so long as something remains for him to desire and seek. . .") Ibid., I-II, q. 3 a. 8 (v. 16, pp. 84-85 (1969)).

³⁴ *"Unde ab ea natus est moveri in homine appetitus sensitivus. Ipsa autem ratio particularis nata est moveri et dirigi secundum rationem universalem; unde in syllogisticis ex universalibus propositionibus concluduntur conclusiones singulares"* ("So man's sense appetite naturally responds to it. But the particular reason in its turn is naturally responsive to the motion and guidance of rational understanding; thus it is that we can logically deduce conclusions regarding individual matters from premises of a general nature.") Ibid. I q. 81 a. 3 (v. 11, pp. 210-211 (1970)); and *"Et ideo quae in aliis animalibus dicitur aestimative naturalis in homine dicitur cogitativa, quae per collationem quandam hujusmodi intentiones adinveni."* ("[A]nd so what we call natural instinct in other animals in man we call cogitation which comes upon intentions of the kind in question through a process of comparison.") Ibid., I q. 78 a. 4 (v. 11, pp. 140-41 (1970)).

³⁵ *"[A]d secundum dicendum quod radix liberatis est voluntas sicut subjectum; sed sicut cause est ratio"* ("The will is the root of freedom, for that is where freedom lies, yet the reason is its cause.") Ibid. I-II q. 17 a. 1 ad 2 (v. 17 pp. 184-85 (1970)).

³⁶ *"Sed finis est principium in operationibus ab homine"* ("men's deeds originate from having an aim.") Ibid., q. 1 a. 1 (v. 16, pp. 2-3 (1969)); and *"objectum voluntatis est finis et bonum in universali. Unde non potest esse voluntas in his quae carent ratione et intellectu, cum non possint apprehendere univrsale: sed esse in eis appetitus naturalis vel sensitivus, determinatus ad aliquod bonum particulare"* ("The object of the will is end--

reason's proposal of the best means, under the circumstances, to the agent's fulfillment overall. The proposal, conceived as the formal cause of the action, is based on a formal concept of an end of action. Reason both formulates an intention, or end, such as to pursue knowledge, and formulates a proposal for an external action, directly or indirectly, advancing that end. In itself, the proposal and the principle or principles upon which it is constructed are strictly mental or subjective realities.³⁷ The intention, choice, and consent of the will are, in each case, aspects of assent to this proposal.³⁸

In St. Thomas's epistemology, the speculative intellect derives concepts, explanatory of what is, from sensible data regarding realities outside of the mind. By contrast, the practical intellect forms concepts of ends realizable through the agent's action, as self-evident first

goodness as a universal value. Consequently will is absent from things without intelligence or reason, since they cannot apprehend a universal. Yet they have within them a natural appetite or a sense appetite set towards some particular good.") Ibid. I-II q. 1 a. 2 (v. 16 pp. 10-11 (1969)).

³⁷ "*Quodcumque igitur sic agit vel movetur a principio intrinseci quod habet aliquam notitiam Finnis habet in seipso principium sui actus, non solum ut agat, set etiam ut agat propter finem*" ("Accordingly whenever a thing so acts or is so moved by an inner principle, namely as having some awareness of the end, then it holds within itself the principle of the activity, and not of the acting merely, but of the purpose of acting well.") Ibid., I-II a. 6 a. 1 (v. 17, pp. 6-7 (1970)).

³⁸ "[*Ad primum ergo dicendum quod intentio nominatur oculus metaphorice, non quia ad cognitionem pertinet, sed quia cognitionem praesupponit, per quam proponitur voluntari Finnis, ad quem movet; sicut oculi praevidemus quo tendere corporatem debeamus*" ("Intention is compared to the eye by metaphor, not because it is a function of knowledge but because it presupposes the knowledge which presents the end we should have in view, as the eye shows us the way we should walk.") Ibid., I-II q. 12 a. 2 (v. 17, pp. 112-113 (1970)); "*Manifestum est autem quod ratio quodammodo voluntatem praesedit et ordinant actum ejus, inquantum scilicet voluntas in suum objectum tendit secundum ordinem rationis, eo quod vis apprehensiva appetitivae suum objectum repraesentat, sic igitur ille actus quia voluntas tendit in aliquid quod proponitur et bonum, ex eo quod per rationem est ordinatum ad finem, materialiter quidem est voluntatis, formaliter autem rationis*" ("It is clear that reason comes before will and directs its activity, in that the will tends towards its object in the setting of reason, which presents to it the object of desire. Accordingly then, that will-act which turns towards an object proposal to it as being good, that is, as being reasonably subordinate to the end, is 'materially' one of will, but 'formally' one of reason.") Ibid., I-II q. 13 a. 1 (v. 17 a. 124-125 (1970)); and "*Cujus ratio est quia consensus importat applicationem appetivi motus ad aliquid agendum*" ("Our grounds are that consent means the application of appetitive power to something that is to be done.") Ibid. I-II, q. 15 a. 3 (v. 17, pp. 162-163 (1970)).

“*praecepta*,” akin to the methodological first-principle of non-contradiction guiding the speculative intellect towards logical conclusions. St. Thomas conceives of certain ends of action as cognitive first principles.³⁹ Each principle is in a form of an apprehension that an end, in the form of a state of being is perfect, and thus desirable.⁴⁰ The agent knows these ends as self-evident truths of practical reason. And, he can explicate them formally without syllogistic derivation from facts known speculatively concerning the agent's faculties, or from the nature or meaning of objects external to the agent's mind.⁴¹ Known *per se nota*, akin to “*prima principia indemonstrabilia*,” the agent experiences these ends in a subjective manner.

³⁹ “*Et ideo primum principium indemonstrabile est quod non est simul affirmare et negare, quod fundatur supra rationem entis et non entis . . . Sicut autem ens est primum quod cadit in apprehensione simpliciter, ita bonum est primum quod cadit in apprehensione practicae rationis, quae ordinatur ad opus. Omne enim agens agit propter finem, qui habet rationem boni. Et ideo primum principium in ratione practica est quod fundatur supra rationem boni; quae est, bonum est quod omnia appetunt. Hoc est ergo primum praeceptum legis, quod ‘bonum est faciendum et prosequendum, et malum vitandum’” (“This first indemonstrable principle, ‘there is no affirming and denying the same simultaneously,’ is based on the very nature of the real and the non-real . . . To apply the analogy: as to be real first enters into human apprehending as such, so to be good first enters the practical reason’s apprehending when it is bent on doing something. For every agent acts on account of an end, and to be an end carries the meaning of to be good. Consequently the first principle for the practical reason is based on the meaning of good, namely that it is what all things seek after and so this is the first command of law: ‘that good is to be sought after and done, evil to be avoided.’”) Ibid. I-II q. 94 a. 2 (v. 28 pp. 80-81 (1966)).*

⁴⁰ “*Cum igitur voluntas sit quaedam vis immaterialis, sicut et intellectus, respondet ei naturaliter aliquod unum commune, scilicet bonum, sicut etiam intellectui aliquod unum commune, scilicet verum, ve ens, vel quidquid hujusmodi. Sub bono autem communi multa particularia bona continentur, ad quorum nullum voluntas determinatur*” (“Now since the will, like the mind, is a certain non-material force, there corresponds to it one common reality, namely being good, as there corresponds to mind one common reality, namely being true and being real and so forth. This universal good embraces many particular goods, towards none of which is there a determinism within the will.”) Ibid., I-II q. 10 a. 1 (v. 17 pp. 86-87 (1970)).

⁴¹ In St. Thomas’s view, practical knowledge of the ends of action comes after speculative knowledge of being. *ibid.*, I q. 79 a. 11 ad 2 (v. 11 pp. 184-87 (1970)). But, practical knowledge is not derive from speculative. The knowledge that a state of being represents a perfection of some dimension that can be realized through action is an original judgment made possible by a kind of tincture in practical reason imprinted by the Creator. It is not derived from speculative knowledge. In other words, it is the starting point not ending point of a chain of practical reasoning.

They have the character of an "*intentionem rei*," which is the object of the act, "*quam in se habit vel recipit secundum proprium modum*."⁴²

Aquinas identifies the five following such ends:

- (a) *happiness*, as the complete, unrestricted, and irreversible satisfaction of the will as such: "*ideo illud salum bonum quod est perfectum et cui nihil deficit est tale bonum quod voluntas non potest non velle, quod est beatitudo, . . . Finis ultimus ex necessitate movet voluntatem, quia est bonum perfectum; . . . oportet igitur quod ultimis finis ita impleat totum hominis appetitum, quod nihil extra ipsum appetendum relinquatur*;"⁴³
- (b) *life and health*, as the self-perpetuation of the agent as living organism; "*Inest enim primo inclinatio homini ad bonum secundum nativam in qua communicate cum omnibus substantiis, prout scilicet quaelibet substantia appetit conservationem sui esse secundum suam naturam et secundum hanc inclinationem pertinent ad legem naturalem ea per quae vita hominis conservatur, et contrarium impeditur*;"⁴⁴
- (c) *procreation*, as the conception, gestation and rearing of offspring to maturity: "*Secundo inest homini inclinatio ad aliqua magis specialis secundum naturam in qua communicate cum caeteris*

⁴² "*Sed cognoscit eam secundum intentionem rei, quam in se habet vel recipit secundum proprium modum*" ("But a cognitive faculty . . . comes to know them by means of *representations*, which it either already has, or receives in the appropriate way.") Ibid., I-II, q. 22 a. 2 (v. 19 pp. 10-11 (1967)) (emphasis added).

⁴³ ("[T]hat good alone which is complete and which lacks for nothing at all is that object which the will is unable not to want and this is beatitude,") *ibid.*, I-II q. 10 a. 2 (v. 17, pp. 88-89 (1970)); ("The ultimate end moves the will necessarily because it is the complete good,") *ibid.* I-II q. 2 a. 3 (v. 17 pp. 88-89 (1970)); and ("The ultimate end ought so to fulfill a man's whole desire that nothing is left beside for him to desire.") *ibid.*, I-II q. 1 a. 5 (v. 16 pp. 20-21 (1969)).

⁴⁴ "In this way, the life of man is preserved, and the opposite is impeded," *ibid.* I-II qq. 94 a. 2 (v. 28 pp. 80-81 (1966)) and 10 aa. 1 & 2 (v. 17 pp. 82-90 (1970)); and "There is in man, first, a tendency towards the good of the nature he has in common with all substances; each has an appetite to preserve its own natural being. Natural law here plays a corresponding part and is engaged at this stage to maintain and defend the elementary requirements of human life." *ibid.*, I-II, q. 94 a. 2 (v. 28 pp. 80-81 (1966)). Also, "*Unde naturaliter homo vult non solum objectum voluntatis, sed etiam alia quae conveniunt aliis potentiis . . . ut esse et vivere*" ("By nature he wills all that matches his entire ability, . . . his will, for instance. . . to be, to live. . .") *ibid.*, I-II q. 10 a. 1 (v. 17 pp. 84-85 (1970)).

animalibus; et secundum hoc dicuntur ea esse de lege naturali quae natura omnia animalia docuit, ut est commixtio maris et feminae, et educatio liberorum, et similia."⁴⁵

- (d) *friendship*, as relationships of mutual regard for the good of self and others: "*Tertio modo inest homini inclinatio ad bonum secundum naturam rationis quae est sibi propria: sicut homo habet naturalem inclinationem ad hoc quod veritatem . . . ad hoc quod in societate vivate, et secundum hoc ad legem naturalem pertinent ea quae ad hujusmodi inclinationem spectant ut pate quod . . . alios non offendat cum quibus debet conversari, et caetera hujusmodi quae ad hoc spectant*"; and⁴⁶
- (e) *knowledge* of the causes which comprise reality, especially of persons as substantial beings, and, above all, of God, as the First Cause: "*Tertio modo inest homini inclinatio ad bonum secundum naturam rationis quae est sibi propria sicut homo habet naturalem inclinationem ad hoc veritatem cognoscate de Deo . . . Et secundum hoc ad legem naturalem pertinent ea quae ad hujusmodi inclinationem spectant, utpote quod inclinationem spectant, utpote quod homo ignorantium vitet . . . et caetera hujusmodi quae ad hoc spectant.*"⁴⁷

Happiness is the end of the will by its nature, since the will is the universal mover of all the agent's powers. The other goods are the goals by nature of the agent's other powers, those which the agent has (b) in common with other substances, (c) with other animals, and (d) and

⁴⁵ ("Secondly, there is in man a bent towards things which accord with his nature considered more specifically, that is in terms of what he has in common with other animals correspondingly those matters are said to be of natural law which nature teaches all animals, for instance the coupling of male and female, the bringing up the young, and so forth.") Ibid. I-II, q. 94 a. 1 (v. 28 pp. 82-83 (1960)).

⁴⁶ ("Thirdly, there is in man an appetite for the good of his nature as rational, and this is proper to him, for instance, that he should know truths . . . about living in society. Correspondingly whatever this involves is a matter of natural law, for instance that a man should . . . not offend others with whom he ought to live in civility, and other such related requirements.") Ibid. I-II q. 94 a. 2 (v. 28 pp. 82-83 (1966)).

⁴⁷ ("Thirdly, there is in man an appetite for the good of his nature as rational, and this is proper to him, for instance, that he should know truths about God . . . Correspondingly whatever this involves is a matter of natural law. For instance that a man should shun ignorance. . . . and other such related requirements.") Ibid. I-II q. 94 a. 2 (v. 28 pp. 82-83 (1966)).

(e) according to the nature of reason proper to human beings. Thomas sketches each category generically leaving room for more detailed description.⁴⁸ But does he leave the door open to adding other generic ends which he himself does not state? There are two possible such additions. Both are goods proper to the rational soul of man: i.e. (f) Practical Reason conceived of as the capacity of acting according to virtue, and (g) the possession of a virtuous character. However, St. Thomas seems to organize all distinctively human qualities comprehensively under the capacities to know and love and (d) and (e) clearly encompass these two capacities.⁴⁹ It, therefore, appears logical that Practical Reason is part of knowledge (e). Further support for this conclusion can be found in St. Thomas's inclusion of both speculative and practical knowledge as aspects of a single faculty.⁵⁰ And, it seems equally logical to consider acting for and preserving a virtuous character as a part of friendship (d).⁵¹ Additional

⁴⁸ In Question 94, article 2, Aquinas adds "*et similia*" ("and so forth") to the end of a series of aspects of Man's animal inclinations, and he begins the series of aspects of Man's rational inclinations, "*quae est sibi propria sicut*" ("this is proper to him, for instance") *ibid.*, I-II q. 94 a. 3 (v.28 pp. 82-83 (1966)) but in each case he is merely leaving the door open for further specifications of the given inclination. And any further specification would, following the logic of those named, be further stated modes of being.

⁴⁹ "*Dicendum quod, cum beatitudo consistat in consecutione ultimi finis, ea quae requiruntur ad beatitudinem sunt consideranda ex ipso ordine hominis ad finem. Ad finem autem intelligibilem ordinatur homo partim quidem per intellectum partem autem per voluntatem*" ("Since happiness consists in gaining our last end, its requirements are to be marked in terms of man's relationship to it. He is related to a supra-sensible end aptly by mind, partly by will.") *Ibid.*, I-II q. 4 a. 3 (v. 16 pp. 94-95 (1969)).

⁵⁰ "*Dicendum quod intellectus practicus et speculativus non sunt diversae potentiae. . . . Secundum hoc autem differunt intellectus speculativus et practicus nam intellectus speculativus est qui quod apprehendit non ordinat ad opus, set ad solam veritatis considerationem; practicus vero intellectus dicitur qui hoc quod apprehendit, ordinate ad opus . . . unde et a fine deminative uterque: hic quidem speculativus, ille vero practicus, idest operativus*" ("The practical mind is not a distinct power from the speculative. . . . But this is the difference between the speculative and the practical in the mind. The speculative mind knows but does not relate what it knows to action, merely considering the truth; whereas we speak of the mind as practical when it orders what it knows to action. . . . Each is named from its intention, the one speculative, the other practical or active.") *Ibid.*, I q. 79 a. 12 (v. 11 pp. 186-87 (1970)).

⁵¹ The good of living in society requires that one "*quod aliis non offendat cum quibus debet conversari*" ("Not offend others with whom he ought to live in civility.") *Ibid.* q. 94 a. 2 (v. 28, pp. 84-85 (1966)).

support for this latter conclusion is in St. Thomas's treatment of virtue as owed to others in justice, because it is to their good.⁵² As for other principles of action here unaccounted for, these, in St. Thomas' view, these are not necessarily basic virtuous goods. Not every such principle is of natural law.⁵³

Each of these five basic forms fulfillment is equally self-evident and underived as a principle of action (is known *per se nota*), but each does not relate in the same way to the agent's fulfillment. Most significantly, the intellect presents the first concept, happiness, to the will, as the will's "*ultimus finis*," its satisfaction *per se*, while the intellect presents the other concepts as means thereunto. The concept of happiness is the necessary first principle of action in the order of intention, organizing the work of the will to function as the universal mover of the agent's diverse voluntary powers.⁵⁴ The agent gives this ultimate intention

⁵² "*Secundum hoc ergo bonum cujuslibet virtutis, sine ordinantis aliquem hominem ad seipsum sive ordinantis ipsum ad aliquas alias personas singulares est referibile ad bonum commune, ad quod ordinet justitia*" ("Accordingly the value in each and every virtue whether it composes a man in himself or whether it disposes him in relation to others, may be referred to the common good, to which justice orders us.") *Ibid.*, II-II, q. 58 a. 6 (v. 37, pp. 32-33 (1975)).

⁵³ [*M]ulta enim secundam virtutem fiunt ad quae natura non primo inclinat; sed per rationis inquisitionem ea homines adinvenerunt quasi utili ad bene vivendum*" ("For many of them are not immediately prompted by nature, but have to be investigated and are reasoned out before they are helpful to the good life.") *Ibid.*, I-II q. 94 a. 3 (v. 28 pp. 84-85 (1966)).

⁵⁴ "*Primo quidem, quia quidquid homo appetit appetit sub ratione boni. Quod quidem si non appetitur ut bonum perfectum, quod est ultimus finis, necesse est ut appetatur ut tendens in bonum perfectum: quia semper inchoatio alicujus ordinatur ad consummationem ipsius; sicut patet tam in his quae fiunt a natura quam in his quae fiunt ab arte. Et ideo omnis inchoatio perfectionis ordinatur in perfectionem consummatam, quae est per ultimum finem*" ("First, whatever a man desires is because of its evidence of good. If not desired as the perfect good, that is, the ultimate end, then it is desired as tending to that, for a start is made in order to come to a finish, as appears in the products of nature and art alike. And so every initial perfection anticipates the consummate perfection which comes with the final end.) *Ibid.*, q. 1 a. 6 (v. 16 pp. 22-23 (1969)) and "*[F]inis ultimus ex necessitate movet voluntatem, quia est bonum perfectum*" ("The ultimate end moves the will necessarily because it is the complete good.") *Ibid.*, I-II q. 10 a. 2 ad 3 (v. 17 pp. 88-89 (1970)).

content in the order of external action through the four remaining basic goods.⁵⁵ The distinctive cognitive status of these goods is reflected in St. Thomas's term for them, virtuous goods, for each promises the perfection of some dimension of the agent's being.⁵⁶ The essential intelligibility of these goods, in each case, thus includes the element of a "means-end" relationship to the agent's happiness. Each constitutes an equally original conceptual starting point for particular action. Each provides the matter of the will's necessary last end of happiness, but the form of concrete actions.⁵⁷

According to St. Thomas, all other ends acquire their intelligibility, in relation to these four basic precepts, in one of two ways. Each is intelligible either as an instrumental means to a basic virtuous good, i.e. money and power, or as a benefit flowing from the attainment of one, i.e. fame and honors.⁵⁸ The hierarchical distinction between virtuous and other goods can

⁵⁵ *"Non enim per voluntatem appetimus solum ea quae pertinent ad potentiam voluntatis, sed etiam ea quae pertinent ad singulas potentias et ad totum hominem"* ("For the will wants, not only its own immediate object, but also all the corresponds to each of the other powers, and to the whole man." Ibid. I-II, q. 10 a. 1 (v. 17 pp. 84-85 (1970))).

⁵⁶ *"[H]onestum . . . bonum"* ("Virtuous . . . good.") Ibid., I-II q. 34 a. 2 ad 1 (v. 20 pp. 70-71 (1975)): for example, *"esse, vivere et intelligere est appetibile et amabile omnibus"* ("to be, to live, to understand" . . . are desirable and lovable to all.") Ibid., II-II q. 34 a. 1 (v. 35 pp. 4-5 (1972)).

⁵⁷ *"Unde secunda appetibilis non movent appetitum nisi in ordine ad primum appetibile, quod est ultimus finis"* ("Likewise secondary objects of desire do not attract except as subordinate to the supreme good, which is the final end.") Ibid., I-II q. 1 a. 7 (v. 16. pp. 24-25 (1969)); and *"finis autem proprie est objectum interioris actus voluntarii, id autem circa quod est actu exterior est objectum eius"* ("Strictly speaking the end intended is the objective for the will's internal act, while the objective for the external act is what it is engaged with.") Ibid. I-II q. 18 a. 6 (v. 18 pp. 24-25 (1960)).

⁵⁸ *"Ex quia ordine quodam ratio inferioris homines partes regit, et etiam se ad exteriora extendit, ideo etiam secundum quod unum objectum . . . secundum etiam quod pertinet ad animam corpus, vel exteriores res, diversam habitudinem habet ad rationem, et per consequens natum est diversificare virtutes . . . Bonum autem non sensu, set interiori virtute apprehensum, ad ipsum hominem pertinens secundum seipsum, est sicut pecunia et honor quorum pecunia ordinabilis est de se ad bonum corporis, honor autem consistet in apprehensione animae"* ("Now the regime of reason over man's lower parts, and over external things, follows a certain order. Therefore an object of passion . . . according as it belongs to soul, to body, or to external things, has different references to reason, and consequently is of a nature to cause a difference of virtue . . . Yet an agreeable object apprehended, not by the senses but by an inner power, and belonging to man in himself, is like money and honour; the first of

be known through a subjectively self-evident conceptual priority belonging to the basic virtuous goods. The four basic virtuous goods are known self-evidently as fulfilling the agent's nature. Other ends lack this epistemological status.

(3) The Passions of Rest in Completed Action

According to St. Thomas, the agent experiences passion upon attaining an object of desire. This experience is subjective in that it is found within the conscious awareness of the agent. When a sensible appetite is satisfied, the agent feels sensible enjoyment and delight.⁵⁹ The cause of the feeling is, in each case, the "*operatio connaturalis non impedita . . .*" of the agent's faculties, and his appetitive powers resting in the possession of their object: "*ex hoc quod appetites requiesciet in bono adepto.*"⁶⁰ When the appetite's satisfaction is known by the agent it causes him pleasure, and where it has been brought about by a rational act, he experiences the feeling of joy or calm in the will, itself an appetitive power, now in possession of its object.⁶¹

itself being employable for the good of the body, while the second consists in an attitude of mind.") Ibid., I-II q. 60 a. 5 (v. 23 pp. 110-113 (1969)).

⁵⁹ "*Delectio est quidam motus animae, et constituto simul tota et sensibilis in naturam existentem*" ("Pleasure is a movement of the soul, perceptibly establishing one in a condition which is in harmony with one's nature, and which is an instantaneous whole.") Ibid., I-II q. 31 a. 1 (v. 20, pp. 4-5 (1975)); "*[D]electatio per prius bonum adeptum quasi proprium objectum*" ("[T]he proper object of pleasure is, primarily, a good possessed.") Ibid., I-II q. 32 a. 1 (v. 20, pp. 30-31 (1975)).

⁶⁰ ("[U]nimpeded natural activity.") Ibid., I-II q. 31 a. 1 ad 1 (v. 20, pp. 6-7(1975)) and ("[pleasure] is caused by the repose of desire in a good that is held.") Ibid., I-II q. 4 a. 1 (v. 16, pp. 90-91 (1969)).

⁶¹ "*Nam a principio volumus consequi finem intelligibilem et tunc voluntas delecta conquiescit in fine jam adepto*" (The will's desire starts for an end . . . when it is already gained the delight of will rests content with it.") Ibid., I-II q. 3 a. 4 (v. 116 pp. 70-71 (1969)).

The fulfillment of the sensible appetite can flow from automatic behavior no less than from reasoned choice.⁶² In such cases, the corresponding passions reflect an awareness of the particular, concretized instances of fulfillment. Insofar as these feelings flow from reasoned choice, they may be incidental to the choice of a virtuous or useful good, or they themselves may have formed the object of the action, since the agent may aim at pleasure or delight.⁶³ He may pursue this state of feeling as a secondary aim, in a larger act aiming at a virtuous or useful end, or as the principle end of an action making a virtuous end the means.⁶⁴

Where the agent has chosen an end, in addition to sensitive pleasure, he experiences a corresponding magnification of the will, parallel to but distinguishable from a passion, yielding the intellectual delight, known as joy, once reason informs the will that the object has been attained.⁶⁵ Where the agent attains a rational good without the gratification of the sensible appetite, he experiences the purely intellectual pleasure of joy alone. St. Thomas

⁶² “[H]ujus modi actiones non sunt proprie humanae, quia non procedunt ex deliberatione rationes, quae est proprium principium humanorum actuum. Et ideo habent quidem finem imaginatum, non autem per rationem praestitutum” (“[S]emi-automatic movements of this sort are not human actions in the strict sense, for they do not come from reasoned deliberation, which sets the stage on which men act as men. Such ends are present on the level of sense, and are not present by reason.”) Ibid., I-II q. 1 a. 2 (v. 16, pp. 6-7 (1969)).

⁶³ “[D]electatio perfecit operationem sicut quidam superveniens finis, inquantum scilicet super hoc bonum quod est operatio, supervenit aliud bonum quod est delectatio, quae importat quietationem appetitus in bono praesupposito” (“Pleasure completes an action as a sort of complementary end; over and above the good which the operation itself constitutes, there is added a further good: pleasure – the repose of the orexis coming to rest in the good which, we are assuming, has been attained.”) Ibid., I-II q. 33, a 4 (v. 20, pp. 62-63 (1975)); and “Talis autem delectationes appetitus videtur concupescencia esse, quae simul pertineat et ad animam et ad corpus” (“[H]ence sensory good is the good of the body-soul composite. When it is pleasure of this sort that one wants, one is said to have desire; this involves both soul and body. . . .”) Ibid. I- II, q. 30 a. 1 (v. 19, pp. 124-25 (1967)).

⁶⁴ “Sed voluntas bonorum delectatur in eis secundum convenientiam rationis, quam non curat voluntas malorum” (“But the good man enjoys such pleasure only in so far as they are in conformity with reason; in that, the evil person’s will takes no interest.”) ibid., I-II q. 34 a. 4 (v. 20 pp. 76-77 (1975)) and “[I]ntemperatus habet pro fine delectionem operis, propter quam consentit in opus magis quam ipsam operationem” (“It is the pleasure in the act, rather than the act itself which is the end for the intemperate man and it is for the sake of the pleasure that he consents to the act.”) Ibid., I-II q. 15 a. 3 ad 2 (v. 17 pp. 164-65 (1970)).

⁶⁵ “Sic igitur essentia beatitudinis in actu intellectus consistit, sed ad voluntatem pertinet delectatio beatitudinem consequens” (“In conclusion, then, an act of mind forms the essence of happiness, while for the will is the delight that follows.”) Ibid., I-II q. 3 a. 4 (v. 16 pp. 70-71 (1968)).

asserts that this purely intellectual pleasure is greater than any occurring in the sensitive appetite.⁶⁶ Like the feelings in the sensitive appetite, it represents a form of awareness of the good attained.

(4) The Normatively Good End or Object of Action:
Subjective Reality?

Ethical theory reaches its critical turn when it can term an end or object of choice normatively, and not merely descriptively, “good.” When it takes up the topic of “justification,” this study will seek a full account of how St. Thomas establishes that an end or object of choice is morally good, when it takes up “justification.” For now, it is enough to note that St. Thomas holds that the normative end or object of human choice or action can be validated in subjective terms.

St. Thomas holds that the species of an act as good or evil depends on how the agent frames it within the formal scope of his intention, itself a subjective matter.⁶⁷ The action’s rightness or wrongness lies in the proportionality of means to end within the concept of action the agent intends.⁶⁸ This proportionality is conceptual and in this sense, subjective. Thus, a

⁶⁶ “*Si igitur comparentur delectationes intelligibiles delectationibus sensibilibus secundum quod delectamur in ipsis actionibus, puta in cognitione sensus et in cognitione intellectus, non est dubium quo ad multo sunt majores delectationes intelligibiles quam sensibiles*” (“If therefore one compares the pleasures of intellect with those of sense, on the point of the pleasure given by the actions involved -- i.e. comparing sense-cognition with intellectual cognition -- it is clear that the pleasure arising from the latter is the greater.”) *Ibid.*, I-II q. 31 a. 5 (v.20 pp. 16-17 (1975)).

⁶⁷ “[*S*]upposito quod voluntas sit boni, nulla circumstantia potest eam facere malam” (“Given that a volition is good then no circumstance can make it bad.”) *Ibid.*, I-II q. 19 a. 2 (v. 18 pp. 52-53 (1966)).

⁶⁸ e.g., “[*M*]anifestum est quod quantas actus non sequitur quantitatem intentionis . . . Uno modo quia objectum quid ordinatur ad finem intentum non est proportionatum fini illi.” (“Clearly what the will does may not match what the will intends . . . “First, when the object selected is not proportionate to the purpose.”) *Ibid.*, I-II q. 19 a. 8 (v. 18, pp. 71-72 (1966)).

proposed choice might be judged without any direct extra-mental reference at all. For example, an agent might make a purely interior decision to prioritize the general importance he will give the virtuous, pleasurable or instrumental uses of reason. Such a decision would be immoral, if it subordinated the virtuous to the pleasurable or useful. Similarly, if an agent decided to do harm, if the possibility arose, and the possibility did not arise, the interior decision would be morally wrong because of the abstract proposal alone. St. Thomas's emphasizes that the rightness or wrongness of an action lies in the agent's intending against reason, i.e. in what the agent subjectively *believes* to be disproportionate, rather than what is disproportionate.⁶⁹

b. The Good as End or Object of Action in St. Thomas:
Objective Reality?

The subjective dimension of choice and action, so far outlined, hardly exhausts St. Thomas's conception of the good. This conception has features which are of an objective character. These features appear in Aquinas's account of the three phenomena discussed above: the passions arising on sensitive apprehension; the precepts of practical reason whereby the agent conceives of, assents to, and chooses the good; and the passions and other interior movements arising upon the completion of successful action. One can return to a

⁶⁹ *"Si autem sit error causet involuntarium proveniens ex ignorantia alicujus circumstantiae absque omni negligentia, tunc talis error rationis gvel conscientiae excusat ut voluntas concordans rationi erranti non sit mala"* ("If, however, it be an error rising from ignorance of some circumstance without any negligence that makes the act involuntary, then it excuses so that the corresponding act of will is not bad.") Ibid., I-II q. 19 a. 6 (v. 18, pp. 66-67 (1966)).

reconsideration of these three topics to discover the ways in which St. Thomas's notion of the good has an objective character.

(1) The Passions Arising on Sensible Apprehension

According to St. Thomas, the passions arise in the agent's sensitive appetites when he encounters external things.⁷⁰ The object moves the appetite, causing emotion. The object simply apprehended as such causes pleasure or pain,⁷¹ as it does the other passions: "*cum igitur delectatio et dolor prae supponant in eodam subjecto sensum vel apprehensionem aliquam.*" Objects move the sensitive appetites to passion because the appetite has the potential to be moved. They bear the "defect" of a lack of being, of passivity, and they are subject to being moved by (drawn to) any object which can fill this deficit. The agency of the object causes the emotions of "*amor, desiderium, et gaudium.*"⁷² If the object is an arduous good, it also causes the irascible passions of "*spes*" and "*desperatio.*"⁷³ The appetites are also subject to being repelled by any object which can make their defect worse. Thus, the agency

⁷⁰ "*Nam per vim appetitivam anima habet ordinem ad ipsas res, prout in seipsis sunt . . . Ad secundum dicendum quod vis appetitiva dicitur esse magis activa quia est magis principium exterioris actus. Et hoc habet ex hoc ipso ex quo habet quod sit magis passiva, scilicet ex hoc quod habet ordinem ad rem prout est in seipsa: per actionem enim exteriorem venimus ad consequendas res*" (For through its orectic faculties the soul is drawn towards things as they are in themselves . . . The orectic powers are said to be the more active because they are more closely connected with our external activity. But this arises from the very thing which makes them, in the relevant sense, more passive – their relationship with things as they are in themselves; for by external activity we come to possess more things.) Ibid., I-II q. 22 a. 2 and 2 ad 2 (v. 19, pp. 10-11 (1967)).

⁷¹ "*Cum igitur delectatio et dolor praesupponant in eodam subjecto sensum vel apprehensionem aliquam*" ("Pleasure and pain, however, presuppose some perception or awareness on the subject's own part") Ibid., I-II q. 35 a. 1 (v. 20, pp. 80-81 (1975)).

⁷² ("Love, desire and joy.") Ibid., I-II q. 23 a.2 (v. 19, pp. 22-23 (1967)).

⁷³ ("Hope and despair.") Ibid., I-II q. 23 a.2 (v.19, pp. 24-25 (1967)).

of the evil object causes emotions of “*odium, fuga seu abominatio, and tristitia.*”⁷⁴ If it is an arduous evil, the object also causes the irascible passions of “*timor, audacia.*”⁷⁵ If it is an arduous evil already at hand, it causes the irascible passion of “*ira.*”⁷⁶

St. Thomas holds that the sensitive appetites are ordered to things in themselves:

“*Magis autem trahitur anima ad rem per vim appetitivam. . . nam per vim appetitivam anima habet ordinem ad ipsas res, prout in seipsis.*”⁷⁷ He asserts that the “*vi appetitiva. . . respicit rem secundum quod in se est,*”⁷⁸ and that “*bonum et malum, quae sunt objecta appetitivae potentiae, sunt in ipsis rebus.*”⁷⁹ The passions, for Aquinas, are forms of consciousness of real objects constituting the good. They can be correctly understood only with the addition of this objective reference.

The object moving the sensitive appetite to passion is, for St. Thomas, enhances or detracts from some real aspect of the agent’s animal well-being or natural good. The passion is intelligible in relation not only to the object, but to the real enhancement it causes. The enhancement or detraction can be explained through speculative reason based on empirical

⁷⁴ (“[H]atred, aversion, sadness.”) Ibid., I-II q. 23 a. 2 (v. 19, pp. 24-25 (1967)).

⁷⁵ (“[F]ear and courage.”) Ibid., I-II q. 23 a. 1 & 3 (v. 19, pp. (1967)).

⁷⁶ (“[A]nger”) Ibid., I-II q.23 a.3 (v. 19 pp. 26-27 (1967)).

⁷⁷ “*Magis autem trahitur anima ad rem per vim appetitivam quam per vim apprehensivam. Nam per vim appetitivam anima habet ordinem ad ipsas res, prout in seipsis sunt*” (“But the soul is drawn to things by its orectic, rather than its cognitive faculties. For through its orectic faculties the soul is drawn towards things as they are themselves.”) Ibid., I-II q. 22 a. 2 (v. 19, pp. 10-11 (1967)).

⁷⁸ (“[T]he orectic faculties. . . bear upon a thing as it is in itself. . . .”) Ibid., I-II q.27 a. 2 ad 2 (v. 19, pp. 18-19 (1967)).

⁷⁹ (“[G]ood and evil, i.e. the objects of the appetitive power, are *things in themselves.*”) Ibid., I-II q. 22 a. 2 (v.19, pp. 10-11(1967)).

investigation.⁸⁰ Even the relative intensity of various passions the agent feels subjectively points to the real benefit of the object causing it.⁸¹ For example, St. Thomas observes that sensible pleasure from the sense of touch is greater than from sight because “*Utilitas enim sensibilium attenditur secundum ordinem ad conservationem naturae animalis ad hanc autem utilitatem propinquius se habent sensibilia tactus; est enim tactus cognoscitivus eorum ut quibus consistit animal, scilicet calidi et frigidi et humidi et sicci, et hujusmodi.*”⁸²

⁸⁰ “*Nam intellectus speculativus est qui quod apprehendet non ordinat ad opus, sed ad solam intellectus dicitur qui hoc quod apprehendat, ordinet ad opus*” (“The speculative mind knows but does not what it knows to action, merely considering the truth; whereas we speak our mind as practical when it orders what it knows to action”) *Ibid.*, I q. 79 a. 11 (v. 11 pp. 186-187 (1970)); “*Et ideo sicut bonum convertitur cum ente, ita et verum*” (“[a]nd therefore, as ‘good’ is convertible with ‘being’, so is the ‘true’.”) *Ibid.*, I q. 16 a. 3 (v. 4 pp. 82-83 (1964)); and “*Dicendum quod licet verum et bonum supposito convertantur cum ente, tamen ratione differunt; et secundum hoc, verum absolute loquendo prius est quam bonum. Quod ex duobus patet. Primo quidem ex hoc, quod verum propinquius se habet ad ens, quod est prius, quam bonum; nam verum respicit ipsum esse simpliciter et immediate; ratio autem boni consequitur esse secundum quod est aliquo modo perfectum; sic enim appetibile est. Secundo apparet ex hoc quod cognitio naturaliter praecedat appetitum. Unde, cum verum respiciat cognitionem, bonum autem appetitum, prius erit verum quam bonum secundum rationem*” (“Though in their subject ‘good’ and ‘true’ are convertible with being, still they are notionally different; and from that point of view truth is, absolutely speaking, prior to good. This may be seen from two considerations. First, truth is closer to being, which comes first, than good is; for truth has reference to being itself, without qualification and immediately; whereas the notion of goodness follows on being when being is considered as in some way complete or perfect, in which condition it is desirable. And secondly, knowledge naturally precedes desire. Hence, since truth has reference to knowledge, and good to desire, truth will be notionally prior to good.”) *Ibid.*, I q. 16 a. 4 (v. 4 pp. 84-87 (1964)); and “*Unde in ordine appetibilium bonum se habet ut univernale, et verum ut particulare; in ordine autem intelligibilium est e converso*” (Hence when we consider things as desirable, good has the condition of universal, and truth that of particular.; but when we consider things as intelligible the converse is true.”) *Ibid.*, I q. 16 a. 4 ad 1 (v. 4 pp. 86-87 (1964)).

⁸¹ “*Et ideo quae in aliis animalibus dicitur aestimativa naturalis in homine dicitur cogitativa, quae per collationem quandam hujus modi intentiones advenit*” (“And so what we call natural instinct in other animals, in man we call cogitation, which comes upon intentions of the kind in question through a process of comparison.”) *Ibid.* I-I Q. 78 a. 4 (v. 11 pp. 140-41 (1970)).

⁸² “*Si autem loquamur de delectatione sensus quae est ratione utilitatis, sic maxima delectatio est secundum tactum. Utilitas enim sensibilium attenditur secundum ordinem ad conservationem naturae animalis. Ad hanc autem utilitatem propinquius se habent sensibilia tactus; est enim tactus cognoscitivus eorum ex quibus consistit animal, scilicet calidi et frigidi et humidi et sicci, et hujusmodi. Unde secundum tactum sunt majores, quasi finis propinquiores*” (“But when one is talking about the pleasures afforded by the senses as useful, the pleasures of touch are the greatest. For the usefulness of the senses is gauged by their role in preserving an animal physically; and it is the objects of touch which serve that purpose most directly, for it is the best source of information about things concerned with an animal’s very composition – hot and cold, wet and dry, and so on. From this latter point of view, then, the pleasures of touch are the greater, as being more intimately connected with preservation.”)

It is not accidental to the passions that they incline the agent to that which objectively completes its being, and away from what destroys it. Even apart from reason, the passions register the significance, however crudely, of external stimuli, for the agent's real well being. The passions are a form of awareness of both external objects and their objective value or disvalue for the agent's natural good.

(2) The Precepts of Practical Reason

The precepts of practical reason have an objective dimension. They have a relationship to the agent's powers and faculties; to the agent's capacity for union with, or possession of, real objects; and to the real enhancement of the agent's being through completed action. Further, these objective references are the source of knowledge about diverse ways of realizing the precepts in question and of objective differences in their value for the agent's happiness. These objective references are essential to the basic intelligibility of St. Thomas's principles of practical reason.

According to St. Thomas, the intellect and will have their principles, by their natures, so that the principles of Practical Reason are "*naturaliter nota*."⁸³ These precepts are forms of knowledge of the will's inherent inclinations, and they include "*universaliter omnia illa quae conveniunt volenti secundum suam naturam*."⁸⁴ St. Thomas refers to the precepts of

Ibid., I-II q. 31 a. 6 (v. 20 pp. 20-21 (1975)).

⁸³ ("[K]nown naturally,") *ibid.*, I-II Q. 10 a. 1 (v. 17 pp. 82-84 (1970)).

⁸⁴ "*Natura dicitur multiplicitate quandoque enim dicitur principium intrinsecum in rebus mobilibus; et talis natura est vel materia vel forma materialis Alio modo dicitur natura quaelibet substantia, vel quodlibet ens; et secundum hoc illud dicitur esse naturale rei quod convenit ei secundum suam substantiam et hoc est quod per se inest rei. In omnibus autem ea quae non per se insunt reducuntur in aliquid quod per se inest, sicut in primum. Et ideo necesse est, quod hoc modo accipiendo naturam, semper principium in his quae conveniunt rei sit naturale. Et hoc manifeste apparet in intellectu; nam principia intellectualis cognitionis sunt naturaliter nota*" ("'[N]ature'

Practical Reason as “*secundum. . . ordinem inclinationum naturalium.*” They include the capacities for self-preservation, procreation, and distinctively rational activities such as knowledge and friendship.⁸⁵ For its realization, each of these natural inclinations depends on the specific powers and faculties just mentioned, including the human intellect and will. They also depend on the external members of the agent’s body. Each inclination which practical reason points as a self-evident first precept of action speculative reason understands objectively as an aspect of human nature.⁸⁶ The speculative knowledge is the more universal. It is prior to practical knowledge.⁸⁷

The will inclines to “*bonum in communi*” as it is available to a human being. The inclinations of the will include the ends of all the agent’s powers: “*Non enim per voluntatem*

has several meanings. Sometimes it refers, . . . to the inner principle in mutable things which is their material or material form. Sometimes it refers to the substance of being of a thing; the ‘natural’ is what is of its very essence, and is in it essentially. Whatever is present though not essentially has always to be brought back to what is present essentially and originally. Hence, if we take ‘nature’ in this sense then the very principles of things are natural. You see this in the mind; the first beginnings of thought are known naturally.” Ibid.

⁸⁵ “*Tertio modo inest homini inclinatio ad bonum secundum naturam rationis quae est sibi propria: sicut homo habet naturalem inclinationem ad hoc quod veritatem cognoscat de Deo, et ad hoc quod in societate vivat*” (“Thirdly, there is in man an appetite for the good of his nature as rational, and this is proper for him, for instance, that he should know truths about God and about living in society.”) Ibid., I-II q. 94 a. 2 (v. 28 pp. 82-83 (1966)).

⁸⁶ Stephan Brock notes that St. Thomas treats the principles in question as inclinations of the intellect. He considers the idea to be expressed by Jacques Maritain’s notion of “knowable by connaturality.” Stephan L. Brock, *The Legal Character of Natural Law according to St. Thomas Aquinas* (Ph.D. dissertation, University of Toronto, 1988), citing Maritain, *Man and the State*, University of Chicago Press. (Chicago, 1951) pp. 189-94; “Du Savoir moral,” *Review Thomast* 82 (1982): 533-549; “On Knowledge through Connaturality,” *The Review of Metaphysics* IV.4 (June 1951): 473-481, esp. 477-480.

⁸⁷ “*Accidit autem alicui apprehenso per intellectum quod ordinetur ad opus vel non ordinetur. Secundum hoc autem differunt intellectus speculativus et practicus. Nam intellectus soper em; practicus vero intellectus dicitur qui hoc quod apprehendit, ordinat ad opus. . . . Unde et a fine denominature uterque: hic quidem speculativus, ille vero practicus, idest operativus*” (“Now when it comes to understanding something, it is a matter of indifference whether we are going to do something with it or not. But this is the difference between the speculative and the practical in the mind. The speculative mind knows but does not relate what it knows to action, merely considering the truth; whereas we speak of the mind as practical when it orders what it knows to action. . . Each is named from its intention the one speculative, the other practical or active.”) Ibid., I q.79 a.12 (v. 11 pp. 186-187(1970)).

appetimus solum ea quae pertinent ad potentiam voluntatis, sed etiam ea quae pertinent ad singulas potentias et ad totum hominem unde naturaliter homo vult non objectum voluntatis sed etiam alia quae conveniunt aliis potentiis."⁸⁸ St. Thomas cites: "*quae convenit intellectui*" and "*unde naturaliter homo vult non solum objectum voluntatis, et esse et vivere, et hujusmodi alia quae respiciunt consistentias naturalem.*"⁸⁹ St. Thomas assumes that the satisfaction of natural inclinations, known to reason as principles of action, occurs by operation of the agent's faculties and powers, as speculative reason knows and understands there.

St. Thomas assumes, moreover, that the satisfaction of such inclinations yields real benefits directly or indirectly perfecting the agent's being. Through action, he may come to possess some means useful to this perfection, or he may unite himself with some object in itself perfecting his being.⁹⁰ In the latter case, he may have consumed the nutrition, enjoyed the rest, warmth, or shelter he needed to preserve or perfect his natural well being, obtained the union of marriage, entered in to the parent-child relationship, obtained, through the commitment of the wills, the good of friendship, or through the intellect, of knowledge of what is. Thus upon completion, action for the first principles of natural reason yields an

⁸⁸ ("For the will wants, not only its own immediate object, but also all that corresponds to each of the other, and to the whole .") Ibid., I-II q.10 a.1 (v. 17, pp. 84-85 (1970)).

⁸⁹ ("By nature he wills all the that matches his entire ability, not just his will, for instance, to know the truth, to be, to live, and so forth, indeed all that relates to the integrity he was born to have . . .") Ibid., I-II q.10 a.1 (v. 17, pp.84-85 (1970)).

⁹⁰ "*Nam a principio volumus consequi finem intelligibilem; consequimur autem ipsum per hoc quod fit praeiens nobis per actum intellectus; et tunc voluntas delecta conquiescit in fine jam adepto*" ("The will's desire starts for an end, but it is reduced by its becoming present to us by an act of mind, and then, when it is already gained, the delight of will rests content with it.) Ibid., I-II q.3 a.4 (v. 16, pp. 70-71 (1969)); and "*[i]psa objecta operationem non sunt delectabilia, nisi in quantum conjunguntur nobis . . . in quantum . . . proportionatae et connaturales operanti*" ("the objects of operations are not pleasurable save inasmuch as they are united to us . . ." and ". . . apprehended as possessed. Now to have such like things is nothing else but to use them or to be able to use them.") Ibid., I-II, q. 32 a.1 and 2 (v. 20, pp. 30-31 (1975)).

objective enhancement of the agent through union with suitable objects. This is according to natural inclination. The intelligibility of the first principles of practical reason is, according to St. Thomas, inseparable from the real relationships attained with objects outside of the agent.

Finally, in St. Thomas's vision, such successful action completes or perfects the agent.⁹¹ Through it, the agent progresses from potential to actual being: "*In rebus autem unumquodque tantum habet de bono quantum habet de esse; bonum enim et ens convertuntur . . .*"⁹² Aquinas understands human nature as comprised of three souls, the natural, the animal, and the rational. Each is actualized or perfected through action, directly through attainment of the virtuous goods, and indirectly through that of the useful and pleasurable goods. St. Thomas's first precepts of practical reason are intelligible in relation to the perfection of the agent's nature.

In addition to its consciousness of the suitability of real objects and of the inclinations of the agent's nature, practical reason enjoys a third element of objectivity. It has the capacity to know the value of objects in themselves in the ontological order. It can correlate the independent ontological value of an object with its relative value for the agent's fulfillment.

Practical Reason begins at self-evident first precepts, but it proceeds to evaluate particular objects of actions for which is the best means to the end. The act of prudence

⁹¹ "[*Quia omnia appetunt suam perfectionem adimpleri*]" ("Because all desire their complete fulfillment.") Ibid., I-II, q.1 a.8 (v. 16, pp. 26-27 (1969)).

⁹² ("Now the degree of good it possesses matches its degree of real existence, for 'good' and 'being' are convertible terms.") Ibid., I-II, q. 18 a. 1. (v. 18, pp. 4-5 (1996)).

includes “*inquisitio consilium*” and “*judicare de inventis*.”⁹³ The judgment in question is sometimes one of useful extrinsic means. At other times, it is one of valuing particular objects which might realize the virtuous good -- as fundamental as which bride to wed, or as transient as which book to read, for instance.⁹⁴ The principle of practical reason is thus, insufficient to explain the intelligibility of a proposal for action. The full explanation must refer to the agent’s capacity to evaluate the real potential of the object for the agent’s fulfillment.⁹⁵

⁹³ “*In necessariis autem et universalibus est absolutior et simplicior consideratio, quod magis ad hujusmodi considerationem unius per se sufficere potest; et ideo inquisitio consilii proprie pertinet ad contingentia singularia*” (“In such matters to owing the truth is not so lofty as to be desirable in itself like the knowledge of necessary and universal truth, it’s desired as being serviceable action, for action bears on contingent and individual issues.”) *Ibid.*, I-II q. 14 a. 4 (v. 17, pp. 148-149 (1970)).

⁹⁴ “[*E*]lectio praesupponit consilium ratione iudicii sive sententiae Unde quando iudicium vel sententia manifesta est absque inquisitione non requiritur consilii inquisitio” (“It is because choice is charged with a verdict or sentence that it presupposes deliberation. Consequently when a conclusion is clearly evident without inquiry, it can become [sic] to without pondering over it.”) *Ibid.*, I-II q. 14 a. 4 (v. 17 pp. 150-51 (1970)).

⁹⁵ “*Dicendum quod, sicut supra dictum est, ad prudentiam pertinet non solum consideratio rationis, sed etiam applicatio ad opus, quae est finis practicae rationis. Nullus autem potest convenienter alteri aliquid applicare nisi utrumque cognoscat, scilicet et ide quod appliandum est et id cui applicandum est. Operationes autem sunt in singularibus; et ideo necesse est quod prudens et cognoscat universalialia principalia rationis et cognoscat singularia circa quae sunt operationes*” (“As we have mentioned, careful attention by reason is not the only concern of prudence, for it also has to do with applying oneself to do something, which is what the practical reason is for. But how can one thing be applied to another unless both what to apply and what it is to be applied to is known? Now our actions deal with affairs which are individual. The prudent character, then, must needs know both the general moral principles of reason and the individual situation in which human actions take place. But no man can conveniently apply one thing to another, unless he knows both the thing to be applied, and the thing to which it has to be applied. Now actions are in singular matters: and so it is necessary for the prudent man to know both the universal principles of reason, and the singulars about which actions are concerned.”) *Ibid.*, II-II q. 47 a. 5 (v. 36 pp. 12-13 (1974)); and “*Hujusmodi autem principia, quae in inquisitione consilii supponuntur, sunt quaecumque sunt per sensum accepta; utpote quod hoc sit panis vel ferrum, et quaecumque sunt per aliquam scientiam speculativam vel practicam in universali cognita, sicut quod moechari est a Deo prohibitum, et quod homo non potest vivere, nisi nutriatur ntrimento convenienti*” (“Principles of this sort, which deliberation has to take for granted, include data presented through the senses, for instance that this here is bread and that there is iron, and also general truths of science on theory and practice, for instance that adultery is divinely forbidden or that a man cannot stay alive without suitable nourishment.”) *Ibid.*, I-II q. 14 a. 6 (v. 17 pp. 154-55 (1970)).

Practical Reason's capacity to register hierarchal differences in values begins with knowledge of an ascending order of worth or value in the agent's own faculties. Fulfillment through natural goods is a condition to the agent's fulfillment through animal, and fulfillment through animal goods is a condition of fulfillment through rational. The lower exists "for" the higher, "*ordinantur ad ea*," according to St. Thomas, so that the rational is higher and of greater value.⁹⁶ St. Thomas orders even useful goods hierarchically according to the tier of virtuous good they advance.⁹⁷ The agent always of necessity acts for happiness by his will's nature, but happiness can be attained, according to St. Thomas, only if the agent confers a priority on virtuous over nonvirtuous goods, and further, if he respects the ascending hierarchy among the virtuous goods just described.

Action for a particular precept can be realized through diverse concrete objects. These concrete objects are of greater or lesser value for satisfying the agent's inclinations, and for perfecting his nature. Their relative value derives from an objective hierarchy of value among

⁹⁶ "*Unde relinquitur quod solus Deus sit veritas per essentiam, et quod ejus contemplatio faciet perfecte beatum. Aliqualem autem beatitudinem imperfectam nihil prohibet attendi in contemplatione angelorum; et etiam altiore quam in consideratione scientiarum speculativarum*" ("God alone is essential truth of himself: only by contemplating him is man in perfect bliss. All the same there is no reason to deny some measure of happiness to our contemplation of angels, an even higher happiness than attends our study of the theoretical sciences.") *Ibid.*, I-II q.3 a.8 (v. 16, pp. 82-83 (1966)).

⁹⁷ "[*C]um anima sit una, potentiae vero plures, ordine quem quodam ab uno in multitudinem procedatur, necesse est inter potentiae animas ordinem esse Dependuntia autem unius potentiae ab altera accipi potest uno modo secundum naturae ordinem, prout perfecta sunt naturaliter imperfectis priora Secundum igitur primum potentiarum ordinem, potentiae intellectivae similiter potentiae sensitivae hoc ordine sunt priores potentiis animae nutritivae*" (As the soul is one and its powers are many and order consists in a relation of many to one, there has to be an order among the soul's powers One power can depend on another First, by virtue of the natural ascendancy of a higher power over a lower The first kind of order gives the intellectual powers ascendancy over the sense powers by guiding and commanding them. In the same way the sense powers have an ascendancy over the nutritive.") *Ibid.* I q. 77 a. 4 (v. 11 pp. 102-103 (1970)).

things in themselves.⁹⁸ Different foods will keep the agent alive, but the better food is that which is more nutritious. Different marital arrangements can be imagined, but the best is that which most effectively serves the couple's basic personal and social needs and the care and education of their children. Different sorts of friendships are possible, but mutually disinterested love of virtuous friends is best. The bond of loyalty uniting the community fulfills the good of friendship more perfectly than does that of just two individuals. There are different forms of knowledge, but the best discloses most fully truth about reality. Knowledge of causes is better than of effects, and that of more original causes better than derivative ones. Knowledge of substances, whether God, angels, or men and women, is better than knowledge of merely inanimate and animate beings. Among substances, knowledge of God, as First Cause is better than mere knowledge of angels and men. The agent must also respect the ontological hierarchy among the objects he pursues, as realizations of each good. It is not enough that he value his capacity for knowledge and friendship as being at the apex of his faculties. He must value knowledge of God as a mode of fulfillment which is at the pinnacle of that apex.⁹⁹

⁹⁸ e.g. "*Quorum bonorum exteriora quidem ordinantur ad ea quae sunt corporis ea vero quae sunt corporis ad ea quae sunt animae, et ulterius ea quae sunt vitae activae ad ea quae sunt vitae contemplativae*" ("Here there are priorities to be observed, for the good in external things should serve the good in our bodily deeds about them; and this should serve the good in our acts of soul, and there the good in our active life should serve that in our contemplative life.") Ibid., I-II q. 13 a. 3 (v. 17, pp. 130-31 (1970)); "*[S]ed sanitas corporis ordinatur ad bonum animae.*" ("Medical health, however, is subordinate to spiritual health . . .") Ibid., I-II q. 13 a. 3 (v.17 pp. 130-131 (1970)); and "*[U]nde cum spiritualia sint temporalibus potiora, gravius peccatum est personas accipere in dispensatione spiritualium quam in dispensatione temporalium*" ("It follows that since spiritual matters are more important than temporal ones, it is a graver sin to practice unfair discrimination in granting spiritual rights and benefits than in dispensing temporal ones.") Ibid., II-II q.63 a.2 (v. 38 pp. 8-9 (1975)).

⁹⁹ "*[U]ltimus hominis finis est bonum increatum, scilicet Deus, qui solus sua infinita bonitate potest voluntatem hominis perfecte implere*" ("[M]an's ultimate end is uncreated good, namely God, who alone can fill the will of man to the brim because of his infinite goodness.") Ibid., I-II q. 3 a. 2 (v. 16 pp. 60-61 (1969)); and "*[A]d perfectam igitur beatitudinem requiritur quod intellectus pertingat ad ipsam essentiam primae causae. Et sic*

St. Thomas holds that, through habituation, decisions have a perduring effect on the agent's appetites. The will becomes habituated to the *de facto* hierarchy of values the agent's actions imply among the goods, and the pattern in which he checks or gratifies the passions habituates his sensitive appetites. The agent has either forged a character ordered objectively to true happiness, because it is by having chosen with consistent respect for the objective hierarchy of values or he has not. If the agent has chosen well objectively, he will have a character inclined to the practice of temperance and fortitude.¹⁰⁰ He will also have a will duly ordered to the true last end, God.¹⁰¹ If he has not chosen well, his character will not be so inclined. Thus, the content of the first precepts of practical reason has an intrinsic relation to the moral character to which action gives rise. The lasting foundation of moral character is one final objective element in St. Thomas's conception of the good.

(3) The Passions and Other Interior Movements Arising with Completed Action

The agent feels passions upon attaining the object of action. These passions represent not merely subjective feeling or emotion, but also awareness of objective reality: namely, the

perfectionem suam habebit per unionem ad Deum sicut ad objectum, in quo solo beatitudo hominis consistit ("Complete happiness requires the mind to come through to the essence itself of the first cause. And so it will have its fulfillment by union with God as its object. For in him alone our happiness lies.") Ibid., I-II q. 3 a. 8 (v. 16 pp. 86-87 (1969)).

¹⁰⁰ *"Dicendum quod irascibilis et concupiscibilis . . . considerari possunt: . . . in quantum participant rationem per hoc quod natae sunt rationi obedire, et sic . . . potest esse subjectum virtutis humanae"* ("The irascible and concupiscible powers . . . can be considered as sharing in the life of reason, which in man is what they are born to do. In this sense [t]hey . . . can be the seat of human virtue, for in so far as each participates in reason, it is a principle of a human act.") Ibid., I-II q. 56 a. 4 (v. 23 pp. 28-29 (1969)).

¹⁰¹ *"Et ita voluntas videntis Dei essentiam ex necessitate amat quidquid amat, sub ordine ad Deum, sicut voluntas non videntes Dei essentiam ex necessitate amat quidquid amat sub communi ratione boni quam novit"* ("And so the will of a person who sees God face to face must needs love whatsoever he loves within the embrace of God's goodness.") Ibid., I-II q. 4 a. 4 (v. 16 pp. 96-99 (1969)).

suitable good attained.”¹⁰² The knowledge of a real union of one of the agent’s faculties with a suitable object causes the passion of pleasure, and the craving for this experience is concupiscence. The union occurs through one of the agent’s powers, and where it is chosen, the will is included therein. In anticipation of this union, “*liquifactio importat quandam mollificationem cordis, qua exhibet se cor habile ut amatum in ipsum subintret* .”¹⁰³ Upon its occurrence, the agent feels pleasure or enjoyment.¹⁰⁴ And in his will, he experiences joy. St. Thomas calls the will’s enjoyment “*delectatio sive fruitio*.”¹⁰⁵ The repose of fruition is only

¹⁰² “*Ad amorem autem pertinet quod appetitus coaptetur ad quandam receptionem boni amati, prout amatum est in amante . . . Unde cordis conselatio vel duritia est disposito repugnans amori. Sed liqueta etio importet quandam mollificationem cordis, qua exhibet se cor habile ut amatum in ipsum subintret*” (“But with love, the orexis is quick to take into itself the object loved: this is how that object ‘dwells in’ the lover as we have seen. Coldness or hardness of heart is therefore a state incompatible with love; whereas ‘melting’ or warmth suggests a certain softness which means that the heart will be quick to let the object loved enter into it.” Ibid., I-II q. 28 a. 6 (v. 19, pp. 104-105 (1967))).

¹⁰³ (“[W]hereas ‘melting’ or warmth suggests a certain softness which means that the heart will be quick to let the object loved enter into it.”) Ibid., I-II. q. 28 a. 5; “*Ad amorem autem pertinet quod appetitus coaptetur ad quandam receptionem boni amati, prout amatum est in amante, sicut jam supra dictum est*” (“But with love, the orexis is quick to take into itself the object loved: this is how that object ‘dwells in’ the lover, as we have seen. Coldness and hardness of the heart is therefore a state incompatible with love; whereas ‘melting’ or ‘warmth’ suggests a certain softness which means that the heart will be quick to let the object loved enter into it”) Ibid., I-II q.28 a.6 (v. 19, pp. 104-105(1967)).

¹⁰⁴ “*[A]d delectationem duo requiruntur: scilicet consecutio boni convenientis et cognitio hujusmodi adeptionis*” (“[F]or pleasure, two things are necessary: attaining some appropriate good thing, and knowing that one has attained it.”) Ibid., I-II q. 3 a. 4 (v. 16, pp. 70-71(1969)).

¹⁰⁵ “*Nam a principio volumus consequi finem intelligibilem; consequimur autem ipsum per hoc quod fit praesens nobis per actum intellectus; et tunc voluntas delectata conquiescit in fine jam adtepte*” (“The will’s desire starts for an end, but it is reached by its becoming present to us by an act of mind, and then, when it is already gained, the delight of will rests content with it.”) Ibid., I-II, a 3 ad 4 (v. 16 pp. 70-71 (1969)); and “*[A]d delectationem duo requiruntur: scilicet consecutio boni convenientis et cognitio jujusmodi adeptionis*” (“[F]or pleasure, two things are necessary: attaining some appropriate good thing, and knowing that one has attained it.”) Ibid., I-II q. 32 a. 1 (v. 20 pp. 28-29 (1975)).

absolute in relation to the last end, but it is true “*quidem aliquomodo*” of all lesser goods, with the attainment of each has “*quamdam delectationem*.”¹⁰⁶

Anticipatory passion gives way to rest when the agent knows that the good of the action has been attained. If the action is morally good, this rest is due participation in a universal hierarchy of values ordered to the last end of God.¹⁰⁷ The continued movement of the rational or sensitive appetite in the enjoyment of fulfillment is a kind of awareness, then, of the same good anticipated in the agent’s original proposal for action. But upon completed action, the good has a new objective dimension: it reflects the agent’s enhanced participation in being. The objectivity in question lies not just in the due operation of the agent’s faculties, but also in the agent’s due participation in an universal hierarchy of external goods.¹⁰⁸

(4) The Normatively Good End or Object of Action in St. Thomas: Objective Reality?

Upon coming once again to the critical turn in ethical theory, at which the end or object of an action can be termed not merely intelligibly but normatively good, we can ask if St. Thomas has an objective basis for concluding that an end or object of action is good in the

¹⁰⁶ “*Quod autem in se habet quamdam delectationem, ad quam quaedam praecedentia referuntur, potest quidem aliquo modo dici fructus*” (That which in itself holds a certain delightfulness, and to which other things led up, can indeed be called fruit in a sense, but not as though it peculiarly and quite completely fulfilled the notion of a fruit to be enjoyed.) Ibid., I-II q. 11 a. 3 (v. 17 pp. 104-105 (1970)).

¹⁰⁷ “[*N*]on autem quiescit simpliciter nisi in ultimo” (“But rest is not utter and complete except in our ultimate end.”) Ibid., I-II q. 11 a. 3 (v. 17 pp. 104-105 (1970)).

¹⁰⁸ “[*A*]d delectatione, deo requiruntur” scilicet consecutio boni convenientis et cognitio hujusmodi adeptiones” (“[F]or pleasure, two things are necessary attaining some appropriate good thing, and knowing the one has attained it.”) Ibid., I-II q. 32 a. 1 (v. 20 pp. 28-29 (1975)), and “*Est enim delectatio quies appetitivae virtutis in aliquo bono amato, et consequens aliquam operationem*” (“For pleasure is that repose of the orexis in some loved good which comes at the end of some activity.”) Ibid., I-II q. 34 a. 1 (v. 20, pp. 66-67 (1975)).

normative sense. As will be more fully developed elsewhere, St. Thomas views an end or object of action normatively good, if it is duly ordered to reason in all respects. If the choice or action is not in accord with reason in even one respect, it fails the test for normative goodness.

To be in *full* accord with reason and thus, normatively good, the object of the *interior* act must be in due proportion to the agent's last end. This due proportion depends on relation to the objective hierarchies of value to be found in the mediating basic good, the agent's natural powers, external goods, including the agent's interpersonal relationships. For its part, the object of the *external* act must be about due matter and circumstance. The agent is materially to will whatever particular good forms the object of his action, according to what his own reasonable understanding shows is due. Formally, he is to will the universal good even if this, in fact, departs from his material conception. The agent's reasonable insight and the true universal good both reflect natural law, eternal law, and divine Providence. Thus, the Divine lawgiver is the ultimate objective explanation for why an act is normatively good in Aquinas.

2. A Comparison of Finnis and Aquinas on the "Good"

Finnis and Aquinas propose broadly similar conceptions of the "good." This fact ensures a likeness in their ethical theories. Yet, the two authors differ in important particulars on the question and such differences point to distinctions between their visions of human choice and action which cannot be ignored.

Aquinas, no less than Finnis, derives his conception of the good, in an essential way, from the structure of practical reason. Whatever else the good may be, each author assumes

that it is what a human agent can bring about through his choice and action. Both hold that the agent knows the good as a self-evident underived starting point in reasoning about what he will do or choose to bring about. Each holds that the ends of action regards starting points in reasoning without being deductions and the end points of reasoning. Both reject the idea that “good” is an utopian or other unitary end-state, from which moral obligation arises. Both authors consider the good to be irreducibly plural, in a sense, for both hold that there are multiple first principles of action, equally underived and self-evident.

All of these similarities arise within the subject. But, even on the subjective plane the two concepts differ. Aquinas, for instance, unifies his concept with an overarching teleology of a single last end. Aquinas asserts that, underived as they might be each mediatory basic good shares a common meaning as a means to the agent’s happiness. Each is a distinctive opportunity ultimately for knowing or loving some aspect of reality, as a unique and unrepeatably person, and thereby, of finding one’s happiness.

By contrast, Finnis believes action remains just that– a series of discrete undertakings. It is not convertible with being. Finnis’s self-reflexive goods may bring the agent’s will into some particular commitment, but they cannot be said to fulfill the agent as a person. If undertaken uprightly, action may rectify the will. But it does so indirectly. It confirms an attitude in the agent of respect for the consistent use of reasoning. Where Aquinas equates happiness with becoming fully alive, Finnis considers it, cognitively speaking, to be an illusion, at most harmlessly absorbing the agent’s emotions, but simply irrelevant to moral agency.

Further, as a matter of subjective consciousness, Aquinas relates the essential meaning of each of the mediatory basic goods to one another and to speculative forms of knowledge. Each mediatory basic good, for example, represents the satisfaction of one of the agent's faculties and inclinations. Finnis considers there to be no more than accidental *occasions* for cognition of abstract possibilities. The basic goods draw no meaning from the nature of the inclination or faculty. In Aquinas's scheme the emotions, rest, and pleasure all point to the good. The meaning of Aquinas's mediatory basic goods is inseparably linked to feelings preceding and following insight and action. The agent does not derive the principle of action from the feeling, but he knows and understands both as disclosing a single reality in distinct but complimentary ways. Finnis, by contrast, treats the emotions as no more than *accidental occasions* for abstract cognition of abstract possibilities, with value for revealing the good.

Aquinas and Finnis concur that the practical knowledge of the (mediatory) Basic Goods is underived, but they disagree over whether speculative reason, nonetheless, has a role in ethics. Aquinas's ethics depend on speculative knowledge to unite practical principle, faculties, and feelings. They rely, as well, on speculative knowledge of the ontological hierarchy value apparent in external objects.¹⁰⁹ But Finnis bifurcates practical and speculative

¹⁰⁹ "Dicendum quod intellectus practicus et speculativus non sunt diversae potentiae. . . Nam intellectus speculativus est qui quod apprehendit non ordinat ad opus, sed ad solam veritatis considerationem; practicus vero intellectus dicitur qui hoc quod apprehendit, ordinat ad opus" ("The practical mind is not a distinct power from the speculative . . . The speculative mind knows but does not relate what it knows to action, merely considering the truth; whereas we speak of the mind as practical when it orders what it knows to action.") Ibid., I q. 79 a. 11 (v. 11 pp. 186-87 (1970)); "[B]onum est quoddam verum, alioquin non esset intelligibile" ("good is something true, otherwise we should not know about it.") Ibid., I q. 79 a. 11 ad 2 (v. 11 pp. 186-87 (1970)); and "[P]rudentia est recta ratio agibilium. Sed hoc non pertinet nisi ad rationem practicam. Ergo prudentia non est nisi in ratione practica" ("[P]rudence is the right idea in our doing things. But this is the business of the practical reason alone, and prudence, consequently, is nowhere else but there.") Ibid., II-II q. 47 a. 2 (v. 36 pp. 8-9 (1974)).

reason, so that Practical Reason conceives of the end of action entirely apart from the theoretical knowledge of human nature and creation.

Aquinas's idea of the good lends a unity of the self. All human drives can be integrated within a person because they are intrinsically oriented to the good by imprint of the Creator. The agent's "negative" drives or irascible appetites are merely to ward off evil. By contrast, Finnis recognizes no basis for integrating positive drives into personal identity. He considers "death, pain, joylessness, trash, hatred, destruction of others, incoherence and other forms of human ruin" to be human drives, but without orientation to any positive purpose. Aquinas would view these latter tendencies as signs of viciousness and the digeneration of what would be benefits tendency through sin and not natural drives at all.

On the objective plane, further substantial differences emerge in the two authors' conceptions of the good. Aquinas treats the external object of the act as a specifiable object, distinct from the agent's knowing or willing. The agent applies one or more of his faculties to attain that object. The "point" of the basic good is, for Aquinas, its value for fulfilling the faculty. In this view, virtue is a habit in the faculty of aptness for such fulfillment. Aquinas's ethics rests upon a theory of human nature accounting for the correspondence between human faculties and opportunities for participating in reality.

Finnis equates the person with the will. He considers other drives, inclinations and powers to have no essential role in expressing the reality of the person. Like happiness, the benefits or substantive fulfillment arising from successful actions be outside the person understood as moral agent. Similarly, Finnis must exclude pleasure from his conception of the good, where Aquinas includes it according to the measure of virtue. Finnis views virtue as no

more than a useful discipline in the will's task of remaining attentive to abstract cognition in the face of the distraction (or worse) of emotion. Thus, his virtues include "farsightedness and sensitivity, determination, enthusiasm, sobriety, and steadfastness." This list of traits might be observed in an active trade, say the work of a community organizer, but it offers no pattern of being for the person on his whole self

Finnis's virtues correlate very roughly with prudence ("farsightedness and sensitivity"), fortitude ("determination, enthusiasm, and steadfastness") and temperance ("sobriety"), if one can consider them to mean the same thing when one detaches them from the passions. But, no virtue in Finnis's list corresponds to justice. In Aquinas, justice observes the "realness" of the reciprocity between persons. It is a non-negotiable requisite of friendship. Rather than as a virtue, Finnis takes justice as a shorthand notion for the requirement of coordinating separate life plans in a pattern of harmony. The observance of these requirements contributes to the self-regarding objective of rectifying the wills but it does not necessarily contribute to friendship with another.

Aquinas correlates the mediatory basic goods with specific modes of participating in reality. It is for this reason that he distinguishes self-preservation from procreation. Because Finnis cultivates agnosticism about any relationship the agent's drives may have to intrinsic modes of being he must collapse these two goods into one. Aquinas limits the mediatory basic goods to the ontologically distinct modes of being human. With Finnis Basic Goods proliferate. Some of these Finnisian goods have the quality of performances (work and play) and others of harmonious states of mind (Inner Peace, Peace of Conscience and Religion).

But none are modes of being. St. Thomas would see these as passions of rest attained or, perhaps, instrumental goods, not as mediatory basic goods.

Finnis terms the outcome of successful action, an “instantiation” or a “state of affairs.” He distinguishes this outcome from the good itself, which remains an *a priori* cognitive first principle, which derives precisely none of its content from knowledge of real objects or the agent’s own faculties. Speculative reason adds nothing to practical reason’s original apprehension of the principle. The agent “instantiates” the good in an external state of affairs, but that state of affairs teaches the agent nothing about the good he did not already know.¹¹⁰

Aquinas differs in his opinion of speculative reason. He holds that ethical reasoning relies on speculative reason on a number of points.¹¹¹ It relies on speculative knowledge about

¹¹⁰ It is true that Finnis considers basic human goods to be “at once principles of Practical Reason” and “aspects of the full-being of persons.” John Finnis, Joseph M. Boyle, Jr., and Germain Grisez, *Nuclear Deterrence, Morality and Realism* (Oxford: Clarendon Press, 1987) 278. Finnis typically refers to the later which it is realized as an “instantiation.” However, the good as known as a “reason” in the mind which can be used to interpret “a state of affairs” as instantiating the opportunity pointed to be the reason. Finnis pointedly jettisons any metaphysics or ontology which would allow for values in things which are states external to cognition which the agent can know.

¹¹¹ In St. Thomas’s epistemology, practical reason comes after speculative reason in the order of operation: “*Ad secundum dicendum quod secundum hoc aliquid est prius ratione, quod prius cadit in intellectu. Intellectus autem per prius apprehendit quod prius cadit in intellectu. Intellectus autem per prius apprehendit ipsum ens; et secundo apprehendit se intelligere ens; et tertio apprehendit se appetere ens. Unde primo est ratio entis, secundo ratio veri, tertio ratio boni, licet bonum sit in rebus*” (“A thing is notionally prior if it is prior in the intellect’s apprehension. Now the intellect first apprehends being; then in the second place it apprehends that it is understanding being; and thirdly it apprehends that it desires being. Hence the notion of being comes first, that of truth second, and third that of good; but still, good runs throughout.”) Ibid. I q. 16 a. 4 ad. 2 (v. 4 pp. 86-87 (1964)); *Dicendum quod intellectus practicus et speculativus non sunt diversae potentiae . . . Nam intellectus speculativus est qui quod apprehendit non ordinat ad opus, sed ad solam veritatis considerationem, practicus vero intellectus dicitur qui hoc quod apprehendit, ordinat ad opus* (“The practical mind is not a distinct power from the speculative. . . Now when it comes to understanding something, it is a matter of indifference whether we are going to do something within it or not.”) Ibid., I q. 79 a. 12 (v. 11 pp. 186-87 (1970)); *Verum et bonum se invicem includunt . . . Sicut ergo objectum appetitus potest esse verum in quantum habet rationem boni. Verum in quantum . . . Intellectus enim practicus veritatem cognoscit, sicut et speculativus, sed veritatem cognitam ordinat ad opus* (“Good and true each include the other . . . Good is something true otherwise we should not

“scales” of value arising intrinsically with an ontology of ascending levels of being. In this ascent, life surpasses nonlife, animate life surpasses inanimate, and conscious and free (personal) life surpasses instinctual.¹¹² The greater the awareness of causes, the higher the consciousness of the person. For Aquinas, the most suitable objects of human knowledge and love are other persons: human, divine, angelic. St. Thomas considers human fulfillment ultimately to be in knowing and loving persons. Knowledge of the natural world, for this reason, ultimately is a good because of what it discloses about the God who created it. For all of these reasons Aquinas’s basic goods, while not obligatory, are nonetheless, other than strictly pre-moral. They are already prescriptive, because of their ontological relationship to the *summum bonum*.

Aquinas’s ontology is incompatible with Finnis’s “metaphysically austere” theory. The relationship which Finnis propounds between ethics and philosophical ontology is a one-way street. With its exposition of Practical Reason, ethical theory gives direction to philosophical anthropology but it has nothing to learn from it. One need not adopt Aquinas’s

know about it . . . the object of the practical mind is good to be done, known to be truly such.”) Ibid., I-II q. 79 a. 12 (v. 11 pp. 186-87 (1970)); and “*Ratio autem eorum quae sunt agenda propter finem est ratio practica; unde manifestum est quod prudentia non consistit nisi in ratione practica*” (“The reason as engaged with matters of this sort is the practical reason. Clearly, therefore, that is where prudence lies.”) Ibid., II-II q. 47 a. 2 (v. 36 pp. 8-9 (1974)).

¹¹² The role of judgment in the deliberation of right reason about action -- the meaning of singulars. “[D]icendum quod prudentia est recta ratio agibilium, ut supra dictum est. Unde oportet quod ille sit praecipuus actus prudentiae qui est praecipuus actus rationis agibilium; cuius quidem sunt tres actus. Quorum primus est consiliari, quod perinet ad inventionem, name consiliari est quaerere, ut supra habitum est. Secundus actus est judicare de inventi. Et hic sistit speculative ratio” (“Assuming the definition of prudence as right reason applied to human conduct, then it follows that the chief act of prudence will be the chief act of reason as engaged with conduct. Here the activity of reason goes through three stages. The first is taking counsel, which, as we have seen, is inquiry in order to discover. The second is forming a judgment on what has been discovered. So far we have not left theory.”) Ibid., II-II q. 47 a. 8 (v. 36 pp. 26-27 (1974)).

ontology and metaphysics precisely to agree with him, that ethical theories require some such supplement to function. Finnis's position on this point is untenable.

A point-by-point comparison of Finnis's Basic Goods and Aquinas's mediatory basic goods underscores the differences in the authors' viewpoints. One notes the absence of Finnis's good of Religion in Aquinas, who treats Religion as an aspect of the virtue of justice. Justice in turn, is the disposition to giving a friend his due. The mediatory good advanced is Friendship. This good fulfills an essential social aspect of the person. It depends upon respect for the friend's ontological status. The requirement of respect for the other expresses itself as Religion towards God and neighborliness toward the person-next-door. The inner unity of the requirement is presupposed by Christ's counsel, "Truly I tell you, just as you did not do it to one of the least of these, you did not do it to me."¹¹³

Next, Finnis's good of Inner Peace or Psychological Integration does not appear in Aquinas. Rather than as a principle of reason, Aquinas would presumably treat the phenomenon in question as a state of pleasure, or freedom from pain. For Aquinas, the only a good reasonably involved would be happiness itself, which brings with it pleasure and freedom from pain because it represents the full satisfaction of every desire. The only other "peace" Aquinas would recognize would reflect the will's repose in some other good giving the act its specific content. Aquinas's ontology offers no niche for Finnis's good of Inner Peace.

¹¹³ Matthew 25:45.

Peace of Conscience is a Basic Good for Finnis, but not for Aquinas. He considers conscience to be an operation of the intellect, and would consider the good in question to be that of knowledge. At most, it might be a specific manifestation of Practical Reason, assuming that St. Thomas were to acknowledge this phenomenon as a separate good, which is doubtful. Or one might find room for it, as a part of St. Thomas's concept Friendship, because of its contribution to justice.

St. Thomas's ontology does not leave room for Finnis's good of Excellence in Performance. Every mediatory basic good in some way, enhances the agent's being. In St. Thomas's view performance may disclose a virtuous character, and it is conceivable but not probable that St. Thomas considers the agent's possession of such a character to be a mediatory basic good. But, in either case, St. Thomas accords the performance itself no ontological status, compatible with being a mediatory basic good.

At the level of specifics, the contrast between Finnis and Aquinas appears stark. Finnis equates personal fulfillment with having a rectified will. Some manifestations of this fulfillment, such as "true commitments" and "coherent patterns of choice," take the form of "states of affairs" and "instantiations." However, Finnis provides no coherent metaphysical or ontological explanations of the rectification of a will, the truth of a commitment, or the coherence of patterns of choice.

Finnis and Aquinas both trace the normative goodness of ends of action to subjective intention. They concur that moral goodness or evil are to be found in the wills election of proportion or disproportion within reason's proposal for action. And yet, Finnis explains the character of obligation as the rational priority of cognitive principle over the inclination of

emotion. Aquinas views obligation as an ordinance of a higher authority that the proportion in the mind of the agent corresponds to the objective proportions of an eternal ontological hierarchy.

Interestingly, an agent who is in good faith, but misapplies every principle of ethics can still attain happiness in St. Thomas's view, because his will may still be disposed to know and love God, his true last end. But the same agent satisfies only one of Finnis's requirements of Practical Reasonableness, and he is in violation of all the others. He falls radically short of Finnis's Ideal of Integral Fulfillment. Finnis would have to consider him *out of harmony with the Divine puppet master since he would be unresponsive to most of his tugs*, and thus, a failure at the goal of practical reasonableness. Finnis might concede that such an agent could be a good friend to God, but he would seem to be a friend of much diminished capacity. Aquinas would hold that subjective good faith could yield a fully harmonious state in the soul of an invincibility ignorant person, but not so Finnis.

B. Aquinas's Concept of Justification

A second term of heuristic value for interpreting Aquinas's "ethical theory" is "justification." Chapter 2 applies this concept to analyze Finnis's concept of Practical Reason. An exposition of St. Thomas's conception of the term completes what is necessary for a full comparison of the two ethical theories.

Chapter 1 defined justification as:

the demonstration or explicitation of the rational or moral necessity of a single, unified, determinate and universally applicable vantage from which, by applying some determinate methodological steps, one can establish the rational or moral necessity of choices, attitudes and actions.

The term "obligation" succinctly expresses the concept of "rational or moral necessity of choices, attitudes and actions." It served to relate the heuristic definition to Finnis's ideas of justification, and it can serve to relate it to Aquinas's, as well.

The concept of obligation forms the cornerstone of St. Thomas's treatises on justice and law. It does not figure expressly in his account of the good and evil of human acts, but it is there assumed.¹¹⁴ It is a pivotal element in his moral philosophy. St. Thomas derives the meaning of law (*lex*) from *ligando* (to bind), because the law binds one to act (in the sense of creating obligation),¹¹⁵ and is binding in conscience.¹¹⁶ St. Thomas holds that the precepts of justice state that "*in his quae sunt ad alterum manifeste apparet quod homo est alteri obligatus ad reddendum ei quod debet.*"¹¹⁷ The concept of obligation therefore, inheres in any reference Aquinas makes to justice or law, including natural law, and as such, implicitly informs whatever Aquinas says about the "*proportionatum fini*" separating good from evil

¹¹⁴ "[F]ines proprii virtutem ordinantur ad beatitudinem sicut ad ultimum finem; et hoc modo potest esse eorum electo" ("Happiness is the ultimate end of all the virtues, and their proper ends are subordinate to that, which is why they fall into our field of choice.") Ibid., I-II q. 13 a. 3 (v. 17 pp. 130-31 (1970)) and "Unde operetur quod ex maxime respiciat ordinem qui est in beatitudine. Rursus cum omnes pars ordinetur ad totum sicut imperfectum ad perfectum, unus autem homo est pars communitates perfectae, necesse est quod ex proprie respiciat ordinem ad felicitatem communem" ("Consequently law is engaged above all with the plan of things for human happiness. Again, since the subordination of part to whole is that of incomplete to rounded-off reality, and since a human individual man is part of the full life of the community, it must needs be that law properly speaking deals with this subordination to a common happiness.") Ibid., I-II q. 9 a. 2 (v. 28 pp. 10-11 (1966)).

¹¹⁵ "[L]ex a ligando, quia obligat ad agendum" (The word comes from *ligando*, because it is binding on how we should act.") Ibid., I-II q. 90 a. 1 (v. 28, pp. 6-7 (1966)).

¹¹⁶ "Et secundum hoc leges hujusmodo onera proportionaliter inferentes, justae sunt, et obligant in foro conscientiae, et sunt leges legales" (Accordingly laws which apportion in due measure the burdens of responsibility are just, legitimate, and oblige at the bar of conscience.") Ibid., I-II q. 96 a. 4 (v. 28 pp. 130-331 (1966)).

¹¹⁷ ("[I]n matters involving other people it is evident that he is under obligation to render to them whatever he owes them.") Ibid., II-II q. 122, a.1 (v. 41 pp. 292-93 (1972)).

acts.¹¹⁸ It is fair to say that St. Thomas establishes obligation from a "single" and "determinate," if subtle vantage, which he presents as rationally and morally necessary. He also proposes a determinate methodology by which to establish the rightness or wrongness of choices, attitudes and actions.¹¹⁹

1. Aquinas's Formal Vantage and Its Rational or Moral Necessity

Three concepts come together to comprise Aquinas's vantage : 1) happiness, as the first principle of Practical Reason; 2) prudence, as the virtue enabling happiness's attainment; and 3) law, as the rule or measure of action proportionate to universal happiness.

a. Happiness as the First Principle of Practical Reason

According to Aquinas, the will inclines to its own complete and definitive satisfaction which is happiness or bliss. The last section considered happiness as St. Thomas's "last end" or fundamental basic good. This section examines its pursuit as a characteristic task of ethics. St. Thomas refers to happiness as the ultimate satisfaction of the inclinations pertaining "*ad totum hominem*;" as "*universaliter bonum et secundum omnem considerationem*."¹²⁰ He

¹¹⁸ ("Proportionate to the purpose") *ibid.*, I-II q. 19 a. 8 (v. 18 pp. 72-73 (1965)).

¹¹⁹ Although Finnis argues that "Thomas' account of the ultimate end is inconsistent with his account of natural law," "The Basic Principles of Natural Law: A Reply to Ralph McInerney," *American Journal of Jurisprudence* (with German Grisez) 26 (1981): 21-31, Aquinas's vantage, while complex, is ultimately unified. The unity comes to expression in the concept of legal justice as a general virtue: "*Secundum hoc ergo bonum cujuslibet virtutis, sive ordinantes aliquem hominem ad seipsum sive ordinantes ipsum ad aliquas alias personas singulares, est referibile ad bonum commune, ad quod ordinat justitia*" ("Accordingly the value in each and every virtue, whether it composes a man in himself or whether it disposes him in relation to others, may be refunded to the common good, to which justice orders us.") *Ibid.*, II-II q. 58 a. 6 (v. 37, pp. 32-33 (1975)) and in the Eternal law as the supreme, and in reason as the proximate, rule of human actions, *ibid.*, I-II q. 21 a. 1 (v. 18, pp. 106-107 (1966)); "*et talis participatio legis aeternae in rationali creatura 'lex naturalis dicitur'*" ("Now this sharing in the Eternal Law by intelligent creatures is what we call 'natural law.'") I-II q. 91 a. 2 (v. 28 pp. 22-23 (1966)).

¹²⁰ "*Unde, si proponatur aliquod objectum voluntati quod est universaliter bonum et secundum omnem considerationem, ex necessitate voluntas in illud tendit si aliquid velit*" ("[A]n object universally good and good from every point of view, then it will respond to it of necessity, that is, if it wills anything at all." *Ibid.*, I-II q.

asserts that the will can attain happiness gradually through particular choices and actions. The temporal and finite character of human, in contrast to angelic nature ordinarily bars an agent from definitively acting for happiness in any one choice, so that he seeks it progressively through many choices.¹²¹

Willing has a twofold-orientation in St. Thomas. In the interior act of the will,¹²² the agent aims at satisfying the will per se. This end is “inward” in the sense that the ultimate satisfaction of the will or fulfillment of the self occurs within the person. Practical Reason apprehends this inward end in the “form” of happiness. Happiness perfects the agent's will, as such, and it is the first principle of all action.¹²³ Externally, the will seeks to, realize particular inclinations corresponding to the agent's diverse appetites and powers through

10 a. 2 (v. 17 pp. 88-89 (1970)); [*N*]on enim per voluntatem appetimus solum ea quae pertinent ad singulas potestas et ad totum hominem” (“[f]or the will wants, not only its own immediate object, but also all that corresponds to each of the other powers, and to the whole Iman.” Ibid., I-II q. 10 a. 1 (v. 17 pp. 84-85 (1970)); and “[*I*]deo illud solum bonum quod est perfectum et cui nihil deficit est tale bonum quod voluntas non potest non velle, quod est beatitudo” (“that good alone which is complete and which lacks for nothing at all is that object which the will is unable not to want. And this is beatitude.”) I-II q. 10 a. 2 (v. 17 pp. 88-89 (1970)).

¹²¹ “[*S*]ed haec operatio nec continua potest esse, et per consequens nec unica est, quia operatio intercisione multiplicatur. Et propter hoc in statu presentis vitae, perfecta beatitudo a homine haberi non potest” (“Final perfection for men in their present life is their cleaving to God by activity which, however, cannot be continuous or consequently single, for activity becomes multiple when interrupted. That is why we cannot possess perfect happiness now. . . .”) Ibid., I-II q. 3 a. 2 (v. 16 pp. 64-65 (1969)).

¹²² “[*I*ntentio respicit finem secundum quod est terminus motus voluntatis” (“Intention regards end as being the term of a will-movement.”) Ibid., I-II q. 12 a. 2 (v. 17, pp. 114-115 (1970)).

¹²³ “[*R*atio autem beatitudinis communis est ut sit bonum perfectum . . . cum autem bonum sit objectum voluntatis, perfectum bonum est alicujus quod totaliter ejus voluntati satisfacit. Unde appetere beatitudinem nihil aliud est quam appetere ut voluntas satiatur.” (“[*B*]eatitudo signifies . . . complete goodness. Since the good is the object of the will, the perfect good is that which satisfies it altogether. To desire to be happy is nothing else than to wish for this satisfaction.”) Ibid., I-II q. 5 a. 8 (v. 16 pp. 140-41 (1968)) and “[*O*mnes appetunt suam perfectioem adimpleri, quae est ratio ultimi finis” (“all desire their complete fulfillment which . . . is what final end means.”) Ibid., I-II q. 1 a. 7 (v. 16 pp. 26-27 (197)).

concrete acts.¹²⁴ Practical Reason grasps the ends fulfilling these tendencies, in the abstract as concepts. These are the mediatory basic goods. He also grasps secondary concepts of correlated instrumental and pleasurable ends. These concepts allow the agent consciously to direct his powers to unite his being with reality outside of the soul.¹²⁵

The unity of the will manifests itself in a means-end relationship between what the will seeks as instrumental good and as mediatory basic good, and between what it seeks as mediatory basic good and as ultimate happiness. The mediatory basic goods are “for” the agent’s happiness, so that the will always embraces each particular choice as a means to that end.¹²⁶ The external act advances, in some partial way, this finality which is internal to the will itself.

¹²⁴ “*Bonum autem in communi, quod habet rationem finis, est objectum voluntatis; et ideo ex hac parte voluntas movet alias potentias animae ad suos actus. Utimur enim aliis potentiis, cum volumus. Nam fines et perfectiones omnium aliarum potentiarum comprehenduntur sub objecto voluntatis sicut quaedam particularia bona*” (Now being good as such – that is, taken without restriction – has the meaning of being the purpose and the end, It is the will’s object. Consequently the will moves the other powers to their activity with respect to executive motion considered as coming from the side of the subject: in human action we make use of them when we will. The ends they achieve, as being certain particular goods, are comprehended in the will’s object.”) Ibid., I-II q. 9 a. 1 (v. 17 pp. 64-65 (1970)) and “[v]oluntas enim, cuius proprium objectum est finis, est universale motivum respectu omnium potentiarum animae, quorum propria objecta sunt particularium actuum” (“[t]he will, which has our final end as its proper objective, is the universal motive -power for all our psychological powers where their proper objectives are the objectives of particular acts...”) Ibid., I-II q. 18 a. 7 (v. 18 pp. 30-31 (1965)).

¹²⁵ “*Hanc igitur formam naturalem sequitur naturalis inclinatio, quae appetitus naturalis vocatur. In habentibus autem cognitionem, sic determinatur unumquodque ad proprium esse naturale per formam naturalem quod tamen est receptivum specierum aliarum rerum*”(The propensity accompanying this natural form is called its natural appetite. But things that know are each fixed in their natural being in such a way as to be open to receive forms from other things.) Ibid., I q. 80 a. 1 (v.11 pp. 198-199 (1970)).

¹²⁶ “[Q]uidquid homo appetit appetit sub ratione boni. Quod quidem si non appetitur ut bonum perfectum, quod est ultimus finis, necesse est ut appetatur ut tendens in bonum perfectum quia semper inchoatio alicujus ordinatur ad consummationem ipsius sicut petet tam in his quae fiunt a natura quam in his quae fiunt ab arte” ([W]hatever a man desires is because of its evidence of good. If not desired as the perfect good, that is, the ultimate end, then it is desired as tending to that, for a start is made in order to come to a finish, as appears in the products of nature and are alike.”) Ibid, I-II q. 1 a. 6 (v. 16 pp. 22-25 (1969)); I-II q. a. 7 (v. 16 pp. 24-26 (1969)).

In its interior act, the will adopts the specific conceptions of the good, which Practical Reason supplies, as proximate means to happiness. Practical Reason posits at minimum some one mediatory basic good in every act as a proximate means to happiness. In the external act, it posits some description of behavior realizing that concept in fact. The description may entail the same good that is the object of the interior act, or it may be a different one that serves as a means to the interior end.¹²⁷

Human freedom, in this view, does not have such latitude as to permit the agent to reject happiness as his last end.¹²⁸ The agent is free no more than to elect from particular patterns of fulfillment as the means to happiness.¹²⁹ Nor is the agent free to reject any of the four mediatory basic goods where reason discerns an opportunity for realizing it concretely free of disadvantage when considered from every angle.¹³⁰

¹²⁷ “[I]n exteriori actu potest considerati duplex bonitas vel malitia; una secundum debitam materiam et circumstantias, alia secundum ordinem ad finem.” (“[Y]ou can consider a double good or evil in an outward deed, one according to the due matter and circumstances, the other according to its ordered purpose”) Ibid., I-II q. 20 a.2 (v. 18 pp. 88-89 (1966)).

¹²⁸ “[I]llud solum bonum quod est perfectum et cui nihil deficit est tale bonum quod voluntas non potest non velle, quod est beatitudo” (“[T]hat good alone which is complete and which lacks for nothing at all is that object which the will is unable not to want. And this is beatitude.”) Ibid., I-II q. 10 a. 2 (v. 17 pp. 88-89 (1970)).

¹²⁹ “Dicendum quod de ultimo fine possumus loqui dupliciter: uno modo secundum rationem ultimi finis; alio modo secundum id in quo finis ultimi ratio invenitur. Quantum igitur ad rationem ultimi finis, omnes conveniunt in appetitu finis ultimi: quia omnes appetunt suam perfectionem adimpleri, quae est ratio ultimi finis, ut dictum est. Sed quantum ad id in quo ista ratio invenitur, non omnes homines conveniunt in ultimo fine: nam quidam appetunt divitias tanquam consummatum bonum, quidam autem voluptatem, quidam vero quodcumque aliud. Sicut et omni gustui delectabile est dulce, sed quibusdam maxime delectabilis est dulcedo vini, quibusdam dulcedo mellis, aut alicujus talium” (“We can speak of the ultimate end in two senses, namely to signify first what it means, and second that in which it is realized. As for the first, all are at one here, because all desire their complete fulfillment, which, as we have noted, is what final end means. As for the second, however, all are not unanimous, for some want riches, others a life of pleasure, others something else. We draw a comparison here with the palatable, which is pleasurable to every taste. Some find this in wine most of all, others in sweetstuffs or something of the sort.”) Ibid., I-II q. 1 a. 8 (1968)).

¹³⁰ “Alia autem quaelibet particularia bona in quantum deficiunt ab aliquo bono possunt accipi ut non bona; et secundum hanc considerationem possunt repudiari vel approbari a voluntate, quae potest in idem ferri secundum diversas considerationes” (“All other particular goods whatever, in so far as they fall short of some good, can strike us as not good on this head, and the will can refuse them or accept them as the case may be, for it is able to respond to one and the same object from different points of view.”) Ibid., I-II q. 10 a. 2 (v. 17 pp. 88-89 (1970)).

Through his choices, the agent gradually establishes a unique hierarchy among available ends for their value as means to his happiness.¹³¹ Through the pattern of ends pursued in past acts residing by habituation in his will, the agent accords relative priorities to each end, in relation to every other end, and, ultimately, to happiness itself. The agent is disposed to rank each end as a more or less proximate means to the agent's happiness.¹³² Rather than being a completely original starting point in Practical Reasoning, the interior end of any particular act actually is conceived as a means to a particular conception of happiness to which the agent has habituated his will.

The finality of the exterior act always lies in one or more of the mediatory basic goods. The external act also customarily embraces further instrumental means (if only the activation of the agent's own bodily members).¹³³ And, it may also embrace pleasure

Ibid., I-II q. 10 a. 2 (v. 17 pp. 88-89 (1970)).

¹³¹ “[D]iversa studia vivendi contingunt in hominibus propter diversas res in quibus quaeritur ratio summi boni” (“Different views of how life should be lived arise from the various objects in which the idea of complete good is sought.”) Ibid., I-II q. 1 a. 7 ad 2 (v. 16 pp. 26-27 (1969)).

¹³² “[A]liquis certus modus adhibetur bonorum effluxi a primo bono, a quo omnia alia bona participant virtutem diffusivam” (“In point of fact, however, the fount of good pours forth according to a shaping intelligence so that a certain measure is established among the derivative goods which stream out and draw from it their generous virtue of giving of themselves.”) Ibid., I-II q. 1 a. 4 (v. 16 pp. 16-17 (1969)).

¹³³ “[U]sus rei alicujus importat applicationem rei illius ad aliquam operationem: unde et operatio ad quam applicamus rem aliquam dicitur usus ejus, sicut equitare est usus equi, et percutere est usus baculi. Ad operationem autem applicamus et principia interiora agendi, scilicet ipsas potentias animae vel membra corporis; ut intellectum ad intelligendum, et oculum ad videndum; et res exteriores, sicut baculum ad percutiendum. Sed manifestum est quod res exteriores non applicamus ad aliquam operationem nisi per principia intrinseca, quae sunt potentiae animae aut habitus potentiarum aut organa, quae sunt corporis membra” (“Using a thing means putting it into operation, and so the execution applied by us is termed its use; thus the use of a horse is to ride and the use of staff is to strike. Now not only are our interior active principles, namely psychological powers and bodily members, applied to activity, thus the mind to understanding and the eye to seeing, but also exterior things, save through principles within us, namely our psychological powers and their trained dispositions and other organs which are bodily members.”) Ibid., q. 16 a. 2 (v. 17 a. 1 (v. 17 pp. 172-73 (1970))).

associated with the good's realization. An act is suited to the agent's true happiness, if its matter and circumstances are proportionate to the order of reason.¹³⁴

The agent's object in the external act may be an instrumental good or pleasure, rather than a mediatory basic good as such, but the act remains proportionate to the order of reason, as long as the agent acts according to the measure of the mediatory basic good implicated in his chosen pleasure or instrumentality.¹³⁵ The will then remains fully open to the possibility of fulfillment in real happiness. The quest for instrumental goods and pleasures may lead the agent to depart from due proportion to the mediatory basic good. Such a choice leads the agent to order values in a hierarchy opposed to the objective one, and thus, at odds with the virtuous operation of his faculties and the full perfection of his being.¹³⁶

All action implicitly habituates the agent towards one last act, advancing some one concept of the good as a final means to his happiness (analogous to the angelic act of self-constitution). All particular acts can be understood as asymptotic steps towards this

¹³⁴ *"[A]liquid actus exteriores possunt dici boni vel mali . . . secundum circumstantias in ipsis consideratas; sicut dare eleemosynam, servatis debitis circumstantiis, dicitur esse bonum"* ("Some outward deeds can be termed good or bad . . . by the kind of act they are, taking into consideration the proper circumstances that should invest them; so, for instance, to give alms is good when all due conditions are observed.") *Ibid.*, I-II q. 20 a. 2 (v. 18 pp. 86-87 (1966)).

¹³⁵ *"[D]electatio dupliciter operationem perficit. Uno modo, per modum finis, non quidem secundum quod finis dicitur id propter quod aliquid est, sed secundum quod omne bonum complete superveniens, potest dici finis. . . . Secundo modo, ex parte causae agentis. . . . Indirecte autem, inquantum scilicet agens, quia delectatur in sua actione, vehementius attendit ad ipsam, et diligentius eam operatur"* ("Pleasure makes an operation perfect in two ways. First, as end: not in the sense of 'end' as 'that for the sake of which a thing exists,' but in the sense that any good thing may be called an 'end' which is added to a thing and completes it. . . . second, pleasure perfects an action by way of being an efficient cause. It perfects the action indirectly, in so far as the agent, because he is enjoying the action, gives it his more eager attention and performs it with greater care.") *Ibid.*, I-II q. 33 a. 4 (v. 20 pp. 62-63 (1975)); and *"Si vero passiones dicantur quicumque motus appetitus ensitivi, sic possunt esse in virtuoso, m excundum quod sunt a ratione ordinati"* ("If, however, passions be taken as any movements of the sensitive appetite, they can be in a virtuous man, in so far as they are subordinate to reason.") *Ibid.*, I-II q. 59 a. 2 (v. 23 pp. 86-87 (1969)).

¹³⁶ *"[[A]d rationem ultimi finis] . . . non omnes homines conveniunt in ultimo fine: nam quidam autem voluptatem, quidam vero quodcumque aliud"* ("[A]ll are not unanimous [in what][the ultimate end][is realized] for some want riches, others a life of pleasure, others something else.") *Ibid.*, I-II q. 1 a. 7 (v. 16 pp. 26-27 (1969)).

hypothetical act. Over time the will, in effect, forges an interior hierarchy of ends around some one elected value as the sole proximate means to happiness, and some one real object as its realization.¹³⁷

There are two possible outcomes to this procedure. Either the agent's will is upright and inclines towards one most-fulfilling mediatory basic good which is to be realized in one most-suitable real object, or less felicitously, it becomes vicious, absolutizing some instrumental pleasure or good, as realized through one most proficient manipulation.¹³⁸ The former outcome brings true peace. The latter fails to do so, because the agent's will has an inherent inclination for real happiness, even as he chooses against it.¹³⁹

b. The Virtue of Prudence as the Apt Operation of Practical Reason in Pursuit of Happiness

The pursuit of happiness depends on Practical Reason for its first principles. But, St. Thomas insists that Practical Reason must supply more than first principles, if the agent is to succeed in this task. It must specify the operation of the agent's faculties in a manner

¹³⁷ “[C]um unumquodque appetat suam perfectionem, illus appetit aliquis ut ultimum finem, quod appetit, ut bonum perfectum et completivum sui ipsius” (“[B]ecause in all things whatsoever there is an appetite for completion, the final end to which each move marks its own perfect and fulfilling good.”) Ibid., I-II q. 1 a. 5 (v. 16 pp. 20-21 (1968)).

¹³⁸ “Oportet ergo beatitudinem in ultimo actu hominis consistere” (“Happiness, therefore, must go with man's culminating actuality.”) Ibid., I-II q. 3 a. 2 (v. 16 pp. 62-63 (1969)).

¹³⁹ “Si enim intelligatur simpliciter de omnibus quae vult homo naturaliter appetitu, sic verum est quod qui habet omnia quae vult est beatus: nihil enim satiat naturaalem hominis appetitum nisi bonum perfectum, quod est beatitudo. Si vero intelligatur de his quae homo vult secundum apprehensionem rationis, sic habere quaedam quae homo vult non pertinet ad beatitudinem, sed magis ad miseriam, inquantum hujusmodi habita impediunt hominem ne habeat quaecumque naturaliter vult” (“If you take it to refer to wishes that spring from his nature, then it is true that one who has all he wants is happy, for nothing but the perfect good, which is beatitude, satisfies the desires of human nature. If you take it to refer to all that strikes him as his wants, then to have some of them will not be his happiness, but rather the reverse: in fact they will, stop him from getting what his nature wants.”) Ibid., I-II q. 5 a. 8 (v. 16 pp. 111-112 (1968)).

proportionate to the fulfillment of his end.¹⁴⁰ To accomplish this, it must prudently relate the first principles of the mediatory basic goods to the matter of the agent's faculties and to the singular possibilities of the situation, thereby arriving at a concept of apt external action.¹⁴¹ The will intends, chooses and consents to successive aspects of Practical Reason's command of external action to be undertaken.¹⁴²

¹⁴⁰ “[E]o modo omnes appetunt delectationem, sicut et appetunt bonum et tamen delectationem appetunt ratione boni, et non e converso, ut dictum est. Unde non sequitur quod delectatio sit maximum et per se bonum: sed quod unaquaeque delectatio consequatur aliquod bonum, et quod aliqua delectatio consequatur id quod est per se et maximum bonum” (“The motions of appetite for the pleasurable and the good-in-itself follow the same channel; all the same, the pleasurable is desired by reason of the good in itself, and not, as we have pointed out, the other way round. Consequently it does not follow from the objection that pleasure is the sovereign and essential good, but that each pleasure results from some good, and a pleasure from the highest and essential good.”) *Ibid.*, v. 26 pp. 50-51 (1969)).

¹⁴¹ “*Recta autem ratio praeexigit principia, ex quibus ratio procedit. Oportet autem rationem circa particularia procedere non solum ex principiis universalibus, sed etiam ex principiis particularibus. . . Et ideo, sicut homo disponitur ad recte se habendum circa principia, universalia per intellectum naturalem vel per habitum scientiae, ita ad hoc quod recte se habeat circa principia particularia agibilia, quae sunt fines, oportet quod perficatur per aliquos habitus secundum quos fiat quodammodo homini connaturale recte iudicare de fine*” (“Prerequisites for right judgment are principles from which reason proceeds. Yet when reason is concerned with the particular, it needs not only universal principles, but also particular ones . . . Consequently, as by the habits of natural understanding and science, a man is rightly disposed with regard to general truths, so, in order that he be rightly disposed with regard to the particular principles of action, namely, their ends, he needs to be perfected by certain habits, whereby it becomes, as it were, connatural to him to judge rightly about an end.”) *Ibid.*, I-II q. 58 a. 5 (v. 23 pp. 76-77 (1969)).

¹⁴² “*Unde hoc nomen intentio nominat actum voluntatis, praesupposita ordinatione rationis ordinantis aliquid in finem*” (“Consequently ‘intention’ denotes an act of will, the ordinance of reason directing a means to an end being presupposed.”) *Ibid.*, I-II q. 12 a. 1 ad 3 (v. 17 pp. 112-13 (1970)); and “*In ordine autem agibilium, primo quidem oportet sumere apprehensionem finis, deinde appetitum finis, deinde consilium de his quae sunt ad finem, deinde appetitum eorum quae sunt ad finem. Quae . . . in quantum sunt ad finem, sub consilio cadunt; et sic potest esse de eis consensus, in quantum motus appetivus applicatur ad id quod ex consilio iudicatum est. Motus vero appetitivus in finem non applicatur consilio, sed magis consilio ipsi, quia consilium praesupponit appetitum finis; sed appetitus eorum quae sunt ad finem praesupponit determinationem consilii. . . . [E]lectio addit supra consensum quamdam relationem respectus ejus cui aliquid praeeligitur; et ideo post consensum adhuc remanet electio*” (“Now the ordered sequence for practical action is as follows. First, the end is apprehended. Next, it is desired. Then the means of obtaining it are deliberated about, and these in their turn come before desire. . . . objects . . . are matters for consent, because appetitive motion is applied to the concluding decision of deliberation. . . Choice adds to consent the notion of a special relationship to that which is preferred to something else, and accordingly a choice still remains open after consent.”) *Ibid.*, I-II q. 15 a. 3 (v. 17 pp. 164-65 (1970)).

Always with Happiness as the last end, practical reason matches means to ends, beginning with the end the will offers to reason to initiate the chain of practical reasoning.¹⁴³ Its proposal for action is prudent if the reasoning reaching it is “proportionate” at each step.¹⁴⁴ The action takes its species as good or evil from the presence or absence of this consistent proportionality. The interior end, the first step in the chain posited, must be proportionate to the agent's necessary last end of happiness. The lack of this due proportion would compromise the capacity of the agent's faculties to mediate his participation in being in accord with the universal good.¹⁴⁵

The exterior act, for its part, must be in proportion to the interior end of the will. The external act aims at some combination of utility, pleasure, and intrinsic value (grasped as a mediatory basic good). It seeks to attain these values through the apt use of one of the agent's powers or faculties under singular circumstances. Practical Reason grasps the matter about which the act is to be done, as of value for advancing the interior end of the will.¹⁴⁶ If the

¹⁴³ *“Id enim quod est primum in ordine intentionis est quasi principium movens appetitum: unde, subtracto principio, appetitus a nullo moveretur”* (“In the order of intention, it is that which originally moves desire; take this away, and desire would be moved by nothing.”) Ibid., I-II q. 1 a. 4 (v. 16 pp. 116-17 (1968)).

¹⁴⁴ *“[E]lectio consequitur sententiam vel iudicium, quod est sicut conclusio syllogismi operativi”* (“Choice follows the decision or verdict which, as it were, is a conclusion to a practical syllogism.”) Ibid., I-II q. 13 a. 3 (v.17 pp. 130-31 (1970)).

¹⁴⁵ *“Finis autem comparatur ad id quod ordinatur ad finem sicut forma ad materiam. Unde sicut materia non potest consequi formam, nisi sit debito modo disposita ad ipsam, ita nihil consequitur finem nisi sit debito modo ordinatum ad ipsum. Et ideo nullus potest ad beatitudinem pervenire nisi habeat rectitudinem voluntatis* (“The will is rightful when duly bent on its ultimate end, which end is to intermediate purposes as form to matter. Now as material cannot be shaped unless it be duly prepared, so likewise nothing gains its end unless it be well adapted to it. The inference is that nobody can come through to happiness without a right good will, which, therefore, is an antecedent condition.”) Ibid., I-II q. 4 a. 4 (v. 16 pp. 98-99 (1969)).

¹⁴⁶ *“[M]anifestum est quod quantitas actus non sequitur quantitatem intentionis. Quod quidem ex parte actus exterioris contingere potest dupliciter uno modo quia objectum quod ordinatur ad finem intentum non est proportionatum fini illi . . . Alio modo propter impedimenta quae super venire possunt circa exteriorem actum,*

purpose of the act is utility alone, then proportionality merely calls for the act's reasonable efficiency in advancing the agent's interior end (aside, of course, from the standing requirement that the mean of the passions be simultaneously observed--about which more will be said later).

If the matter of the external act directly implicates a mediatory basic good (this good may be the same, or different, from that which comprises the end of the will's interior act) then the act must be proportionate to this intrinsic value. In that case, it is not enough that the external act advance the interior end of the will alone, even within the due mean of the passions, it must also be proportionate to the objective value of the mediatory basic good, and the absence of this proportionality alone is enough to give the act the species of evil.¹⁴⁷

The matter or circumstances of an external act may directly implicate an intrinsic value (mediatory basic good) even if the agent's conscious interest is only in utility or pleasure.

Quite aside from the agent's intent, the use of speech, for example, necessarily implicates the

quae non est in potestate nostra remove" ("[C]learly what the will does may not match what the will intends. As for outward deeds of will, this may come about in two ways. First, when the object selected is not proportionate to the purpose. . . . Second when external obstacles arise beyond our power to shift.") Ibid., I-II q. 19 a. 8 (v. 18 pp. 72-73 (1965)).

¹⁴⁷ e.g. "*Unde cum fornicatio sit concubitus vngus, upote praeater matrimonium existens, est contra bonum prolis educandae; et ideo peccatum mortale.*" ("Accordingly, since fornication or intercourse between people who are not committed to one another is outside marriage, which is for the good of a child, it is a mortal sin.") Ibid. *Ad hujus autem evidentiam considerandum est quod peccatum mortale est omne peccatum quod committitur directe contra vitam hominis. Fornicatio autem simplex importat inordinationem quae vergit in nocumentum vitae ejus qui est tali cocubitu nasciturus*" ("To explain. A sin which directly attacks a requirement for human life is deadly. Now simple fornication is an inordinate act of a sort to injure the life that may be born from the intercourse.") Ibid., II-II q. 154 a. 2 (v. 43 pp. 212-13 (1968)). "*[M]anifestum est quod quantitas actus non sequitur quantitatem intentionis. Quod quidem ex parte actus exterioris contingere potest dupliciter uno modo quia objectum quod ordinatur ad finem intentum non est proportionatum fini illi . . . Alio modo propter impedimenta quae super venire possunt circa exteriorem actum, quae non est in potestate nostra remove*" ("[C]learly what the will does may not match what the will intends. As for outward deeds of will, this may come about in two ways. First, when the object selected is not proportionate to the purpose. . . . Second when external obstacles arise beyond our power to shift.") Ibid., I-II q. 19 a. 8 (v. 18 pp. 72-73 (1965)).

good of knowledge; sexual intercourse, that of procreation; and the property of another, friendship.¹⁴⁸ Because Aquinas believes pleasure to be a concomitant of the use of a faculty, and that each faculty implicates a mediatory basic good, any time the agent makes pleasure the goal, he will directly implicate some mediatory basic good as well.¹⁴⁹

Observing due proportion in the external act is essential for the agent's ultimate happiness, since a disproportion willed in any one act, alters the inclination of the agent's will *per se*, costing it some of its ordination to the hierarchy of values devolving from God as the *summum bonum*. Any act which lacks full proportionality to the good diminishes the agent's capacity for happiness. The evil disproportion of one act, lives on in the habitation of the will, so that it affects the formulation of other acts. The agent is prone, with time, to compound the evil being willed and done.¹⁵⁰

¹⁴⁸ "*Objectum autem proprium manifestationis sive enuntiationis est verum vel falsum*" ("The objective proper to communication or statement is truth or falsity.") Ibid., II-II q. 110 a. 1 (v. 41 pp. 148-49 (1972)); "*[E]x uno concubita potest unus homo generari; et ideo inordinatio concubitus, quae impedit bonum prolis nasciturae, ex ipso genere actus est peccatum mortale, et non solum ex inordinatione concupiscentiae*" ("one act of intercourse can beget a child, and therefore its inordinateness, which handicaps a child to be born, is a grave sin from the kind of act that it is, not merely because of the intemperateness of the lust.") Ibid., II-II q. 154 a. 3 ad 6 (v.143 pp. 216-17 (1968)); and "*[P]rimo quidem propter contrarietatem ad iustitiam, quae reddit unicuique quod suum est, et sic furtum iustitiae opponitur unquantum furtum est acceptio rei alienae*" (If one analyzes the notion of theft, . . . it is contrary to justice, which is a matter of giving each person his due. And so theft is contrary to justice, in so far as theft is taking somebody else's property.") Ibid., II-II q. 66 a. 5 (v. 38 pp. 74-75 (1975)).

¹⁴⁹ "*[A]d delectationem duo requiruntur: scilicet consecutio boni convenientis et cognitio hujusmodi adeptionis*" ("[F]or pleasure, two things are necessary: attaining some appropriate good thing, and knowing that one has attained it.") Ibid., I-II q. 32 a. 1 (v. 20 pp. 28-29 (1975)).

¹⁵⁰ "*[O]mnis potentia quae diversimode potest ordinari ad agendum indiget habitu quo bene disponatur ad suum actum. Voluntas autem, cum sit potentia rationalis, diversimode potest ad agendum ordinari. Et ideo oportet involuntate aliquem habitum ponere, quo bene disponatur ad suum actum*" ("Every faculty which can be exercised in more than one way needs a disposition to ensure that it is exercised in the right way. But the will, since it is a rational faculty, can be exercised in more than one way. And so there is a need for a disposition of the will to ensure that it is exercised in the right way.") Ibid., I-II q. 50 a. 5 (v. 22 pp. 42-43 (1964)).

The proportionality of an act depends on whether its matter and circumstances contradict or frustrate the mediatory basic good in view, either as a matter of the interior end or external object. The violation occurring in the description of the external act may be found in the object or in the other circumstances. The problem may be an actual contradiction of the good, more or less direct, or merely the sacrifice of efficiency in realizing it. Thus, an act of lying directly frustrates the good of truth, as do acts of fornication and theft.¹⁵¹ Eating at the wrong time of day, by contrast, suffers from the disproportion of merely less effectively serving the good of life.¹⁵²

¹⁵¹ “[V]eritas invenitur in intellectu secundum quod apprehendit rem ut est, et in re secundum quod habet esse conformabile intellectui. Hoc autem invenitur maxime in Deo. Nam esse suum non solum est conforme suo intellectui, sed etiam es ipsum suum intellegere; et suum intelligere est mensura et cause amnis alterius esse et omnis alterius intellectus; et ipse est suum intelligere et suum esse. Unde equitur quod non solum in ipso sit veritas, sed quod ipse sit summa et prima veritas” (“[Y]ou find truth in the mind when it apprehends the thing as it is, and truth in the thing when it possesses being conformable to mind. This is verified most of all in God. For his being is not only in conformity with his intellect, but is his very act of knowing; and his act of knowing is the measure and cause of all other being and all other intellect; and he himself is his own being and his own act of knowing. Hence it follows not only that truth is in God but also that he is the supreme and original truth.” e.g., the knowledge of God is of higher value than other forms of knowledge.”) *Ibid.*, I q. 16 a. 5 (v. 4 pp. 86-89 (1964)); The violation might occur through the disrespect shown another through injustice, “*Omne autem nocumentum alteri illatum ex se caritati repugnat, quae movet ad volendum bonum alterius*” (“Every injury inflicted on another of itself conflicts with charity, which moves us to will the good of another.”) *Ibid.*, II-II q. 59 a. 4 (v. 37 pp. 64-65 (1975)); or through the intrinsic contradiction of the mediatory good, as a principle of reason, e.g. in unnatural, i.e. counter-rational sexual intercourse. With respect to the last kind of act, St. Thomas says: “[I]n quolibet genere pessima est principii corruptio ex quo alia dependent” (“Take any class of objects grouped together for comparison, and the worst of them all will be that which saps the basis on which all of them rest.”) *Ibid.*, II-II q. 154 a. 12 (v. 43 pp. 246-47 (1968)); and “*Per furtum autem homo infert nocumentum proximo in suis rebus; et si pasim homines sibi invicem furarentur, periret humana societas*” (Stealing, however, damages one’s neighbour through his property and human society would perish if everybody started stealing from everybody else.”) *Ibid.*, II-II q. 66 a. 6 (v. 38 pp. 78-79s (1975)).

¹⁵² “*Ita etiam est in actione. Nam plenitudo bonitatis ejus non tota consistit in sua specie, sed aliquid additur ex his quae adveniunt tanquam accidentia quaedam; et hujusmodi sunt circumstantiae debitae*” (“The same holds true with moral activity. For its full goodness as a whole is not constituted by what kind of act it is, but is filled out by additions which are like its qualities; such are its due circumstances.”) I-II q. 18 a. 3 (v. 18 pp. 14-15 (1966)).

As mentioned in passing above, no act is of due proportion unless it observes the mean in regulating of the agent's sensitive appetites. The agent must moderate his passions regardless of whether their excess reaches the point of actually contradicting or unduly impeding a mediatory basic good defining the external act. The agent may seek only so much of a good, at any point in time, as befits the balanced function of his powers in relation to his innate temperament. That is to say, the agent must act with a due degree of fortitude and temperance.¹⁵³ And, the amount of the good sought should comply with the rights of others.¹⁵⁴ The agent must act in accord with justice.

Practical reason can successfully undertake the complex assessment set out thus far, only if it is habituated to excellence. Only the prudent person can make the needed judgments of due proportion. Practical experience allows prudence to become increasingly capable of recognizing objective hierarchies of value among the mediatory basic goods, and of discerning

¹⁵³ *“Ordinem enim rationis necesse est ponere circa passiones, considerata repugnantia ipsarum ad rationem. Quae quidam potest esse dupliciter. Uno modo secundum quod passio impellit ad aliquid contrarium rationi, et sic necesse est quod passio reprimatur et ab hoc denominatur temperantia. Alio modo secundum quod passio retrahit ab eo quod ratio dictat, sicut timor pericularum vel laborum; et sic necesse est quod homo firmetur in eo quod est rationis ne recedat ab hoc denominatur fortitudo”* (“For the need of putting the rule of reason into our emotions rises from their resistance to reason. This is twofold. They may incite us to something against reason, and so need a curb, which we name *temperance*. Or they make us shirk a course of action dictated by reason, through fear of dangers or hardships. Then a person needs to be steadfast and not run away from what is right; and for this *courage* is named.”) Ibid., I-II q. 61 a. 2 (v. 23, pp. 120-121 (1969)).

¹⁵⁴ *“Cum enim omnis virtus sit habitus qui est principium boni actus, necesse est quod virtus definiatur per actum bonum circa propriam materiam virtutis. Est autem iustitia proprie circa ea quae ad alterum sunt, sicut circa propriam materiam virtutis. Est autem iustitia proprie circa ea quae ad alterum sunt, sicut circa propriam materiam . . .”* (“Since every virtue is a principle of good activity it has to be defined by that in a specific field of virtue. Now with respect to justice this is made up of deeds that harm another.”) Ibid., II-II q. 58 a. 1 (v. 37, pp. 20-21 (1975)).

the specific value of all singular things for realizing the good.¹⁵⁵ Through experience, prudence sharpens its ability for comparing past and present to predict future outcomes. In its assessments, prudence consults empirical fact, as well as practical and speculative sciences. In its judgments, it distinguishes the apparent from the real. Based on its knowledge of the requirements of the goods, the nature of the agent's faculties and powers, and the significance of external matter for successful action prudence guides all the other moral virtues in the agent's pursuit of happiness.

¹⁵⁵ *"Dicendum quod prudentia est circa contingentia operabilia . . . In his autem non potest homo dirigi per ea quae sunt simpliciter et ex necessitate vera, set ex his quae ut in pluribus accedunt. . . . et ex talibus talia concludere, ut dicitur in Ethic quid autem in pluribus sit verum oportet per experimentum considerare. Unde et philosophus dicit quod virtus intellectualis habet generationem et augmentum ex experimento et tempore. Experimentum autem est ex pluribus memoriis . . . unde consequens est quod ad prudentiam requiritur plurimum memoriam habere"* (Prudence... is engaged with contingent human doings. Here a person cannot be guided only by norms which are simply and of necessity true, he must also appreciate what happens in the majority of cases. Aristotle remarks that *like should be concluded from like*: . . . Now to know what is true in the majority of cases we just be empirical; Aristotle says that *intellectual virtue is produced and developed by time and experience*. Experience is stocked with memories . . . consequently recalling many facts is required for prudence.") Ibid. II-II q. 49 a. 1 (v. 36, pp. 60-63 (1973)); *"Nullus autem potest convenienter alteri aliquid applicare nisi utrumque cognoscat; scilicet et id quod applicandum est et id cui applicandum est operationis autem sunt in singularibus; et ideo necesse est quod prudens et cognoscat universalia principia rationis et cognoscat singularia circa quae sunt operationes . . . ad primum ergo dicendum quod ratio primo quidem principaliter et universalium; potest tamen universales rationes ad particularia applicare; unde syllogismorum conclusiones non solum sunt univerales, sed etiam particulares, quia intellectus per quamdam reflexionem se ad materiam extendit, ut dicitur in De Anima"* ("But how can one thing be applied to another unless both what to apply and what it is to be applied to is known? Now our actions deal with affairs which are individual. The prudent character, then must needs know both the general moral principles of reason and the individual situation in which human actions take place. . . . Here: 1. Though the human reason is occupied with universal ideas first and foremost, nevertheless it can apply them to particulars accordingly. The conclusions of proofs may be not only universal but particular as well because by a certain reflexion the human mind can stretch out to individual matter, as explained in the *De Anima*.") Ibid. q. 47 a. 3 (v. 36, pp. 12-13 (1973)) and *"[E]t quaedam sunt in ratione practica ut conclusiones, et huiusmodi sunt ea quae sunt ad finem, in quae pervenimus exipsis finibus. Et horum est prudentia, applicans universalia principia ad particulares conclusiones operabilium. Et ideo ad prudentiam non pertinet praestituere finem virtutibus moralibus set solam disponere de his quae sunt ad finem"* ("[I]n the practical reason . . . there are also judgments by way of conclusions about the things to be done for the sake of ends, arrived at in the light of those ends. It is about them that prudence is concerned, by applying general moral principles to particular conclusions regarding human conduct. And thus prudence does not merely establish the end of virtuous conduct, but also disposes of how the end is to be reached.") Ibid., II-II . 46 a. 6 (v. 36 pp. 22-23 (1973)).

The agent gradually acquires prudence by repeatedly choosing well, just as he gradually becomes imprudent by choosing badly. The tendency is for the agent's choices to become better and better, or worse and worse. By prudently proposing and executing action, his will become ever more perfectly inclined to the mediatory basic goods and their actualization. His inclinations become ever more perfectly ordered, so that he is able to place the highest value on fulfillment through the mediatory basic good of knowledge and among external objects, the highest value on God as an object of knowledge. The knowledge of God becomes the proximate means to his happiness. The second value, among his ends, becomes love or friendship. The love of God then comes next in the order of means to his happiness.¹⁵⁶ The faculties of the prudent agent operate with increasing harmony in cooperation with a will increasingly inclined to the last act of knowing and loving God as his mode of perfecting his being.¹⁵⁷

Where prudence is lacking, imprudence may take different forms. St. Thomas highlights one form of imprudence as the most vicious. When the agent substitutes some derivative benefit in the form of instrumental power or pleasure for virtuous good as the proximate means to happiness, his practical reason organizes all of its choices most efficiently to realize this good. Aquinas mentions fame, honor, money, power, bodily health,

¹⁵⁶ e.g., "*Deo nulles recte utitur, sed fruitur*" ("No one rightly uses God, but enjoys him.") Ibid., I-II q. 16 a. 3 (v. 27, pp. 174-77 (1974)).

¹⁵⁷ e.g., "*[F]inis dicitur dupliciter. Uno modo, ipsa res quam cupimus adimpisci . . . Alio modo, ipsa adeptio vel possessio, seu usus aut fruitio ejus rei quae desideratur*" ("[T]here are two sides to an end. One, the thing itself we long for. . . Two, the getting, holding, or effective attainment and enjoyment of it. . . As for the first, man's ultimate end is . . . God . . . As for the second, man's ultimate end is a creaturely reality in him, for what is it but his coming to God and his joy with God.") Ibid., I-II q. 3 a. 2 (v. 16, pp. 60-61 (1969)).

intellectual self-realization, and pleasure as possibilities, in this regard.¹⁵⁸ He terms this attitude “*prudentia carnis*.” It expresses itself in craft, guile and fraud.¹⁵⁹ The self-defeating character of this attitude is such that the more the agent fulfills his idea of happiness, the more incapable he becomes of attaining the peace of true happiness, since his actions thwart the innate inclinations of his nature.

c. Law as the Objective Norm of Justified Actions

Granting that prudence can attain happiness, it remains to explain what obligates the agent morally to seek it. For Aquinas, the ordinance of Divine Reason gives rise to obligation. He terms this ordinance natural law. The two justificatory concepts, which have already been expounded upon, happiness and prudence, figure indirectly in Aquinas’s concept of natural law. His concept of natural law, likewise, has a role in a fuller exposition of these two concepts. But, Aquinas’s concept of natural law adds a dimension to his justificatory vantage which cannot be explained on the presupposition alone of the teleological virtue ethics considered thus far. It moves Aquinas from concern with autonomy to heteronomy, from the rational mean to the real, from the “good” to the “right,” and from prudence to justice.

¹⁵⁸ “[I]lli qui peccant avertuntur ab eo in quo vere invenitur ratio ultimi finis: non autem ab ipsa ultimo finis intentione quam quaerunt falso in aliis reus . . . nam quidam appetunt divitas tanquam consummatum bonum, quidam autem voluptatem, quidam vero quodcumque aliud” (“When men sin they turn away from that in which the idea of the ultimate end is truly realized, not from the intention of reaching it, which mistakenly they seek elsewhere . . . [F]or some want riches, others a life of pleasure, others something else.”) Ibid., I-II, q. 1 a. 8 (v. 16, pp. 26-27 (1969)).

¹⁵⁹ “Et ideo prudentia carnis proprie dicitur secundum quod aliquis bona carnis habet ut ultimum finem suae vitae” (“Prudence of the flesh, then, is so named from a man’s holding that benefits to the flesh compose the final purpose of his life.”) Ibid., II-II q. 55 a. (v. 36 pp. 146-47 (1973)).

The mediatory basic good of friendship mediates the agent's happiness by its concept of union with other persons who, as free and reasonable beings, are capable of a reciprocal bond of respect and love. In friendship, each friend wills the good of the other as he wills it for himself.¹⁶⁰ To give a friend his due in this way, is justice. Justice is a basic requirement of friendship.¹⁶¹ Because the good of the friend is good in "common," and beyond the agent's capacity unilaterally to ordain,¹⁶² some rule or measure allocating shares between the parties is a means necessary to this end. Such a rule or measure can arise only through an authority acting with equal concern for both parties. Such an ordinance St. Thomas defines as "law."¹⁶³

¹⁶⁰ *"Similiter cum aliquis amat aliquem amore amicitiae, vult ei bonum sicut et sibi vult bonum: unde apprehendet eum ut alterum se in quantum scilicet vult ei bonum sicut et sibi ipsi"* ("When one has love-of-friendship for a person, one wants good things for him as one does for oneself; one therefore looks on him as another self, wishing him well in the same way as one does oneself.") Ibid., I-II q. 28 a. 1 (v. 19 pp. 90-91 (1967)).

¹⁶¹ *"Et ideo cum iustitia ordinetur ad alterum, non est circa totam materiam virtutis moralis, sed solum circa exteriores actiones et res, secundum quamdam rationem objecti specialem, prout scilicet secundum eas unus homo alteri coordinatur"* ("Since it is directed to others, justice consequently is not about the whole field of moral virtue, but only about external deeds and things, and these under a certain specific aspect, namely of the due coordination of one person with another.") Ibid., q. 58 a. 8 (v. 37, pp. 40-41 (1975)).

¹⁶² *"Ratio autem formalis omnium quae sunt ad finem attenditur ex parte fines, sicut ex supra scidicitis patet: et ideo necesse est quod ex relatione ad diversos fines diversificentur species habitus. Diversi autem fines sunt bonum proprium unus, et bonum familiae, et bonum civitatis et regni. Unde necesse est quod prudentiae differant specie secundum differentiam horum finium"* ("The significance in anything that is done for the sake of an end is looked at . . . in the light of that end. Hence from their being related to different ends active dispositions or virtues are rendered specifically distinct. Now the good of the individual, of the family, and of the state or nation are different sorts of ends. Consequently there must be a different sort of prudence corresponding to each.") Ibid., II-II, q. 47 a. 11 (v. 36, pp. 36-37 (1974)).

¹⁶³ *"Dicendum quod praecepta Decalogi sunt prima praecepta legis et quibus statim ratio naturalis assentit sicut manifestissimus principis manifestissime autem ratio debiti, quae requiritur ad praeceptum apparet in iustitia, quae est ad alterum. Quia in his quae sunt ad seipsum videtur primo aspectu quod homo sit sui dominus et quod liciat ei facere quodlibet sed in his quae sunt ad alterum manifeste apparet quod homo est alteri obligatus ad reddendum ei quod debet. Et ideo praecepta Decaloge oportuit ad iustitiam pertinere"* ("The Ten Commandments are the primary precepts in all law, and natural reason gives immediate assent to them as being plainly evident principles. Indebtedness, essential to the meaning of precept, is most clearly present in matters of justice, since justice has reference to another person. In matters of self-concern, it seems, at least on the face of it, that a man is autonomous and can do what he likes; but in matters involving other people it is evident that he is under obligation to render them whatever he owes them. For this reason, the Ten Commandments necessarily relate to justice.") Ibid., I-II q. 122 a. 2 (v. 41, pp. 292-93 (1972)).

In addition to the teleology of happiness and the virtue of prudence, the agent finds among the principles of practical reason the first precept of natural law, which expresses obligation: "*Hoc est ergo primum praeceptum legis, quod 'bonum est faciendum et prosequendum, et malum vitandum.'*"¹⁶⁴ The good cited as "*faciendum*" is the universal good, which is to say that the first precept of natural law requires that the good of all is to be done without respect of persons. Thus, Aquinas also sets out the first precept of natural law,

¹⁶⁴ "And so this is the first command of law, 'that good is to be sought and done, evil to be avoided.'" Ibid., I-II q. 94 a. 2 (v. 28, pp. 80-81 (1964)). This phrase is the first principle of Practical Reason which simultaneously provides fundamental direct both to Aquinas's five "basic" goods and his first principle of natural law. The first precept of natural law does not give rise to the other requirements of morality by way of derivation. It has rather "the status of being enshrined in all the other natural law principles, which they are . . . immediate conclusions . . . or conclusions . . . more remote." R.A. Armstrong, *Primary and Secondary Precepts in Thomistic Natural Law Teaching* (The Hague: Martinus Nijhoff, 1966).

In the context of article 2 of question 94 of the *prima secundae*, the fuller meaning of the first precept of natural law is understood as encompassing not just the good but the common good as God ordains it: "*Rursus cum omnis pars ordinetur ad totum sicut imperfectum ad perfectum, unus autem homo est pars communitatis perfectae, necesse est quod lex proprie respiciat ordinem ad felicitatem communem*" ("Again, since the subordination of part to whole is that of incomplete to rounded-off reality, and since a human individual man is part of the full life of the community it must needs be that law properly speaking deals with this subordination to a common happiness.") Ibid I-II q. 90 a. 2 (v. 28, pp. 10-11 (1964)). This point is borne out by the fact that the purpose of all the first precepts of the natural law are oriented to preserving the good of others. Aquinas states: "*[I]lla scilicet quae sunt prima et communia, quorum non oportet aliam editionem esse nisi quod sunt scripta in ratione naturale quasi per se nota, sicut quod nullis debet homo male facere.*" ("The primary and general which, being inscribed in natural reason as self-evident, need no further promulgation, such as that one should do evil to no one . . .") Ibid. I-II q. 3 (v. 29, pp. 64-65 (1969)); "*Dicendum quod, sicut supra dictum est, sicut praecepta legis humanae ordinant hominem ad communitatem humanam, ita praecepta legis divinae ordinant hominem ad quandam communitatem seu rempublicam hominum sub Deo. Ad hoc autem quod aliquis in aliqua communitate bene commoretur deo requiruntur. Quorum primum est ut bene se habeat ad alios communitatis socios et participes*" ("As stated above, just as the precepts of human law direct a man in regard to a kind of community, so those of the divine law direct him in regard to a kind of community or commonwealth of men under God. Now for the proper conduct of any community there are two requirements: the first is that each member should behave rightly towards its head; the second, that he should behave rightly to the rest of his fellows and partners in the community." Ibid., I-II q. 94 a. 2 (v. 28 pp. 78-81 (1964)); and, "*Praecepta autem decalogi continent ipsam intentionem legislatoris, scilicet Dei. Nam praecepta primae tabulae, quae ordinant ad Deum, continent ipsum ordinem ad bonum commune et finale, quod Deus est praecepta autem secundae tabulae continent ipsum ordinem iustitiae inter homines observandae, ut scilicet nulli fiat indebitum, et cuilibet reddatur debitum*" ("Now the precepts of the decalogue embody the actual intention of the lawgiver, God. For the precepts of the first table, which direct man to God, embody the order to the general and ultimate good, which is God; and those of the second table embody the order of justice to be observed between men namely that nothing undue be done to anyone, and that to each should be given his due.") Ibid., I-II q. 100 a. 8 (v. 29, pp. 90-91 (1969)).

as follows: “*homo est alteri obligatus ad reddendum ei quod debet.*”¹⁶⁵ This principle is a necessary means to friendship with God and neighbor alike. Both forms of friendship are essential to the agent’s happiness. God, as the First Cause of Reality, promulgates natural law.¹⁶⁶ Respect for natural law rectifies the agent’s will in the virtue of justice.¹⁶⁷

Prudence in its active matching of means and ends functions on an analogy with a “*architect.*”¹⁶⁸ Among its operations, prudence consults natural law to ascertain necessities

¹⁶⁵ “[H]omo est alteri obligatur ad reddendum ei quod debet” (“[H]e is under obligation to render to . . . [others] whatever he owes them.”) Ibid., II-II q. 122 a. 2 (v. 41 pp. 292-93 (1972)). For Aquinas, the concept of moral obligation is strictly speaking inconceivable except as a dimension of an interpersonal relationship. Thus, more fully, Aquinas states: “*Dicendum quod praecepta Decalogi sunt prima praecepta legis et quibus statim ratio naturalis assentit sicut manifestissimis principiis. Manifestissime autem ratio debiti, quae requiritur ad praeceptum, apparet in iustitia quae est ad alterum. Quia in his quae sunt ad seipsum videtur primo aspectu quod homo sit sui dominus et quod liceat ei facere quodlibet, sed in his quae sunt ad alterum manifeste apparet quod homo est alteri obligatus ad reddendum ei quod debet*” (“The Ten Commandments are the primary precepts in all law, and natural reason gives immediate assent to them as being plainly evident principles. Indebtedness, essential to the meaning of precept, is most clearly present in matters of justice, since justice has reference to another person. In matters of self-concern it seems, at least on the face of it, that a man is autonomous and can do what he likes; but in matters involving other people it is evident that he is under obligation to render to them whatever he owes them.”) Ibid., II-II, q. 122 a. 2 (v. 41, pp. 292-3 (1972)).

¹⁶⁶ “*Dicendum quod, sicut supra dictum est, nihil est aliud lex quam dictamen practicae rationis in principe qui gubernat aliquam communitatem perfectam. Manifestum est autem, supposito quod mundus divina providentia regatur ut in Primo habitum est quod tota communitas universi gubernatur ratione divina. Et ideo ipsa ratio gubernationis rerum in Deo sicut in principe universitatis existens legis habet rationem . . .*” (“As stated above, law is nothing but a dictate of practical reason issued by a sovereign who governs a complete community. Granted that the world is ruled by divine Providence, and this we have shown in the *Prima Pars*, it is evident that the whole community of the universe is governed by God’s mind. Therefore the ruling idea of things which exist in God as the effective sovereign of them all has the nature of law . . .”) Ibid., I-II q. 91 a. 1 (v. 18 pp. 28-20 (1966)); and “*et talis participatio legis aeternae in rationali creatura ‘lex naturalis’ dicitur.*” (“Now this sharing in the Eternal Law by intelligent creatures is what we call ‘natural law.’”) Ibid., I-II q. 99 a.2 (v. 28, pp. 22-23 (1964)).

For a critique of “those ethical theories within or without the Thomist tradition which claim that such an obligation can be derived from an analysis of human nature without God,” see Robert J. Roth, “Moral Obligation--With or Without God?” *The New Scholasticism* 59 (1985): 471-74, 472.

¹⁶⁷ “[J]ustitia est habitus secundum quem aliquis constanti et perpetua voluntate jus suum uni cuique tribuit.” (“[J]ustice is the habit whereby a person with a lasting and constant will renders to each his due.”) Ibid., II-II q. 58 a. 1. (v. 37 pp. 20-21 (1975)).

¹⁶⁸ “. . . [E]t in artificialibus etiam ratio artificialium actuum derivatur ab architect ore ad inferiores artifices qui manu operantur” (“. . . [A] thus also in architecture the master-plan of the building descends from the architect to the workmen.”) Ibid. I-II, q. 93 a. 3 (v. 28 pp. 58-59 (1966)); and “. . . [E]t quaedam sunt in ratione practica ut conclusiones, et huiusmodi sunt ea quae sunt ad finem, in quae pervenimus ex ipsis finibus. Et horum

and limits on the agent's freedom. In observing natural law's obligatory rule or measure, practical reason is receptive rather than active, akin to a "*inferiores artifices qui manu operantur*."¹⁶⁹ The agent accepts the natural law, in its first principle, on *authority*. In submitting to this authority, the will acknowledges the incompleteness of the ordinances practical reason as it functions autonomously. Practical reason, by its own internal process, cannot adequately envision universal happiness which is the necessary content of the agent's fulfillment, and, for this reason, the agent must defer to the authority of law. By accommodating the law encountered as self-evident precepts implanted by God, the agent honors a should which is prior to his own prudential considerations.¹⁷⁰

Aquinas's vantage overall synthesizes virtue and duty ethics and it does so without canceling or negating either.¹⁷¹ Starting from happiness as the first principle of practical

est prudentia applicans universalia principia ad particulares conclusiones operabilium" (" . . . "[T]here are also judgments by way of conclusions about the things to be done for the sake of ends, arrived at in the light of those ends. It is about them that prudence is concerned, by applying general moral principles to particular conclusions regarding human conduct.") Ibid., II-II q. 47 a. 6 (v. 36 pp. 22-23 (1974)).

¹⁶⁹ ("[W]orkmen.") Ibid., I-II q. 93 a. 3 (v. 28, pp. 58-59 (1966)).

¹⁷⁰ The law aims at the "*felicitem communem*," the "common happiness," and with respect to the individual, it "*.pars ordinetur ad totum sicut imperfectum ad perfectum, unus autem homo est pars communitatis perfectae*" (the "incomplete to the "rounded reality.") Ibid., I-II q. 90 a. 2. Walter Farrell, O.P., in his article, "The Roots of Obligation," *The Thomist* 1 (1939): 14-30, explains St. Thomas on obligation in this manner: "the moral agent is 'no more than a secondary cause acting under and in virtue of the first cause,' . . . God's intellect being the cause of the moral order, . . . and God implements his intention in this regard, with an analogy to the command of Practical Reason to the will, by commanding the agent as means to executing his intention . . . Thus, man's acting rightly is not merely prudentially advisable but obligatory because man's end is made absolutely necessary by God's command. What is prudential on the level of the superior intellect becomes a strict obligation on the level of the inferior one . . ."

¹⁷¹ Aquinas offers several formulations of the integral unity of his justificatory vantage as a whole: "*Est autem duplex debitum: unum quidem secundum regulam rationis*." ("Now duty is of two kinds: that which is determined by reason, and that which determined by a law.") Ibid., I-II q. 99 a. 5 (v. 29 pp. 48-49 (1969)); "*[I]n his vero quae aguntur per voluntatem, regula proxima est ratio humana; regula autem suprema est lex aeterna*" ("For activities which issue through will the proximate rule is the human reason, the paramount rule the Eternal Law.") Ibid., I-II q. 211 a. 1 (v. 18, pp. 106-107 (1966)); and "*Dicendum quod in omnibus causis ordinatis effectus plus dependet a causa prima quam a causa secunda, quia causa secunda non agit nisi in virtute prima causae. Quod autem ratio humana sit regula voluntatis humanae, ex qua ejus mensuretur, habet ex lege aeterna, quae est ratio divina*" ("In a directly casual series an effect depends more on the first cause than on a secondary cause, since the

reason, the agent comprehends choice and action as an opportunity for practical reason to play an active and creative role in attaining both virtue and happiness. In this quest, the agent discovers himself in self-transcending relationships, "for which" he is constituted. These include his relationship with God, as his First Cause and objective Last End; and his relationship with the human community, as the intrinsic finality of his natural inclination towards social identity.¹⁷² In the interpersonal dimension, the agent encounters a real, as opposed to merely rational mean of due choice. The real measure of "the common good" arises through the ontologically "higher" or "prior" ordinance of Eternal Reason participating in his practical reason. The adherence to the judgments of practical reason becomes a handicraft, conforming to the directiveness of God, architect of the universal good.¹⁷³

secondary does not act save in virtue of the first. That the human reason is the rule for acts of human will so that it measures their goodness because it derives from the Eternal Law which is the divine reason.") Ibid., I-II q. 19 a. 4 (v. 18 pp. 56-57 (1966)). Aquinas's moral vision cannot be entirely held within what is here considered his "justificatory vantage," since since it prescribes only actions, it cannot prescribe the virtues themselves: "*Et ista firmitus proprie pertinet ad habitum, ut scilicet aliquis ex habitu radicato operetur. Et quantum ad hoc, modus virtutis non cadit sub praecepto neque legis divinae neque legis humanae.*" ("This is what a habitual disposition really means, acting, that is, from ingrained habit. In this respect, the mode of virtuous action is outside both divine and human law.") Ibid., I-II q. 100 a. 9 (v. 29 pp. 96-97 (1969)).

¹⁷² "*Ad secundum decendum quod homo qui habet dominum sui actus, ipse etiam in quantum et alterius, scilicet communitatis cujus est pars meretur aliquid vel demeretur in quantum actus suos bene vel male disponit; sicut etiam si alia sua, de quibus communitati servire debet, bene vel male dispensat*" ("Although master of his own acts, a person still belongs to another namely the community of which he is a part; hence he should merit his deserts according as he conducts himself well or badly, just as he should according as he administers his property well or badly for in this also he should serve the community.") Ibid., I-II q. 21 a. 4 (v. 18, pp. 114-15 (1966)).

¹⁷³ "*Inter caetera autem rationalis creatura excellentiori quodam modo divinae providentiae subjacet, in quantum et ipsa fit providentiae particeps, sibi ipsi et aliis providens. Unde et in ipsa participatur ratio aeterna per quam habet naturalem inclinationem ad debitum actum et finem, et talis participatio legis aeternae in rationali creatura*" ("Among them intelligent creatures are ranked under divine providence the more nobly they take part in Providence by their own providing for themselves and others. Thus, they join in and make their own the Eternal Reason through which they have their natural aptitudes for their due activity and purpose. Now this sharing in the Eternal law by intelligent creatures is what we call 'natural law.'") Ibid., I-II q. 91 a. 2 (v. 28, pp. 22-23 (1966)); and "*Unde in omnibus gubernantibus idem videmus, quod ratio gubernationis a primo gubernante ad secundos derivatur, sicut ration eorum quae sunt agenda in civitate derivatur a rege per praeceptum in inferiores administratores ad inferiores artifices qui manu operantur*" ("We see the same with any governed system where power issues from an original principle to secondary principles, thus the execution of State policy descends by the sovereign's ordinance to subordinate administrators, and thus also in architecture the master-plan of the building descends from the architect to the workmen.") Ibid., I-II q. 93 a. 3 (v. 28, pp. 58-59 (1966)).

Of Aquinas's natural law and virtue ethics, his natural law ethics are the more comprehensive subsuming his virtue ethics, as subordinate element, and providing the overarching frame of his justificatory vantage. By God's authoritative ordinance, all of the agent's virtues advancing the apt pursuit of happiness become an obligation of justice to the community of the universe.¹⁷⁴ The agent *owes* his prudent judgment regarding his personal happiness to the whole community for its universal good.

Indirectly, the natural law makes all the virtues obligatory. Directly, its requirements call for the virtue of justice. Natural law requires that in each act, the means be arranged before God so that all other rational beings whose good is at stake also receive their due according to the real mean of justice.¹⁷⁵ Natural law expresses the requirement of justice in

¹⁷⁴ *“Ad secundum decendum quod homo qui habet dominum sui actus, ipse etiam in quantum et alterius, scilicet communitatis cuius est pars meretur aliquid vel demeretur in quantum actus suos bene vel male disponit; sicut etiam si alia sua, de quibus communitati servire debet, bene vel male dispensat”* (“Although master of his own acts, a person still belongs to another namely the community of which he is a part; hence he should merit his deserts according as he conducts himself well or badly, just as he should according as he administers his property well or badly for in this also he should serve the community.”) *Ibid.*, I-II q. 21 a. 4 (v. 18, pp. 114-15 (1966)).

¹⁷⁵ *“Sed materia iustitiae est exterior operatio, secundum quod ipsa vel res cuius est usus debitam proportionem habet ad aliam personam. Et ideo medium iustitiae consistit in quadam proportionis de qualitate rei exterioris ad personam exterioris ad personam exteriorem . . . ; unde iustitia habet medium rei. 1. Ad primum ergo dicendum quod hoc medium rei est etiam medium rationis”* (“The subject-matter of justice, however, is an external deed in so far as the doing or employing something is duly proportionate to another person. So therefore the mean of justice lies in a certain proportion matching or equalizing the external work to an external person . . . Therefore justice strikes a man in objective reality. Hence: 1. The objectively real mean of justice is also the mean of reason.”) *Ibid.*, II-II, q. 58 a. 10 (v. 37 pp. 46-47 (1975)).

the form of obligation conferring precepts or rules.¹⁷⁶ The greater number of natural law rules are specifications of the simple precept: *nulli nocumentum inferatur*.¹⁷⁷

St. Thomas's virtue ethics exclude intentional harm to self and others. The former is opposed to self-fulfillment, and the latter is opposed to the good of friendship. But, in either case, the avoidance of harm is not obligatory, but merely prudential. The first principle of natural law raises the avoidance of harm to another to the level of moral obligation.¹⁷⁸ The

¹⁷⁶ "*Dicendum quod praecepta Decalogi sunt prima praecepta legis et quibus . . . manifestissime autem ratio debiti, quae requiritur ad praeceptum, apparet in justitia, quae est ad alterum*" ("The Ten Commandments are the primary precepts in all law . . . Indebtedness, essential to the meaning of precept, is most clearly present in matters of justice, since justice has reference to another person.) *Ibid.*, II-II, q. 122 a. 1 (v. 41 pp. 292-93 (1972)); and "*Generaliter autem quantam ad omnes, ut nulli nocumentum inferatur, neque operate neque ore neque corde. Opere quidem inferatur nocumentum proximo, quandoque quidem in personam propriam, quantum ad consistentiam scilicet personae. Et hoc prohibetur per hoc quod dicitur, Non occides. Quandoque autem in personam conjunctum quantum ad propaationem prolis. Et hoc prohibetur cum dicitur, Non moechaberis. Quandoque autem in rem possessam, quae ordinatur, ad utrumque. Et quantum ad hoc dicitur, non furtem facies. Nocumentum autem oris prohibetur cum dicitur, Non loqueris contra proximum tuum falsum testimonium. Nocumentum autem cordis prohibetur cum dicitur, Non concupisces*" ("To all men in general he is obliged to refrain from doing harm whether by deed, word or thought. By deed, harm is done to another, either in his person - his personal existence - and this is prohibited by the command Thou shalt not kill. Or else in a person associated with him generation and this is prohibited by the command, *Thou shalt not commit adultery* or else in his possessions, which serve him in both these respects; and against this is the commandment, *Thou shalt not steal*. Injury by speech is forbidden by the command, *Thou shalt not bear false witness against thy neighbor*. Finally, injury by thought is forbidden by *Thou shalt not covet*.") *Ibid.*, I-II q. 11 a. 5 (v. 29 pp. 74-77 (1969)).

¹⁷⁷ ("Refrain from doing harm.") *Ibid.*, I-II q. 11 a. 5 (v. 29 pp. 74-75 (1969)).

¹⁷⁸ "*Manifestissime autem ratio debiti, quae requiritur ad praeceptum, apparet in justitia, quae est ad alterum. Quia in his quae sunt ad seipsum videtur primo aspectu quod homo sit sui dominus et quod liceat ei facere quodlibet, sed in his quae sunt ad alterum manifeste apparet quod homo est alteri obligatus ad reddendum ei quod debet. Et ideo praecepta Decalogi oportuit ad justitiam pertinere*" ("Indebtedness, essential to the meaning of precept, is most clearly present in matters of justice, since justice has reference to another person. In matters of self-concern it seems, at least on the face of it, that a man is autonomous and can do what he likes; but in matters involving other people it is evident that he is under obligation to render to them whatever he owes them. For this reason the Ten Commandments necessarily relate to justice.") *Ibid.*, II-II Q. 122 a. 1 (v. 41 pp. 292-93 (1972)); and "*Non ponuntur aliqua praecepta decalogi . . . ordinantia hominem ad seipsum.*" ([T]here is no precept of the decalogue about . . . man's relations towards himself.") See also "*Dicendum quod meritum et demeritum dicuntur in ordine ad retributionem, quae fit secundum justitiam. Retributio autem secundum justitiam fit alicui ex eo quod agit in profectum vel nocumentum alterius.*" ("We speak of merit and demerit in relation to the requital which is rendered according to justice to a person by reason of his having done something for another's benefit or hurt.") *Ibid.*, I-II q. 21 a. 3 (v. 18 pp. 112-113 (1966)).

last six of the Ten Commandments prohibit generic kinds of harm to others. But, the natural law does not prohibit harm to self as such:

*Manifestissime autem ratio debiti, quae requiritur ad praeceptum, apparet in iustitia, quae est ad alterum. Quia in his quae sunt ad seipsum videtur primo aspectu quod homo sit sui dominus et quod liceat ei facere quodlibet, sed in his quae sunt ad alterum manifeste apparet quod homo est alteri obligatus ad reddendum ei quod debet. Et ideo praecepta Decalogi oportuit ad iustitiam pertinere (emphasis added).*¹⁷⁹

Natural law prohibits the indirect harm to God, flowing from harm to self as creature of God.¹⁸⁰ The agent's adoption of any act disproportionate to virtue, for this reason, would not be only be a prudential error, it would violate a natural law obligation to God.

St. Thomas's natural law ethic encompasses a few positive duties. For example, it imposes a duty of social reciprocity with others. The agent has a duty to give compensation for benefits received.¹⁸¹ An instance of the latter duty is the duty of gratitude to God for the

¹⁷⁹ “[H]omo est alteri obligatur ad reddendum ei quod debet” (“[H]e is under obligation to render to . . . [others] whatever he owes them.”) Ibid., II-II q. 122 a. 2 (v. 41 pp. 292-93 (1972)). For Aquinas, the concept of moral obligation is strictly speaking inconceivable except as a dimension of an interpersonal relationship. Thus, more fully, Aquinas states: “*Dicendum quod praecepta Decalogi sunt prima praecepta legis et quibus statim ratio naturalis assentit sicut manifestissimis principiis. Manifestissime autem ratio debiti, quae requiritur ad praeceptum, apparet in iustitia quae est ad alterum. Quia in his quae sunt ad seipsum videtur primo aspectu quod homo sit sui dominus et quod liceat ei facere quodlibet, sed in his quae sunt ad alterum manifeste apparet quod homo est alteri obligatus ad reddendum ei quod debet*” (“The Ten Commandments are the primary precepts in all law, and natural reason gives immediate assent to them as being plainly evident principles. Indebtedness, essential to the meaning of precept, is most clearly present in matters of justice, since justice has reference to another person. In matters of self-concern it seems, at least on the face of it, that a man is autonomous and can do what he likes; but in matters involving other people it is evident that he is under obligation to render to them whatever he owes them.”) Ibid., II-II, q. 122 a. 2 (v. 41, pp. 292-3 (1972)).

¹⁸⁰ “[O]ccisio sui ipsius est peccatum . . . [p]er comparationem autem ad communitatem et ad Deum habet rationem peccati etiam per oppositionem ad iustitiam” (“[S]uicide is . . . a sin . . . against justice when considered in relation to the community and God.”) Ibid., II-II q. 64 a. 5 (v. 38 pp. 32-33 (1975)).

¹⁸¹ “*Intantum autem ad iustitiam voluntaria translatio pertinet in quantum voluntaria translatio pertinet in quantum est ibi aliquid de ratione debiti. Quod quidem contingit multipliciter. Uno modo quando qui transfert simpliciter rem suam in alterum pro recompensatione alterius rei, sicut accidit in venditione et emptione*” (“A voluntary transfer comes under justice in so far as it involves the notion of something due. This can enter in several ways. First, when somebody transfers what is in his in payment for something else, as happens in buying and selling. . . .”) Ibid., II-II q. 61 a. 3 (v. 37 pp. 96-97 (1975)).

debt of existence. The agent is obligated by justice to repay God for existence, a duty obviously exceeding his capacity. The agent fulfills this duty by worshiping God according to the virtue of Religion.¹⁸² The Natural law imposes a similar duty to honor one's parents, the proximate cause of one's coming to be.¹⁸³

Beyond these few obligations, the positive duties of the natural law remain open-ended or defeasible, akin to the aspirational goals of St. Thomas's virtue ethics.¹⁸⁴ Even the obligation to procreate, based on natural law, is defeasible in the individual case, because it is incumbent only on the community as a whole.¹⁸⁵ The natural law makes it obligatory that the agent seek his own happiness and virtue, in accord with the aspirational standards of St. Thomas's teleological-virtue ethic, without enjoining any particular steps to these ends.

The agent experiences of natural law obligation as the ordinance of another. He feels it limits his autonomy, an ought transcending his own rational ordination. He knows himself

¹⁸² "*Cum ergo ad religionem pertineat reddere honorem debitum alicui, scilicet Deo, manifestum est quod religio virtus est*" ("Clearly, then, religion is a virtue because it pays the debt of honour to God.") Ibid., II-II q. 81 a. 22 (v. 39 pp. 16-17 (1964)).

¹⁸³ "*Debitum autem filii ad patrem adeo est manifestum quod nulla tergiversatione potest negare: eo quod pater est principium generationis et esse, et insuper educationis et doctrinae. Et ideo non ponitur sub praecepto decalogi vel obsequium alicui impendatur nisi parentibus*" ("Now a son's debt to his father is so obvious that it cannot possibly be evaded, since from the father comes his very existence, as well as his upbringing and education; and so the decalogue does not prescribe any service to be rendered to anyone other than to parents") Ibid., I-II, q. 100 a. 6 (v. 29, pp. 78-79 (1969)).

¹⁸⁴ "*Lex est directiva actuum qui conveniunt subjectis gubernationi alicujus; unde nullus, proprie loquendo suis actibus legem imponit*" ("[L]aw is the directive of actions on the part of subjects who are governed. Hence, strictly speaking, nobody imposes a law on himself.") Ibid., I-II q. 93 a. 5 (v. 28 pp. 64-67 (1966)).

¹⁸⁵ "*Et ideo sufficienter providetur humanae multitudini, si quidam carnali generationi operam dent; quidam vero ab hac abstinentes, contemplationi divinarum vacent ad totius humani generis pulchritudinem et salutem*" ("Whereas the command to be fruitful falls on the people as a whole. . . The human family is sufficiently provided for and some undertake the responsibility of bodily generation, while others are free in order to devote themselves to the study of divine things, for the health and beauty of our race.") II-II q. 152 a. 2 (v. 43, pp. 174-75 (1968)).

to be subject to the truth that God made him not for himself alone, but for others. He understands his own practical reason to be subordinate to the prevenient ordinance of Eternal Wisdom. Thus, Practical Reason knows its own first principle as a mark of belonging to others and of self-transcendence. It knows its last end to be the unfathomable God. Thus, obligation is an experience of participation in the cosmic pattern of *exitus–reditus* stressed throughout the *Summa*, and as such, it stands in tension with the autonomous quest of happiness at the heart of Aquinas’s virtue ethics. Aquinas resolves this tension by obligating the agent to seek his happiness, according to the universal common good. He requires the agent to submit himself to God’s inscrutable providence, even though Providence may bring his particular temporal good to naught. Thus, natural law obligation does more than orient the agent to principles of reason. It places the agent at the disposal of Providence by establishing the agent’s limits for advancing his particular good.¹⁸⁶

In the order of reason, the violation of natural law represents a choice to disregard self-evident principles. It manifests a flaw in thinking, and it contradicts the will’s innate inclination to true happiness. The evil choice disregards what reason discloses. The agent’s willful selectivity compromises his capacity to attain the universal whole of goodness. The

¹⁸⁶ “*Bonum autem totius universi est id quod est apprehensum a Deo, qui est universi factor et gubernator. Unde quidquid vult Deus, vult sub ratione boni communis, quod est sua bonitas, quae est bonum totius universi. Apprehensio autem creaturae secundum suam naturam est alicujus boni particularis proportionati suae naturae. Contingit aliquid esse bonum secundum rationem particularem quod non est bonum secundum rationem universalem . . . Non est autem recta voluntas alicujus hominis volentis aliquod bonum particulare, nisi referat illud in bonum commune sicut in finem*” (“What God has in mind is the good of the whole universe, since he is its maker and governor; hence whatever he wills is in the light of the common good, that is, his own goodness, which is the good of the whole universe. What naturally the creature has in mind is some particular good proportionate to its sort of being. Now it may well happen that something may be good according to a particular judgment which is not good according to a wider judgment. . . . However it is not right for a person to will a particular good unless he refers it to the common good as to its end.”) *Ibid.* I-II, q. 19 a. 10 (v. 18, pp. 80-81 (1966)).

bad choice tends to make the agent's faculties and powers inapt for attaining their respective forms of fulfillment.

In the order of real relations, the violation of Natural Law has a second meaning: It is a choice against the First Cause of one's own being. It is to contradict, not just one's reason, but one's transcendent personal ground. It is an act of ingratitude. Its real consequence is demerit with the Author of one's creation, who also is one's Last Judge. Divine retribution, eternal punishment, awaits as redress.¹⁸⁷

d. Supernatural Justification and the State of Grace

In Aquinas's scheme, the justificatory vantage, thus far considered, establishes the normative status of any act.¹⁸⁸ At a more inclusive level, St. Thomas integrates conclusions drawn from this vantage into a larger pattern including a supernatural destiny of the person.¹⁸⁹ By divine gift or grace, justification means more than the aptness of the will for created happiness. A good will is also a condition to the indwelling of the soul of Divine Charity.

¹⁸⁷ *"Est autem Deus gubernator et rector totius universi, sicut in Primo habitum est, et specialiter rationalium creaturarum. Unde manifestum est quod actus humani habent rationem meriti vel demeriti per comparationem ad ipsum; alioquin sequeretur quod Deus non haberet curam de actibus de actibus humanis"* ("God is the governor and ruler of the whole universe, as we have shown in the Prima Pars, and especially of the world of intelligent creatures. Therefore it is clear that human actions will meet their reward and deserts from him; otherwise it would follow that he exercised no care over them.") Ibid., I-II, q. 21 a. 4 (v. 18, pp. 116-119 (1966)).

¹⁸⁸ *"Praecepta vero moralis . . . continebant id quod erat secundum se justum vel in generali, vel etiam in speciali. Sed moralia praecepta continebant id quod est secundum justitiam generalem quae est omnis virtus, ut dicitur"* ("The moral . . . precepts, however, contained what was in itself just both in general and in detail. The moral precepts contained what is in itself just according to that general justice which is every virtue.") Ibid., I-II, q. 100 a. 112 (v. 29, pp. 110-111 (1969)).

¹⁸⁹ *"Vita autem aeterna est finis excedens proportionem naturae humanae, ut ex supra dictis patet, et ideo homo per sua naturalia non potest producere opera meritoria proportionata vitae aeternae; sed ad hoc exigitur altior virtus, quae est virtus gratiae"* ("Now eternal life is an end which lies beyond the proportionate scope of human nature, as appears from what was said above. And so by his natural endowments man cannot produce meritorious works proportionate to eternal life, but a higher power is needed for this which is the power of grace. And so man cannot merit eternal life without grace.") Ibid., I-II q. 109 a. 6 (v. 30, pp. 86-87 (1972)).

The observance of the precepts of natural law disposes the agent's soul to receive this gift.

Thus, St. Thomas uses "justification" to signify the possession of Divine Charity.¹⁹⁰

The "justified" character of a choice, attitude or action within the justificatory vantage just recounted, disposes but does not entitle the agent to the indwelling of divine charity. The pattern within created reality, by which the possessor of proportionate "lower" forms of good disposes the agent to participate in "higher" ones recurs in the pattern within the relationship between the order of reason and the order of supernatural charity. Due order on the first level disposes the agent to receive the supernatural gift, without implying any entitlement to fulfillment at the higher level.¹⁹¹

Through moral action, the agent finds true happiness in knowing and loving God, as the First Cause of all that is. In a beatific vision after death, he is graced with knowing and loving God's Essence, and obtains thereby, a fulfillment commensurate with his unbounded appetite for the truth.¹⁹² Anticipating this end state, the agent may seek in charity, the

¹⁹⁰ "*Sed si loquamur de justificatione proprie dicta, . . . [J]ustitia autem, sicut et aliae virtutes potest accipi et acquisita et infusa, ut ex supra dictis patet. Acquisita quidem causatur ex peribus: sed infusa causatur ab ipso Deo per ejus gratiam*" ("If, however, we take justification in the strict sense, justice, like the other virtues, may be acquired or infused, as we have seen the acquired virtue is caused by man's acts, the infused comes from God himself through grace.") Ibid., I-II, q. 100 a. 12 (v. 29 q. 108-109 (1969)).

¹⁹¹ "*[P]raecepta moralia omnino in nova lege remanere debebant quia secundum se pertinent ad rationem virtutis*" ("The entire body of moral precepts had to remain in the New Law, because they are intrinsically implied in virtuous action.") Ibid., I-II, q. 108 a. 3 (v. 30, pp. 56-57 (1972)).

¹⁹² "*Dicendum quod ultima et perfecta beatitudo non potest esse nisi in visione divinae essentiae. Ad cujus evidentiam, deo considerata sunt Primo quidem quod homo non est perfecte beatus quandium restat sibi aliquid desiderandum et quaerendum. Secundum est, quod unius cujusque potentiae perfectio attenditur secundum rationem sui objecti. Objectum autem intellectus est quod quid est, idest essentia rei . . . Unde intantum procedit perfectio intellectus inquantum cognoscit essentiam alicujus rei. . . Et sic perfectionem suam habebit per unionem ad Deum sicut ad objectum, in quo solo beatitudo hominis consistit, ut supra dictum est*" ("There can be no complete and final happiness for us save in the vision of God. The evidence? Consider first, that man is not perfectly happy so long as something remains for him to desire and seek; and secondly, that a power's full development comes only from its shaping object. Now . . . the object of mind is what really is that is the essence

universal good of all.¹⁹³ Charity completes the agent's being more perfectly than could prudence or justice alone. It supplies the agent with self-sacrificing counsels of perfection. Divine Charity infuses the agent's intellect and will with virtue exceeding the measure of the cardinal virtues. His attitude becomes one of faith and hope in an ultimate fulfillment transcending unaided reason.¹⁹⁴ Mysteriously, human choice and action in conformity to natural law, in St. Thomas's view, both is, and is not, the means by which the moral agent reaches his last End. St. Thomas considers a morally upright will a condition of the Beatific Vision, and yet, both this moral uprightness and God's ultimate self-disclosure in the Beatific Vision given in response, depend upon grace.

of a thing. And so the mind's expansion into perfection is proportionate to its possession of what really is . . . And so it will have its fulfillment by union with God as its object, for we have already explained that in him alone our happiness lies.") Ibid., I-II q. 3 a. 8 (v. 16, pp. 84-85 (1969)).

¹⁹³ "*Sed quod absque articulo necessitatis homo etiam hoc actu impleat ut diligat inimicum propter Deum, hoc pertinet ad perfectionem caritatis. Cum enim ex caritate diligatur proximus propter Deum, quanto aliquis magis diligit Deum, tanto etiam magis ad proximum dilectionem ostendit, nulla inimicitia impediante*" ("But, apart from the case of necessity, to do this actually and to love one's enemy for God's sake, belongs rather to the perfection of charity. For since charity makes us love our neighbour for God's sake, the more we love God, the more love we show our neighbour in spite of his dislike for us." Ibid. II-II, q. 25 a. 1 8 (v. 34 pp. 104-105 (1975)).

¹⁹⁴ "*Unde ad hoc quod homo perveniat ad perfectam visionem beatitudinis praeexigitur quod credat Deo tanquam discipulus magistro docenti.*" ("Thus in order that a person come to the full, beatific vision, the first requisite is that he believe God, as a learner believing the master teaching him.") Ibid., II-II q. 2 a. 4 (v. 31 pp. 73-75 (1974)), and "*Objectum autem spei est uno modo beatitudo aeterna, et alio modo divinum auxilium*" ("Now the object of hope is eternal beatitude, and in a somewhat distinct way, the divine assistance." Ibid., II-II q. 17 a. 7 (v. 33 pp. 22-23 (1966))); "*Sed in statu naturae corruptae quantum ad duo, scilicet ut sanetur, et ulterius ut bonum supernaturalis virtutis operetur, quod est meritorium. Ulterius autem in utroque statu indiget homo auxilio divino, ut ab ipso moveatur ad bene agendum*" ("But in the state of spoiled nature he needs [grace] in two respects, namely, in order to be healed, and further that he may perform the good proper to supernatural capacity, which is meritorious. Furthermore, in both states [spoiled and unspoiled] man needs divine assistance so as to be moved by it to act well.") Ibid., I-II q. 109 a. 2 (v. 30 pp. 74-77 (1971)); and "*Sed in statu naturae corruptae homo ad hoc deficit secundum appetitum voluntatis rationalis, quae propter corruptionem naturae sequitur bonum privatum, nisi sanetur per gratiam Dei*" ("But in the state of spoiled nature man falls short of this in the desire of his rational will, which because of the spoiling of nature pursues a private good unless it is healed by God's grace.") Ibid., I-II q. 109 a. 3 (v. 30, pp. 78-79 (1972)).

2. Aquinas's Moral Methodology

From within his moral vantage, Aquinas applies “determinate methodological steps” to establish “the rational or moral necessity” of choices, attitudes and actions.¹⁹⁵ He holds every voluntary act to be demonstrably either morally good or evil.¹⁹⁶ Natural law makes avoidance of evil obligatory, and as an exceptional matter, it also requires the attainment of good.

Aquinas's moral methodology aims at showing when a given omission is morally prohibited, or a commission morally required. Beginning with the first principle of natural law, which can be phrased, “*bonum est faciendum et prosequendum, et malum vitandum,*” or “*suum uni cuique tribuit,*”¹⁹⁷ Aquinas moves to a concrete judgment about the existence of obligation in three methodological steps. He: a) offers a description of an objective relationship of justice defined as the due one person owes another, according to their respective ontological status; b) formulates a precept setting out a concrete omission or commission that one party to the relationship owes the other; and c) assesses the concrete act for whether it violates the precept.

¹⁹⁵ “*Cum enim rationes sit ordinare, actus a ratione deliberativa procedens, si non sit ad debitum finem ordinatus, ex hoc ipso repugnat rationi et habet rationem mali; si vero ordinetur ad debitum finem, convenit cum ordine rationi, unde habet rationem boni. Necessesse est autem quod vel ordinetur vel non ordinetur ad debitum finem . . .*” (For since it is the office of reason to control, if an act issuing from deliberate reason is not shaped by due purpose it will be against reason, and so will have the character of evil, while if it is so shaped it will accord with reasonable order and have the character of good. A human act is bound to be one or the other, that is either having or not having this direction towards a fitting end.”) Ibid., I-II q. 18 a. 9 (v. 18 pp. 36-37 (1966)).

¹⁹⁶ “*Quonodcumque ergo actus hominis procedit in finem secundum ordinem rationes et legis aeternae tunc actus est rectus; quando autem a hac rectitudine obliquatur tunc dicitur peccatum*” (“Whenever, therefore, a human act goes out to an end according to the order of reason and of the Eternal Law, then it is right, but when it goes away then it is termed a sin.”) Ibid., I-II q. 21 a. 1 (v. 18 pp.106-107 (1966)).”

¹⁹⁷ (“[G]ood is to be sought and done, evil to be avoided.”) Ibid., I-II q. 94 a. 2 (v. 28 pp. 80-81 (1966)); and “[T]o render to . . . [others] whatever . . . [one] owes them.”) Ibid., II-II q. 122 a. 2 (v. 41pp. 292-93 (1972)).

a. Objective Relationships of Justice

Obligation, for St. Thomas, arises *only* in relation *to another*. He asserts: *quia in his quae sunt ad seipsum videtur primo aspectu quod homo sit sui dominus et quod liceat ei facere quodlibet, sed in his quae sunt ad alterum manifeste apparet quod homo est alteri obligatus ad reddendum ei quod debet.*¹⁹⁸ St Thomas reiterates this idea in his explanation of retribution “[L]icet non debeat ei retributio in quantum est bonum vel malum singularis personae, quae est eadem agenti, nisi forte a seipso secundum quamdam similitudinem prout est justitia hominii ad seipsum,” but only “. . . [c]um vero aliquis agit quod in bonum proprium vel malum vergit, etiam debetur ei retributio, in quantum etiam hoc vergit in commune, secundum quod ipse est pars collegii.”¹⁹⁹ Thus, the good Aquinas considers one *obligated* to do is always the *common* good, the good in relationship to others.²⁰⁰ Aquinas observes that it is for this reason that the Decalogue is in two tables, according to the two kinds of relationships.

Prior to formulating natural law precepts, one must stipulate the nature of the relationship the precept governs. In St. Thomas’s view, there are three generic kinds of relations of justice: relationships between individuals; between an individual and the

¹⁹⁸ (“In matters of self-concern it seems, at least on the face of it, that a man is autonomous and can do what he likes; but in matters involving other people it is evident that he is under obligation to render them whatever he owes them.”) Ibid., II-II, q. 122 a. 2 (v. 41, pp. 292-3 (1972)).

¹⁹⁹ (“Even when what he does is for his own good or evil, he still deserves requital, since his deeds involve the common interest in so far as he is part of the community – although if you consider the individual in isolation no return of justice is due for what he does to himself, except perhaps by a figure of speech as when we talk of a man being fair to himself.”) Ibid., I-II q. 21 a. 4. (v. 18 pp. 1114-15 (1966)).

²⁰⁰ “[T]emperantia est circa concupiscentias naturales cibi et potus, et venereorum, quae quidem ordinantur ad bonum commune naturae, sicut et alia legalia ordinantur ad bonum commune morale” (“[T]emperance is engaged with the natural desires food, drink, and sex, all of which subserve the common good of nature, as do all matters of law ordered to the common moral good.”) *ibid.*, I-II q. 94 a. 3 ad 1. (v. 28 pp. 84-85 (1966)).

community; or between the community and the individual. Aquinas terms these three sorts of relationships, as relationships of: 1) commutative justice; 2) legal justice; and 3) distributive justice, respectively.

1) Relationships of Commutative Justice

Aquinas asserts that the relationship between any two people is a relationship of commutative justice. This relationship is one of a duty of mutual respect. The measure of respect is ordinarily one of equality. Each person is due the other's respect for the *suum*. Precepts of natural law prescribe this due, which is the common good of the parties. Aquinas observes that one can state the first principle of natural law, as “[d]iliges proximum tuum sicut seipsum” and “nulli nocumentum inferatur.”²⁰¹ The underlying assumption is the equality of moral agents. In the generic relationship of commutative justice, the measure of equality is simple: each person counts for one. In other relationships, the assumption is one of ontological inequality. The agent is to respect the greater dignity of his better.

Commutative justice calls for respect for all that belongs to another. As a matter of natural justice, each person owns his life, bodily integrity and security, his freedom of movement, and his reputation. As a matter of convention, he owns property under whatever contingent set of arrangements concerning property the community has made. He is owed respect as well, for the expectations arising under agreements.

²⁰¹ “*Et ideo tota lex impletur in hoc uno mandato, Diliges proximum tuum sicut seipsum*” (“For this reason the whole of the law is summed up in this single commandment, *Thou shalt love thy neighbor as thyself.*”) I-II q. 99 a. 1 ad 2. (v. 29 pp. 32-33 (1969)); and “*Generaliter autem, quantum ad omnes, ut nulli nocumentum inferatur, neque opere neque ore neque corde*” (“To all men in general he is obliged to refrain from doing harm, whether by deed, word or thought.”) *ibid.* I-II q. 100 a. 5 (v. 29 pp. 74-75 (1969)).

Between ontologically unequals, commutative justice requires that the better party be accorded greater respect. Such relationships may entail the debt of the inferior to the superior. Thus, the agent's relationship to God is one of indebtedness of creature to Creator. The respectful attitude required is that of religion. The agent relating to mother and father is one of indebtedness of a child to his parent. The required attitude of respect is piety. The agent's relationship to a person of superior virtue is one of lesser to greater personal worthiness. The attitude of respect required calls for observance.

2) Relationships of Legal Justice

The agent also has a duty to the community in commutative justice. St. Thomas terms this duty legal justice. This relationship arises between the agent, considered as part of the community, and the community as the entirety. In this relationship, the community is "due" the complete rectitude of the agent's will. The agent has an obligation to make all of

his choices morally good, and to cultivate every virtue “for the sake of the community.”²⁰²

The agent also owes the community obedience to its laws, where they are just.²⁰³

3) Relationships of Distributive Justice

For its part, the community has an obligation to give its members their due in its distribution of benefits. St. Thomas terms this obligation distributive justice. He considers the obligation to be one of *prima facie* equality of treatment. This equality is “geometric” rather than arithmetical however, since it allows departures from strict equality in proportion

²⁰² “*Rursus cum omnis pars ordinetur ad totum sicut imperfectum ad perfectum, unus autem homo est pars communitatis perfectae necesse est quod lex propriis respiciat ordinem ad felicitatem communem*” (“Again, since the subordination of part to whole is that of incomplete to rounded-off reality, and since a human individual man is part of the full life of the community, it must needs be that law properly speaking deals with this subordination to a common happiness.”) *Ibid.*, I-II q. 90 a. 2 (v. 28 pp. 10-11 (1966)); and “*Est autem considerandum quod unusquisque in aliqua societate vivens est aliquo modo pars et membrum totius societatis. Quicumque ergo agit aliquid in bonum vel malum alicujus in societate existentis, hoc redundat in totam societatem; sicut qui laedit manum per consequens laedit hominem. Cum ergo aliquis agit in bonum vel malum alterius singularis personae, cadet ibi dupliciter ratio meriti vel demeriti. Uno modo secundum quod debetur ei retributio singulari persona, quam juvat vel offendat. Alio modo, secundum quod debetur ei retributio a toto collegio*” (“Consider how each person living in a community is in a way a part or member of the whole group. The helping or harming of anybody in the community therefore extends to the whole; it is like hurting a hand and consequently hurting a man. Now when you act for the good or bad of another individual person merit or demerit comes into the case on two counts. First, a return is owing from the individual person who has been helped or harmed. Second, from the whole community.”) *Ibid.*, I-II q. 21 a. 4 (v. 18 pp. 114-115 (1966)); and “[*S]ecundum hoc ergo bonum cujuslibet virtutis, sive ordinantis aliquem hominem ad seipsum sive ordinantis ipsum ad aliquas alias personas singulares, est referibile ad bonum commune, ad quod ordinat justitia*” (“Accordingly the value in each and every virtue, whether it composes a man in himself or whether it disposes him in relation to others, may be referred to the common good, to which justice orders us.”) *Ibid.* II-II q. 58 a 6 (v. 37 pp.32-33 (1975)).

²⁰³ “*Et secundum hoc legis hujusmodi onera proportionaliter inferentes, justae sunt, et obligant in foro conscientiae, et sunt leges legales*” (“Accordingly laws which apportion in due measure the burdens of responsibility are just, legitimate, and oblige at the bar of conscience.”) *Ibid.*, I-II q. 96 a. 4 (v. 28 pp. 130-131 (1966)).

to legitimate criteria of merit.²⁰⁴ Human laws are to be evaluated for their distributive justice. Laws failing this evaluation are not truly laws but “*injustiae*”²⁰⁵

b. The Formulation of Precepts

In Aquinas’s view, the mind gives the statement of obligation the form of an authoritative precept or rule. The rule sets out a command or prohibition concerning what is to be done or to be avoided, as due another.²⁰⁶ To translate general natural law principles into precepts, the agent must specify each of the following: the person whose good is at risk; a description of the good; and a description of the action or forbearance needed, if the good is to be accomplished or harm is to be avoided. The agent specifies the person whose good is at stake according to his ontological status.

²⁰⁴ “[S]i loquamur de justitia legali, manifestum est quod ipsa est praeclarior inter omnes virtutes morales in quantum bonum commune praeminet bono singulari unius personae” (“If we speak of legal justice, it is evident that it stands foremost among all the moral virtues, for as much as the common good transcends the individual good of one person.”) Ibid., II-II q. 58 a. 12 (v. 37 pp. 50-53 (1975)).

²⁰⁵ “[O]utrages,” as in, “*Injustae autem sunt leges . . . etiam ex forma, puta cum inaequaliter onera multitudini dispensantur, etiamsi ordinentur ad bonum commune et hujusmodi magis sunt violentiae quam leges*” (“Laws are unjust . . . , from their form, when, although meant for the common good, laws are inequitably dispensed. These are outrages rather than laws. . . .”) Ibid., I-II q. 96 a. 4 (v. 28 pp. 130-31 (1966)).

²⁰⁶ “*Dicendum quod praeceptum legis cum sit obligatorium, est de aliquo quod fieri debet. Quod autem aliquid debeat fieri, hoc prevenit ex necessitate alicujus finis*” (“a legal precept has binding force, and therefore it has as its subject something that must be done. Now the reason for something having to be done is that it is necessary for the attainment of some end.”) Ibid., I-II q. 99 a. 1 (v. 29 pp. 32-33 (1969)); “[M]anifestissime autem ratio debiti, quae requiritur ad praeceptum apparet in justitia, quae est ad alterum” (“Indebtedness, essential to the meaning of precept, is most clearly present in matters of justice, since justice has reference to another person.”) *ibid.*, II-II q. 122 a. 2 (v. 41 pp. 292-293 (1972)); and “*Sed peccatum proprie consistet in actu qui agitur propter finem aliquem, cum non habet debitum ordinem ad finem illum. Debitus autem ordo ad finem secundum aliquam regulam mensuratur . . . In his vero quae aguntur per voluntatem, regula proxima est ratio humana; regula autem suprema est lex aeterna*” (“. . . A sin properly speaking, consists in an activity done for some end but lacking the due order to it. This is measured by some rule For activities which issue through will the proximate rule is the human reason, the paramount rule the Eternal Law.”) Ibid., I-II q. 21 a. 1 (v. 18 pp. 106-107 (1966)). See generally R.A. Armstrong, *Primary and Secondary Precepts in Thomistic Natural Law Teaching*, (The Hague: Martinus Nijhoff, 1966) 113-114, and Walter Farrell, O.P., “The Roots of Obligation,” *The Thomist* 1 (1939): 14-30. As Farrell observes, “precept implies obligation,” 15.

At the level of its primary precepts, i.e. the Ten Commandments, the natural law takes its form of general injunctions and gains the asset of the mind “*modica consideratione*.”²⁰⁷ At the level of secondary precepts, the agent may formulate the natural law with increasing specificity--more precisely stipulating the kinds of good at stake, the status of the person to be respected, and the nature of the act or forbearance required or detrimental. St. Thomas cautions, however that the more specific the precept the more uncertain is its scope of application.²⁰⁸

c. The Evaluation of Particular Actions

The precepts of natural law measure the morality of human acts. The structure of human choice necessitates that the morality of an act be tested according to three of its individual aspects: a) the external act defined by its object; b) the act's interior end; and c) the act's other circumstances.²⁰⁹

²⁰⁷ “*Hujusmodi vero sunt illa quae statim ex principiis communibus primis cognosci possunt modica consideratione*” (“They are such as can be known straightway from first general principles with but little reflection . . .”) Ibid., I-II q. 100 a. 3 (v. 29, pp. 64-65 (1969)).

²⁰⁸ “*Sed ratio practica negotiatur circa contingentia, in quibus sunt operationes humanae; et ideo, si in communibus sit aliqua necessitatis, quanto magis ad propria descenditur tanto magis invenitur defectus*” (“[W]hereas the business of the practical reason is with contingent matters which are the domain of human acts although there is some necessity in general principles the more we get down to particular cases the more we can be mistaken.) Ibid., I-I q. 94 (v. 28 pp. 86-87 (1966)).

²⁰⁹ “*Sic igitur in actione humana bonitas quadruplex considerari potest in una quidem secundum genus, prout scilicet est actio, quia quantum habet de actione et entitate, tantum habet de bonitate, ut dictum est, alia vero secundum speciem, quae accipitur secundum objectum conveniens; tertiam secundum circumstantias quasi secundum accidentiam quaedam; quarta autem secundem finem, quasi secundum habitudinem ad bonitatis causam*” (“Accordingly in a human act we can observe a fourfold worth. The first is generic, namely its real quality as an action, for, as already remarked, to the extent that it has active reality to that extent it has good. The second is specific, and this is taken from its being directed to a proper objective. The third is according to its circumstances, which are as it were its properties. The fourth is according to its end, in other words by its bearing on the ultimate cause of goodness.”) Ibid. I-II q. 18 a. 4 (v. 18 pp. 16-19 (1966)) and “*Non tamen est actio bona simpliciter, nisi omnes bonitates concurrant, quia quilibet singularis defectus causat malum, bonum autem causatur ex integra causa.*” (However unless it gathers in all these values an action is not good simply speaking, for . . . each single defect causes evil, whereas complete integrity is required for good.”) Ibid., I-II q. 18 a. 4 (v. 18 pp.

(1) The Evaluation of the External Act

St. Thomas holds that the human act cannot be considered moral unless its external object is moral.²¹⁰ The interior intention may be harmless, but if the object of the external act is evil, the act is evil. Foreseeable beneficial consequences do not alter this judgment. St. Thomas defines the external act as "*materia circa quam*," its object being the "*quodammodo rationem formae, in quantum dat speciem*," standing "*sic comparatur ad voluntatem ut terminus et finis*."²¹¹ In any given case, the object of the external act may be found due or suitable, or the contrary, depending on whether it is duly ordered to the basic mediatory good it implicates. If it violates even one precept of the natural law, it is not so ordered.

The majority of natural law precepts exist to prohibit acts from harming the good of another. The good harmed may be at the level of nature or animal existence. The mere natural faculty or power being used for some other reason, always implicates an intrinsic end. Such is the case of the venereal power which may be used for pleasure, but which of necessity also implicates the good of procreation. The good is harmed if the agent acts in such a manner as to contradict the powers ordained to that good. For example, natural law prohibits

18-19(1966)).

²¹⁰ "*Sed non sufficit ad hoc quod actus exterior sit bonus bonitate voluntatis, quae est ex intentione finis. Sed si voluntas sit mala sive ex intentione finis sive ex actu voluto, consequens est actum exteriorem esse malum*" ("For the exterior act to be good it is not enough for the will to be good merely because of the end it intends; the will may be bad either from the end intended or from the objective willed, and then the result will be a bad outward deed.") I-II q. 120 a. 2 (v. 18 pp. 88-89 (1966)).

²¹¹ ("[T]he material with which it deals,"; and "it takes on the role of form in that it gives specific nature to the act," and "it relates to the will as the term and goal of its act.") Ibid., I-II, q. 18 a. 2 ad 2 and q. 20 a. 4 (v. 18 pp. 10-11 and pp. 96-97 (1966)).

sex acts which are essentially, and not merely accidentally, inapt for procreation.²¹² As the act fails to aim, even indirectly, at an intrinsic good as an end, the act is made inapt for the agent's happiness. Avoiding it is a moral obligation, however, only because it is also subject to a precept of the natural law through the *interest others have* in the agent's procreative capacity, that is, God and the human community.²¹³

²¹² “[M]ateria actus, [q]uae quidem potest non convenire rationi rectae dupliciter. Uno modo, qua habet repugnantiam ad finem . . . actus . . . alio modo materia in qua exercetur actus . . . potest esse non conveniens rationis rectae per comparationem ad alios homines” (“[T]he matter . . . may conflict with right reason on two counts. First when the act of its nature is incompatible with the purpose of the sex-act. . . [o]r the conflict with right reason may arise from the nature of the act with respect to the other party.”) Ibid., II-II q. 145 a. 1 (v. 43 pp. 206-207 (1968)). The venereal faculty appears to be the only power named by Aquinas as subject to such a per se contradiction. One explanation would be that the faculty is an aspect of the nutritive function entailing at once necessary relational meanings, and yet being prior or more basic than the rational concerns of justice. St. Thomas views the false signification of a lie to be a per se injury without regard to whether the agent intends harm, but its evil lies in an injury to God or neighbor, not in the contradiction of an abstract principle regarding the inherent meaning of a faculty: “*Si vero falsa significatio sit circa aliquid cuius cognitio pertineat ad hominis bonum, puta quae pertinent ad perfectionem scientiae et informationem morum, tale mendacium in quantum infert damnum falsae opinionis proximo contrariatur caritati quantum ad dilectionem proximi, unde est peccatum proximi, unde est peccatum mortale. Si vero falsa opinio ex mendacio generata sit circa aliquid de quo non referat utrum sic vel aliter cognoscatur, tunc ex tali mendacio non damnificatur proximus; sicut si quis fallatur in aliquibus particularibus continentibus ad se non pertinentibus. Unde tale mendacium secundum se non est peccatum mortale*” (“When the false meaning related to a matter the knowledge of which has bearing on the well-being of another person – for example his growth in learning or his moral training – then the lie in question is against charity towards the neighbor, doing the injury of misleading him. On the other hand when the false impression engendered by a lie relates to something the knowledge of which makes no difference one way or another – for example when someone is misled about bits of news that do not matter to him – the neighbor is not harmed by such a lie., Consequently this kind of lie is not a sin mortal in kind.”) Ibid., II-II, q. 110 a. 4 (v. 41 pp. 164-65 (1972)).

²¹³ “*Sed praeceptum datum de generatione respicit totam multitudinem hominum, cui necessarium est non solum quod multiplicetur corporaliter, sed etiam quod spiritualiter proficiat. Et ideo sufficienter providetur humanae multitudini, si quidam carnali generationi operam dent; quidam vero ab hac abstinentes, contemplationi divinorum vacent ad totius humani generis pulchritudinem et salutem; sicut etiam in exercitu quidam castra custodiunt, quidam signa deferunt, quidam gladii decertant; quae tamen omnia debita sunt multitudini, sed per unum impleri non possunt*” (“Whereas the command to be fruitful falls on the people as a whole. They are bound not only to multiply in body but to grow in spirit. The human family is sufficiently provided for if some undertake the responsibility of bodily generation, while others are free in order to devote themselves to the study of divine things, for the health and beauty of our race. An analogy may be drawn with an army; some soldiers guard the base, others direct the tactics, others do the actual fighting, duties to be discharged by all together, but not by each.”) Ibid., II-II q. 152 a. 2 (v. 43, pp. 175-77 (1967)).

St. Thomas observes that the external act realizing the venereal power may involve no contradiction of the procreative power, but rather may conflict with other goods such as the life or welfare of another. It implicates the life of the child who may be conceived. It may effect the future welfare of the other party to the act. It does so clearly where it occurs through seduction. Thus, fornication violates nature because the life of the potential child at risk for abandonment or neglect. The seduction of a virgin is contrary to her health and well being, putting her *"in via meretricandi."*²¹⁴ Adultery harms the good of the adulterer's existing children by diverting him from their care. It offends the good of the existing children of the other party for the same reason.²¹⁵ It is also necessarily injurious to the interests of the potential offspring of the adulterous union.

However, St. Thomas considers that most acts against natural law are against the order of reason rather than nature. The order of reason is the order of the human goods of friendship and knowledge. Acts in the order of reason generally relate to persons, and so implicate friendship, and thus, justice.²¹⁶ The taking of another person's life ordinarily

²¹⁴ ("On the road to harlotry.") Ibid., I-II q. 154 a. 8 (v. 43 pp. 228-29 (1968)).

²¹⁵ "*Quia accedit ad mulierem alteri per matrimonium copulatam; et sic impedit bonum prolis alienae*" ("[B]ecause the woman is wedded to another, it wrongs the offspring of the marriage.") Ibid., II-II q. 154 a. 8 (v. 43 pp. 234-35 (1968)).

²¹⁶ "*Tertio modo inest homini inclinatio ad bonum secundum naturam rationis quae est sibi propria: sicut homo habet naturalem inclinationem, et ad hoc quod in societate vivat; et secundum hoc ad legem naturalem pertinent ea quae ad hujus modi inclinationem spectant, utpote quod . . . alios non offendat cum quibus debet conversari . . .*" ("Thirdly, there is in man an appetite for the good of his nature as rational, and this is proper to him, for instance, that he should know truths . . . about living in society. Correspondingly whatever this involves is a matter of natural law, for instance that a man should . . . not offend others with whom he ought to live in civility. . . .") Ibid., I-II q. 94 a. 3 (v. 28 pp. 82-83 (1966)).

violates the good of friendship, both in relation to the person killed and to society.²¹⁷ If the taking of life is incidental as in self-defense, then the act is no violation of the precept. The things of Creation exist for persons, and St. Thomas reasons that property, or the possession of external things for profit, is the due of the person.²¹⁸ For someone to take from another violates this due as a matter of natural equity, and applicable human law, except in an emergency where natural equity may permit it.²¹⁹

St. Thomas treats lying as against the precept of natural law because security in social relations depends upon the guarantee of being told the truth by others.²²⁰ "Respect for

²¹⁷ *"Dicendum quod aliquis homo dupliciter considerari potest: uno modo secundum se; alio modo per comparationem ad aliud. Secundum se quidem considerando hominem, nullum occidere licet, quia in quolibet etiam peccatore debemus amare naturam quam Deus fecit, quae per occisionem corrumpitur Vita justorum est conservativa et primitiva boni communis, quia ipsi sunt principalior pars multitudinis.. It ideo nullo modo licet occidere innocentem"* ("A man can be looked at in two ways – in isolation and in some context. Now, considering man in isolation, it is not legitimate to kill any man. Every man . . . has a nature which God made, and which as such we are bound to love, whereas we violate it by killing him . . . The life of most men preserves and promotes the common good since they constitute the bulk of the people. There is, therefore, simply justification for taking the life of an innocent person.") Ibid., II-II, q. 64 a. 7 (v. 38 pp. 38-39 (1975)).

²¹⁸ *"[L]icetum est quod homo propria possideat. Et est etiam necessarium ad humanam vitam . . ."* ("[I]t is not merely legitimate for man to possess things as this own, it is even necessary for human life . . .") Ibid., II-II, q. 66 a. 2 (v. 38 pp.66-67 (1975)).

²¹⁹ *"Per furtem autem homo infert noccimentum proximo in suis rebus; et si passim homines sibi invicem furarentur, periret humana societas. Unde furtum, tanquam contrarium caritate, est peccatum mortale"* ("Stealing, however, damages one's neighbor through his property, and human society would perish if everybody started stealing from everybody else. Theft is, therefore, a mortal sin in so far as it is contrary to charity.") Ibid., II-II q. 66 a. 6 (v. 38, pp. 78-79 (1975)); but, *"Si tamen adeo sit urgens et evidens necessitas ut manifestum sit instanti necessitati de rebus occurrentibus esse subveniendum, puta cum imminet personae periculum, et aliter subveniri non potest tunc licite potest aliquis ex rebus alienis suae necessitati subvenire, sive manifeste sive occulte sublatus . . ."* ("If, however, there is so urgent and blatant necessity that the immediate needs must be met out of whatever is available, as when a person is in imminent danger and he cannot be helped in any other way, then a person may legitimately supply his own needs out of another's property whether he does so secretly or flagrantly.") Ibid., II-II q. 66 a. 8 (v. 38 pp. 82-83 (195))I

²²⁰ *"[Q]uia homo est animal sociale, naturaliter unus homo debet alteri id sive quo societas humana servari non posset. Non autem possent homines ad invicem convivere nisi sibi invicem crederent tamquam sibi invicem veritatem manifestantibus"* ("Since man is by nature a social being, there is a natural indebtedness of one person to another in regard to those things without which life together in society could not be maintained. People could not live with one another were there not a mutual trust that they were being truthful to one another.") Ibid., II-II q. 109 a. 3 (v. 41 pp. 140-41 (1972)).

persons” distorting the allocation of common shares also violates a precept of natural law.²²¹ Reviling violates a precept of natural law because respect for honor or dignity is a condition of social life.²²² Reputation is also a condition of social friendship, so that defamation likewise violates a precept of natural law.²²³ Sexual conduct may violate the order of reason, even where unobjectionable in the order of nature. Incest, for example, is naturally unobjectionable but it fails to respect the partner in its disregard for the degree of the parties’ consanguinity or affinity. In adultery or seduction, St. Thomas holds that the agent shows disrespect for the honor of the spouse or guardian of one’s illicit partner.²²⁴

²²¹ “*Sic ergo patet quod personarum acceptio opponitur justitiae distributivae in hoc quod praeter proportionem agitur*” (“It is, therefore, clear that unfair discrimination is opposed to distributive justice in so far as it offends against the principle of apportionment according to social worth.” Ibid. II-II, q. 63 a. 1 ad 1 (v. 38 pp. 44-5 (1975)).

²²² “*Detractio autem secundum suam rationem ordinatur ad denigrandum famam alicujus. Unde ille per se loquendo detrahit qui ad hoc ad aliquo obloquitur, eo absent, ut ejus famam denigret. Aufferre autem alicui famam valde grave est, quia inter res temporales videtur fama esse pretiosior per cujus defectum homo impeditur a multis bene agendis*” (“Now detraction is of its nature calculated to blacken another’s reputation, so that, simply speaking, any one who tells tales behind another’s back in order to blacken his reputation is committing detraction. But it is a serious thing to take away another’s reputation, for a man’s reputation is one of his most precious temporal possessions and he is prevented from doing many good deeds if it is damaged.”) Ibid. II-II q. 73 a. 1 ad 2 (v. 38 pp. 174-75 (1975)).

²²³ “*Verba . . . [I]n quantum vero sunt signa repraesentantia aliquid in notitiam aliorum, sic possunt damna multa inferre; inter quae unum est quod homo damnificatur quantum ad detrimentum honoris sui vel reverentiae sibi ab aliis exhibendae*” (“Words . . . can, however, inflict much damage in so far as they are signs calculated to represent something to somebody, and one way a person can be damaged in this way is for him to lose the honour or respect others pay him.” Ibid., II-II q. 72 a. 1 (v. 38 pp. 158-59 (1975)).

²²⁴ “*Alio modo materia in qua exercetur actus venereus potest esse not conveniens rationi rectae per comparationem ad alio homines: . . . ex parte ejus ni cujus potestate est foemina: quae si est in potestate viri, est adulterium; si autem est in potestate patris, est stuprum . . .*” (“Or the conflict with right reason may arise from the nature of the act with respect to the other party . . . with respect to her guardian. If her husband then we have adultery, and if her father we have then seduction . . .”) *ibid.*, I-II q. 154 a. 1 (v. 43 pp. 206-207 (1967)).

(2) Application to the Act's Interior End

St. Thomas holds that good and evil constitute "*per se differentiae actus voluntatis*,"²²⁵ so that the external act, which was just analyzed, is good or evil because the will elects it. But the will elects the external act as a means to an interior act. The interior act precedes the external act in the order of intention. The interior act, in intending its end, is to be distinguished from the choice of the external act.²²⁶ In a given action, the formal end of the will is precisely its interior end, while the will's material end is the external act. The object of the interior and the external act of the will may be the same good, in which case, the external act merely concretizes the will's original intent. The precepts governing to the external act also govern the interior act. If the external act is evil, then for the same reasons so too is the interior end. The act, in both internal and external dimensions suffers from a single moral defect.

The external act may advance a separate interior end. It may itself be harmless, but advance a nefarious interior end. In that case, the separate moral evaluation of the interior end requires that the act be condemned. Depending on how detailed it is, an interior act may be subject to precepts more or less specific. It may be conceived in the same concrete detail as the external act or it may have a general aim. The agent may give the end an undue

²²⁵ ("Good and evil impart essential differences to the act of willing.") *Ibid.*, I-II q. 19 a. 1 (v. 18 pp. 48-49 (1966)).

²²⁶ "*Actiones autem humanae . . . habent rationem bonitatis ex fine a quo dependent praeter bonitatem absolutam quae in eis existit*" ("And so human acts . . . hold a manner of good which is relative to the end on which they depend besides the strain of good which is theirs considered in themselves.") I-II, q. 18 a. 4 (v. 18, pp. 116-17 (1966)).

priority over other values, as the glutton values food above everything else, even God.²²⁷ For an agent to embrace an instrumental value or derivative benefit as the ultimate interior act of the will would necessarily be evil, since it would be a good not convertible with being, and thus necessarily disproportionate to the agent's happiness.

(3) Application to the Act's Other Circumstances

The agent constructs descriptions of external and interior acts of the will, through a stipulation of desired circumstance. Those acts might be termed the election of the *why* and the *what* of the act, respectively. Other circumstances, not within the *what* or *why* of the agent's intention still contribute to the act's total moral meaning. Some of these regard the agent's situation, as do *time*, *place* and *condition*. Others specify what the agent, in fact, does to bring about the act. There are known as the act's accidents, for instance, the *time*, *place* and *mode of acting*. The mode of acting includes *who* and *by what aids*. Finally, there are the circumstances of *effect* (the acts unintentional consequences-- for example, the goal of "*abluendo*," may have the unintended effect of "*infrigidet vel calefaciat, sanet vel noceat*").²²⁸

²²⁷ "*Quod quidem continget quando delectationi gulae inhaeret homo tanquam propter quem Deum contemnit*" ("A man so to identify himself with his greed and make it his overriding purpose as to contemn God.") *ibid.*, I-II q. 148 a. 2. (v. 43 pp. 120-21 (1968)).

²²⁸ "[To] . . . put . . . in water" . . . [may] "chill or scald" . . . "heal or harm." *Ibid.*, I-II q. 7 a. 3 (v. 17, pp. 44-45 (1970)).

An action may be found immoral because of the simple lack of a due circumstance.²²⁹ This occurs where the flawed circumstance has a special relation to reason, either positive or negative, as a matter of its objective character. Even though outside of the agent's intention, such a circumstance becomes a principal condition of the act, so that the act violates a natural law precept, because the objective circumstances makes the act unreasonable. A thief who unwittingly steals from a holy place is guilty of a misdeed receiving its salient character from by the circumstance of place.

The agent is morally responsible for the unintended consequences if he foresees them. But if he fails to foresee them, he is still morally responsible, where they flow from the nature of the act and are disproportionate to the good intended.²³⁰ Circumstances, with no special relation to reason, may make an action morally better or worse when brought into relationship with other circumstances that do have such a relation. For instance, quantity does not change the essential act, but the circumstance of greater quantity makes a theft morally worse when joined with the circumstance of "*alienum*."²³¹

²²⁹ *"Ita etiam est in actione. Nam plenitudo bonitatis ejus non tota consistit in sua specie, sed aliquid additur ex his quae adveniunt tanquam accidentia quaedam; et hujusmodi sunt circumstantiae debitae. Unde si aliquid desit quod requiratur ad debitas circumstantias erit actio mala"* ("The same holds true with moral activity. For its full goodness as a whole is not constituted by what kind of act it is, but is filled out by additions which are like its qualities; such are its due circumstances. Accordingly if anything be missing in their count the act will be bad.") Ibid., I-II q. 18 a. 3 (v. 18 pp. 12-15 (1966)).

²³⁰ *"Dicendum quod eventus sequens aut est praecogitatus aut non. Si est praecogitatus, manifestum est quod addit ad bonitatem vel malitiam actus . . . Si autem eventus sequens non sit praecogitatus, tunc distingendum est: quia si per se sequitur ex tali actu, et ut in pluribus, secundum hoc eventus sequens addit ad bonitatem vel malitiam actus"* ("The result of an outward deed is either foreseen or not. If foreseen it certainly adds to the moral good or bad of the action . . . If, however, the result is not foreseen, then a distinction should be drawn. If it follows from the act in the nature of things and usually does follow then it makes it better or worse. . .") Ibid., I-II q. 20 a. 5 (v. 18 pp. 100-101 (1966)).

²³¹ ("[O]wnership by another.") Ibid., I-II q. 18 a. 11. (v. 18 pp. 44-45 (1966)).

C. The Role St. Thomas assigns the Good in the Activity of Justification

Together the concepts of justification and the good comprise ethical theory. A more precise statement of the role Aquinas accords to “good” within his concept of “justification” focus his theory more sharply. Answers to three standard questions serve to state that role with the requisite precision: 1) does the role of the good in the moral evaluation of action make this ethical theory teleological?; 2) does it lend the theory’s concept of moral obligation an objective character?; and 3) how does it balance postulates of egoism and altruism?

1. The Teleological Character of the Role of the “Good” in St. Thomas’s Ethical Theory

A teleological ethical theory gives priority to value over obligation, and it derives obligation from the ends of action. The role St. Thomas gives to the good in moral justification essentially satisfies this definition. And yet, Aquinas’s hierarchy of being means that obligation flows from divine authority. From a certain angle, this fact gives St. Thomas’s ethical theory a deontological character.

St. Thomas considers the basic intelligibility of action to depend on the cognitive apprehension of value: “*Omnia agentia necesse est agere propter finem.*”²³² His ethical theory distinguishes among different kinds of values: the ultimate end of happiness, the four mediatory basic goods, and other instrumental and derivative goods. For St. Thomas, a significant part of practical reasoning is a matter of arranging means to these ends. “*In ordine autem agibilium, primo quidem oportet sumere apprehensionem finis, deinde appetitum finis,*

²³² (“All efficient causes must needs act for an end.”) *Ibid.*, I-II q. 1 a. 2. (v. 16 pp. 6-7 (1969)).

deinde consilium de his quae sunt ad finem, deinde appetitum eorum quae sunt ad finem."²³³

The unity of practical reasoning overall arises from the relation of all ends and objects of action, as means, to the one formal last end of happiness, the agent's "*bonum perfectum*"²³⁴

For St. Thomas, successful action depends upon placing virtuous ends, contributing substantially to the agent's fuller being, above instrumental ends incapable of doing so, and, among virtuous ends, by valuing rational over natural ends, and, among natural ends, animal over nutritive ends. Observing this hierarchy in ends aids efficiency in the pursuit of happiness because it corresponds to an objective order within human nature. Human happiness, as a last end, is attainable only according to that nature. Knowledge of human nature allows the agent to rank particular external objects by their relative value as opportunities for attaining essential human ends.

Aquinas derives obligation as a means ultimately of reaching happiness, and, proximately, of reaching the intended and chosen good, as the specific path to happiness. As Aquinas states, reason derives obligation "*ordinare ad finem*"²³⁵ Thus, obligation is intelligible in relation to the *telos* of happiness. In particular, obligation expresses the requisite of friendship as essential to happiness. The all-embracing character of friendship with God makes the agent's perfection in virtue, his self-perfection, obligatory. The

²³³ ("Now the ordered sequence for practical action is as follows. First, the end is apprehended. Next, is it desired. Then the means of obtaining it are deliberated about, and these in turn come before desire.") Ibid., I-II q. 15 a. 3 (v. 17 pp. 164-65 (1970)).

²³⁴ ("[T]he crowning good.") I-II, q. 3 a. 2 (v. 16 pp. 64-65 (1969)).

²³⁵ "*Rationis enim est ordinare ad finem, qui est primum principium in agendis . . .*" ("It is the function of reason to plan for an end, -- and this purpose . . . is the original source of what we do.") Ibid. I-II, q. 90 a. 1 (v. 28 pp. 6-7 (1966)) and I-II q 90 a1 (v. 28 pp 6-7 (1966))

experience of obligation is an awareness of reason's finitude of being beholder to a power greater than oneself.

Notwithstanding its basic teleological stamp, Aquinas's ethical theory appears to be deontological when considered in relation to the ordinances of the higher authority which it presupposes. Obligation advances a universal common good beyond the agent's understanding. Thus, the concept of duty can be said to have the priority in Aquinas's reasoning. The central duties of St. Thomas's natural law lend themselves to being set out in the form of exceptionless abstract deontological rules, as in the Ten Commandments.

2. The Role of the "Good" and the Objectivity of Obligation in St. Thomas's Ethical Theory

St. Thomas accords a role to the good in his ethical theory which grounds obligation "objectively." St. Thomas subsumes his indicative virtue ethics into his natural law ethic of moral obligation, since duty to God makes the pursuit of one's own self-perfection and respect for what belongs to others obligatory. The measures of both self-perception and the due belonging to others are objective. The perfection of the person, both in self and other, reflects an ontological hierarchy of human faculties correlated to modes of perfection in being.

According to St. Thomas, obligation flows from the claims of other rational beings, divine or human. It exists, only because other rational beings exist and the agent is not competent to ordain their good. The good that the agent is obligated to respect is precisely that of the other. Ultimately, obligation is an awareness of God's ontologically prior ordinance for the good of all. The objectivity of obligation, from this view, is universal in its

scope. Every human choice, however apparently incidental, is objectively right or wrong in accord with God's decree for the universal common good.²³⁶

The objectivity which St. Thomas's concept of the good confers on his notion of obligation, does not eliminate every element of subjectivity from that notion. St. Thomas envisions the good, as the self-realizing pursuit of happiness. Each act's meaning draws fundamentally from the agent's conception of fulfilling his unique desires. A single situation may allow for diverse responses in different moral agents, but all of which may be morally justified. Moreover, the good or evil of a choice ultimately turns on its preparing the agent's will for union with God. An objectively evil act undertaken in invincible ignorance and in subjective good faith leaves the will undamaged and apt for this ultimate fulfillment. The capacity of the agent to know and understand are finite, so that moral discourse remains undetermined, with only God knowing the full objective truth of the moral status of an act.

3. The Role of the "Good" in St. Thomas's Ethical Theory, and the Conflict between Egoism and Altruism?

The problem of reconciling egoism and altruism, which characterizes modern ethical theory, is foreign to Aquinas. He stipulates that action begins with the individual's own cognitive first principles and that the ultimate of these principles is that of the agent's own happiness. But Aquinas considers that all action truly conducive to happiness will embrace its

²³⁶ *Requiritur ergo ad bonitatem humanae voluntatis quod ordinetur ad summum bonum. Hoc autem bonum primo quidem et per se comparatur ad voluntatem divinam ut objectum proprium ejus; illud autem quod est primum in quolibet genere est mensura et ratio omnium quae sunt illius generis. Unum quodque autem rectum et bonum est in quantum attingit ad propriam mensuram. Ergo ad hoc quod voluntas hominis sit bona requiritur quod conformetur voluntati divinae* ("For an act of human will to be good, then, it must be ordered to the supreme good. This is the good that relates directly and immediately as its proper object to the divine will. That which come first in any classification we make is the measure and prototype of all members of that class. Each and everything is right and good in so far as it achieves its proper measure. Hence for human willing to be good it has to be conformed to the divine will.") Ibid., I-II, q. 19 a. 10 (v. 18 pp. 76-77 (1966)).

objects for their interpersonal value. Even where the agent aims at a self-regarding good as in the preservation of his own bodily health, that benefit always has a dual significance for the good of others, i.e. God's good. The good of the agent belongs to God and to the human community "for which" the agent also exists.

Since obligation, in a strict sense, arises only as a means to friendship, the question of what the agent *ought* to do arises only within an interpersonal relationship that is essential to the individual's good. The idea of conflict between egoism and altruism is to the same extent per se absurd.

St. Thomas recognizes that the agent experiences concrete conflicts with others over the division of goods. He acknowledges that in a world of limited resources the agent naturally experiences feelings of hostility towards others, and he compares human relations to those among squabbling small tradesmen.²³⁷ Where justice specifically requires no more than that direct harm to the good of the other person be avoided, Aquinas allows the agent to resolve conflicts by preferring his own good. Where another directly attacks his good, Aquinas allows the agent to go so far as to deflect the attack through harm to the other even through the infliction of death.²³⁸

²³⁷ *"Et propter hoc figuli corrixantur ad invicem quia se invicem impediunt in proprio lucro"* ("That is why potters quarrel with each other -- because one is a threat to the others business.") *libid.*, I-II q. 27 a. 3. (v. 19 pp. 82-83 (1967)).

²³⁸ *"Nec est necessarium ad salutem ut homo actum moderate tutelae praetermittat ad evitandam occisionem alterius; quia plus tenetur homo vitae suae providere quam vitae alienae"* ("Moreover a person is not obliged under pain of loss of eternal life to renounce the use of proportionate counter-force in order to avoid killing another, for a man is under a greater obligation to care for his own life than for another's.") *Ibid.*, II-II q. 64 a. 7 (v. 38 pp. 42-43 (1975)).

In these cases, St. Thomas is not saying egoism trumps altruism, but only that under the conditions of human finitude, the agent need attest to no more regarding his concrete ends than that they be the partial good he is capable of envisioning and intending. The one further condition St. Thomas imposes on the agent is that, in the material pursuit of his self-interest the agent continue in principle, formally to will the common good as God envisions it. The agent must will that his particular desires be subordinated to the good of his competitors, where God providentially so wills and brings about.²³⁹

D. Comparison of St. Thomas and John Finnis on Justification: General Vantage, Moral Methodology and Role of the Good

1. General Vantage

As it happens, the justificatory vantage of Finnis and Aquinas both have a threefold character. One can aptly compare the two views by placing in parallel the three primary principles the two systems. Finnis's First Principle of Practical Reason finds its parallel in St. Thomas's idea of happiness as the agent's last end. Finnis's Basic Good of Peace of Conscience has its parallel in Aquinas's virtue of prudence. And, Finnis's First Principle of Morality finds its like in Aquinas's first principle of natural law.

a. "Happiness as the Substantive Final End of Action" versus "The Formal Teleological Structure of the Individual Act"

Finnis and Aquinas select divergent principles as the basic starting points of their respective moral vantages. Finnis makes his the formal First Principle of Practical Reason:

²³⁹ "[N]on est autem recta voluntas alicujus hominis volentis aliquod bonum particulare, nisi referat illud in bonum commune sicut in finem" ("However it is not right for a person to will a particular good unless he refers it to the common good as to its end.") Ibid., I-II q. 19 a.10 (v. 18 pp. 80-81 (1966)).

“the good is to be done and pursued.” Aquinas adopts the substantive first principle: “happiness is the least end of all action.” The difference illumines systematic differences between the two outlooks.

Finnis makes much of opposing any overarching substantive *telos* of choice and action. He rejects any objective hierarchy of being, by which one could know the nature of true happiness. Unlike “knowledge” or “play,” an overarching objective of personal fulfillment requires reference to interpersonal relationships and ontological hierarchies. In any event, Finnis considers happiness as St. Thomas conceives of it as incompatible with human freedom. In contrast to Aquinas, Finnis cannot embrace any interior cognition of the agent’s overall personal fulfillment.

Finnis deletes the last portion of Aquinas’s first principle of natural law in his own formulation of the First Principle of Practical Reason, for just this reason. Finnis alters Aquinas’s “Good is to be done and evil avoided,” and makes it, “Good is to be done and pursued.” Finnis drops “evil avoided,” because evil is the privation of good, and to be the direct end of action, the avoidance of that privation must have some substantive good as a reference, external to the agent’s mind. If the objective were internal to cognition, then the end would be definable, not in terms of evil avoided but some form of good preserved. An example is Finnis’s goal of peace which he presents as a positive concept of good, but which might as well be the avoidance of conflict.

A consequence for Finnis is that the “good to be done” under the First Principle of Practical Reason is always the discrete object of a particular action. It can never be described as the agent’s overall fulfillment, or participation in being. The goodness the agent seeks is

never convertible with his greater participation in being. Goods cannot be understood in relation to various kinds and degrees of objective being. For this reason, Finnis cannot describe the particular goods the First Principle of Practical Reason structures except as concrete instances. He cannot specified them in terms offered by speculative reason.

One may ask why Aquinas's idea of happiness and not his First Principle of Natural Law does not form the parallel to Finnis's First Principle of Practical Reason. But for Aquinas, the concept of law only makes sense in relation to this quest to participate in being. Aquinas's starting point is the basic inclination of the acting person to his complete fulfillment. For one thing, natural law, as an ordinance of divine reason, depends on an analogy to the agent's individual pursuit of happiness. Namely, the natural law is God's ordinance for happiness. Intelligible only in relation to substantive good and evil, as God ordains the good of all, the principle, as a purely formal statement, is a meaningless abstraction.

The first principle of each author's vantage organizes his belief system along specific lines. Finnis's First Principle of Practical Reason functions as a kind of modular pattern of teleology, that by repetition, can organize thought about choice and action, overall. Practical Reason cannot organize its perspective around substantive knowledge of goals, instead it seeks to interrelate the modules in patterns of procedural consistency. The basic unit of meaning implies no knowledge of ontology, since it is pre-moral. Morality enters the picture strictly as a matter of consistent procedural ordering. In fact, from the fuller perspective of Finnis's First Principle of Morality, the Basic Goods themselves begin to look like permissions,

“knowledge may be pursued,” “life may be enhanced,” or “work may be done,” rather than separate substantive possibilities.

St. Thomas is able to unify his vantage before introducing any note of obligation by adopting his basic principle of “*omnes homines conveniunt in appetendo ultimum finem, qui est beatitudo.*”²⁴⁰ Natural law obligation is intelligible as a means to the end of the happiness of the community of the universe. In this view, no sharp distinction exists between moral and pre-moral reasoning. St. Thomas’s pre-obligatory conception of action is already moral. The basic mediatory goods all have moral value, in varying degrees, for attaining to the love and knowledge of God as the agent’s true happiness, but they are not obligatory. They are merely there for the agent’s voluntary appropriation.

b. “Prudence” versus “Peace of Conscience”

Both Finnis and Aquinas in moral reasoning accord a key role to the fitting of means and ends, in a pattern of overall consistency. Finnis sees the task as advancing the architectonic basic good of peace of conscience. Aquinas assigns it to prudence. Similarities and differences in Finnis’s and Aquinas’s approaches on this point lend support to the same themes seen in the last subsection. They also lay the foundation for further contrasts.

²⁴⁰ “[*O*]mnes homines conveniunt in appetendo ultimum finem, qui est beatitudo” (“[A]ll agree in desiring that ultimate which is happiness.”) I-II q. 1 al. 7 (v. 16 pp. 26-27 (1969)). In contrast to Finnis, one sees closer continuity with Aquinas in contemporary moral theologians who emphasize the role of prudence and virtue. One example is Servais Pinckaers, O.P. who writes: “Such is the moral sense that the virtues strengthen—particularly justice, which is a will, a firm and constant love for what is just. In the distinction between the real and apparent good, which directs the application of the principle “*bonum est faciendum, malum est vitandum,*” the principle role is that of prudence, the virtue of moral discernment: not a prudence intimidated by fear of the law and sin, but a far-seeing and courageous virtue, enterprising, too, for its object is to have us do as well as we can.” *The Sources of Christian Ethics*. trans. Sr. Mary Thomas Noble, O.P. Washington, D.C.: The Catholic University of America Press, 1995. Romanus Cessario, O.P. strikes a similar chord with his concept of a “realist moral theology in *Moral Virtues and Theological Ethics*. Notre Dame: University of Notre Dame Press, 1991.

Finnis considers the task of achieving overall consistency in moral reasoning to be internal to the mind and purely formal. He considers strictly internal consonance among choices and judgments, and the freedom from tension it implies an end in itself. In contrast, Aquinas does not view merely formal consistency as a good, citing prudence of the flesh as an example of such consonance and equating it with viciousness. Such formal consistency cannot be even a pre-moral good for Aquinas. Moreover, he distinguishes between an end of action, and the attitudes of intellect and will, with which the agent pursues that end. He holds that such attitudes can be the subject of virtue but are not an end in itself. It is true that Aquinas views friendships as a good involving love, an attitude of will, but the good is the mutuality of living in society not the attitude of will embracing it.

The parallel in Aquinas to Finnis's Peace of Conscience is not a mediatory basic good, but a virtue, a *habit* of intellect and will, i.e. prudence. Moreover, this parallel cannot be considered a merely internal or formal consistency. It depends upon reference to the passions, and to criteria establishing the mean of their satisfaction.²⁴¹ It depends upon further reference to a hierarchy of goods, establishing ordered correspondence between the agent's faculties and external objects. It depends upon other persons, human, angelic and divine, and the agent's relationships with them, and on criteria establishing the mean within those relationships.

²⁴¹ "[N]on est autem recta voluntas alicujus hominis volentis aliquod bonum particulare, nisi referat illud in bonum commune sicut in finem" ("However it is not right for a person to will a particular good unless he refers it to the common good as to its end.") Ibid., I-II q.19 a.10 (v. 18, pp. 80-81 (1966))."

Finnis's moral agent can find Peace of Conscience by observing any convenient standard of consistency. But Aquinas knows of only one way to be prudent, that is, to act consistently for happiness with due regard for the objective ordering of principles, faculties and external objects. Finnis, for his part, could not make a disposition of the agent's faculties (i.e. virtue in St. Thomas's sense) an element in his vantage. His overly emphatic endorsement of Hume's naturalistic fallacy argument prevents him from premising any value on the way things are, even on the agent's character. Moreover, Finnis states that Peace of Conscience is strictly pre-moral, where prudence is intrinsically oriented to moral values, attuned to the perfect operation of the agent's powers, and oriented to the agent's participation in a hierarchy of values descending from the *summum bonum*.

Once Aquinas has added this second term, prudence, to the first, happiness, he has established a teleological virtue ethics. From this vantage, an action can be evaluated morally but not specifically found obligatory. Integrating this partial vantage within the more comprehensive framework of universal natural law does not alter, but only completes its meaning in relation to more encompassing horizons.

By contrast, Finnis lays out his second basic principle without thereby completing any functioning moral vantage. The descriptive meaning of choice and action for Finnis is merely pre-moral, and it does not support an evaluation of the good or evil of a human life. Thus far, Peace of Conscience is of indifferent value in relation to the true attainment of all other Basic Goods. Its pursuit does not orient the agent to the morally true or good. Short of the remaining element that brings full-fledged obligation into the picture and which has yet to be discussed, Finnis has no basis for a moral preference that the agent act one way rather than

another. His concept equating moral value with the ideal of complete reasonableness has an “all or nothing” character about it.

c. “The First Principle of Morality” versus
“Law as the Objective Measure of Morality”

Each author completes his moral vantage by adding a last formal principle which is the specific source of obligation. This third principle qualifies the two authors as a first-order foundationalists, by offering a universally applicable mode of reasoning to moral obligation, on the level of first-order, as opposed to second-order discourse. Beyond this, the principle underscores and extends the contrasts already apparent in the authors’ vantages.

The principle from which Finnis derives obligation sets forth an ideal of coherence applying radically within the mind. It calls for a consistent inclusion in the agent’s awareness of value, all cognitive first principles of action (the Basic Goods). And it entails radical autonomy. The agent encounters moral obligation as a requirement of his own Practical Reasonableness. Observing its demands brings, the reward of an upright will, akin to Kant’s ideal.

St. Thomas’s derivation of obligation occurs differently arising precisely where the agent is called to transcend the self, that is in the agent’s encounter with the other person: “.

. . . *manifestissime autem ratio debiti, quae requiritur ad praeceptum, apparet in iustitia,*

quae est ad alterum.”²⁴² Obligation, in St. Thomas, is other-oriented in two senses. First, it

²⁴² “*Manifestissime autem ratio debiti, quae requiritur ad praeceptum, apparet in iustitia, quae est ad alterum*” (“Indebtedness, essential to the meaning of precept, is most clearly present in matters of justice, since justice has reference to another person.”) Ibid., I-II, q. 122 a. 1. (v. 41 pp. 292-293 (1972)). Finnis’s assertion that his own “first principle of morality” captures “much, if not all, the moral content” of the “primary principles of biblical morality. . . : Love God above all things; Love your neighbor as yourself” does not appear convincing. Finnis admits that “Common morality’s fundamental principles were formulated in theistic terms, while the ideal

requires that the good of others be respected. Second, it arises with the ordinance of reason promulgated, by someone other than the agent, possessing authority over both the agent and the one whose good the agent is called to respect. This second sense of other-orientation, ties obligation inseparably to the concept of authority.²⁴³ Thus, St. Thomas's concept balances autonomy the authority of the agent's own reason and nature, and heteronomy, the authority of God as the ruler of the cosmos.

There are collateral implications of these differences. Finnis's concept of obligation underscores the self-sufficiency of reason. Cognition about action sets the terms of its own completion, closure or perfection. By contrast, St. Thomas's concept highlights the radical insufficiency of reason alone. Obligation arises precisely at the boundary with other minds, especially others of a higher ontological status above the scope of the agent's intellect. A higher authority establishes the obligations of life with others, precisely which the agent's nature leaves him incapable of charting these boundaries.

of integral human fulfilment is not." Finnis concedes also that "not all" of the biblical injunction is necessarily captured by his own principle. Finnis alleges, however, that connections can be drawn between his formulation and the biblical one, making them roughly equivalent. First, he notes that the religious believer has a motive to obey the first principle of morality out of love for God, since God is the implicit transcendent source of the elements of practical reason which support the first principle of morality, and his third requirement of practical reasonableness corresponds to the love of neighbor. But, accountability to God is not part of the principle for Finnis, although it is for Aquinas. Certainly, the difference is substantial. Second, Finnis assumes that the third requirement of practical reasonableness is equivalent to the love of neighbor. But, here again, in Aquinas's account (as in the biblical one), the moral agent is accountable to the neighbor. This is not the case under Finnis's ideal which aims at inner consistency of the will in relation to the self-evident principles of Practical Reason. See John Finnis, Joseph M. Boyle, Jr., and Germain Grisez, *Nuclear Deterrence, Morality and Realism* (Oxford: Clarendon Press, 1987) 284.

²⁴³ Elizabeth Anscombe, in her celebrated essay, "Modern Moral Philosophy," suggests that the concept of moral obligation, in the strict sense, is, in fact, inseparable from this concept of divine authority. See *The Collected Philosophical Papers*, vol. 3, *Ethics, Religion, and Politics*, (Minneapolis: University of Minnesota Press, 1981).

d. The Respective “Postscripts” to the Authors’ Moral Vantages

Both Aquinas and Finnis supplement their general moral vantage with religious context. Both consider the addition of religion necessary, but neither finds a place for it *within* his basic vantage. Neither allows religious or theological considerations to effect the formulation of concrete moral norms. Yet, Aquinas and Finnis differ as greatly in the manner of their appeals to religion, as they do their underlying moral vantages.

Aquinas makes God a basic reference throughout his ethical theory. God appears in that theory as the uncaused cause of all that is. He appears as: the first Efficient Cause of Creation and Providence; the Final Cause to which creatures tend, the *summum bonum* of all ontological hierarchies of value; and the Formal Cause or Eternal Law, according to which things have their natures, and from which Practical Reason, in particular, receives its principles. St. Thomas makes all such references to God for the sake of defining human nature.

Aquinas adds a reference to religion at a level outside of his basic moral vantage. This is the level of the order of Grace or Divine Charity. For Aquinas, God is a personal God who loves His creatures, bestowing Divine Grace upon them in excess of created nature. It is pursued with due respect for the universal good under Aquinas’s general vantage, the goal of natural happiness opens the moral agent to a higher form of fulfillment, in the beatific vision upon death. St. Thomas provides for an interpersonal exchange of creature and Creator. In doing so, he builds on the references to God inherent in his basic vantage of Practical Reason, merely completing them within a super-ordinated frame of reference. The addition of the

order of grace changes nothing in the moral norms St. Thomas derives within his basic vantage,²⁴⁴ but it allows the agent to absolve his obligations with the motivation of Divine Charity, and to go beyond the letter of obligation to realize various counsels of perfection. Through God's grace the agent imitates God's perfect love for Creation.

In this context, Finnis's manner of using Religion, internally within his vantage, differs from Aquinas. His vantage includes Religion as a pre-moral Basic Good with no necessary reference to God. It mediates participation in no ontologically higher order of reality, merely orienting the agent's will to a cognitive principle on the level of secondary intentionality.²⁴⁵ Aquinas develops his supplemental references to grace, starting from theological references within his vantage itself. Having no such theological references in his vantage, Finnis's supplemental references to God are discontinuous with it.

Neither Aquinas nor Finnis effect their derivation of concrete moral norms through their supplemental references to Religion. For Finnis, Religion steadies the agent's nerves: that is all. Finnis sees Religion as an opportunity for pursuing a relationship with a personal God. Yet, the goods of both Religion and friendship are, in themselves, both pre-moral goods. Neither friendship in general, nor friendship in God in particular, adds anything to the rectification of the will. The absence of ontological difference between God and creature in

²⁴⁴ Drawing on the distinction between "foundational" and "implicational" roles that can be assigned to religion in an ethical theory articulated by Dennis Collins, Russell Hittinger suggests that Aquinas develops natural theory as part of his foundations and Religion as part of the implications of his theory. *A Critique of the New Natural Law Theory*, 155-89.

²⁴⁵ Hittinger observes that "Grisez's insistence that the good of Religion can be apart from the issue of whether or not there exists a divine," and that "[t]here is no necessary connection between the two things: being good and being religious are separate and distinctive, and that ". . . the value of a relationship to the person of God is simply pointed out by faith and, once pointed, has no proportionality to the human subject." *The Critique of the New Natural Law Theory*, 108, 141 and 186.

Finnis's concept of Basic Goods places the moral agent on a plane of equality with God, (here one may contrast Finnis's notion of Friendship with God and Aquinas's concept of Religion as an aspect of justice, which implies radical inequality between the agent and God in Aquinas). Aquinas makes the agent's participation in the common good of the human community a condition of the agent's eligibility for the Beatific Vision. Finnis treats the goal of friendship with God as essentially independent of the common good, which after all, for Finnis is no more than a procedural requirement of Practical Reasonableness. Finnis recommends that the agent seek to foster the common good out of a secondary motivation of pleasing God. But, in contrast to St. Thomas, Finnis does not envision the agent as either advancing or hindering his relationship with God, through his response to the ordinances of the common good. Finnis considers the bond of friendship between the agent and God to arise without reference to morality. Finnis's agent does the moral thing as a way of showing solidarity with God's wishes which happens to favor Finnis's morality. Finnis's purposes the attitude of "God and the moral agent against the world."

2. Moral Methodology

Finnis's and Aquinas's moral methodologies yield virtually identical concrete moral norms in areas of standard interest to Catholic moralists.²⁴⁶ And, one glimpses numerous logical and thematic parallels throughout their works. But, a fair comparison yields the conclusion that the differences in their methodologies outweigh the similarities. These

²⁴⁶ Hittinger notes: "[n]ot surprisingly, the system, for the most part, arrives at the same conclusions as the older natural law tradition regarding various issues - moral conduct - particularly, issues like abortion and contraception, in which the foundation between virtue and precepts is decisive," but "as it is the system stands on the precipice of , it has already crossed the boundary into, what could be called an ethico-religious positivism." *The Critique of the New Natural Law Theory*, 167-68.

differences go back to Finnis's reliance on a derivation of obligation from the ideal of consistency in moral reasoning, where Aquinas relies upon authoritative ordinances for the universal common good.

Finnis's methodology advances self-perfection conceived as complete reasonableness. Aquinas's methodology furthers a social order of justice and tranquility. To be sure, Finnis is interested in justice, and Aquinas in self-perfection. But, the authors reverse the priorities they assign these issues as they reason about moral obligation. Justice is the proximate concern for Aquinas as he seeks to explain obligation, self-perfection the more proximate for Finnis. Finnis treats voluntary cognitive inconsistencies as offenses against morality and set backs in the quest for self-perfection. Aquinas considers injustice to constitute such offences. Such offences set back the cause of harmonious life in common with others.

The authors' respective treatments of the Decalogue illustrate the contrast in their conceptions of moral obligation. For Aquinas, the Decalogue embodies a more specific method for applying the first principle of natural law, the "good is to be done and evil avoided." Aquinas views the first principle of natural law as the means God ordains to the final end of happiness. He views the general precepts of the Decalogue as the means God ordains happy relation with other persons --God and the agent's fellow human beings. Each commandment call for respect for particular goods belonging to God and to other people.

Finnis, by contrast, evinces scant interest in the inter-personal relationships assumed by the precepts of the Decalogue, and he has little interest in most of the specific duties they

set forth.²⁴⁷ The Decalogue interests Finnis as an occasion for stating norms of self-perfection. And, even in this respect, he views the Decalogue as radically incomplete, for its requirements extend directly to only two of Finnis's requirements, and indirectly only to a third.

The two direct parallels with the Decalogue are between Finnis's Third Requirement, which calls for equal regard for others, and the Eighth, which calls for the favoring and fostering of the common good and Aquinas's First Principle of Natural Law. In both cases, Finnis significantly changes the meaning of Aquinas's principle. The claims Finnis makes is traceable to his self-perfecting First Principle of Morality. It is also traceable to his far thinner conception of the good. Finnis's Third Requirement, reflects the formal equality of persons. It resembles Aquinas's idea of justice, except for Aquinas's reliance on the ultimate end of universal happiness as an objective hierarchy of external objects of value in attaining it as sources of knowing what respect means. Finnis, by comparison, measures equal respect against a roster of eight pre-moral cognitive principles.

In defining the common good, Finnis subordinates justice to his self-perfecting First Principle of Morality, so that justice is not central enough to his scheme to be its principle unity. Moreover, Finnis's concept of the common good differs from Aquinas's. Aquinas's common good is the universal happiness of the whole community, but Finnis's is no more than the ensemble of conditions for effective choice and action by the diverse individuals. Depending on the group, Finnis holds that on or another concept or pattern of choices overall

²⁴⁷ Hittinger asserts that "[w]hy this or that should be good for someone else, and why I am morally obligated to promote that good for the other person, requires answers which are not easily extracted from the Grisez-Finnis system." *A Critique of the New Natural Law Theory*, 150.

will be considered worth striving for. Finnis considers happiness to be an emotion-laden objective without relevance to moral reasoning.

The Decalogue indirectly implicates Finnis's Seventh Requirement that one should never turn directly against a Basic Good. Finnis's requirement is a way of saying, "do no harm." In this context, Finnis conceives of harm as the will turning against a cognitive principle. Both Finnis and the Decalogue concern themselves with harms. The Decalogue presents harm as an injury to the justice of a relationship between persons. Aquinas's concept of harm coincides with the Decalogue.

Both Finnis and Aquinas seek to answer two questions in this setting: 1) whether the agent has intentionally caused the outcome and 2) whether the outcome is a harm. The authors do not differ observably in their treatment of the first issue. They rely on the direct/indirect distinction and the principle of double effect to distinguish intentional from unintentional outcome.²⁴⁸ For example, one observes no significant difference in their treatment of the morality of killing.²⁴⁹

The two authors differ significantly in how they resolve the second issue. Finnis wants to know whether a particular act description contradicts one of the abstract cognitive principles known as Basic Goods. His unnuanced endorsement of Hume's naturalistic fallacy argument prevents him from asserting any value in of things, so that he has no reasonable

²⁴⁸ See generally J. Mangan, "Historical Analysis of the Principle of the Double Effect" *Theological Studies* 10 (1949): 40-61.

²⁴⁹ With regard to such questions, Finnis's continuity with Aquinas is apparent both in Finnis's own work, e.g. J. Finnis, "Object and Intention in Moral Judgments According to St. Thomas Aquinas," *Thomist* 54 (1991): 1 - 27, and in contemporary interpretations of St. Thomas, e.g. Patrick Lee, "Permanence of the Ten Commandments: St. Thomas and His Modern Commentators," *Theological Studies* 42 (1981): 422-443.

basis for asserting that a given empirical fact description implicates one Basic Good rather than another, or any at all. Even in any apparently clear case like the immorality of killing, Finnis cannot explain why a single human life rather than the greatest number of human lives implicates the cognitive concept of life as a Basic Good. He decides whether an act contradicts a Basic Good by relying on an intuition or sentiment that the act contradicts a Basic Good “willy nilly.”

Finnis and Aquinas both devote attention to harms incurred through sexual conduct. Finnis’s reliance on intuition or sentiment is again apparent in this context.²⁵⁰ Consider a married couple engages in oral sex by inclination, without a thought of avoiding conception (perhaps the couple knowingly has fertile genital intercourse immediately before and after the act.) Finnis would allege that their act contradicts a cognitive principle, a Basic Good. This is so, even though the couple undertakes no act to prevent conception. The defect in their act is their neglect to include genital union in the consummation of their sexual interaction. On the other hand, a couple may have genital intercourse during an infertile period in the woman’s cycle, to ensure that she does not become pregnant. Finnis would hold that their act does not contradict the good of procreation. In holding that the biological incompleteness which the agents accept in the one act but not in the other, turns against a Basic Good. He relies on intuition to distinguish the cases. If one were to suggest that the real basis of

²⁵⁰ Hittinger states that Grisez’s “arguments concerning the value of human organicity do not constitute a merely indirect confirmation of the original practical insight (or, as Finnis puts it, a new “assemblage of reminders”), but rather determine the practical insight itself, . . . but . . . Grisez finds himself having to move back to justify the pre-moral ‘natural’ facet, even though his method rules out the necessity of such a move.” *A Critique of the New Natural Law Theory*, 163-4.

difference were the moral meaning of in the physiological structure of human sexual faculty. Finnis would reject the suggestion as incurring the naturalistic fallacy.

St. Thomas concurs that non-genital acts of sexual intercourse represent a harm that the agent morally may never directly intend. But, he reasons differently from Finnis on this point. He seeks to establish whether there is harm *to another*, in violation of a moral obligation. He finds that non-procreative use of the venereal power represents harm to God and to the human community because both have an interest in the procreation of the human race, and in the moral agent's well being. He identifies the harm to the agent's well being in relation to the objective value of the agent's venereal power and is its aptness for procreation. To activate the faculty without completing its innate procreative teleology violates the meaning of the faculty itself, not merely of the idea of procreation, as in Finnis. Aquinas actually considers the harm in question to be the worst possible in relation to the faculty, since he considers it to turn directly against the faculty's meaning.

Most of Finnis's Requirements of Practical Reasonableness do not intersect with the Decalogue even indirectly. In considering these remaining requirements in turn, one observes that they depart from Aquinas's methodology. Finnis's requirement of a coherent life plan appears neither in the Decalogue nor in Aquinas. Aquinas calls for the agent to act with a formal will to endorse Providence, acknowledging that God, and not the agent, is the author of the plan of his life. Moreover, the agent finds his perfection in general justice, that is, as a member of the community. On this level as well the community, and not the agent can be said to establish his life plan, as a part in a larger societal whole. In his own choices, the agent acts best if he acts according to the hierarchy of values reflected in external objects,

rather than according to any purely private validation. This hierarchy leaves less room for a distinct “life plan” than Finnis takes for granted. Lastly, Aquinas has the agent observe the virtuous mean in the use of his faculties. He is to do so, by respecting his innate temperament.

In all of these ways, excellence in practical reasoning integrates the agent into a virtuous whole. It does not leave room for anything so atomistic as a self-derived “life plan.” Moreover, St. Thomas would consider the concept of purely formal consistency in a plan of life morally neutral at best. His discussion of “prudence of the flesh” suggests that, he holds that a life plan, detracted from an objective hierarchy of value, is the more evil, the more formally consistent it is.

Finnis’s remaining three Requirements of Practical Reasonableness form a cluster: 1) the agent should have no arbitrary preferences; 4) the agent should be sufficiently committed to action; and 5) the agent should not be overly committed to an action. Each concerns itself with proportionality. All three requirements parallel St. Thomas’s principle that one should act according to the mean,²⁵¹ but each does so with this significant difference. Finnis proposes his principles as basic moral duties. Aquinas proposes the mean as a measure of virtue, not obligation.

Further, St. Thomas measures what is proportionate in each case by reference to objective meaning found in the agent’s faculties and external objects. Aquinas’s requirement

²⁵¹ *“Et ideo patet quod bonum virtutis moralis consistit in adaequatione ad mensuram rationis. Manifestum est autem quod inter excessum e defectum medium est aequalitas sive conformitas. Unde manifeste apparet quod virtus moralis in medio consistit”* (“Clearly the good of moral virtue consists in fitting the measure of reason. Clearly, too, between excess and deficiency the mean is equality or conformity. It is evident, then, that moral virtue consists in a mean.”) Ibid. I-II q. 64 a. 1 (v. 23 pp. 166-167 (1969)).

that the agent observe the mean rules out "arbitrary preferences," in the sense that the real mean of justice excludes arbitrary performance among persons and in the sense that too much or too little committed to an action, might violate the rational mean of due proportion to the agent's innate temperament. The difference between Finnis and Aquinas is exemplified by the case of Emily Dickinson. On the day of her death, she had lived as a recluse, and a trunk of largely unread and entirely unpublished poems sat in her attic. Finnis's requirements would seem to call for the conclusion that she arbitrarily preferred one value to all others, was excessively committed to it, and insufficiently committed to all others. Aquinas who measures action according to innate temperament and objective value would judge differently.

Finnis includes efficiency under the Requirement of Practical Reasonableness. Aquinas's indicative virtue ethics suppose that prudence seeks efficient means. Aquinas holds that God, as the author of natural law, prescribes all natural law rules, and for that matter all natural causation, as efficient means to the end of universal happiness.²⁵² But this consideration of efficiency is prior to, and not part of human observance. On the level of practical reason, the few positive injunctions the natural law contains -- e.g., religious observance and filial piety-- require some efficiency to ensure that the minimum under the injunction is satisfied. Moreover, the agent has a duty to avoid foreseeable and disproportionately harmful consequences. To this degree, as well, the agent must calculate efficiency, maximizing gains and minimizing losses. But this concern for efficiency is not a global one. It comes into play only once a specific harm has been prohibited. Aquinas

²⁵² From the Divine Viewpoint, the promulgation of natural law principles by imprint in the human mind would be an act of prudence, involving steps of ordination, notification and motion. See Walter Farrel, "The Roots of Obligation," *The Thomist* 1 (1939): 14-30, 17.

considers efficiency to be a matter of obligation only as the exception. Thus, Aquinas has no parallel to Finnis's general injunction to be efficient. He considers efficiency generally to be a defeasible prudential obligation.

Finnis's final requirements of practical reasonableness forbid acting for apparent goods or acting in disregard for conscience. Here Aquinas would agree with the drift, but again, he would consider neither even a defeasible obligation. Both errors in reasoning may lead to violations of obligation. But in that case, the obligation has its own separable content. Deviations in reasoning are sins for Finnis because they depart from self-perfection through constancy in practical reason. For Aquinas they are sins, if they represent a choice to depart from due relations with others.

3. The Role of the Good in the Two Ethical Theories

Finnis and Aquinas can be best understood in the role the respectively assign the good in their ethical theories by ascertaining how that role affects their approach to teleology, the objectivity of obligation, and the problem of conflict between egoism and altruism.

a. The Respective Ethical Theories' Teleological Character

In explaining the structure of the individual human act, Finnis borrows an element of teleology from St. Thomas: the capacity of the mind to conceive of ends attainable through action. Correctly observing that St. Thomas treats this insight as self-evident and underived, Finnis concludes that this element can stand alone, without St. Thomas's ontology and metaphysics. However, drawing this conclusion, Finnis deletes St. Thomas's assumption that the good and being are convertible.

The ethical theory Finnis builds around the insight taken from St. Thomas is teleological in additional ways. It is oriented to the good to be attained not only in the particular act, but in larger configurations: a life plan, a conception of justice, and a vision of the common good. But, the attractive force of the *teloi* always remains the agent's reason seeking its own complete inner consistency. This is not in itself an end external to the agent's will, but only a basic self-reflexive attitude or procedure, à la Kant. The intrinsic appeal the gestalt in question has for the agent is essentially arbitrary, and without ethical relevance.

In St. Thomas, there is a *summum bonum* in relation to which everything that is, has meaning and value, including the agent himself along with his capacity to choose and act. The agent has a teleology within his faculties centered on the mediatory basic goods. This teleology allows him to order his inner life according to virtue. He knows and engages in the hierarchically ordered universe without, co-creating with God his own fullest participation in the cosmos. In Finnis there is no overarching *telos*. Finnis knows no unifying and knowable vision of the cosmos. He has no finality which integrates a total vision of the human person. For Finnis, ethics do not lead to participation in a cosmic order ordained by God.

Further, Finnis's trust in the agent's life plan, conception of justice, and common good is not intrinsic. They are no more than occasions for cultivating a will consistently open to the categories of reason. Comparison with St. Thomas's ethical vision of a community of reasonable beings bound together by the rule and measure of law brings the deontological aspect of Finnis's notion of obligation to the fore.

b. The Good's Role in Conferring Objectivity on Obligation

Finnis correctly notes that he and Aquinas share an objectivity in their conceptions of moral obligation, since both consider such obligation invariant and universal. Both develop their notions of invariance in relation to self-evident ethical knowledge. Yet, Aquinas gives a role to the good grounding his theory of moral obligation in an objectively missing in Finnis. In Aquinas, the good follows the structure of human faculties, the ascending hierarchy of value in external being, and the ordinance of the Creator for the good of all. The agent is affected in relation to all these objective elements, depending on whether he complies in his being with the precepts of natural law. Finnis lacks the objective elements found in Aquinas. And he can claim no such objective ramifications for in his system of moral norms.

c. The Conflict of Egoism and Altruism

St. Thomas's ontology and metaphysics rule out any conflict between egoism and altruism. The agent's nature means that all fulfillment is inherently interpersonal. He fulfills reason when he complies with the reasonable ordinances of the community for the regulation of common life. If he were a moral person, he necessarily conceives of his particular interests as subordinate to the universal common good willed by God, who in the particular case may intend for this competitor to prevail.

Because Finnis jettisons this ontology and metaphysics, he introduces into his ethical theory tension between the imperativeness of egoism and altruism. Much of his moral anthropology assumes an individualism, with its self-constructed individual life plans and its other individually oriented requirements (concerning individual arbitrariness, degree of commitment, etc.). The pursuit of happiness, organizing the participation of the agent's

emotions in action is completely outside of the scope of rational critique, and thus is utterly private and individualistic.

The concrete moral norm enters to limit the agent in his otherwise neutral sweep of individual power, and often it does so to bar the agent from intruding on another, person's interests requiring in effect, that the agent assume a position of altruism. Here sharp discontinuity evolves between an essentially individual agenda for action, and limits imposed on behalf of the other by a moral norm. The only bridge between the two elements is the ideal of consistent regard for the categories of reason. Finnis concludes that his system is undetermined about which has priority, the demands of egoism or altruism.

E. Aquinas's Jurisprudence

This dissertation ultimately seeks to understand the normative role of "Basic Goods" in John Finnis's jurisprudence. Thus, the present chapter's comparison of Finnis and Aquinas is not complete until it also reviews Aquinas's jurisprudence. A first step in this phase of comparison is to set forth Aquinas's descriptive concept of law. The heuristic concept of law of Chapter 1 offers the starting point in this exposition:

law is a sanction-backed restriction imposed by government power on individual freedom, or a limit on governmental power to restrict individual freedom and (in some variants) an instrument of economic and social goals.

From within the hermeneutical situation Aquinas's concept of law will most readily be grasped where it satisfies this definition, and its distinctive character will seem to appear where it departs it.

The meaning St. Thomas ascribes to each term of the heuristic definition -- "power," "freedom," "restrictions," "immunity," "sanction" and, in some readings, "instrument of

social and economic ends" -- gives the contemporary reader the readiest access to Aquinas's concept of law. The exercise brings to light that St. Thomas considers a basic purpose of the law to reinforce moral discipline, and that when it encounters the lawlessness of the unruly, the law overrides it with coercive sanctions and he understands the law to be a "precept" or "rule," which, as applied to the unruly, is intelligible as restricting the freedom to do as they like.

Aquinas's definition also gives a place to "immunity". It holds state power to be subject to moral limits, which result in a moral immunity from state interference on the part of the individual person. One such set of moral limits arises with two of the elements of St. Thomas's definition of law. He holds that law is: 1) an ordinance of reason, which is 2) for the common good. He considers law an ordinance of reason, which is addressed to the law's subjects for their voluntary appropriation. The subject is morally immune from any governmental demands which is demonstrably unreasonable. St. Thomas defines the law as for the common good. He defines the common good as concernedly with the social dimension of virtue. Therefore, strictly individual matters are morally immune from civil law.

Aquinas's definition embraces the notion of the law as an "instrument of economic and social goals." He equates this element with the third purpose of law, which he cites from St. Isidore of Seville.

This brief inquiry into the fit between the heuristic definition and St. Thomas's idea of civil law discloses that St. Thomas's concept is actually more dissimilar, than similar, to the heuristic definition. Aquinas, for example, does not share the heuristic notion of value-neutrality. St. Thomas gives a place in his definition to virtue and moral purpose which are

not consistent with to the heuristic emphasis on power and freedom. Still, the elements of restriction, immunity, sanction and instrumentation, do appear in their own subordinate way, to run throughout St. Thomas's entire treatment of law. To understand the fuller meaning, in the context of St. Thomas's thought, of these elements Aquinas shares with the heuristic concept, one most productively begins with his meta-level concept-formation.

1. Meta-Level Concept Formation in St. Thomas

Aquinas forms concepts of social institutions based on the basic human purposes they advance. He finds these purposes to inhere in human nature. He considers them to have underived necessity, as the self-evident first principles of Practical Reason. For a fuller elaboration of these concepts, Aquinas shows how basic purposes find their fulfillment through necessary human relationships.²⁵³ He accords speculative reason a role in drawing out the nature and meaning of these constitutive purposes and relationships. He gives priority to neither practical nor speculative reason, in devising concepts, descriptive of social intuitions, but rather he interprets both modes of reason within a common metaphysical framework.

²⁵³ "[C]ommunio domesticarum personarum ad invicem. . . . est secundum quotidiana nos actus qui ordinantur ad necessitatem vitae. Vita autem hominis conservatur dupliciter. Uno modo, quantum ad individuum, prout scilicet homo idem numero vivit: e ad talem vitae conservationem opitulatur homini exteriora bona, ex quibus homo habet victum et vestitum et alia hujusmodi necessaria vitae; in quibus administrandis indiget homo servis. Alio modo conservatur vita secundum speciem per generationem, ad quam indiget homo exore, ut ex ea generet filium. Sic igitur in domestica communione sunt tres combinationes: scilicet domini ad servam, viri ad uxorem, patris ad filium" ("[D]omestic relationships are governed by the daily actions done in view of the necessities of life. Now the preservation of human life may be considered in two aspects. There is the individual aspect, that of each member who has it at his disposal exterior goods to provide him with food and clothing and other such necessities, and to administer these he has need of servants. There is also the specific aspect, that of the preservation of the human race by generation, and for this a man needs a wife to bear him children. These are thus three sets of domestic relations, that of master to servant, husband to wife, and father to son.") Ibid., I-II q. 105 a. 4 (v. 29 pp. 305-307 (1969)).

St. Thomas offers a single metaphysical definition of law, the elements of which are explanatory of reality on four distinct ontological levels. He applies the concept on each of these levels illuminating the practical and speculative truths proper to it. He draws on analogues from each of the other levels, to make fuller sense of the operation of the concept of each level. St. Thomas's concept of law, then, is metaphysical. It equally applies to an effort to organize an understanding of social, theological, moral, and natural realities.²⁵⁴

St. Thomas's metaphysical definition of law is as follows: “[D]efinitio legis, quae nihil est aliud quam quaedam rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata.”²⁵⁵ The term signifies that individual natures-- vegetative, animal, and rational-- come to be in response to an ordinance of reason concerning what is to be. The human community, for instance in the natural and rational relationships constituting it, comes to be in response to such an ordinance.

In the order of uncreated being, St. Thomas utilizes the metaphysical idea of law to explain God's role as the universal First Cause and Last End. The eternal ordinance of Divine Reason determines what comes to be in time. Eternal Law effectuates God's Eternal Purposes, ordaining the nature and operation of all that is. It also ensures that everything that

²⁵⁴ “Deinde considerandum est de diveritate legum, et circa hoc quaeruntur lex: . . . aeterna . . . naturalis . . . humana . . . divina, and . . . animalis” (“Now let us look at the diversity of laws. And here there are five points of inquiry: . . . Eternal . . . natural . . . human . . . divine . . . animal.”) *ibid.* I-II q. 91 a. 1 and 6 (v. 28 pp. 18-19 and 38-39 (1966)).

²⁵⁵ “[N]ihil est aliud lex quam dictamen practicae rationis in principe qui gubernat aliquam communitatem perfectam” (“[L]aw is nothing but a dictate of practical reason issued by a sovereign who governs a complete community.”) *Ibid.*, I-II q. 91 a. 1 (v. 28 pp. 18-19 (1966)).

is works together for a comprehensive common good, uniting and transcending the parts.²⁵⁶

God rules throughout Creation which accounts for the determined character of things, as well as for reason and free will as occasions for human self-government. God also rules through the ordinances of Providence manifest in apparently random patterns of causation.

In the order of human reason, the participation of Eternal Law is apparent in the moral agent's self-evident knowledge of the first principles of practical reason. These principles rule or measure what the common good requires in the realm of self-constituting human choice.²⁵⁷ In the sub-rational order, beings find their individual fulfillment without freedom or rational understanding, through a law "in their natures" effectuating and coordinating

²⁵⁶ "[L]ex aeterna nihil aliud est quam ratio divinae sapientiae, secundum quod est directiva omnium actuum et motionum" ("[T]he Eternal Law is nothing other than the exemplar of divine wisdom as directing the motions and acts of everything.") Ibid., I-II q. 93 a. 1 (v. 28 pp. 52-53 (1966)); and "Nam sicut intentio principalis legis humanae est ut faciat amicitiam hominum ad invicem, ita intentio legis divinae est ut constituat principaliter amicitiam hominis ad Deum" ("For just as human law is principally designed to establish harmonious relationships between men, so divine law is principally designed to establish loving and harmonious relations between man and God.") Ibid., I-II q. 99 a. 2 (v. 29 pp. 36-37 (1969)).

²⁵⁷ "Dicendum quod, sicut supra dictum est, lex importat rationem quamdam directivam actuum ad finem. In omnibus autem moventibus ordinatis oportet quod virtus secundi moventis derivetur a virtute moventis primi, quia movens secundum non movet nisi in quantum movetur a primo. Unde in omnibus gubernantibus idem videmus, quod ratio gubernationis a primo gubernante a secundis derivatur, sicut ratio eorum quae sunt agenda in civitate derivatur a grege per praeceptum in inferiores administratores, et in artificialibus etiam ratio artificialium actuum derivatur ab architectores ad inferiores artifices qui manu operantur." ("We have seen that law implies a plan directing acts to a purpose. In any series of subordinate agents the energy of those that are secondary flows from the energy of the prime mover, since unless it sets them going they do not act. We see the same with any governed system where power issues from an original principle to secondary principles, thus the execution of State policy descends by the sovereign's ordinance to subordinate administrators, and thus also in architecture the master plan of the building descends from the architect to the workmen.") Ibid., I-II q. 93 a. 3 (v. 28 pp. 58-59 (1966)); and "Inter caetera autem rationalis creatura excellentini quodam modo divinae providentiae subjacet, in quantum et ipsa fit providentiae particeps, sibi ipsi et aliis providens. Unde et in ipsa participatur ratio aeterna per quam habet naturalem inclinationem ad debitum actum et finem, et talis participatio legis aeternae in rationali creatura 'lex naturalis' dicitur" ("Among them intelligent creatures are ranked under divine Providence the more nobly because they take part in Providence by their own providing for themselves and others. Thus, they join and make their own the Eternal Reason through which they have their natural aptitudes for their due activity and purpose. Now this sharing in the Eternal Law by intelligent creatures is what we call 'natural law.'") Ibid., I-II q. 91 a. 2 (v. 28 pp. 22-23 (1967)).

natural and animal ends.²⁵⁸ Human agents departing from right reason experience a degradation of their natures, according to a necessary pattern that has the form of a law “*fomes*.”²⁵⁹

Finally, in the social order human beings promulgate and comply with the ordinances of authority for the sake of organizing social life. The purpose in view is civic friendship. Civic friendship subsists in mutual concern for the good of all.²⁶⁰ Its objective requirements relate both to consensual undertakings and to certain natural forms, such as those of the family.²⁶¹

²⁵⁸ “*Unde cum omnia quae divinae providentiae subduntur a lege aeterna reguntur et mensurentur, ut ex dicis patet, manifestum est quod omnia participant aliquantulum legem aeternam, in quantum scilicet expressione ejus habent inclinationes in proprios actus et fines*” (“Since all things are regulated and measured by Eternal Law, as we have seen, it is evident that all somehow share in it, in that their tendencies to their own proper acts and ends are from its impression.”) I-II q. 91 a. 2 (v. 28 pp. 22-23 (1966)).

²⁵⁹ “*In hominibus autem secundum hoc non habet rationem legis, sed magis est deviatio a lege rationis. Sed in quantum per divinam justitiam homo destituitur originali justitia et vigore rationis, ipse impetus sensualitatis, qui eum ducit habet rationem legis in quantum est poenalis, et ex lege divinae consequens hominem destitutum propria dignitate*” (“In men, however, the impulse of sensuality does not have the character of law in this sense; it is rather a deviation from law. All the same, taking them as deprived of original justice and the vigour of reason, their being borne along by sensuality possesses a quality of law, namely of being a penal consequence, according to divine justice, of the loss of their original proper dignity.”) Ibid., I-II q. 91 a. 6 (v. 28 pp. 39 (1966)).

²⁶⁰ “*Unde ad rationem populi pertinet ut communicatio hominum ad invicem justis praeceptis legis ordinetur*” (“Thus it is of the essence of a nation that the mutual relations of its members be governed by just laws.”) Ibid., I-II, 105 a. 2 (v. 29 pp. 278-79 (1969)).

²⁶¹ “*Statuit lex communicationem factam per eos qui sunt domini rerum . . . vero cum recompensatione utilitatis: sicut per venditionem et emptionem, et locationem et conductionem, et per mutuum, et iterum per depositum, de quibus omnibus inveniuntur ordinationes certae in lege*” (“[T]he Law laid down rules for the transference of goods by their owners . . .; and the transfer for a consideration such as buying and selling, borrowing and hiring, the loan and the deposit, for all of which these were definite rules laid down.”) *ibid.*, I-II q. 105 a. 2 (v. 29 pp. 280-81 (1969)); and “*[C]ommunio domesticarum personarum ad invicem. . . est secundum quotidiana nos actus qui ordinantur ad necessitatem vitae. Vita autem hominis conservatur dupliciter. Uno modo, quantum ad individuum, prout scilicet homo idem numero vivit: e ad talem vitae conservationem opitulatur homini exteriora bona, ex quibus homo habet victum et vestitum et alia hujusmodi necessaria vitae; in quibus administrandis indiget homo servis. Alio modo conservatur vita secundum speciem per generationem, ad quam indiget homo exore, ut ex ea generet filium. Sic igitur in domestica communione sunt tres combinationes: scilicet domini ad servam, viri ad uxorem, patris ad filium*” (“[D]omestic relationships are governed by the daily actions done in view of the necessities of life. Now the preservation of human life may be considered in two aspects. There is the individual aspect, that of each member who has it at his disposal exterior goods to provide him with food and clothing and other such necessities, and to administer these he has need of servants. There is also the

2. St. Thomas's Concept of Civil Law

In St. Thomas's scheme, one moves from the metaphysical concept of law to the specific concept of civil law, by incorporating elements from the ontology of social life. St. Thomas considers that the human community has a distinctive ontological finality,²⁶² so that participation therein perfects its members.²⁶³

Aquinas holds the community to be more than an aggregation of individuals. He asserts that it has an ontological status as real. Its reality lies in its members' common will to one another's good. Each individual, while not losing his transcendent personal destiny in relationship to God, has, in relationship to the community, the character of imperfect to perfect, part to whole, or limb to body.²⁶⁴ On the "external" plane, the community's shared

specific aspect, that of the preservation of the human race by generation, and for this a man needs a wife to bear him children. These are thus three sets of domestic relations, that of master to servant, husband to wife, and father to son.") Ibid., I-II q. 105 a. 4 (v. 29 pp. 305-307 (1969)).

²⁶² "[P]opulus est coetus multitudinis juris consensu et utilitatis communione sociatus" ("A nation is a body of persons joined together in acceptance of a law and for the good of all.") Ibid. I-II q. 105 a. 2 (v. 29 pp. 278-79 (1969)).

²⁶³ "*Irsus cum omnis pars ordinatur ad totum sicut imperfectum ad perfectum, unus autem homo est pars communitatis perfectae, necesse est quod lex proprie respiciat ordinem ad felicitatem communem*" ("Again, since the subordination of the part to whole is that of incomplete to rounded-off reality, and since a human individual man is part of the full life of the community, it must needs be that law properly speaking deals with this subordination to a common happiness.") Ibid., I-II q. 90 a. 2 (v. 28 pp. 10-11 (1966)).

²⁶⁴ "*Omnis autem pars ordinatur ad totum ut imperfectum ad perfectum; et ideo omnis pars ordinatur ad totum ut imperfectum ad perfectum; et ideo omnis pars naturaliter est propter totum. Et propter hoc videmus quod si saluti totius corporis humani expediat praecisio alicujus membri, puta cum est putridum ex corruptivum aliorum laudabiliter et salubriter abscinditur. Quaelibet autem persona singularis comparatur ad totam communitatem sicut pars ad totum. Et ideo si aliquis homo sit periculosus communitatis et corruptivus ipsius propter aliquod peccatum laudabiliter et salubriter occiditur, ut bonum commune conservatur. Modicum enim fermentum totam massam corrumpit*" ("But every part is related to the whole precisely as imperfect to perfect, which is the reason why every part is naturally for the sake of the whole. If, therefore, the well-being of the whole body demands the amputation of a limb, say in the case where one limb is gangrenous and threatens to infect the others the treatment to be commanded is amputation. Now every individual person is as it were a part of the whole. Therefore if any man is dangerous to the community and is subverting it by some sin the treatment to be commanded is his execution for a little leaven sours the whole lump.") Ibid., II-II, q. 64 a. 2 (v. 38 pp. 22-23 (1975)).

purpose has the form of "*temporalis tranquillitas civitatis*," stopping short of the everlasting happiness the Church mediates for its members.²⁶⁵

St. Thomas relies on analogies from each of his three other metaphysical levels to deepen our grasp of the meaning of civil law. In the order of nature, he cites a hive of bees for their instinctual allocation of social roles. Human society does this by the rule of law.²⁶⁶ He sees the self-evident principles of practical reason as offering a yet closer analogy to civil law. The individual's good of happiness is the analogue to the community's end of the common good. The command of Practical Reason in the human act parallels the ordinance of civil authority within the community.²⁶⁷ The conformity of the appetites to the rule of reason in virtue is like the compliance of the citizenry with civil law.²⁶⁸ Finally, the Eternal law's coordination of the universal common good from out of the multiplicity of created natures resembles the civil law's coordination of social cohesion from out of striving of a multitude of

²⁶⁵ "*Legis enim humanae finis est temporalis tranquillitas civitatis, ad quem finem pervenit lex cohibendo exteriores actus, quantum ad illa mala quae possunt perterbare pacificum statum civitatis*" ("The end towards which human law is directed is that the state shall have tranquillity in its temporal affairs, and law achieves this by preventing anything from being done in the external sphere which may upset the state's preaceful condition.") I-II, q. 98 a. 1 (v. 29 pp. 4-5 (1969)).

²⁶⁶ *On Kingship or The Governance of Rulers* (De Regimine Principium) chap. 1 in *St. Thomas Aquinas on Politics and Ethics* (trans. Paul Sigmund New York: W. W. Norton, 1988) 15.

²⁶⁷ "*Ad primum ergo dicendum quod, sicut dictum est, regnativa est perfectissima species prudentiae*" ("We have observed that kingly or ruling prudence is the fullest species of prudence.") *ibid.*, II q. 50 a. 2 (v. 36, pp. 86-87 (1974))."

²⁶⁸ "*Unde Philosophus dicit quod ratio proeest irascibili et concupiscibili, non principatu despotico, qui est domini ad servum, sed principata politico aut regali, qui est ad liberos, qui non totaliter subduntur imperio*" ("Aristotle observes how the reason governs the appetites of desire and contention, not by the despotic rule of a slavemaster, but by the civil and royal rule which governs free men who are not entirely subject to dictate.") *ibid.*, I-II q. 17 a. 7 (v. 17 pp. 200-01 (1970)).

individuals. By virtue of this last analogy, St. Thomas considers Practical Reason to function at its highest level, when it directs the life of the many in common.²⁶⁹

St. Thomas understands the civic law to aim at the common good. He understands this good to cohere at three distinct levels: 1) an order of respect for God as the community's First Cause and Last End; 2) an order of peace and justice ensuring the "negative" conditions for the flourishing of individual, family, and private association; and 3) an order of utility in pursuit of the public interest.²⁷⁰ As for the individual, successful action undertaken in common, both brings about the union of civic friendship, and excellence in the use of his faculties. Thus, participation in civic law perfects the agent in the comprehensive social

²⁶⁹ *"Ad primum ergo dicendum quod omnia quae sunt virtutem moralium pertinent ad prudentiam sicut ad dirigentem; unde et ratio rectae prudentiae ponitur in definitione virtutis moralis, ut supra dictum est"* ("Prudence has the role of a guide in all matters of moral virtue; that is why the right reason of prudence enters the definition of moral virtue, as we have seen. And so the execution of justice to serve the common good, and it is the office of a king, needs the guidance of prudence.") *Ibid.*, II-II q. 50 a. 1 (v. 36 pp. 84-85 (1974)); and *"Dicendum quod, sicut ex supra dictis patet, ad prudentiam pertinet regere et praecipere et ideo ubi invenitur specialis ratio regiminis et praecepti in humanis actibus, ibi etiam invenitur specialis ratio prudentiae manifestum est autem quod in eo qui non solum seipsum habet regere, sed etiam communi tatem perfectam civitatis vel regni, invenitur specialis et perfecta ratio regiminis; tanto enim regimen perfectius est quanto universalius est, ad plura se extendens et ulteriorem finem attingens. Et ideo regi, ad quem pertinet regere civitatem vel regnum, prudentia competit secundum specialem et perfectissimam sui rationem et propter hoc regnativa ponitur species prudentiae"* ("We have explained that the function of prudence is to rule and command. Hence whenever in human affairs you find a special kind of ruling and commanding there also you find a special kind of prudence. Clearly in one who is responsible for ruling, not only himself, but also the entire community of the state or kingdom you find a specific and full notion of rulership, which will be more complete the more universal it is, that is, embracing more matters and reaching to a higher purpose. And so, the prudence which befits a king, who has charge of a state or kingdom is of a special and most complete kind. Accordingly the ruling prudence of a polity is set down as a kind of prudence.") *Ibid.*, II-II q. 50 a. 1 (v. 36 pp. 84-85 (1974)).

²⁷⁰ *"Fines autem humanae legis est utilitas hominum, sicut etiam Jurisperitus dicit. Et ideo Isidorus in conditione legis primo quidem tria posuit: scilicet quod religione congruat, in quantum scilicet est proportionata legi divinae; quod disciplinae conveniat in quantum est proportionata legi naturae; quod saluti proficiat, in quantum est proportionata utilitati humanae"* ("The purpose of human law is to be useful to men, as also the Jurist teaches. That is why Isidore starts off by naming three conditions, namely that it is consistent with religion as corresponding with divine law, that it agrees with good discipline as corresponding to natural law and that it furthers our welfare as corresponding to human usefulness.") *Ibid.*, I-II q. 95 a. 3 (v. 28 pp. 108-109 (1966)).

virtue, legal justice.²⁷¹ And it elicits the virtues of political prudence and distributive justice in the character of those making the laws.²⁷² The civil law coordinates common action under general precepts setting a common course of action, for the sake of the three principles mentioned above. Reason in the lawmaker ordains the common course, and in the subject adopts it as the measure of individual conduct.²⁷³

St. Thomas asserts that the civil law enacts the primary and secondary precepts of natural law to ground the social order in religion and morality.²⁷⁴ It goes beyond natural law

²⁷¹ “[J]ustitia legales dicitur esse virtus generali, in quantum scilicet ordinat actus aliarum virtutum ad suum finem, quod est movere per imperium omnes alias virtutes. . . virtus generalis . . . ordinat actus omnium virtutum . . . justitia legalis . . . ordinat actus omnium virtutum ad bonum commune” (“We have spoken of justice as a general virtue, inasmuch as it orders the activities of other virtues to its own end by moving them by its command . . . a general virtue . . . sets the activities of all the virtues . . . legal or general justice . . . sets them towards the common good.”) *Ibid.*, II-II q. 58 a. 6 (v. 37 pp. 36-37 (1975)).

²⁷² “Ad primum ergo dicendum quod omnia quae sunt virtutem moralium pertinent ad prudentiam sicut ad dirigentem; unde et ratio rectae prudentiae ponitur in definitione virtutis moralis, ut supra dictum est” (“Prudence has the role of a guide in all matters of moral virtue; that is why the right reason of prudence enters the definition of moral virtue, as we have seen. And so the execution of justice to serve the common good, and it is the office of a king, needs the guidance of prudence.”) *Ibid.*, II-II q. 50 a. 1 (v. 36 pp. 84-85 (1974)).

²⁷³ “[L]ex imponitur aliis per modum regulae et mensurae. Regula autem et mensura imponitur per hoc quod applicatur his quae regulantur et mesurantur. Unde ad hoc quod lex virtutem obligandi obtineat, quod est proprium legis, oportet quod applicetur hominibus qui secundum eam regulari debent. Talis autem applicatio fit per hoc quod in notitiam eorum deditur ex ipsa promulgatione. Unde promulgatio ipsa necessaria est ad hoc quod lex habeat suam virtutem” (“[L]aw is laid on subjects to serve as a rule and measure. This means that it has to be brought to bear on them. Hence to have binding force, which is an essential property of a law, it has to be applied to the people it is meant to direct. This application comes about when their attention is drawn to it by the fact of promulgation. Hence this is required for a measure to possess the force of law.”) *Ibid.* I-II q. 90 a. 4 (v. 28 pp. 16-17 (1969)).

²⁷⁴ “Quaelibet etiam res recta et mensurata oportet quod habeat formam proportionatam suae regulae et mensurae. Lex autem humana utrumque habet, quia et est aliquid ordinatum ad finem, et est quaedam regula vel mensura regulata vel mensurata quadam superiori mensura regulata vel mensurata quadam superiori mensura; quae quidem est duplex, scilicet divina lex et lex naturae. . . Finis autem humanae legis est utilitas hominum. . . Et ideo. . . in conditione legis primo quidem tria. . . : scilicet quod religioni congruat, in quantum scilicet est proportionata legi divinae; quod disciplinae conveniat, in quantum est proportionata legi naturae; quod saluti proficiat, in quantum est proportionata utilitati humanae. (“Again, whatever is right and measured should be configured to what rules and measures it. Human law meets both requirements, for, first, it is something ordered to a purpose, and, second, it is a sort of rule and measure itself ruled and measured by a higher. This last . . . is twofold, namely divine law and natural law. The purpose of human law is to be useful to men, . . . That is why [one may start.] off by naming three conditions, namely that it is consistent with religion as corresponding with divine law, that it agrees with good discipline as corresponding to natural law, and that it further s our welfare as

in two ways: it gives determinate content to requirements that natural law ordains in only general terms, and it enforces the community's elective goals.²⁷⁵

St. Thomas does not consider civil law to be necessary through any of the functions just described, since reasonable people would pursue these same function through other means without law. Civil law's necessity flows from the unruliness of those not voluntarily observing natural law. The civil law give notice that society expects conformity with the natural law requirements of peace and justice on penalty of sanction.²⁷⁶ Paradoxically, the more lawless the people, the more necessary law.

Lawmaking poses two challenges for prudence, the fashioning of a concrete order of respect for natural law's minimal requirements, and the advancement of the community's instrumental needs. In both respects, prudence balances the use of sanctions with an appeal to the reasonable voluntary compliance. The nature of law as a rule of reason requires that reliance on reason be primary, and on restraint secondary. The law aims at the compliance the majority can be expected to observe voluntarily. In this regard, the civil law's rule is

corresponding to human usefulness.") Ibid., I-II q. 95 a. 3 (v. 28 pp. 108-109 (1969)).

²⁷⁵ *[S]ciendum est quod a lege naturali dupliciter potest aliquid derivari: uno modo sicut conclusiones ex principiis alio modo sicut determinationes quaedam aliquorum communium* ("Reflect on this, however, that commands can be traced to natural law in two ways; one drawn deductively like conclusions from premises; two, grounded on it like constructional implementations of general directives." Ibid., I-II q. 95 a. 2 (v. 28 pp. 104-105 (1966)).

²⁷⁶ *"Dicendum quod, sicut ex supra dictis patet, lex de sui ratione deo habet: primo quidem, quod est regula humanorum actuum; secundo, quod habet vim coactivam. Dupliciter ergo aliquis homo potest esse legi subjectus"* ("It has been shown that law of its nature has the double role of being a guide for human acts and of possessing the power of constraint. Hence a man can be subject to a law in these two counts, first, of being guided by a ruling principle, and second, of being constrained by an enforcing principle.") Ibid., I-II q. 96 a. 5 (v. 28 pp. 132-33 (1966)); and *"Unde ad ratione populi pertinet ut communicatio hominum ad invicem justis praeceptis legis ordinetur. . . . [C]irca . . . autem communicationem lex sufficienter ordinavit. . . . Instituit etiam certas poenas pro diversis delictis"* ("Thus it is of the essence of a nation that the mutual relations of its members be governed by just laws. Now the Law was perfectly adequate . . . It prescribed . . . definite penalties for various crimes.") Ibid., I-II q. 105 a. 2 (v. 29 pp. 278-79 (1969)).

"*politico aut regali*" as opposed to "*despotico*" by analogy to Practical Reason's governance of the appetites.²⁷⁷ The civil law gradually civilizes its subjects, ultimately raising its standards and pushing back the limits of the viciousness that society will tolerate.²⁷⁸

For Saint Thomas, the essence of law lies in a pattern of reciprocity between the lawmaker and subject, in honoring the ordinances of reason for the good of all. Out of common purpose, the lawmaker promulgates these ordinance, and the subject adheres to them.²⁷⁹ These ordinances have the following certain invariant formal characteristics: each is a general precept requiring, prohibiting, or permitting conduct on a standard set of facts, as a means to some good.²⁸⁰

²⁷⁷ "*Unde Philosophus dicit quod ratio proest irascibili et concupiscibili, non principatu despotico, qui est domini ad servum, sed principata politico aut regali, qui est ad liberos, qui non totaliter subduntur imperio*" ("Aristotle observes how the reason governs the appetites of desire and contention, not by the despotic rule of a slavemaster, but by the civil and royal rule which governs free men who are not entirely subject to dictate.") *ibid.*, I-II q. 17 a. 7 (v. 17 pp. 200-01 (1970)).

²⁷⁸ "*Lex autem humana ponitur multitudini hominum, in qua major pars est hominum non perfectorum virtute. Et ideo lege humana non prohibentur omnia vitia a quibus virtuosi abstinent, sed solum graviora a quibus possibile est majorem partem multitudinis abstinere*" ("Law is laid down for a great number of people of which the majority have no high standard of morality. Therefore it does not forbid all the vices, from which upright men can keep away, but only those grave ones which the average man can abstain.") *Ibid.*, I-II q. 96 a. 3 (v. 28 pp. 124-25 (1966)).

²⁷⁹ "*[O]mnis lex proficiscitur a ratione et voluntate . . . Sicut autem ratio et voluntas hominis manifestantur verbo in reus agendis, ita etiam manifestantur facto: hoc enim unusquisque eligere videtur ut bonum quod opere implet*" (All law proceeds from the reason and will . . . [M]an's reason and will in matters of practice are manifested by what he says, and by what he does as well; each carries into execution what he has chosen because to him it seems good.") *Ibid.*, I-II q. 97 a. 3 (v. 28 pp. 148-49 (1966)).

²⁸⁰ "*Quod vero subditur, 'necessaria, utilis', etc., refertur ad hoc quod expediat saluti; Ut necessitas referatur ad remotionem malorum, utilitas ad consecutionem bonorum, manifestatio, vero ad cavendum nocumentum, quod ex ipsa lege posset provenire, Et quia sicut supra dictum est, lex ordinatur ad bonum commune, hoc ipsum in ultima parte determinationis ostenditur*" ("Finally his remaining condition refers to law as advantageous for human well-being; 'necessary' for evil to be put away, 'useful' for good to be gained, 'clearly stated' so that any harm arising from the law itself may be guarded against. And because, as we have said, law is ordained to the common good, he brings in this requirement at the close of his description.") *Ibid.*, I-II q. 95 a. 3 (v. 28 pp. 110-11 (1964)).

Because both the lawmaker and the law's subjects discern the civil law's meaning within the total context of practical reason, the law's formal features merge without clear boundaries, into constitutive moral purposes available within reason, and with the ontological meanings of the situation. The obligation to receive the edicts of government, as law, depends not merely on their legal validity, but on their substantive moral authority.

3. A Comparison Aquinas's and Finnis's Descriptive Definitions of Law

To compare Finnis's and Aquinas's descriptive definitions of law, one ought to begin with their respective methods of concept formation. Aquinas's method is to identify a single pattern of relationships which recurs on four metaphysical levels, and then analyze the meaning of law at the level of specific civil society, by analogy to the other three levels. Finnis's method identifies a configuration of self-evident cognitive principles around which to organize empirical data about the social institution of civil law.

It seems fair to conclude that Finnis's methods of concept formation coincide with just one element of Aquinas's richer and more complex approach. Finnis asserts a connection between the self-evident elements of Practical Reason and the fact of social institutions, but denies the additional connections Aquinas draws between practical reason and social institutions, respectively, and uncreated being and natural causation. Even the connection Finnis develops between Practical Reason and the facts of social institutions are narrower than those St. Thomas develops. Finnis develops the meaning of the connection in only one direction, the meaning of cognitive principles for the nature of social institutions. He does not derive meaning for the cognitive principle from the ontology of the institution. St. Thomas constructs a concept of law drawing equally on practical and speculative reason.

Finnis does so, strictly bifurcating practical and speculative reason, and relying nearly exclusively on Practical Reason

St. Thomas considers action, as the expression of practical reason, to flow from being (*agere equitur esse*), which he considers the object of speculative reason. Aquinas reasons back from the ontology of institutions speculatively understood, to a deeper understanding of the first principles of practical reason. Of Aquinas's metaphysical levels, social relationships are the most readily observable. Aquinas develops his descriptive vocabulary precisely from observations on this level. He applies this vocabulary to explain patterns recurring on other levels, such as practical reason. Clearly, Aquinas derives his metaphysical definition of law ("an ordinance of reason for the common good by him who has care of the community, promulgated") by empirical observation of civil law. He decidedly does not do so by introspection into human cognition, and less so by direct scrutiny of the Divine Intellect. For St. Thomas, the civil order is first in the order of discovery, even though it is last in the order of causation. Aquinas's use of speculative reason allows him to connect the meaning of the social order by analogy, to that of cognition and divine purpose.

Finnis too, assumes access by human inquiry to different orders of meaning. Unlike Aquinas, he restricts the value of comparison among these orders. St. Thomas treats his orders -nature, reason, society, and God- as fitting into a single ascending, and ever more comprehensive, framework of meaning, by which each order subsumes and transcends the level below it, and receiving its form and end from the level above it. St. Thomas's

descriptive concept of civil law thus incorporates data, both analogical and causal, from nature, social data, cognitive categories, and speculative knowledge about God.²⁸¹

Turning from their methods to the specific terms of their descriptive definitions of law, both authors consider the law to be a means to the common good. But neither mean the same thing by the common good, nor hold the law to advance it in the same manner. Being and good are convertible for St. Thomas, and he views the common good as both the aim of action and the perfection of the agent as a social being. In acting for the common good, the agent is fully alive, since St. Thomas holds being alive as being "for" or "in relationship to others." He proposes legal justice as the complete virtue, because it perfects the agent's faculties for the benefit of others. All that the agent is subsumed and elevated through his acting for the community. His bond with the community is grounded in a common relation to God as First Cause and Last End.

Finnis's "metaphysically austere" approach cannot convert action and being. The bonds uniting the common good for Finnis are not ones of participating in being as in Aquinas. For Finnis, the common good is not a *what* but a *how*. According to his concept, the agent must act in a manner contributing to the conditions of effective joint action with

²⁸¹ Finnis entertains an analogy between the first principle of practical and speculative reason. But, the common term of the comparison is the method by which the mind works. The comparison does not imply common meaning of things in themselves. Such is the case with Finnis's comparison of the agent's practical reasoning about the good of play with the mind of God (the Divine Puppet master) considered as the source of the creature's Practical Reasonableness. Finnis, "Practical Reasoning, Human Goods, and the End of Man," 34; idem, *Fundamentals of Ethics*, 148; *Natural Law and Natural Rights*, 407-410.

But Finnis derives nothing from the order of uncreated being productive of insight into the essential notion of Practical Reason. The agent may benefit in the manner of Kant's moral agent benefitting from the postulates of Practical Reason, by thinking of someone like himself being behind the world. The context of the analogy runs entirely and exclusively from the side of Practical Reason to the God who is being projected a "friend" whose welfare the agent looks out for, as though God were an especially valued classmate. Finnis, *Fundamentals of Ethics*, 149-150; and Grisez, "Practical Principles," 144-45.

others if he is to attain the generic ideal of acting consistently for the fullness of practical cognition. The duty is one of acting in coordination with others for things, opportunities and relationships, including relationships of utility, pleasure and friendship. This order might appear to have an ascending or hierarchical quality to it, because it references intrinsic and instrumental goods. But the only ascent, in this case, is from the status of instrumental goods to Basic Goods, a hierarchical distinction strictly internal to the logic of practical reason.

Finnis lacks the concept of civic friendship as an overarching *telos* of social life. He allows the moral agent to elect the common good as an opportunity for civic friendship, but his essential concept of the common good remains a means of consistency in cognition about action. The role which Finnis ascribes to friendship in this setting is, at most, like the elective place he ascribes to Religion in the setting of individual life plans.

Aquinas and Finnis also differ in their concept of how precisely the law serves to advance the common good. For Aquinas, the law is the rule of reason applied to social life. It flows from the community's consent to a common way of life. In promulgating this way of life, the lawmaker exercises his reason actively, according to the virtue of "regnative" prudence, which "rules and measures." In observing it, the law's subjects allow the common rule to "rule and measure" their conduct in a reciprocal use of reason according to the virtue of legal justice. "Promulgation" is an essential element in St. Thomas's descriptive definition of law. A precept can become law only when once the lawmaker issues it and the subject at least constructively learns of it. The dialogic character of a precept is of the essence of law. Its reciprocity unites the human person with the community, and enables him to fulfill his social nature.

Finnis departs from Aquinas in removing consent from the conditions of the law's authority. He derives the law's authority from its effectiveness, not from the consent of the community. Finnis conceives of the law as an exclusionary reason pre-empting other reasons for acting. He does not understand the bond between lawmaker and legal subject or between citizen and citizen as fulfilling the agent's social nature. He may endorse Fuller's requirement of reciprocity between lawmaker and subject, but he does not assert in fulfilling this requirement, the agent fulfills his nature as a person.

Finnis treats the law as a technique in the tradition of positivism. Finnis leaves this technique open to all human values and not just to the self-interest of neo-classical economics or the greater pleasure principle of the utilitarians. An advantage of Finnis's account of law is its openness to the elements of formal validity and predictability which are essential to the functioning of the modern state. St. Thomas fails to present a concept of law that can radically be assimilated into the modern administrative state, because he lacks these elements. Aquinas's analogical imagination allows him to conceive of law as mirroring the cosmic orders of Creation, Providence, and Revelation. He views the law as perfecting the agent's nature, akin to the completion of biological and physiological processes, and to the hand of Providence the religious mind sees in human affairs. The principle of law connects disparate aspects of human experience into a cosmic whole. Its integrative process reaches its limit in grace. Grace is uncreated, and it transcends human understanding. Having relinquished his analogical imagination at the behest of Hume, Finnis concept of law can play no such explanatory role in relation to the cosmos.

Finnis and Aquinas concur that law is essentially a reasonable and not coercive order. Yet, they both also affirm that sanctions are an essential adjunct to the law. However, the two authors offer subtly different concepts of sanctions. Aquinas conceives of them as a preliminary step in educating the law's subjects in virtue, akin to the physical correction of the young. Finnis conceives of sanctions as unrelated to formation in virtue. Moreover, Aquinas asserts that sanctions reinforce society's basic commitment of natural religion and justice. Finnis, for his part, holds no more for sanctions, than that they help secure the conditions of effective action by individual moral agents.

4. A Retrospective Glance at the Respective Deviations of Finnis and Aquinas from the Heuristic Definition

Finnis's and Aquinas's concepts of law coincide, in part, with the heuristic definition, and, in part, depart from it. Their departures are largely in the same direction, and underscore the authors' relative similarity. Both consider law to express reason, rather than power or coercion. Finnis and Aquinas alike trace the descriptive meaning of law to its value as a means to substantive ends. Neither would accept the heuristic notion of law as value-neutral. Finnis stipulates that the law demands that its subjects accept its determinations as final, and to this extent, its facial insistence on its value-neutrality. But against the backdrop of full practical reasonableness, he does not reduce the law to *mere* technique.

Aquinas agrees with the heuristic definition on one point in opposition to Finnis. Aquinas's franker teleology brings with it an emphasis on utility which Finnis does not share. Aquinas stresses the law's value for implementing useful projects, with the proviso that the heuristic definition calculates utility according to sheer preference, while St. Thomas does so

by reference to an ascending ontology. In a manner reminiscent of Kant, Finnis rejects global concepts of utility.

Finnis agrees with the heuristic definition in a manner setting him at odds with Aquinas. Finnis adopts elements of formalism and positivism in the wake of his rejection of metaphysics and ontology. His similarity to the heuristic definition requires the notation of the proviso that Finnis grounds his formalism and positivism in his master principle of the self-evident duty to pursue cognitive consistency as a condition of reasonableness, rather than the will of the lawgiver or the like.

Finnis and Aquinas come together in the common insight that the law's intelligibility lies in reason rather than will, both rejecting the heuristic definition's opposing position. And yet, each in his own way, makes common cause with a particular aspect of the definition. Their respective accommodations of the heuristic definition reveal significant differences between them. Finnis's principal bridge with liberalism is positivism. Aquinas's is a kind of utilitarianism. This difference exposes essential differences in their respective systems of thought. Finnis bases his descriptive jurisprudence on a metaphysically austere notion of the common good and a deontology of consistency. Aquinas grounds his descriptive jurisprudence in a metaphysical notion of the common good, and its teleology of satisfaction.

5. The Normative Evaluation of Civil Law in St. Thomas Aquinas

Some of the terms of St. Thomas's descriptive concept of law--authority, common good, and reason, for instance-- have a moral meaning. Their use implies the possibility of moral evaluation. The normative moment in St. Thomas's jurisprudence explores, in depth, how and to what degree the elements of the descriptive definition are satisfied. Saint Thomas's normative theory proceeds from two angles, from that of lawmaking, and of the

law's reception. The first concerns itself with active ruling and measuring. St. Thomas calls this perspective "*prudentia politica*," and he likens it to "*modum artes architectonicae*"; the second regards being ruled and measured. St. Thomas also terms it "*prudentia politica*," because it relies upon "*arbitrium rationis*" and he compares it to "*modum artes manu operantes*."²⁸²

a. Lawmaking: *Modum Artes Architectonicae*

Aquinas's normative jurisprudence inquires into whether a given edict is "an ordinance of reason for the common good." It asks whether an edict purporting to be law is truly so. His descriptive jurisprudence, by contrast, simply assumes that an edict at hand satisfies the definition. St. Thomas undertakes a normative jurisprudence of prudence and of justice. The first reflects his indicative virtue ethics, and the second his natural law ethics of obligation.

(1) Issues of Prudence

The lawmakers ordinances of reason for the common good sometimes aim at civil order. Aquinas treats this purpose of law as a matter of prudence for his teleological virtue ethics. The law's civil order creates civil order by promulgating precepts of moral conduct. Natural law provides the norms in question, but it leaves to prudence to decide how to implement them under existent circumstances.²⁸³ Prudence must gauge a people's capacity for

²⁸² "*Sed quia quilibet homo, in quantum est rationalis, participat aliquae de reimine secundum arbitrium rationis, intantum convenit ei prudentiam habere. Unde manifestum est quod prudentia quidem in principe est ad modum artes architectonicae, . . . , in subdites autem ad modum ortis manu operantes*" ("Nevertheless because each man, proportionately to his reasonableness has a share in government through his freely reasoned decisions to that extent political prudence is his. Consequently it is in the ruler in the manner of a master-art . . . yet it is in its subjects after the manner of a mechanical art.") Ibid., II-II q. 47 a. 12 (v. 36 pp. 38-39 (1974)).

²⁸³ "*Secundo est de ratione legis humanae quod ordinetur ad bonum commune civitatis; et secundum hoc lex humana dividi potest secundum diversitatem eorum qui specialiter dant operam ad bonum commune*" ("Secondly, it is of the essence of hman law to be ordered to the benefit of the commonwealth; on this head it can be divided according to the diversity of those whose special business it is to work for the common good.") Ibid., I-II q. 95 a. 4 (v. 28 pp. 114-15 (1966)).

legal observance,²⁸⁴ and it must decide the degree to which the natural law's abstract prescriptions are to be concretely realized.²⁸⁵

It must also stipulate as well the legal consequences which will attach to private actions, which are morally significant. It must discover and must implement effective ways and means of advancing public projects for the community's health, safety and welfare.²⁸⁶ St. Thomas believes that the caliber of lawmaking on all of these points is to be judged by whether it gradually establishes and instills social virtue in the law's subjects, and fosters civic conditions of piety, peace and justice

²⁸⁴ "[L]ex humana intendit homines inducere ad virtutem, non subito sed gradatim; et ideo non statim multitudini imperfectorum imponit ea quae sunt jam virtuosorum, ut scilicet ab omnibus malis abstineant; alioquin imperfecti huiusmodi praecepta ferre non valentes in detriora mala prorumperent" ("The purpose of human law is to bring people to virtue, not suddenly but step by step. Therefore it does not all at once burden the crowd of imperfect men with the responsibilities assumed by men of the highest character, nor require them to keep away from all evils, lest, not sturdy enough to bear the strain, they break out into greater wrongs.") Ibid., I-II q. 96 a. 2 ad 2 (v. 28 pp. 124-25 (1964)).

²⁸⁵ "[P]opulus est coetus multitudinis juris consensu et utilitatis communione sociatus. Unde ad rationem populi pertinet ut communicatio hominum ad invicem iustis praeceptis legis ordinetur. Est autem duplex communicatio hominum ad invicem: una quidem quae fit auctoritate principum; alia autem fit propria voluntate privatarum personarum. Et quia voluntate uniuscujusque disponi potest quod eju subditur potestati, ideo auctoritate principum, quibus subjecti sunt homines, oportet quod iudica inter homines exercentur, et poenae amalefactoribus inferantur. Potestati vero privatarum personarum subduntur res possessae; ei ideo pro propria voluntate in his possunt sibi invicem communicare, puta emendo, evendendo, donando, et aliis huiusmodi modis" ("[A] nation is a body of persons joined together in acceptance of a law and for the good of all. Thus it is of the essence of a nation that the mutual relations of its members be governed by just laws. Now such relations are of two kinds: those set up by the authority of the rulers, and those established by the will of private persons. Since whatever is subject to an individual's power can be used as he wills, and the individual is subject to the ruler, it follows that by the latter's authority judgment must be exercised, between man and man, and punishment inflicted on evildoers. On the other hand, the private individual has power over the things he possesses, and therefore he can deal with them as he will, buying, selling, giving, and so forth.") Ibid. I-II a. 105 a. 2 (v. 29,1 pp 278-79 (1969)).

²⁸⁶ "Quia ergo ad prudentiam pertinet recte consiliari, iudicare et praecipere de his per quae pervenitur ad debitum finem, manifestum est quod prudentia non solum se habet ad bonum privatum unius hominis, sed etiam ad bonum commune multitudinis" ("Consequently, since its business is rightly to deliberate, judge, and command about the ways to a due end, prudence clearly regards the common good of the people, not merely the private good of one individual," Ibid., II-II q. 47a . 10 (v. 36 a. 32-33 (1974)).

St. Thomas charges his normative jurisprudence of prudence with the task of designing society's basic legal and political institutions. He holds that in undertaking the charge "*prudentia politica*" seeks broad participation by the law's subjects in the political process; a division of governmental powers; and a strong and effective executive branch.²⁸⁷ In principle, he also requires that societal institutions be designed to balance private ownership and free economic exchange, with state initiatives in the public interest.²⁸⁸ He also calls for a legal system which is organized to respect the ontological distinctions among at least four types of

²⁸⁷ "*Unde optima ordinatio principum est in aliqua civitate vel regno, in qua unus praeficitur secundum virtutem qui omnibus praesit; et sub ipso sunt aliqui principantes secundum virtutem; et tamen talis principatus ad omnes pertinet, tum quia ex omnibus eligi possunt, tum quia etiam ab omnibus eliguntur*" ("Hence the best system in any state or kingdom is one in which one man, as specially qualified, rules over all, and under him are others governing as having special endowments, yet all have a share inasmuch as those are elected from all, and also are elected by all.") I-II q. 105 a. 1 (v. 29 pp. 268-69 (1969)); and "*Talis enim est optima politia, bene commixta ex regno, inquantum unus praeest; et aristocratia, inquantum multi principantur secundum virtutem; et ex democratia, idest potestate populi, inquantum ex popularibus possunt eligi principes, et ad populum pertinet electio principum*" ("This is the best form of constitution, a mixture of monarchy, in that one man is at the head, of aristocracy, in that many rule as specially qualified, and democracy, in that the rulers can be chosen from the people and by them.") Ibid., I-II q. 105 a. 1. (v. 29 pp. 268-69 (1969)).

²⁸⁸ "[P]opulus est coetus multitudinis juris consensu et utilitatis communione sociatus. Unde ad rationem populi pertinet ut communicatio hominum ad invicem iustis praeceptis legis ordinetur. Est autem duplex communicatio hominum ad invicem: una quidem quae fit auctoritate principum; alia autem fit propria voluntate privatarum personarum. Et quia voluntate uniuscujusque disponi potest quod eju subditur potestati, ideo auctoritate principum, quibus subjecti sunt homines, oportet quod judica inter homines exercentur, et poenae amalefactoribus inferantur. Potestati vero privatarum personarum subduntur res possessae; ei ideo pro propria voluntate in his possunt sibi invicem communicare, puta emendo, evendendo, donando, et aliis hujusmodi modis" ("[A] nation is a body of persons joined together in acceptance of a law and for the good of all. Thus it is of the essence of a nation that the mutual relations of its members be governed by just laws. Now such relations are of two kinds: those set up by the authority of the rulers, and those established by the will of private persons. Since whatever is subject to an individual's power can be used as he wills, and the individual is subject to the ruler, it follows that by the latter's authority judgment must be exercised, between man and man, and punishment inflicted on evildoers. On the other hand, the private individual has power over the things he possesses, and therefore he can deal with them as he will, buying, selling, giving, and so forth.") Ibid. I-II a. 105 a. 2 (v. 29, pp. 278-79 (1969)).

social relationships: sovereign to subject; subject to subject; citizen to foreigner; and family member to family member.²⁸⁹

St. Thomas holds that prudence moderates the pace of changes in the law, so that society can absorb them without undue disruption in the rule of law. The rule of law relies on the habit in the law's subjects of obedience. Any change in the law poses some cost to that habit. Prudence weights the gains envisioned in religion, morality or utility, against costs to habitual respect for the law in its subjects.²⁹⁰ St. Thomas holds a conservative or progressive course of law reform may be appropriate, depending on the resiliency of the community's commitment to the rule of law.

The lawmaker is to elect a conservative or progressive course of legal reform, depending on the community's capacity to absorb legal change, while preserving the rule of law.²⁹¹ The criterion of good law may be efficiency rather than morality or virtue. Even where morality or virtue under law are at issue, frequently the lawmaker is justified in St. Thomas's view implementing cultural preference. Examples include society's adoption of

²⁸⁹ *"Quadruplex autem ordo in aliquo populo inveniri potest: unus quidem, principum populi ad subditos; alius autem, subditorum ad invicem; tertius autem, eorum qui sunt de populo ad extraneos; quartus autem, ad domesticos, sicut patris ad filium, uxoris ad virum, et domini ad servum"* ("In any people we find four different types of order. There is the order of rulers to their subjects, of the subject to one another, of the citizens to foreigners, and the order within the household, that of father to son, wife to husband, and master to servant.") Ibid., I-II q. 104 a. 4 (v. 29 pp. 262-63 (1969)).

²⁹⁰ *"Et . . . nunquam debet mutari lex humana, nisi ex alia parate tantum recompensetur communi saluti quantum ex ista parte derogatur"* ("[A] human law should never be altered, unless the gain to the common well-being on one hand makes up for what has been lost on another.") Ibid., I-II q. 197 a. 2 (v. 28 pp. 146-47 (1969)).

²⁹¹ *"[L]ex humana intendit homines inducere ad virtutem, non subito sed gradatim; et ideo non statim multitudini imperfectorum imponit ea quae sunt jam virtuosorum, ut scilicet ab omnibus malis abstineant; alioquin imperfecti hujusmodi praecepta ferre non valentes in detriora mala prorumperent"* ("The purpose of human law is to bring people to virtue, not suddenly but step by step. Therefore it does not all at once burden the crowd of imperfect men with the responsibilities assumed by men of the highest character, nor require them to keep away from all evils, lest, not sturdy enough to bear the strain, they break out into greater wrongs.") Ibid., I-II q. 96 a. 2 ad 2 (v. 28 pp. 124-25 (1964)).

personal excellence, wealth, or equality, rather than intrinsic natural law values as principles of merit in distribution.²⁹² These culturally-conditioned values intertwine with universal values e.g. civic friendship, to give law its fundamental value orientation.²⁹³

(2) Aquinas's Normative Jurisprudence of Justice

St. Thomas clearly treats the lawmaker as under specific moral duties. The requirements of prudence are open-ended and a matter of aspiration only, so that these special moral duties have a separate basis. That basis is the virtue of justice. Precepts of justice prescribe the lawmaker's duties, both positive and negative.

(a) Positive Obligations

To start, St. Thomas's lawmaker has a natural law duty in justice to legislate in favor of society's basic needs to some minimal extent. The law's three purposes in St. Thomas's

²⁹² *Aliud est quod attenditur secundum speciem regiminis, vel ordinationis principatum. Cujus cum sint diversae species . . . regnum . . . aristocratia . . . et . . . democratia* ("There are various kinds of regimen, . . . but the principal ones are monarchy, . . . aristocracy . . . and Democracy." Ibid, I-II q. 105 a. 1 (v. 29 pp. 268-69 (1969)), and *Quae quidem principalitas in aristocratica communitate attenditur secundum virtutem, in oligarchica secundum divitias, in democratica secundum libertatem, et in aliis aliter. Et ideo in iustitia distributiva non accipitur medium secundum aequalitatem rei ad rem, sed secundum proportionem rerum ad personas, ut scilicet sicut una persona excedit aliam, ita etiam res quae datur uni personae excedat rem quae datur alii* ("Importance is assessed in an aristocracy by virtue, in an oligarchy by wealth, in a democracy by liberty, and in other regimes variously. So then the virtuous mean is taken in distributive justice, not according to an equality between thing and thing, but according to a proportion between things and persons, and in such a way that even as one person exceeds another so also that which is meted out to him exceeds that which is meted out to the other.") Ibid., II-II q. 61 a. 2 (v. 37 pp. 92-93 (1975)).

²⁹³ *Quadruplex autem ordo in aliquo populo inveniri potest: unus quidem, principum populi ad subditos; alius autem, subditorum ad invicem; tertius autem, eorum qui sunt de populo ad extraneos; quartus autem, ad domesticos, sicut patris ad filium, uxoris ad virum, et domini ad servum* ("In any people we find four different types of order. There is the order of rulers to their subjects, of the subject to one another, of the citizens to foreigners, and the order within the household, that of father to son, wife to husband, and master to servant.") Ibid., I-II q. 104 a. 4 (v. 29 pp. 262-63 (1969)); but, *[P]rincipia communia legis naturae non eodem modo applicari possunt omnibus propter multam varietatem rerum humanarum; et hoc provenit diversitas legis pritivae apud diversos* ("Owing to the great variety of human affairs the common principles of natural law do not apply stiffly to every case. One outcome is the diversity of positive laws among different peoples.") Ibid. I-I q. 95 a. 2 (v. 28 pp. 106-107 (1964)).

view are to uphold morality, do justice, and provide for welfare.²⁹⁴ An outright failure to pursue any of these purposes would not only fail the test of prudence. It would be an injustice. The lawmaker would be committing a commutative injustice against every member of the community.

St. Thomas considers the civil authority to have an obligation in natural law to establish an order of justice. It must promulgate standards of conduct setting out the rights and duties of society's members, including rules on property and contracts.²⁹⁵ Aquinas gives a reasoned justification for a regime of property and in particular private property.²⁹⁶ Similarly, he implies that the law must provide for the criminal's punishment of at least, major crimes.²⁹⁷ The law's failure to provide for these purposes would be a commutative injustice to the law's subjects.

²⁹⁴ *"Finis autem humanae legis est utilitas hominum, . . . [S]cilicet quod religioni congruat, inquantum scilicet est proportionata legi divinae; quod disciplinae conveniat, inquantum est proportionata legi naturae; quod saluti proficiat, inquantum est proportionata utilitati humanae"* ("The purpose of human law is to be useful to men . . . namely that it is consistent with religion as corresponding with divine law, that it agrees with good discipline as corresponding to natural law, and that it furthers our welfare as corresponding to human usefulness.") *Ibid.*, II-II q. 61 a. 1 (v. 37 pp. 86-91 (1975)).

²⁹⁵ *"Unde oportet leges humanas esse proportionatas ad bonum commune. Bonum autem constat ex multis; et ideo oportet quod lex ad multa respiciat, et secundum personas et secundum negotia et secundum tempora. Constituitur enim communitas civitatis ex multis personis, et ejus bonum per multiplices actiones procuratur; nec ad hoc instituitur quod aliquo tempore modico duret, set quod omni tempore perseveret per civium successionem"* ("Therefore human laws should be proportioned to the common good. Now this comprises many things; hence law should cover all manner of personalities, occupations, and occasions. Many types go to make up the political community, a variety of business serves its common interest.") *Ibid.*, I-II q. 96 a. 1 (v. 28 pp. 120-21 (1964)).

²⁹⁶ *"[L]icitum est quod homo propria possideat. Et est etiam necessarium ad humanam vitam"* ("[I]t is not merely legitimate for a man to possess things as his own, it is even necessary for human life. . . .") *Ibid.*, II-II q. 66 a. 2 (v. 38 pp. 66-67 (1975)).

²⁹⁷ *"Oportet quod judicia inter homines exerceanur, et poenae malefactoribus inferantur"* ("[J]udgment must be exercised between man and man, and punishment inflicted on evildoers.") *Ibid.*, I-II q. 105 a. 2 (v. 28 pp. 278-79 (1966)).

(b) Negative Duties

Aquinas places the lawmaker under negative duties in justice, as well. The lawmaker may not employ morally illicit means in pursuit of his ends. The violation of this, or another negative prescription, may cause the law to fail as law: "*Si vero in aliquo a lege naturali discordat, iam non erit lex, sed legis corrupto.*"²⁹⁸ St. Thomas recognizes two kinds of negative duties in justice: precepts prohibiting intrinsically unjust acts and precepts forbidding unjust commutations and distributions.

1) The Duty to Avoid Intrinsically Unjust Acts

Aquinas observes that no law may call for an intrinsically unjust act. He offers the example of idolatry, an act against God forbidden by divine positive law.²⁹⁹ He observes, similarly, that the law may not take innocent human life, stipulating that capital punishment and killing in war require special moral justification.³⁰⁰ He holds that capital punishment can only be justified where it is reasonable to see individual as a "part" of the commonwealth harmful to the whole, and thus not subject to execution other than as a person per se.³⁰¹ Such is the case where the individual through an adjudicated wrong against another has established

²⁹⁸ ("If on any head it is at variance with natural law, it will not be law, but spoilt law.") Ibid., q. 95 a. 2 (v. 28 pp. 104-105 (1966)).

²⁹⁹ "[*Leges possunt esse injustae . . . Sicut leges tyrannorum inducentes ad idololatrium*" ("Laws can be unjust because they are contrary to God's rights; such are the laws of tyrants which promote idolatry.") Ibid., I-II q. 96 a. 4 (v. 28 pp. 130-31 (1966)).

³⁰⁰ "*Sed homo peccator non est naturaliter distinctus ab hominibus justes; et ideo indiget publico iudicio, ut discernatur an sit occidendus propter communem salutem*" ("A sinner, however, is a man, and as such is not by nature different from a just man, and this is why some public judgment is necessary to decide whether he is to be killed in the public interest.") II-II q. 64 a. 3 ad 2 (v. 38 pp. 26-27 (1975)).

³⁰¹ "[*Sicut ad medicum pertinet praeacidere membrum putridum, quando ei commissa fuerit cura salutis totius corporis*" ("[J]ust as it is the doctor who has been entrusted with the health of the whole body who may amputate a gangrenous limb.") Ibid., II-II q. 64 a. 3 (v. 38 ppp. 26-27 (1975)).

his guilt. Killing in war can be justified, only because the enemy soldier embodies unjust aggression. Aquinas formulates the action to be licitly undertaken, so that force is not directed against a person as such. Aquinas likewise requires a reasoned justification for the taking of private property lest it be classified as theft. In that case, his warrant for the taking is the emergency nature of the claim and the surplus character of the owner's goods.³⁰²

2) The Duty to Avoid Violations of Natural Justice

Legislative enactments and administrative deeds unavoidably allocate benefits and burdens between and among persons. Moreover, judges allocate gains and losses among litigants, and, in cases of torts or crime, between wrongdoers and their victims. Aquinas evaluates legislative and administrative allocations for their "distributive" justice, and the judicial disposition of cases for their "commutative" justice.³⁰³

a) Distributive Justice

Saint Thomas holds that the law may distribute benefits and burdens in any pattern the lawmaker judges best advances the common good, with the proviso that the pattern must

³⁰² *"Si tamen adeo sit urgens et evidens necessitas ut manifestum sit instanti necessitati de rebus occurrentibus esse subveniendum, puta cum imminet personae periculum, et aliter subveniri non potest, tunc licite potest aliquis ex rebus alienis suae necessitati, subvenire, sive manifeste sive occultate sublatis; nec hoc proprie habet rationem furti vel rapinae"* ("If, however, there is so urgent and blatant a necessity that the immediate needs must be met out of whatever is available, as when a person is in imminent danger and he cannot be helped in any other way, then a person may legitimately supply his own needs out of another's property, whether he does so secretly or flagrantly. And in such a case there is strictly speaking no theft or robbery.") Ibid., II-II q. 66 a. 8 (v. 38 pp. 82-83 (1975)).

³⁰³ *"[O]rdo unius privatae personae ad aliam; et nunc ordinem dirigit commutativae justitiae, quae consistet in his quae mutuo fiunt inter duas personas ad invicem. . . . [Et] ordo ejus quod est commune ad singulas personas: quem quidem ordinem dirigit justitia distributiva, quae est distributiva communium secundum proportionalitatem. Et ideo duae sunt justitiae species, scilicet distributiva et commutativa"* ("[T]he ordering of private persons among themselves . . . is governed by commutative justice, which is engaged with their mutual dealings one with another. . . . [and] . . . the bearing of the community or individual persons. . . is governed by distributive justice which apportions proportionately to each his share from the common stock. And so there are two species of justice, namely commutative and distributive justice.") Ibid., II-II q. 61 a. 1 (v. 37 pp. 88-89 (1975)).

respect the basic equality of persons. Any pattern arrived at through a consistent standard based on a public reason, is distributively just. Thus, the standard need not be one of simple equality, but it must consistently apply a publically demonstrable standard of merit. The law must allocate shares *in proportion* to its standard. Aquinas terms this measure of proportionality, geometric equality or equality of proportion.³⁰⁴ The principle of merit may be any morally unobjectionable cultural preference.³⁰⁵ Distributive justice prohibits allocations based on respect for persons, caprice or negligence.³⁰⁶

b) Commutative Justice

Judges sentence criminals and they order civil remedies. In doing so, the judges assign gains and losses to individuals. St. Thomas would hold their decisions reviewable for their commutative justice. Judges must set sentences and remedies in a manner respecting the initial equal moral worth of those offended and offending. The measure is one of simple or arithmetical equality.³⁰⁷ The judge sums the good in dispute. He subtracts the excess from the quantity belonging to the party holding too much. And, where possible, he adds a

³⁰⁴ “[G]eometricam proportionalitatem” (“According to geometric proportionality,”) *ibid.*, II-II q. 61 a. 2 (v. 37 pp. 92-93 (1975)), and “[S]ecundum aequalitatem proportionis” (“[I]n equitable proportion,”) *ibid.*, q. 96 a. 4 (v. 28 pp. 130-31 (1966)).

³⁰⁵ “[E]t secundum hoc distinguuntur leges humanae secundum diversa regimina civitatum” ([L]aw can be divided according to the type of the regime.”) *Ibid.*, I-II q. 95 a. 4 (v. 28 pp. 114-15 (1966)).

³⁰⁶ “[A]cceptio personarum est peccatum in quantum contrariatur justitiae. . . . Quandoque vero consanguinei praelati ecclesiastici sunt aequi digni ut alii: et sic licite potest absque personarum acceptione consanguineos suos preferre; qui saltem in hoc praeeminent quod de ipsis magis confidere potest ut unanimiter secum negotia Ecclesiae tractent” (“[D]iscrimination is a sin to the extent that it thwarts justice. . . . Relatives of dignitaries may, however, also be as well qualified as others, and in such a case it is legitimate to prefer one’s relatives without thereby practicing unfair discrimination; for they do at best have this advantage over the others that they are more likely to work well together for the Church.”) *Ibid.*, II-II q. 63 a. 2 (v. 38 pp. 6-9 (1975)).

³⁰⁷ “[S]ecundum arithmetica medietatem” (“[A]ccording to an arithmetical mean,”) *ibid.*, II-II q. 61 a. 2 (v. 37 pp. 92-93 (1975)).

corresponding amount to the party who has too little.³⁰⁸ In a criminal case, the judge generally seeks to diminish the person convicted of a crime by the amount of the loss he has caused to another. In a tort case, the judge aims at compensating the victim by the amount of the loss the tortfeasor has caused.³⁰⁹ In a contract case, the judge assesses the amount as equal to the value of the performance owed, but withheld under the contract.³¹⁰ In all cases, St. Thomas assumes that the judge ascertains the objective value of a thing contested in the manner of a just price.³¹¹

b. The Normative Evaluation of the Citizen's Response to Law:
Modum Artes Manu Operantes

St. Thomas considers the essence of law to be in its promulgation for the free and reasonable reception of its subjects, rather than in the precept in the abstract, and St. Thomas treats the reception of law, as a topic for normative evaluation. Under this rubric, he

³⁰⁸ *“Et ideo oportet adaequare rem rei, ut quanto iste plus habet quam suam sit de eo quod est alterius, tantumdem restituat ei cuius est”* (There the balance of equilization of thing with thing is called for, so that a man should repay the other as much as he gains in acquiring the thing which belonged to the other.) Ibid., II-II q. 61 a. 2 (v. 37 pp. 92-93 (1975)).

³⁰⁹ *“Quarum quaedam sunt involuntariae, Involuntariae quidem quando aliquis utitur re alterius, vel persona, vel opere, eo invito, quod quidem continget quandoque occulte per fraudem, quandoque etiam manifeste per violentiam”* (“Of these exchanges some are involuntary They are involuntary when somebody employs another’s thing, person, or work without his consent. This may be done secretly by deceit or openly by violence.”) Ibid., II-II q. 61 a. 3 (v. 37 pp. 94-97 (1975)).

³¹⁰ *“Voluntarie autem commutationes dicuntur quando aliquis voluntarie transfert rem suam in alterum Intantum autem ad justitiam voluntaria translatio pertinet inquantum est ibi aliquid de ratione debiti”* (“Exchanges are called voluntary when a person willingly transfers something, he owns to another. . . . A voluntary transfer comes under justice in so far as it involves the notion of something due.”) Ibid., II-II q. 61 a. 3 (v. 37 pp. 96-97 (1975)).

³¹¹ *“Et ideo si vel pretium excedat quantitatem valoris rei vel e converso res excedat pretium, tolletur justitiae aequalitas. Et ideo charius vendere aut vilis emere rem quam valeat est secundum se injustum et illicitum”* (“[T]he balance of justice is upset if either the price exceeds the value of the goods in question or the thing exceeds the price. To sell for more or to buy for less than a thing is worth is, therefore, unjust and illicit in itself.”) Ibid., II-II q. 77 a. 1 (v. 38 pp. 214-15 (1975)).

addresses two topics. He asks when law is morally binding, and he inquires into a binding law's significance for moral reasoning.

(1) Whether the Law Binds

Saint Thomas posits no general moral obligation by subjects to obey a lawmaker's formal promulgations. In each case, the precept must be evaluated as to whether it satisfies the definition of law. Thus, if the precept has not been duly promulgated; if the one issuing it lacks authority, as measured by popular consent; if it is for a private, rather than public purpose; or if it violates distributive justice, then the precept is not just, and thus, is not law. It does not bind in conscience. St. Thomas expresses his norm on the duty to obey governmental ordinances as follows, "*a lege naturali discordet, jam non erit lex;*" the agent need not obey it.³¹²

Even if the law is just and, in itself true and obligatory, St. Thomas holds that the subject may reasonably test whether the effect of a law as applied to him, actually carries out the intention of the lawmaker. If the facts of the case are beyond the situation the law was intended to cover, the agent may disregard the law with or without a formal exception under the rule.³¹³ In an emergency, St. Thomas waives the need for judicial dispensation.³¹⁴

³¹² "*Unde omnis lex humanitus posita intantum habet de ratione legis inquantum a lege naturae derivatur. Si vero in aliquo a lege naturali discordet, jam non erit lex, sed legis corruptio*" (Hence in so far as it derives from this, every law laid down by men has the force of law in that it flows from natural law. If on any head it is at variance with natural law, it will not be law, but spoilt law.") I-II q. 95 a. 2 (v. 28 pp. 104-105 (1966)). On whether the subject has a right to overthrow a ruler, whose ordinances are over time unjust overall, not just in an individual case, St. Thomas equivocates. He may be interpreted as saying that the presumption is against rebellion, but that this presumption can be rebutted where a reasonable opportunity exists of obtaining society's consent to a new government. See *On Kingship or the Governance of Rulers (De Regimine Principium)* chap. 1 in *St. Thomas Aquinas on Politics and Ethics* (trans. Paul Sigmund New York: W.W. Norton, 1988)."

³¹³ "*Quia igitur legislator non potest omnes singulares casus intueri, proponit legem secundum ea quae in pluribus accidunt, ferens intentionem suam ad communem utilitatem. Unde si emergat casus in quo observatio talis legis sit damnosa communi saluti non est observanda*" ("Since he cannot envisage every individual case, the

(2) The Moral Significance of Binding Laws

If a precept has the character of law, and no dispensation exists to its scope, St.

Thomas holds that it obligates the subject morally, as the due of the community. His obedience is a necessary means towards the common good.³¹⁵ Obedience to law habituates the subject in the crowning or highest of all natural virtues, legal justice. This virtue manifests itself in an attitude of respect towards the good of all in all the agent does.³¹⁶ Many duties of commutative justice derive specific content from the determinations of civil law, which

legislator frames a law to fit the majority of cases, his purpose being to serve the common welfare. So that if a case crops up where its observance would be damaging to that common interest, then it is not to be observed.”) I-II q. 96 a. 6 (v. 28, pp. 138-39 (1966)).

³¹⁴ “*Sed tamen hoc est considerandum, quod si observatio legis secundum verba non habeat subitum periculum cui oporteat statim occurri, non pertinet ad quemlibet ut interpretetur quid sit utile civitati, et quid inutile civitati; sed hoc solum pertinet ad principes, qui propter hujusmodi casus habent auctoritatem in legibus dispensandi. Si vero sit subitum periculum, non patiens tantam moralem ut ad superiorem recurri possit, ipsa necessitas dispensationem habet annexam, quia necessitas non subditur legi*” (“All the same notice this: if observing the letter of the law does not involve a sudden risk calling for instant decision and to be dealt with at once, it is not for anybody to construe the law and decide what is or what is not of service to the city. This is only for the governing authorities who because of exceptional cases, have the power to grant dispensations from the laws. If, however, the danger is urgent, and admits of no delay, or time for recourse to higher authority, the very necessity carries a dispensation with it, for necessity knows no law.”) Ibid., I-II q. 96 a. 6 (v. 28 pp. 138-39 (1966)).

³¹⁵ “*Cum enim unus homo sit pars multitudinis, quilibet homo hoc ipsum quod est, et quod habet, est multitudinis, sicut quaelibet pars id quod est est totius; unde et natura aliquod detrimentum infert parti ut salvet totum. Set secundum hoc leges hujusmodi onera proportionaliter inferentes, justae sunt, et obligant in foro conscientiae, et sunt leges legales*” (“Since an individual is part of a group, each in all that he is and has belongs to the community, as also is any part what it is because of the whole: Nature itself offers hurt upon a part for the health of the whole. Accordingly laws which apportion in due measure the burdens of responsibility are just, legitimate, and oblige at the bar of conscience.”) Ibid., I-II q. 96 a. 4 (v. 28 pp. 130-31 (1966)).

³¹⁶ “*[S]i loquamur de justitia legali, manifestum est quod ipsa est praeclarior inter omnes virtutes morales in quantum bonum commune praeminet bono singulari unius personae*” (“If we speak of legal justice, it is evident that it stands foremost among all the moral virtues, for as much as the common good transcends the individual good of one person.”) Ibid., II-II q. 58 a. 12 (v. 37 pp. 50-53 (1975)).

concretize general natural law requirements. Just civil law precepts provide the moral agent with moral obligation beyond those of natural law.³¹⁷

c. A Comparison of St. Thomas and John Finnis
on the Law's Normative Evaluation

Finnis bases his assessment of the law's authority solely on the requirements of the common good, which he defines as an "ensemble of conditions." In his view, anyone with the *de facto* power to coordinate social life effectively has authority to make law, without the consent of the governed. For Finnis, mere effectiveness in co-ordinating the desired "ensemble of conditions" distinguishes law from sheer power. St. Thomas, by contrast, premises the authority of law, even in a monarchy, on the consent of the governed. The threshold question for St. Thomas is whether the community is sufficiently self-aware to allow it to consent to confer authority on a lawmaker. For Finnis, this question is whether a sufficient aggregation of individuals in fact effectively co-ordinates their activities according to the lead of some mouthpiece. St. Thomas requires consent for authority to exist because it is consent which mediates the agents participation in being in common with others. The authority can bind the individual because the community the authority represents perfects the agent's nature as a human being. Finnis, by contrast, views participation in the community as no more than a joint pattern of coordinated action sufficiently comprehensive to provide the ensemble of conditions necessary to support moral action by the participants. For this reason,

³¹⁷ "[L]eges positae humanitus vel sunt justae vel injustae. Si quidem justae sunt, habent vim obligandi in foro conscientiae a lege aeterna a qua derivantur" ("Human positive laws are either just or unjust. If they are just, they have binding force in the court of conscience from the Eternal Law from which they derive.") Ibid., I-II q. 96 a. 4 (v. 28 pp. 130-31 (1966)).

Finnis treats formal coherence and the rule of law as aspects of the common good, while Aquinas adds them as separate criteria of authority.

Both authors base their normative critiques, no less than their descriptive definitions, of law on an idea of the common good. St. Thomas normatively evaluates whether a purported law contributes to a given kind of state defined by the single overarching *telos* of civic friendship. This state of being comes into being through mutual regard for the well-being of all. It is an order of peace, justice, and common concern for the good of all. It is an order of virtue which perfects the characters of the participants. It grounded in religious respect for God as the First Cause and Last End. St. Thomas studies and judges the edicts of civil government for how well they advance this realized state of being in common with others.

For his part, Finnis evaluates law according to how well it advances a contingent constructive ideal of the common good offered by the particular society. He considers its actualization of this ideal neither morally good nor bad. He generally declines to evaluate the substantive accomplishments of a legal regime, leaving such issues to politics. Finnis has a narrower scope of normative concern over the ends of lawmaking than does Aquinas. Instead, he places a bar on the kinds of arguments which are admissible in support of the state's positive welfare goals, ruling out "slice-in-time" concepts of distribution (it would appear that St. Thomas would not object to these concepts in their proper place).

St. Thomas and Finnis move closer in their modes of reasoning over the negative duties binding lawmakers. They offer similar frameworks for avoiding commutative and distributive injustice, and for avoiding to intrinsically unjust or evil acts. But even these

frameworks reflect major differences in the two thinkers' general modes of reasoning.

Finnis's calculations of justice float on top of contingent constructions of concrete desired outcomes, while St. Thomas's devolve from notions of virtue and an objective hierarchy of value. St. Thomas's elective distributional principles are strictly supplemental of these underlying objective elements.

Another difference between the authors arises from the contrasting way each relates the concepts of "person" and "good" in the course of defining the requirements of justice, and intrinsically evil acts. Finnis starts with the Basic Good, and posits the equality of persons in relation to it. Aquinas starts with the equality of persons and then requires respect for goods belonging to persons. This reversal, in emphasis creates subtle, but far reaching difference in the tenor of the two normative critiques of law. Aquinas's insistence the importance of consent in contrast to Finnis, is just one example.

Finnis and Aquinas also approach the evaluation of the individual's response to law differently. Finnis presumes that any law that is valid within a legitimate legal system is morally obligatory. Finnis also endorses the law's functional claim that its obligations are morally absolute on their face. This presumption, coupled with the procedural difficulties, foreseeable in Finnis's scheme of moral reasoning for gaining a hearing for moral objection to law suggest that in Finnis's scheme the moral critique of law will be relegated to specialized academic and professional channels.

Aquinas's more far-reaching metaphysics allow him to stipulate that consent, rather than effective coordination of action is the basis of legal obligation, so that every passing individual may justly question the moral legitimacy of every governmental edict which effects

him. Aquinas's normative jurisprudence is inherently inimical to bureaucracy, while Finnis's supports it within a set of essentially deontological restrictions, on certain methods and actions.

Aquinas considers law to be the means to the highest form of human friendship, and the perfection of all natural social virtue. Finnis is somewhat more sober in his assessment of law. He considers law to advance his Eighth Requirement of Practical Reasonableness in just one among many possible ways. The upright moral agent complies with legal obligation as one of many parallel duties in the course of preserving a rectified will. In doing so, the agent can know that he has contributed to a rather far-reaching pattern of instantiation of goods, in what Finnis seems to imagine as a kind of shadowy kingdoms of Ends, but the agent's contribution to this kingdom does not entail, as it does in St. Thomas, participation in the mystery of being in accordance with Eternal Law.

6. The Relevance of Differences in Aquinas and Finnis's Normative Jurisprudence for Understanding of Finnis's Concept of Basic Goods

A comparison of Aquinas's and Finnis's concepts gives focus to a set of problems in normative jurisprudence. Finnis solves these problems with his idea of Basic Goods, and Aquinas with a constellation of metaphysical and ontological principles more extensive than his idea of mediatory basic goods alone. The distinctive contrasts between the authors' solutions can be summarized as follows.

Normative reasoning about law seeks to validate common values for resolving public disputes and decisions. Aquinas and Finnis each take the concept of the common good as a self-evident starting point for reasoning to this end. Indeed, Finnis consciously seeks to

establish continuity with Aquinas in so doing. Yet, Finnis's concept of the common good rests on a self-evident duty, deriving from an ideal of consistency in moral reasoning, while Aquinas's relies on the basic mediatory good of friendship as an overarching *telos* grounded metaphysically and ontologically.

Consequently Finnis's normative jurisprudence consists principally of negative obligations functioning as side-constraints on the lawmaker in pursuit of his elective ideals. Aquinas's chart the law's progress towards a common substantive goal, given with human nature. Even his negative norms, thus, take on content by reference to substantive values. Finnis's Basic Goods are a metaphysical bridge connecting individuals in a manner generally lacking in modern theories of law and values, but this it is a bridge is too narrow to support a substantive theory of the common good. Finnis's Basic Goods imply no overarching *telos* either for the person or the community. They forge only a common duty to coordinate separate patterns of moral agency to mutual advantage in the rectification of diverse wills. Aquinas's mediatory basic goods, by contrast, offer a path towards a common fulfillment in being because they are intrinsically oriented to union with real objects, including life in common with others.

V. JOHN FINNIS AND H.L.A. HART COMPARED

This chapter continues the phase of dialectic further sharpening Finnis's descriptive profile, in order to make a more comprehensive understanding of his work, and better to evaluate it in the study's final chapter. It compares Finnis's ideas to those of liberalism, a school of thought characterizing the hermeneutical situation of Chapter 1. The comparison has particular value for illuminating Finnis's position in relation to that situation, for Finnis offers his theory as an alternative to liberalism, and yet, he incorporates elements of liberalism. The chapter's specific comparison is of Finnis and H.L.A. Hart, a representative liberal.¹

This chapter will pursue its comparison of Finnis and Hart by means of the same interpretive questions employed in the foregoing chapters. It begins by outlining Hart's ethical theory, describing his ideas of the "good" and "justification ." It explicates the latter concept in terms of Hart's basic vantage; his procedures of moral analysis; and his arguments for their rational or moral necessity. It explores the interrelationship between the "good" and "justification," as these terms appear in Hart's theory analyzing the implications of that interrelationship for Hart's claims to teleology and objectivity, and for the manner in which he relates egoism and altruism. The chapter registers Hart's similarity and difference with Finnis at each step, especially Finnis's concept of basic goods.

¹ Hart was Finnis's tutor at Oxford, and he proposed that Finnis write *Natural Law and Natural Rights*, and he helped with the practical arrangements of its completion. See John Finnis's comments at the Association of American Law Schools' Workshop on "Jurisprudence and Legal Philosophy and Their Application to the Basic Curriculum," March 20-22, 1986, Philadelphia, Pennsylvania, in proceedings published *Journal of Legal Education* 36 (1986): 492-93.

This chapter then sets out Hart's ideas of jurisprudence. It asks how Hart does, or does not, approximate the heuristic concept of law, encountered in Chapter 1, as a sanction-backed restriction on individual freedom or governmental power, and (in some variations) as an instrument of state action. It ascertains Hart's meta-level reasons for departures from the heuristic definition. It sets forth his general concept of law and it sketches his concepts and methodology for morally evaluating law. At each stage, the chapter compares Hart's ideas to those of Finnis, with particular regard for Finnis's basic goods.

A. Hart's Ethical Theory

Hart has a fairly well developed, if often implicit, ethical theory, which can be set forth in terms of the idea of the "good" and "justification." Hart contradicts his own assertion that his concept of law depends on no particular theory of value.² As support for the assumption that Hart propounds an ethical theory, one may cite his assertion that he aims at the effective moral critique of law.

1. What Hart Means by the "Good"

Chapter 1 defined the "good" for heuristic purposes, as the "morally significant" "formal goal of human choice or action." The present chapter inquires into Hart's conception of this concept. It proceeds by asking how Hart's conception is, respectively, to be understood as subjective and objective. It seeks to determine how Hart's vision of the good is, and is not, similar to Finnis's basic goods.

² "We shall seek to evade . . . [the] philosophical difficulties" in the "many complicated and subtle variants . . . philosophers have developed in the effort to elucidate the nature of morality." H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), 164.

a. The Sense in Which Hart's Conception of the Good is Subjective

Hart, like Finnis, adopts Hume on the naturalistic fallacy. But unlike Finnis, Hart also concurs with Hume's contention that human ends are good because they are desired, not the reverse.³ Hart conceives of goodness as essentially a formal rather than substantive idea. He finds its intelligible meaning, and moral significance, in the agent's election of states of affairs as goals of choice and action.

Hart describes the intelligible content of choices in one of several empirically verifiable terms. He describes it as physiological or psychological inclination, i.e. as "passion" or "desire."⁴ He describes it as pleasure or pain avoidance, arising through the satisfaction of an inclination.⁵ And, he describes it as a socially directed preference, taste or convention.⁶ Under each such description, the object of the agent's election counts as an "interest."⁷

Hart conceives of the moral agent as constructing the ends and objects of choice and action from the raw material of desire, pleasure, pain avoidance and socially acquired preferences. He imagines these aims to be "infinitely various" concrete states of affairs.⁸

³ See H.L.A. Hart, *The Concept of Law*, 187.

⁴ Hart cites "powerful instincts with which personal happiness is intimately connected." H.L.A. Hart, *Law, Liberty, and Morality* (Stanford: Stanford University Press, 1963), 43.

⁵ See H.L.A. Hart, *Law, Liberty, and Morality*, 22, 43.

⁶ See H.L.A. Hart, "Problems in the Philosophy of Law," in H.L.A. Hart, *Essays*, 111.

⁷ H.L.A. Hart, "Rawls on Liberty and Its Priority" in H.L.A. Hart, *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon Press), 240.

⁸ H.A. Hart, *The Concept of Law*, 162-63; Cf. H.L.A. Hart, "Problems in the Philosophy of Law," 112.

With one exception, to be addressed below, Hart understands the agent's ends to be *sui generis*.

The agent formulates his conscious aims, by means of a moral-psychological mechanism, that imputes "supreme importance" to the attainment or avoidance of certain states of affairs.⁹ By this device, the agent attaches feelings of frustration or gratification to the outcomes of action. Hart terms ends that are imbued with such prescriptive emotion, "ideals." The ideal's force is emotive. Feeling rather than cognition supplies its content.¹⁰ The individual experiences its persuasiveness as inherent.¹¹ An ideal may be "heroic," "romantic," "aesthetic," "scholarly," or "less agreeably mortification of the flesh."¹² Hart holds ideals, no less than the concrete aims through which they are fulfilled, to be infinitely various. Other non-idealized aims and desires derive their meaning from their instrumental value in advancing ideals.¹³

Hart observes that concrete proposals for action are likely to implicate ideals secondary to the one the agent intends. Yet, no intrinsic standard exists for resolving conflicts among ideals. Hart assumes that Hume's critique of naturalism rules out the commensuration of aims and ideals. He holds that the agent must construct his own standard, either alone or with others, for resolving such conflicts, based on noncognitive

⁹ H.L.A. Hart, *The Concept of Law*, 175-76.

¹⁰ ". . . though conversions are possible the notion that such ideals could be adopted, changed, or eliminated by a deliberate choice is chimerical; . . . deviations from such ideals are 'punished' by . . . guilt and remorse." H.L.A. Hart, *The Concept of Law*, 180.

¹¹ See *Ibid.*, 169, 177-79.

¹² *Ibid.*, 179; H.L.A. Hart, *Law, Liberty, and Morality*, 58.

¹³ "Their pursuit is felt as a duty to which other interests or desires are to be sacrificed." *Ibid.*, 180.

grounds. He will conceive of such a standard as a “pattern” or “way of life.”¹⁴ In such case, the standard is an ideal pattern of choice, over time. Hart alleges that complexity and transience exclude the formation of any one standard sufficient to resolve consistently all conflicts among values. The agent cannot avoid applying shifting standards.¹⁵

Hart assumes that the agent will derive certain ideals from social convention. But even these ideals lack any grounding in reason or nature and so remain subjective. Counter to the “disintegration” thesis of Devlin and Durkheim, Hart denies that societal ideals derive objective meaning from the advantages they confer socially. He considers their meaning to consist merely in shared *sentiment*. Society concludes that their nonobservance is blameworthy. It bases this judgement on the alleged negative effects of nonconformity which remain unspecified, but where, nonetheless, arouse distaste.

The turn in ethical theory at which the agent’s ends can be said to be morally, and not merely intelligibly good, arises with the adoption of what Hart terms, “critical morality.”¹⁶ Hart alleges that the intelligible good is already a matter of prescription. He asserts that the good becomes normatively good merely by critical morality’s further prescription of which prescriptions to advance over others.¹⁷ The normatively good is what the critic holds to be the overriding good. For its part, this judgment rests on nothing more than the critic’s dominant emotion. Hart holds that normativity arises when a good is

¹⁴ See H.L.A. Hart, “Between Utility and Rights,” in H.L.A. Hart, *Essays* 201; H.L.A. Hart, “Social Solidarity and the Enforcement of Morality,” in *Essays*, 251.

¹⁵ H.L.A. Hart, *Law, Liberty, and Morality*, 38.

¹⁶ H.L.A. Hart, *The Concept of Law*, 181.

¹⁷ *Ibid.*, 180.

asserted with an intensity, expressive either of a dogmatic, “conservative” thesis that existing moral ideals must, *ipso facto*, continue as such, or as a declarative “progressive” thesis that such ideals may to be altered.¹⁸

b. The Sense in which Hart’s Conception
of the “Good” is Objective

Hart also includes elements of objectivity in his vision of the good. One relevant meaning Hart gives objectivity is empirical verifiability.¹⁹ The agent’s subjective election may give his choice and action its basic intelligibility, but the desire and emotion propelling the election can be verified empirically; as can the concrete states of affairs the agent projects and actually brings about. The psychological and social stimuli triggering his conscious preferences can be empirically observed, i.e. his desires, passions, tastes, as well as the influence of societal aims and conventions. The fact of the agent’s concrete aims may be inventoried, so too may his abstract ideals. His execution of his actions can be observed and recorded.

Hart attributes objectivity in a second sense to at least some ends or objects of choice and action. This objectivity is the cross-cultural invariance of some moral values. Hart postulates survival as a value across all cultures. People everywhere wish to survive at an overwhelming price.²⁰ Assuming that survival is a value, other aims take on invariant

¹⁸ H.L.A. Hart, *Law, Liberty, and Morality* 55, 72-73; *The Concept of Law*, 162-63; “Social Solidarity and the Enforcement of Morality,” 248-62.

¹⁹ “Generalizations ... may be confirmed or falsified by observable events.” H.L.A. Hart, *The Concept of Law*, 184.

²⁰ “It is the tacit assumption that the proper end of human activity is survival.” Hart equates the normative implications of this, in itself, descriptive premise with “classical teleology’s ‘lowest level,’ ‘perseverare in esse suo.’” *Ibid.*, 186-87.

instrumental worth, given several postulates of human nature. Here postulate means an empirical presupposition of a hypothesis. Such aims include physical safety; security in possessing, using and supposing of property; and the assurance of being told the truth and being free to rely on promises.²¹ These elements of cross-cultural invariance lend objectivity to Hart's notion of the good only in the sense of supporting predictions of what people will do, not in the sense of offering any objective certainty about what it is right for them to do.

Hart considers the goodness of the ends or objects of choice and action to be objective in a third sense. He holds namely that language is an intersubjective constant. He assumes that the existence of language is a prerequisite of choice and action.²² Speech encodes "values," in a manner which makes sense from the "internal point of view" of those subscripitive of its meaning. Hart rejects the belief that linguistic value-terms correspond to ontological or metaphysical reality.²³ Linguistic terms for value function by positing "gains" and "losses" as flowing from given act descriptions. They present themselves as pairs for anticipated correlated gains and losses. Hart provides the following examples: "cure" and "disease," "safety" and "danger," "harm" and "benefit."²⁴ He believes that descriptively such paired terms receive invariant cross-cultural meaning where they can be

²¹ "If conformity with elementary rules were not thought a matter of course among any group of individuals, living in close proximity to each other, we should be doubtful of the description of the group as a society, and certain that ut could not endure for long." *Ibid.*, 167.

²² Hart conceives of obligations as "the internal aspect of rules." He understands rules linguistically as the "speech" linking "thought" and "action." *Ibid.*, 86.

²³ *Ibid.*, 187.

²⁴ *Ibid.*, 188.

related to the quest to survive. They can be given further descriptive content according to changing societal convention. Normatively, their basic meaning is purely emotive.²⁵

All three elements of objectivity here discussed concern relatively “external” aspects of choice. In Hart’s view, for example, desire and material consequence are the ends and objects of choice because the agent *elects* them. Even the linguistic element can figure as an aspect of choice because the agent *elects* to use language to articulate what he will do.

However, Hart points an element of objectivity in choice, internal to the agent’s moral consciousness. This is the element of the priority and invariance Hart accords freedom as a basic value.²⁶ Paradoxically, he considers the freedom to be subjective in assessing value, objectively to merit respect.

In the tradition of John Stuart Mill, Hart holds the agent to be a “progressive being endowed with distinctively human capacities of thought, rational choice and action who . . . [has] ends to pursue,” and whose freedom of choice has priority over all other values.²⁷ In this view, the autonomous self-definition of the individual is a master value that may be the direct, but is also the indirect goal of choice and action. In this perspective, whatever bolsters individual capacities of thought, choice and self-direction is also

²⁵ Without minimum noninterference and cooperation, “men would be grossly hampered in the pursuit of desires.” H.L.A. Hart, “Problems in the Philosophy of Law” in *Essays* 112; a “minimum peace . . . makes living with others worthwhile.” H.L.A. Hart, *The Concept of Law*, 177, 187-88.

²⁶ H.L.A. Hart, “Utilitarianism and Natural Rights,” in *Essays*, 189.

²⁷ H.L.A. Hart, “Utilitarianism and Natural Rights,” in *Essays*, 189.

objectively an instrumental good.²⁸ The nature of autonomy as a value means that instrumental goods exist because they advance a freely elected outcome.

At the turn in ethical theory where the goal of choice or action can be said to be normatively good, the good of autonomous choice plays a decisive role. Self-defining freedom is, Hart believes, not just intrinsically intelligible, it is merits invariant respect as the highest normative ideal. Hart considers the value of individual self-definition the proper ultimate end of every act. Even suicide serves to negate the possibility of further action.²⁹ He holds every particular aim and ideal to deserve its ultimate value as an expression of self-defining freedom shares.

Just as Hart considers individual self-defining freedom a normative ideal, he concedes its efficient advancement a normative value. His "principle of rationality" thus postulates that whatever is worth doing, is worth doing efficiently.³⁰ This principle calls for the optimization of the natural powers, resources and opportunities advancing individual freedom. Hart proposes this objective as a social ideal in his later writings.³¹ Hart's principle calls for securing the material requisites for realizing particular aims. Accurate

²⁸ Ibid., 181-87; H.L.A. Hart, "Legal Rights," in *Essays on Bentham* (Oxford: Clarendon Press, 1982), 190.

²⁹ H.L.A. Hart, *The Morality of the Criminal Law* (London: Oxford University Press, 1965), 41-54.

³⁰ Hart's endorsement of the efficiency principle is many-sided, pervasive, and largely implicit. He rules for direction in much on Bentham and what Bentham's thought did for "passion for reform and respect for law" H.L.A. Hart, "Positivism and the Separation of Law and Morals" in *Essays*, 51. He implicitly accepts the notion of efficiency as rationality found in Richard Posner's work, qualifying it only with the call for respect for the universalizability principle expressed by means of a theory of individual moral rights." H.L.A. Hart, "American Jurisprudence through English Eyes: The Nightmare and the Noble Dream," in *Essays*, 144. He find that the intrinsic intelligibility of morality depends, however inconsistently, on "efficiency." H.L.A. Hart, *The Concept of Law* 85, as does, even more definitively that of law. Ibid., 94.

³¹ H.L.A. Hart, "Legal Rights" in *Essays on Bentham*, 190; H.L.A. Hart, "Utilitarianism and Natural Rights," in *Essays*, 181-87.

scientific knowledge of human nature and the material conditions of human life has normative value for its utility in advancing the use of self-defining freedom.³²

Hart's principle of universalizability requires that self-defining freedom be respected in others.³³ The principle of universalizability, like that of rationality, has no deeper grounding than the ordering language analysis of the meaning of "morality."³⁴ He does not believe genuine interpersonal knowledge of what fulfills others possible, but he believes that one can know the value of natural powers, resources, and opportunities as means to self-defining freedom. He calls them material interests.³⁵ They include whatever contributes to effective action to attain pleasure and avoid pain.

The principle of universalizability, requires the agent to forbear from direct interference with the freedom of the other by violating of his physical security or property. It also prohibits imposing pain or a deprivation of pleasure on another, to discourage his use of his freedom.³⁶ Both individuals and society are bound by these requirements of the principle of universalizability. Mutual noninterference is a normative social objective.³⁷

³² H.L.A. Hart, *Law, Liberty, and Morality*, 57-58.

³³ "Certainly in the modern world, the fact that human beings, of whatever color, are capable of thought, feeling, and self-control, would be generally though not universally accepted as constituting crucial resemblances between them to which the law should attend." Hart sees "certain essential human attributes centering on the "capacity to realize some ideal of the good life." H.L.A. Hart, *The Concept of Law*, 157-58.

³⁴ But concerning Hart's justification of his normative theory, see 375-78 below.

³⁵ *Ibid.*, 186-87.

³⁶ H.L.A. Hart, *Law, Liberty, and Morality*, 70-71.

³⁷ "Among such rules obviously required for social life are those forbidding, or at least restricting the free use of violence, rules requiring certain forms of honesty and truthfulness in dealing with others, and rules forbidding the destruction of tangible things or their seizure from others." H.L.A. Hart, *The Concept of Law*, 167.

Hart's requirement of mutual noninterference serve to preserve key interests. Each of these is a normative end. They include: political liberty, liberty of speech and assembly, freedom of conscience and thought, liberty of ownership, and immunity from arbitrary search and seizure.³⁸ They also include sexual freedom and the free the use of intoxicants. Hart views sex and intoxicants essential sources of pleasure and relief from pain.³⁹

c. Hart's Overall Vision of His Good

It remains to state how Hart integrates subjective and objective elements into a single overall vision of the good. That view can be set out as follows: the exercise of individual self-defining freedom is an intelligible value and normative ideal. It is the universal first principle of choice and action. It has an objective status due its universal priority. This objectivity carries over to the status of ends, which are means to advancing it, and to all material resources useful in constructing those means.

Language as an intersubjective constant in attributions of value, also lends an element of objectivity to the meaning of choice and action. *Natural desire and social preference*, may be elected as goals, and these facts are empirically verifiable. The concrete states of affairs the agent sets out to bring about are otherwise empirically verifiable. Notwithstanding these "objective" elements, the basic value of the agent's aims and ideals arises through the agent's election. The material, physiological, psychological and social impulses which the agent

³⁸ H.L.A. Hart, "Legal Rights" in *Essays on Bentham*, 190-91.

³⁹ "Sexual impulses are... a recurrent and insistent part of daily life. Resistance . . . affects the development or balance of the individual's emotional life, happiness, and personality." H.L.A. Hart, *Law, Liberty, and Morality*, 22, 43.

draws upon to formulate his unique aims and ideals, have no necessary role in the derivation of value. The part they play in choice shifts and changes with circumstance. Hart's overall vision can fairly be expressed in a single image: that of Hobbes's sovereign or "mortal god," with the individual (rather than the state) being the sovereign, and individual autonomy (not state power) serving as the basic objective. Individual election, not state decree, gives choice and action its intelligibility. In Hart, as in Hobbes, the act of election by the privileged decision maker receives further descriptive content from the material, empirically verifiable world, rather than by reference to metaphysical or "cognitive" goods.

d. Similarity and Difference in Hart's and
Finnis's Conceptions of the Good

Both Hart and Finnis begin with Hume's critique to explain the intelligible nature of human choice. They agree that no teleology "out there" or in "the nature of things" gives choice its meaning. They concur that no universal or overarching good supplies an end of "man" or "human life." Each sees the intelligibility of action in the internal structure of reasoning toward the individual act. They agree that natural desire or inclination occasions the conscious formulation of ends of action, but that the mind does not derive the end from the desire. Finnis finds the underived starting point of practiced reason in the cognition of a "basic good," while Hart finds it in an underived projection of self-defining choice.

Undoubtedly, the most significant similarity between Finnis and Hart is the parallel between Hart's end of self-defining choice and Finnis's "basic goods," more specifically, his sixth basic good, "Peace of Conscience." The parallel supports another. Finnis finds that basic goods are intelligible by contrast to "the pull" of sub-rational emotion and desire.

Hart holds that the value of self-defining freedom is intelligible, over and against “the pull” of conventional societal norms and expectations.

Finnis and Hart both explain normatively good choice, by reference to an ideal of consistent reasonableness in action. Each espouses a first principle of morality which the agent is to report as a matter of a secondary intentionality, by acting according to a broader pattern of consistency. Finnis requires that the agent act according to a life plan, and coordinate his actions with those of others for the common good. Hart requires that the agent act according to autonomously chosen moral ideals, and with respect for the self-defining freedom of others in a pattern of mutual noninterference and minimum cooperation. In his later writings, he suggests that minimum cooperation be required includes the production and distribution basic instrumental goods.

These parallels suggest that, if Hart is a liberal and modern, then, to some extent, so is Finnis. Finnis’s concept of the end and object of action, like Hart’s is at least modern and liberal in this sense: it dispenses with pre-modern metaphysics, and conceives of practiced values as arising through the individual’s interior election. It conceives of the “common good” as the coordination of individual agency rather than as an organic pattern of social relationships.

Nonetheless, it should be evident that the differences between Hart and Finnis outweigh similarities. Finnis’s underived starting points for describing the ends of action are cognitive truths. Hart conceives of human ends as projections. These draw upon the agent’s prescriptive capacity and his reading of his material interests. Hart is a noncognitivist, and

underneath it all, he claims no firmer epistemological status even for the primacy he accords his own basic good, self-defining choice.

Finnis understands the agent's concrete proposal for action to "instantiate" a cognitive truth. Hart, by contrast, grasps it as reflecting only the value the agent elects to project onto it. Finnis sees desire and consequences as essentially unrelated to the insight into the good which they may occasion. Hart, however, believes precisely that desire and consequences are the essential matter the agent may elect to consider value.

There is this further difference between the authors' respective views on the good. Both understand an end as morally good, if the agent conforms to the ideal of consistency. But Hart limits his concept of consistency to consistent regard for the requirements of efficiency and universalizability in advancing just one value, individual autonomy. Finnis requires more. He demands consistent regard for the equal appeal of diverse values which the agent expresses by respecting elaborate procedural principles. The notions of coherence informing Finnis's requirements are virtually unintelligible from Hart's perspective. Hart, for example, discerns no integrity in favoring cognition over desire. And, Hart recognizes no intrinsic values according to which a "life plan" is preferable to complete spontaneity in choosing, as long as the agent choose autonomously. Hart's concept of a requirement of social cooperation is necessarily more limited than Finnis's. Hart restricts his to mutual respect for freedom and material interests, while Finnis's includes regard for all the basic goods.

The root of the authors' difference can be traced to their respective strategies for implementing Hume's critique. Finnis opts for revamping pre-modern moral epistemology,

preserving the contrast it draws between reason and desire or consequence. By contrast, Hart elects to treat the individual as a sovereign whose projections of meaning and value organize action for the sake of passing desire and apparent consequence. In this respect, Hart is quintessentially liberal and modern. By comparison, Finnis is liberal and modern, but with a difference.

Finnis would undoubtedly assert that Hart is implicitly relying on his practical reason, as Finnis would explicate it, but distorting it. Finnis would claim that Hart's linguistic patterns of value attribution and prescriptive-psychological projection of ideals are actually ways of expressing the basic goods and the requirements of practical reasonableness. Finnis would consider Hart's account defective because not either sufficiently penetrating or comprehensive. He would consider Hart's framework especially open to error because of its uncritical endorsement of desire and emotion.

Hart would counter that Finnis mistakes contingent linguistic patterns and the prescriptive psychology for invariant practical truth. He would assert that Finnis's entire elaborate array of allegedly cognitive principles is actually only Finnis's projection of a particular prescription, probably the option Hart terms ". . . less agreeably the mortification of the flesh." Hart, however, would credit Finnis's system with this much truth: it has its own unique and unrepeatable appeal a projection of one individual's prescriptive capacity. Hart would object merely to consider Finnis's norms as obligatory except where they happen to serve the cause of individual autonomy -- for those who elect to see the good in some other way.

2. Hart's Concept of Justification

“Justification” is a second basic concept which is useful in interpreting Hart’s ethical theory. Specifically, it offers a heuristic key to Finnis’s conception of practical reason. It can serve to bring to light the relative difference between Hart and Finnis with special reference to Finnis’s concept of basic goods. The meaning Hart gives “justification” can be set out first.

Chapter 1 defined justification for heuristic purposes as being:

the demonstration or explication of the rational or moral necessity of a single, unified, determinate and universally applicable vantage from which, by applying some determinate methodological steps, the rational or moral necessity of choices, attitudes and actions is established.

The central idea in this definition is moral “obligation.” The point of departure in applying the heuristic definition to interpreting Finnis’s ethical theory, “obligation” will serve the same purpose here.

Hart treats moral obligation, in the first instance, as a linguistic convention. He holds that moral obligation exists whenever a linguistic unit known as a rule, sets out a standard of conduct, proposed as obligatory because it advances some societal ideal, and the rule applies.⁴⁰ The obligation provides an independent and peremptory reason to act or forbear from acting.⁴¹

⁴⁰ Rules are conceived as constituting society’s “normative structure” in their “distinctive style of . . . thought, speech and action.” H.L.A. Hart, *The Concept of Law*, 9, 78, 85, 133.

⁴¹ Obligation is intelligible as a “reason,” not as a “feeling of pressure or compulsion” even though the latter may, in fact, be associated with the concrete experience of obligation. *Ibid.*, 85, 88; H.L.A. Hart, *Legal Rights*, in *Essays on Bentham*, 243, 253.

For obligation to arise under a rule, society must acknowledge the rule as performative in character. Those reading a rule as performative consider it from the “internal point of view.”⁴² According to Hart, four conditions must be met for a moral rule to be performative:

- 1) a rule that something is to be done or avoided must appear necessary to avoid far-reaching costs to society, largely, but not necessarily entirely, of a material nature and sufficiently important to override passion and self-interest;⁴³
- 2) the rule must appear immutable;
- 3) the rule must appeal to conscience and the sanction of remorse; and
- 4) intentional transgressions of the rule must give rise to blame.⁴⁴

Rules satisfying these conditions set out the obligations of “conventional” or “positive” morality. Considered “from the internal point of view,” they confer obligation.⁴⁵

Conventional morality proposes obligation by these means against the backdrop of its larger content including open-ended conventional ideals and virtues. Hart understands moral rules as establishing the minimum requirements of an elected ideal which is simultaneously the focus of positive aspiration. The ideal inspires the agent’s further

⁴² Hart considers linguistics, unlike sanctions, inseparable from the idea of obligation: “Rules are . . . *spoken of* as imposing obligations.” H.L.A. Hart, *The Concept of Law* 84, 86 (emphasis added).

⁴³ “The figure of a *bond* binding the person obligated, which is buried in the word ‘obligation’ and the similar notion of a debt latent in the word ‘duty’ are explicable in terms of . . . factors, which distinguish rules of obligation or duty from other rules. In this figure, which haunts much legal thought, the social pressure appears as a chain binding those who have obligations so that they are not free to do what they want. The other end of the chain is sometimes held by the group or their official representatives, who insist on performance or exact the penalty: sometimes it is entrusted by the group to a private individual.” *Ibid.*, 85.

⁴⁴ *Ibid.*, 169-76.

⁴⁵ H.L.A. Hart, *Law, Liberty, and Morality*, 20.

voluntary action beyond the minimum established by the rule. The violation of a rule elicits blame, while progress towards the positive fulfillment of an ideal receives praise.⁴⁶ Hart includes virtue within the scope of conventional morality. In his view, virtue is a character trait enabling the agent to fulfill an obligation under difficult circumstances, and to pursue an ideal beyond the minimum the rule establishes.⁴⁷

At first glance, Hart's concept on conventional morality might appear to satisfy the heuristic definition of "justification." But this is not actually the case. Conventional morality lacks the unity, necessity, and coherence which the heuristic definition demands. The rules of conventional morality form no system. They are contradictory, uneven in application, and incomplete.⁴⁸ They lack exhaustiveness and determinacy. Finally, they fail to meet the requirement of rational necessity. Their demands are "unjustified" when viewed through the lens of "critical morality."

Hart indeed offers a vantage, here heuristically defined as justification, but it is distinct from his framework for understanding conventional morality. His justificatory vantage incorporates conventional morality, but it revises it to satisfy the demands of a "critical" point of view.⁴⁹ It centers on the normative ideal of the consistent exercise of self-defining freedom. It unfolds in two stages. In the first stage, the enlightened individual

⁴⁶ H.L.A. Hart, *The Concept of Law*, 167, 177-78.

⁴⁷ *Ibid.*, 178.

⁴⁸ Some conventional moral obligations reflect "quite erroneous or even superstitious beliefs as to what is required for the health or safety of the group," attributing importance to sexual conformity with no basis in utility, at the price of great suffering. *Ibid.*, 167, 170.

⁴⁹ "Enlightened moral criticism is urged by individuals, whose moral horizon has transcended the morality currently accepted." *Ibid.*, 181.

adopts conventional morality after amending it to reflect the demands of a radical moral critique. In the second, the agent restates the requirements of morality in a comprehensive hierarchy which takes individual self-defining freedom as a master value. Thus, Hart's justificatory vantage has three dimensions: social convention; individual critique; and universal norms, advancing the *summum bonum* of individual self-defining freedom.

Hart's vantage of critical morality is necessarily pluralistic. Its pluralism flows from the nature of his master principle of self-defining freedom. This principle calls for the individual agent to re-interpret conventional morality in a unique and autonomous manner.⁵⁰ The agent undertakes the task in question as an aspiration, not an obligation. He is to be praised for his progress, not blamed for his failure. The enlightened moral agent sets out his critical morality in terms of stated ideals, virtues and obligations. The meaning of these terms is linguistic and socially performative. It transpires in both individual consciousness and social discourse.⁵¹

In developing his moral vantage, the individual takes linguistic patterns, expressive of aims, obligations, ideals, and virtues from conventional morality. As he prefers, he adds to, deletes from, and re-arranges this body of material.⁵² Specifically, he adopts obligation-conferring rules around his own elected ideals. From the resulting vantage, he categorically critiques existing conventional morality. Hart holds that there are as many critical moralities

⁵⁰ Hart follows John Stuart Mill in his affirmation of autonomous self-realization by the individual as fundamentally ideal. See H.L.A. Hart, "Utilitarianism and Natural Rights," in *Essays*, 193.

⁵¹ "These four features reflect different aspects of a characteristic and important function which such standards perform in social life or in the life of the individual." H.L.A. Hart, *The Concept of Law*, 164.

⁵² *Id.* at 179.

as there are “enlightened” individuals.⁵³ The individual critic critiques social mores from his own unique pattern of ideals and preferences. He aims at converting society from convention to his enlightened viewpoint.⁵⁴ Hart values democracy for its usefulness in experimenting with proposals for social reform.⁵⁵

The second stage of Hart’s “critical morality” formulates specific rules of obligation. It does so, according to two universal principles. These principles are formal ones, expressive of the invariant requirements of Hart’s master principle of consistent respect for self-defining freedom. Common language usage establishes that these two formal principles inhere in what is taken to be the intrinsic meaning of morality.⁵⁶ The two principles are: 1) rationality, and 2) generality.⁵⁷

⁵³ The grounding of critical morality in the fundamental value of individual self-realization ensures that it will entail moral pluralism. See *Ibid.*, 179; “Social Solidarity and the Enforcement of Morality” in *Essays* 261-62; *Law, Liberty, and Morality*, 20.

⁵⁴ The point of the critique is conversion. For instance, Hart sees a “conversion”: occurring through his critique of criminal punishment away from conventional regard for outer conformity, gratification of feelings of hatred for the wrongdoer, punishment as a symbol or expression of moral condemnation, and mere insulation from change, and towards the imposition of responsibility for voluntarily committed material injuries. See *Ibid.*, 20; H.L.A. Hart, *The Concept of Law*, 173-75, 180. Speaking of the “common good,” Hart states: “It is not clear what [this ... phrase ... means], since there seems to be no side by which contributors of the various alternatives to the common good can be measured and the greater identified.” H.L.A. Hart, *The Concept of Law*, 162-63. Hart is emphatic in viewing moral pluralism as the consummation of the value of individualism and a societal good. See H.L.A. Hart, “Social Solidarity and the Enforcement of Morality,” in *Essays*, 261-62.

⁵⁵ “One of the great justifications of democracy is that it permits experimentation and a revisable choice between such alternatives.” *Ibid.*, 179; H.L.A. Hart, *Law, Liberty, and Morality*, 75-77, 80.

⁵⁶ See H.L.A. Hart, *The Concept of Law* 179, 193-95.

⁵⁷ “[some principles are not merely the moral convictions or mores of a particular society but are matters of justice which may be said to enter very deeply into the heart of morality at all times and places, and even where men do not conform to them they pay lip service to them. *Ibid.*, 71-72; Hart refers to “[t]he general moral principles used in the criticism of actual social institutions including positive morality. H.L.A. Hart, *The Morality of Criminal Law*, 53.

The principle of rationality asserts that any aim or ideal an individual elects to pursue is worth pursuing efficiently.⁵⁸ Here, efficiency means the greatest possible realization of an aim or ideal, at the lowest possible cost to the agent's other aims and ideals. Since Hart rejects a master calculus of utility, his calculations of efficiency entail commensurating incommensurable ideals.⁵⁹ To pull this off, the agent trades the sacrifice of one ideal for the attainment of others, according to some unique overall vision of choice. No such idealized pattern can resolve all conflicts given the complexities of changing circumstances, so that the agent engages in continual accommodation and compromise.⁶⁰

The principle of generality calls for the agent to formulate his rules of obligation, in a manner effecting all similarly situated agents in the same way.⁶¹ The rule then respects the equal moral dignity of all persons. Hart interprets individual dignity to prohibit the recognition of race or gender as grounds for considering persons differently situated under moral rules.⁶² Hart terms a variation of the principle of generality the duty of "fair play."⁶³ Under this statement of the principle, the acceptance of the benefit of the other party's performance under a contract binds the party, for example, to perform.

⁵⁸ Hart means social science data when he speaks of "knowledge of the facts." H.L.A. Hart, *Law, Liberty, and Morality* 20.

⁵⁹ "We cannot usually in social life pursue a single value as a single moral aim, untroubled by the need to compromise with others." *Ibid.*, 38.

⁶⁰ *Ibid.*; "Like nettles, the occasions when life forces us to choose the lesser of two evils must be grasped with the consciousness that they are what they are." H.L.A. Hart, "Positivism, Law, and Morals," in *Essays*, 77.

⁶¹ [Equality in distribution, whether through law or personal action] resides at the heart of the meaning of justice and the principle of universalizability. H.L.A. Hart, *The Concept of Law*, 153-55.

⁶² See H.L.A. Hart, *Law, Liberty, and Morality*, 71.

⁶³ H.L.A. Hart, "Problems of the Philosophy of Law" in *Essays*, 117-19; "Utilitarianism and Natural Rights" in *Essays*, 192-93.

Hart does not consider respect for equality to be enough to realize the principle of generality.⁶⁴ The principle also requires the agent to refrain from imposing certain harms on others. It does so in conjunction with the principle of rationality. This latter principle could also be described as the interpersonal application of the principle of rationality.

The respect for the equality of others called for under the principle of generality has the collateral effect of requiring that the agent include costs to other agents in his calculations of efficiency, under the principle of rationality.⁶⁵ The absence in Hart of a common concept of self-fulfillment raises the issue of how the interpersonal costs of action are to be commensurate. Hart's solution is to say that no agent may ever directly act to undermine the material interests of another. Nor, may the agent ever impose direct material costs on another to discourage him in his exercise of self-defining freedom (as, for example, to pressure others to adopt a particular sexual morality).⁶⁶ Material interests are those essential to the agent's basic exercise of self-defining freedom.⁶⁷

In Hart's view, pressure to dissuade others from conduct causing material harm is a separate matter, but one may not pressure others to abandon behavior causing merely psychic distress for observers. Offense to a person's moral sensibilities is a psychic and not a

⁶⁴ H.L.A. Hart, "Between Utility and Rights," in *Essays*, 208-25.

⁶⁵ H.L.A. Hart, *Law, Liberty, and Morality*, 68; Hart rejects John Rawls' characterization of the problem as one of a conflict in liberty. See H.L.A. Hart, "Rawls on Liberty and Its Priority," in *Essays*, 242.

⁶⁶ See *Ibid.*, 170; *Law, Liberty, and Morality* 6, 47; H.L.A. Hart, *The Morality of Criminal Law*, 41-54; H.L.A. Hart, *The Concept of Law*, 167; *Law, Liberty, and Morality*, 47, 70.

⁶⁷ "A structure of reciprocal rights and obligations proscribing at last the grosser sorts of harm, constitutes the basis, though not the whole, of the morality of every social group." H.L.A. Hart, *The Concept of Law*, 160. "Human misery and the restriction of freedom are evils, calling for justification." H.L.A. Hart, *Law, Liberty, and Morality*, 82; *Ibid.*, 22.

material harm. A claim of material harm must, moreover, be based on accurate empirical and scientific grasp of the facts.⁶⁸

Hart considers conventional morality to be generally adequate in its articulation of moral duties in the areas of reciprocal non-interference and minimum cooperation (requirements Hart refers to as the “minimum content of natural law”). He also argues that people will generally fulfill such duties on prudential grounds, without even needing moral suasion, and he asserts that overreaching by individuals is not a threat to individual dignity and freedom.⁶⁹ Thus, Hart’s critical morality does not even concern itself with the critique of individual moral choices. His critical morality instead critiques conventional morality and law.⁷⁰ Its purposes is to free individuals from unjustified social pressure and legal coercion. Critical morality seeks to awaken a critical morality in other individuals, so that they may submit to the “internal point of view” of conventional morality or not as they see fit.⁷¹

a. The Rational or Moral Necessity of Hart’s Justificatory Vantage

Hart’s impressive rhetorical skills help to account for his work’s influence on Anglo-American jurisprudence. Justificatory themes out of British analytical philosophy, noncognitive ethics, and, with some qualification, utilitarianism, are discernible undercurrents in his pages, although tracing these undercurrents to their sources is beyond

⁶⁸ See H.L.A. Hart, *The Concept of Law*, 178.

⁶⁹ See H.L.A. Hart, “Utilitarianism and Natural Rights,” in *Essays*, 193.

⁷⁰ The principle issue is “whether the enforcement of [conventional] morality is morally justified.” H.L.A. Hart, *Law, Liberty, and Morality*, 17. Hart expects the “free discussion” the critique entails to be the “solvent of social morality.” *Ibid.*, 18.

⁷¹ See *Ibid.*

the scope of this study. His sporadic justificatory excursions into the theories of others support the priority of self-defining freedom. Beyond these allusions, he offers at least one argument in favor of his position. But he does not offer a comprehensive justificatory argument for his vantage in moral reasoning.⁷²

Hart never even repeats Hobbes' or Hume's arguments, much less advances an original argument for adopting their positions. He merely cites modernity's "triumphant" choice to follow Hobbes and Hume, and his own choice to do the same.⁷³ Hart hints that a pattern of progress in moral thinking throughout history warrants adopting his preference for individual self-creating freedom⁷⁴ Although elsewhere he repudiates the notion that one can deduce the truth of ideas from any historical pattern.⁷⁵

Hart's argument in favor of his own position is fairly thin. He alleges that his scheme of moral reasoning corresponds to the ordinary language of morality.⁷⁶ He cites a consensus

⁷² He claims to "seek to evade" questions of the ultimate epistemological status of his principles. H.L.A. Hart, *The Concept of Law*, 164.

⁷³ Hart refers to natural-law, thinking as "confusion from which modern thought has triumphantly freed itself." H.L.A. Hart, *The Concept of Law*, 182. He refers to transitions occurring between a profession of "faiths in moral philosophy" that have in common that they are espoused by the enlightened members of their respective generations. See H.L.A. Hart, "Between Utility and Rights," in *Essays* 221-22.

⁷⁴ E.g., "Certainly in the *modern* world ..." Ibid., 157 (emphasis added).

⁷⁵ See H.L.A. Hart, *Law, Liberty, and Morality*, 73-75.

⁷⁶ H.L.A. Hart, *The Concept of Law*, 153-65. Hart offers four arguments against the truth of the utilitarian calculus. He argues that: 1) neither pleasure and pain, nor the satisfaction and nonsatisfaction of preferences is commensurable between and among individuals; 2) no aggregative benefit to a group can justify the sacrifice of the individual which utilitarianism countenances; 3) specific gains and losses over time, whether in terms of pleasure, or satisfaction are incommensurable between and among themselves; and 4) even if the experience of pleasure or satisfaction were to offer a normative ground of choice, the net maximum sum of such pleasure or satisfaction constitutes an abstraction that itself is neither pleasure nor satisfaction and so does not share in pleasure or satisfaction's normativity.

among those who are "enlightened" or "progressive" in favor of his position.⁷⁷ Hart holds that the source of value is noncognitive. He ultimately subscribes to a meta-ethics which assumes that all value, including the priority and invariance he attributes to self-defining freedom, is strictly emotivist or prescriptivist preference, so that even his own references to "enlightened" or "progressive" opinion, and his other arguments, must be read as pure prescription.⁷⁸

Hart justifies the priority of self-defining freedom by its utility. He observes that respect for self-defining freedom promotes the discovery of new means to individual and societal welfare.⁷⁹ He argues that the pain to individuals who are denied the freedom of self-definition for the purpose of a pure moralism is a form of suffering counts as inutility.⁸⁰ Both points imply that the value of individual liberty depends on the satisfaction, pleasure or fulfillment it advances. At other junctures, Hart seems to offer the argument that individual self-defining freedom is a self-evident value, akin to Finnis's basic goods.⁸¹

⁷⁷ They are "deeply embedded in modern man." Ibid. 158, 183-84; H.L.A. Hart, *Law, Liberty, and Morality*, 23-4, 54; H.L.A. Hart, "Utilitarianism and Natural Rights," in *Essays*, 196-97.

⁷⁸ Hart equivocates on whether he accepts the "insistence that judgements of what ought to be done . . . contain such noncognitive elements, [that they] cannot be argued for or established by rational methods as statements of fact can be." H.L.A. Hart, "Positivism, Law, and Morals," in *Essays*, 83.

⁷⁹ ". . . [I]t may be thought valuable because it enables individuals to experiment--even with living--and to discover things valuable both to themselves and others." H.L.A. Hart, *Law, Liberty, and Morality*, 20-21.

⁸⁰ Ibid., 22.

⁸¹ "The unimpeded exercise by individuals of free choice may be held a value in itself with which it is *prima facie* wrong to interfere." Ibid., 21.

However, each of these ethical arguments appears rhetorical, in view of Hart's noncognitivist meta-ethical prescriptivist assumptions.⁸²

Hart defends his position by waging a polemic against classical natural law and, to a lesser extent, against utilitarianism.⁸³ He purports to refute natural law by citing Hobbes and Hume for authority that moral reasoning cannot derive either ends or obligations from *telos* found in nature or reason.⁸⁴ Hart, like modernity generally, denies that the purposiveness of human thought and action mirrors a teleology of nature.⁸⁵ He specifically rejects Finnis as a failed effort to retrieve pre-modern thought.⁸⁶ Hart rejects the principle of an overall greatest happiness, pleasure or satisfaction, although his principle of rationality gives utility a role in his own thought, subordinated to the individual election and prioritization of ideals.⁸⁷

⁸² Hart holds that critical morality is based on moral feeling, no less than is positive morality. See H.L.A. Hart, *The Concept of Law*, 180. The "reasons" of both kinds of morality function as such because emotion requires that they be treated "as if" they were real. *Ibid.*, 88. This is equally so of the civil law's reasons. *Ibid.*, 113. Hart nowhere gives any clear basis for supposing the normative force of the principle of universalizability and rationality have any other basis. *Ibid.*, 178-79.

⁸³ About natural law theories, he says: "There are ... obscurities and metaphysical assumptions in the . . . notions of nature and reason which makes their formulations unacceptable to most modern secular thought." H.L.A. Hart, "Problems of the Philosophy of Law," in *Essays*, 111. About utilitarianism, he says: "utilitarian principles cannot give secure foundation for equality and a just distribution of happiness." *Ibid.*

⁸⁴ H.L.A. Hart, *The Concept of Law*, 187.

⁸⁵ He uses adjectives like "strange" and "fantastic" and characterizes the teleology of classical moral philosophy as asserting the equivalent of the view that a "stone falling to the ground return[s] to its proper place like a horse galloping home to its stable." H.L.A. Hart, *The Concept of Law*, 184-85. He contrasts "the difference, so important in modern thought, between human beings with a purpose of their own which they consciously strive to realize and other living or inanimate things." *Ibid.*, 186.

⁸⁶ H.L.A. Hart, "Introduction," in *Essays*, 11.

⁸⁷ See H.L.A. Hart, "Between Utility and Rights," in *Essays*, 199.

b. Hart's Procedure of Justificatory Evaluation

Hart applies his vantage of critical morality to the resolution of concrete cases by means of a standard procedure. In this regard, his approach fits the heuristic definition of justification. He illustrates his procedure by applying it to a few recurring cases. His procedure may be succinctly stated.

The two phases of Hart's procedure of moral evaluation accords with Hart's bifurcation of moral reasoning. In the first phase, the moral agent fills in Hart's formal vantage with the substantive judgments of his unique critical viewpoint. In the second, the agent evaluates laws and social conventions according to specific steps.

In the first phase, the enlightened critic –

- a. adopts substantive ends from the stock of ideals available in the language and practice of his culture;⁸⁸
- b. commensurates these ideals in a pattern of priority established by some unique overall vision of the good life which the critic entertains;⁸⁹
- c. suggests means (generally rules) for advancing his ideals in this chosen overall pattern, which
 - (1) are interpersonally efficient (the measure of efficiency assuming that security from material harm through interference by other individuals is more valuable than is untrammelled individual freedom, and that individual freedom is more valuable than other societal goals attainable only through direct societal interference with individual freedom, and which⁹⁰

⁸⁸ *Id.* at 179.

⁸⁹ H.L.A. Hart, "Between Utility and Rights," in *Essays*, 201; H.L.A. Hart, "Social Solidarity and the Enforcement of Morality," in *Essays*, 251.

⁹⁰ See H.A. Hart, *The Concept of Law* 170; H.L.A. Hart, *Law, Liberty, and Morality* 22, 47.

- (2) submit the proposed moral program to societal debate and critique both before and following its implementation.⁹¹

The second phase of Hart's procedure exists to apply the precepts which deriving from paragraph c. above. The enlightened critic applies these precepts to test legal rules and social conventions for unjustifiable infringements on individual liberty. The precepts deriving from paragraph c(1) are:

- (a) no one may directly burden individual freedom of choice and expression, without the justification of the threat of material harm to another individual;⁹²
- (b) no one may claim a threat of material harm exists to others, without adequate warrant in the form of scientific evidence; and⁹³
- (c) no one may indirectly burden individual freedom or material interest, without a proportionate societal purpose.⁹⁴

The precept deriving from paragraph c(2) above are:

no one may allocate benefits and burdens by classification according to race, gender, social caste or national origin.⁹⁵

c. The Role of the Good in Hart's Concept of Justification

It remains to ask, more precisely, about the role of the good within Hart's concept of justification. That role can be usefully specified by describing the teleological character which Hart's concept of the good may give to his notion of justification; the objectivity

⁹¹ Id. at 80.

⁹² Id. 6, 22, 47; H.L.A. Hart, *The Concept of Law* 170.

⁹³ See H.A. Hart, *Law, Liberty, and Morality* 57-8.

⁹⁴ See H.A. Hart, "Problems of the Philosophy of Law" in *Essays* 193.

⁹⁵ Id. at 117.

which it may confer on his moral norms; and the tension between egoism and altruism which it may introduce into his moral reasoning.

(1) Does the Role of the "Good" Give Hart's Ethical Theory the Character of Teleology?

The theme of value or goodness unifies a teleological ethical theory and is the source of obligation within it. With certain qualifications, the role which Hart assigns the "good" in his ethical theory satisfies this definition, so that his theory is essentially teleological.

Hart holds that particular choices and actions can be described and evaluated by reference to their ends or objects. He does not distinguish between the two. The external object of the act only makes sense because of the agent's projection of meaning onto it, so that there is not a significant difference between the object of the interior act of the will and the external act. Hart views the meaning and value involved as a pure prescription, but he sees the prescription as arising in connection with the moral agent's positing an end or object. The manner in which Hart confers meaning and value on broader patterns of action extends his theme of teleology. He calls for the agent's formulation of an overall ideal for the sake of harmonizing conflicts among his more specific aspirations. He proposes, for universal acceptance, a societal ideal of reciprocal non-interference, minimum cooperation, and the maintenance of the requisites of individual autonomy.

Moreover, Hart derives obligation from the end or object of action. Obligation exists when action is a necessary means towards minimum required progress in reaching an applicable ideal. Obligation can, thus, be understood as the requirement of efficiency. Hart derives an array of specific obligations from the minimum progress he envisions as necessary

towards his ideal of the progressive enlightenment of legal and other social institutions. The overall thrust of these obligations concerns the elimination of material costs to the exercise of self-defining freedom. Hart advances a teleology of individual satisfaction or happiness. He resembles utilitarianism in everything but his rejection of the possibility of an overall interpersonal calculations of net happiness.

However, Hart's theory cannot be characterized as teleological without qualification. The meaning and value Hart sees in end states hangs from the slender thread of the agent's conscious projection of the ideals through self-defining freedom. If the faith in individualism, the thread is lost, as occurs in post-modernism, then, Hart's teleology dissolves.

More critically, the Hobbesian aspect of Hart might be grounds for concluding that Hart's apparent teleology is illusory. It could be agreed that at a deeper level, Hart unifies his theory and derives obligation from the perspective of the decision maker's will which is to say from the fact of power, without positing self-definition as a value. In that case, his universal norms deriving from the principle of generality would then flow from a pure deontology of respect for the freedom of others. Obligation would serve the cause of rational consistency in resolving disputes between sovereign decision makers, not the cause of self-defining freedom, conceived as an ideal.

(2) Does the Role of the "Good" in Hart's Ethical Theory Lend Objectivity to His Moral Norms

Certain elements of objectivity have been seen to characterize Hart's concept of the "good." This objectivity carries over to his moral norms in at least an attenuated way. Hart

considers empirically verifiable linguistic patterns to express obligations. Obligation shares in the “objectivity” of these invariant linguistic forms. The universal priority Hart assigns to individual self-defining freedom also counts as a form of objectivity. From it, Hart derives invariant obligations to respect the equality and material interests of others.

At the same time, important dimensions of Hart’s concept of the “good” are subjective. And the sweep of moral obligation in Hart’s critical morality flows from the agent’s individual aims and ideals. Thus obligation, in Hart, is, in most instances, as subjective as the aims and ideals it advances. Hart’s emphasis on pluralism and change flows from this element of subjectivity.

One interpretation of Hart that is mentioned above considers the purpose of his vantage to be the resolution of conflicts among sovereign decision makers. In such case, no objectivity could be considered to accrue from the role of the good. Then too, Hart’s noncognitivist meta-ethics means that his concepts of the good and of moral obligation alike are better viewed, in any case, as emotive and subjective than objective.

(3) Tension Between Egoism and Altruism Attributable to the Role of the “Good” in Hart’s Ethical Theory

Modern ethical theories can encounter tension between egoism and altruism which poses a challenge to their coherence. Hart’s justificatory vantage is characteristically modern, in that it reflects such a tension. His reliance on unique individual election in order to formulate ideals, virtues and obligations appears egoistical. The requirement that the agent respect equality and support mutual noninterference and minimum cooperation appears altruistic.

Hart asserts that the individual may formulate aims and ideals with a preference for altruism, communitarianism, or even self-denial. Empirically speaking, he alleges that human motives are a mix of altruism and self-interest. Ultimately, however, Hart values all individual aims and ideals as expressions of the ideal of individual self-defining freedom, so that the fulfillment envisioned has the character of egoism. The agent may find himself subordinating short-sighted self-interest and desire for some even altruistic ideal, but the meaning of the ideal is always self-fulfillment.

Hart's principle of generality calls for respect for the equality of others, mutual noninterference, and minimal cooperation. This obligation, by definition, cannot advance any pattern of self-defined fulfillment. It can only advance material interests indirectly deemed (but not known) to advance the exercise of freedom by the other person. One may highlight the discontinuity between the two principles by thinking of a masochist who idealizes and legislates pain for himself as his own ideal of self-defining freedom, but who, in Hart's scheme, must avoid imposing pain on others as against their material interests.

The source of this discontinuity lies in the inherent character of individual self-defining freedom, a basic value. Hart considers this single value to undergird his critical morality, but the fulfillment of self and other cannot be bridged by self-fulfillment. If one interprets Hart as espousing a morality which coordinates sovereign decision-makers unfettered by any real notion of fulfillment, then the divide between self and other becomes more profound. In that case, a demonology of duty to others has no link with the morality of duty of efficiency in advancing one's elected ideals.

In either event, Hart lacks an idea of the good that could bridge the gap between egoism and altruism. He considers the demands of altruism to extend only to mutual noninterference and minimal cooperation. Most ethical objectives lie beyond these basics of social order. They have no more force than the particular enlightened critic invests in them. Ethical debate becomes a set-off between the individual and the view currently dominant within society.

3. Hart and Finnis's Concepts of Justification Compared

Hart's concept of "justification" resembles Finnis's idea of practical reason, to the extent that both Hart and Finnis structure their normative reasoning around the teleology of the human act, and both consider fulfillment to be the measure of right action, while declining to adopt either metaphysical teleologies or a utilitarian calculus to establish what fulfillment is.

Hart's thought presents parallels to three of the basic principles comprising Finnis's practical reason. The first principle of practical reason finds its counterpart in Hart's principle, that "the election of the individual is to be done and pursued, insofar as the individual elects to do and pursue it." Both authors find that the structure inherent in their core principle is the basis of structure in all moral reasoning. Hart's one "basic good," the exercise of self-defining freedom, has its parallels in Finnis's second principle, the basic good of "peace of conscience." Just as Finnis's basic good of peace of conscience, as an end-in-itself, has an architectonic role in practical reason's ordering of broader patterns of action for the entire array of all basic goods, Hart's "basic good" of self-defining freedom orders all of the agent's elected aims and ideals.

Finnis's third principle, the First Principle of Morality, resembles Hart's ideal of consistent respect for self-defining freedom. In both cases the normative ideal aims at consistency in respect for the basic values. It permits the agent to construct unique purposes and ideal patterns of action. Finnis calls for a life plan and a vision of the common good. Hart calls for the projection of both particular ideals and some overall standard for resolving conflicts among them. Both authors consider these to be actions which are descriptively intelligible, but morally undetermined, and so neither good nor evil. Both treat moral requirements, when they apply, as flowing from a unique and contingent ideal of the agent's devising.

Hart agrees with Finnis that conditions of finitude limit the agent's realization of the basic good(s). Hart does not consider consistency in resolving conflicts arising among ideals to be, in itself, of any importance. Finnis, by contrast, considers such consistency to be the highest ethical ideal. Still, for his own reasons, Hart shares with Finnis procedural principles supportive of consistent action. Two and possibly three parallels to Finnis of this kind can be found in Hart.

Hart's principle of rationality resembles Finnis's fifth requirement favoring efficiency. Also, his principle that the individual's self-defining freedom may not be directly restricted except in cases of material harm is similar to Finnis's seventh requirement prohibiting direct action against a basic good. These parallels suggest that Finnis and Hart would agree on norms of moral obligation under at least some circumstances.

But Finnis and Hart's concepts of justification have to be viewed more as different than similar. There is the obvious and overwhelming contrast between Finnis's belief that

the intelligibility of action lies in a cognitive truth distinct from both the impulse of desire and the election of the will, and Hart's belief that it is to be found in the elections of the will, and projections of desire and emotion.

Finnis's Peace of Conscience presupposes the *will* as a subsisting metaphysical dimension of human personality, and it presupposes the invariance of the concepts of the good as a measure of consistency. Hart's good of self-defining freedom does not share in either presupposition. Hart's principle is subjective and existential. By comparison, Finnis's is objective and metaphysical.

The final normative principles the authors add to complete their vantages reveal that their concepts of moral evaluation diverge. Finnis's principle assumes that the will subsists in a metaphysical sense, and that it can be rectified. This rectification depends on respect for cognitive insights into the good. Hart's principle presupposes only changing existential consciousness. The concept of the will as a subsisting metaphysical reality is foreign to his thought. He requires the agent consistently to prefer his own self-definition over conventional morality, and to prefer the self-defining freedom of others to his own moralistic objection to what they do with it. Hart's standard contains no reference to any cognitive notion of the good.

In general, moral evaluation serves the cause of staying on course. In Finnis's case, moral evaluation serves to assist the agent in choosing reason over emotion or desire for Finnis understands emotion and desire to pull the agent away from the fullness of practical reason. Moral evaluation for Hart serves to overcome conflicts among the agent's elected ideals. Far from seeing emotion as in conflict with reason, Hart derives moral ideals from

desire and emotion. His solution to conflicts of values is a prescriptive subordination of one ideal to another.

The authors concur that human finitude affects moral choice in yet another way. Material resources are limited, and the claims of moral agents compete. Finnis considers these limits to significantly burden the integrity of moral choice. Hart regards the burden as trivial. He considers the agent to have only prudential, and not moral reasons for concern for these limits. Beyond the specific norms spelled out above, prohibiting interference with others. But Hart's notion of moral evaluation seeks to counter the unreasonable pull of conventional social morality. In Finnis, practical reason principally guides individual choice. Hart's parallel requirements apply with seriousness, only in the critique of society's impositions on the individual. The difference in the authors' concrete norms on suicide, euthanasia, divorce, abortion, homosexuality and contraception captures the overall difference in their concepts of "practical reason" or moral "justification." Finnis sees prohibitions in these areas as practically reasonable, and Hart sees them as unreasonable societal interference in the exercise of individual self-definition.

B. Hart's Jurisprudence

The present study seeks a critical understanding not merely of the concept of basic goods, but more specifically, of the role which John Finnis accords basic goods in his natural law jurisprudence. The present comparison of Hart and Finnis explores Hart's jurisprudence, to learn what similarities and contrasts it presents in relation to Finnis's jurisprudential use of "basic goods." The first step in this comparison is to state Hart's descriptive jurisprudence. This description follows in the form of showing how Hart's

concept is like and unlike the heuristic definition of Chapter 1. There, the law was defined as:

a sanction-backed restriction imposed by governmental power on individual freedom, or a limit on the governmental power to restrict individual freedom [and, in some variants] an instrument of economic and social organization.

Contemporary readers most readily understand Hart's concept, where it coincides with this definition. Where it varies the heuristic definition, they will assume they are encountering its distinctive character.

A comparison of Hart's and the heuristic definition of law can begin to advantage by considering Hart's approach to each element of the heuristic definition, in turn: "power," "freedom," "restriction," "immunity," "sanction," and, in some readings, "instrument of state purpose."

For Hart the law is a mechanism of social control,⁹⁶ so that by definition it channels power. For law to come into being, Hart makes it a condition that most of the population must acquiesce to the power wielded through it.⁹⁷ He further observes that the law creates legal "powers" enabling certain actors to obligate others.⁹⁸ But Hart rejects Austin's theory of law as "command," because he distinguishes the law as descriptive reality from the power relationships operating through it.⁹⁹

⁹⁶ See *Ibid.*, 115.

⁹⁷ See H.L.A. Hart, *The Concept of Law*, 111-113.

⁹⁸ See H.A. Hart, "Legal Rights" in *Essays on Bentham*, 169-70, 187.

⁹⁹ See H.L.A. Hart, "Positivism, Law, and Morals," in *Essays*, 56-62; and H.L.A. Hart, *The Concept of Law*, 18-76.

Hart sees law's descriptive meaning as deriving from the idea of legal obligation. He understands legal obligation to be an independent and peremptory reason for acting, holding that legal obligation arises where the criteria of a legal rule are satisfied. Because the lawgiver establishes these criteria, the legal rule subordinates the agent's freedom to the will of another.¹⁰⁰ This aspect of law comes into focus for Hart as he considers the effect of law on the individual's self-defining freedom. In the same context, Hart equates the meaning of law with "restriction." Hart's primary legal rules 'restrict' the freedom of individuals.¹⁰¹ His secondary rules restrict state power.¹⁰² He expresses the concept of "restriction" through the term, "rule." He criticizes Bentham, however, for equating the law's "restriction" with "command," and he rejects Bentham's assertion that the law cannot be understood merely in terms of the formal restriction of freedom, without some further reference to some benefit the law aims at ensuring.¹⁰³

Hart's definition of law also includes the element of "immunity." The heuristic definition uses "immunity" to signify a "limit" on the power of the state over individual freedom. Hart's secondary legal rules ensure that individuals are immune from governmental action except by due enactment. His concept of constitutional limits on

¹⁰⁰ The preemption operates on the level of reasoning as a preemptive reason. See *Ibid.*, 99. It operates on the level of prudential motive as a coercive order and a "demand[] for conformity, social pressure, and punishment." *Ibid.*, 96.

¹⁰¹ See H.L.A. Hart, "Legal Rights," in *Essays on Bentham*, 243, 253.

¹⁰² See H.A. Hart, *The Concept of Law*, 107.

¹⁰³ See H.A. Hart, "Legal Rights" in *Essays on Bentham*, 171-93.

legislative power depends on the notion of individual immunity from majoritarian restriction.¹⁰⁴

Hart considers the legal order intrinsically coercive, since it relies on sanctions to achieve a minimal level of compliance.¹⁰⁵ However, the parallel to the heuristic definition's reliance on "sanction." But the parallel is not unqualified. Hart holds that legal obligation offers a reason that is independent and preemptory of prudential considerations. Its essential meaning is unrelated to the sanctions that are a necessary condition to the law's emergence as a social fact.

Some versions of the heuristic definition add the element of the law as "instrument" of social and economic aims. Hart's concept of law resembles the heuristic definition in one of these versions. In substituting the element of "tool of social control" for that of "sovereign command," Hart shifts the emphasis away from law as power per se, to law as a tool for effectively advancing policy goals.¹⁰⁶

Hart's concept of law resembles the heuristic definition insofar as it treats law as a formal device restricting individual freedom and governmental power in turn, for policy objectives. This resemblance extends as well to Hart's reliance on sanctions for the law's existence as a social fact. Hart considers law's descriptive meaning to lack reference to value or moral obligation. Still, by seeing the law's meaning as arising through linguistic signs, rather than power commands or the like, Hart moves that meaning away from the

¹⁰⁴ Id. at 190-91; H.L.A. Hart, *The Concept of Law*, 64-76.

¹⁰⁵ Id. at 84.

¹⁰⁶ Id. at 99.

external plane of sanctions, to the internal one of rational purposes. He relinquishes the vertical model of law as a hierarchal tool of command, in favor of a horizontal model of law as an instrument of shared purpose.¹⁰⁷

a. Hart's Meta-Level Reasoning and
His Concept of Law

Hart's general concept of law ultimately is an alternative to the heuristic definition. Hart constructs his concept of law according to a conception of what counts as a warranted descriptive concept. This conception of concept formation bases a concept descriptive of a social institution on criteria deriving from the purposes of those ordinating the institution on criteria deriving from the purpose of those originating the institution. The right criteria to define a given term are those with the greatest power to explain the way the term is used. They set out the term's "central case."¹⁰⁸

The concept does not name the specific differences setting the phenomenon apart from a general class. Even less so does it identify external causes. From the perspective of his theory of concept formation, Hart critiques John Austin's concept of law, for example. Austin identifies the meaning of law with its effect on behavior.¹⁰⁹ Hart rejects the idea of equating a social institution with its material effects. Hart insists that Austin cannot explain law's central case. Command or sanction are not the law's main purpose. If they were,

¹⁰⁷ He abandons the idea that the foundations of a legal system consist in "a habit of obedience to a legally unlimited sovereign." *Ibid.*, 107.

¹⁰⁸ Hart observes that "'what is law'" is contested like no subject systematically studied in a separate discipline." *Ibid.*, 3; *Ibid.*, 86.

¹⁰⁹ See *Ibid.*, 18-20.

legal obligation would “oblige” in the manner of a gunman. But we do not generally speak of law as a “gunman writ large.”¹¹⁰

Hart rejects the idea that the formation of descriptive concepts depends on social science’s verification of patterns of external causation. The social scientist and the participants in social institutions alike understand the institutions in terms of purposes communicated through the performative meaning of language.¹¹¹ Hart means to steer away from the Scylla of external causes, no less than the Charybdis of metaphysical purpose. He considers the “golden mean” between the two to lie in the notion of human purposes as linguistic convention.¹¹²

b. Hart’s Descriptive Concept of Law

As a matter of linguistic usage, Hart finds that law’s standard case is a “union” of two kinds of “rule,” which society acknowledges yield reasons for action. As such, rules function performatively. Hart terms one such kind of rule, “primary.” It confers obligation, meaning a peremptory reason to act or forbear from acting.¹¹³ Hart terms the other kind of rule, “secondary.” It establishes the criteria for the existence of a primary rule and for its

¹¹⁰ Ibid., 7, 18-76; H.L.A. Hart, “Positivism, Law, and Morals,” in *Essays*, 56-62.

¹¹¹ Ibid., 80-1; H.L.A. Hart, *The Concept of Law*, 87-8.

¹¹² Ibid., 82, 79-88, 114. He considers “the autonomous analytical study of law” to embody this golden mean. H.L.A. Hart “Problems of the Philosophy of Law,” in *Essays*, 110.

¹¹³ Hart considers the idea of rule as a linguistic entity to exist “over and above the clear and ascertainable facts, some extra element, which guides, judges and justifies or gives him a reason for punishing.” H.L.A. Hart, *The Concept of Law*, 78. Morally and legally, rules function as “guiding and critical standards of conduct.” Ibid., 151.

revision and application.¹¹⁴ Hart calls his general concept the “key to the science of jurisprudence.”¹¹⁵

Obligation, arising under primary rules, is the basic building block of Hart’s concept of law. He considers the meaning of secondary rules “parasitic” on that of primary rules.¹¹⁶ Obligation arises under a primary rule, when three conditions are met: 1) there is social pressure for conformity with the standard of conduct (under the rule); 2) society views such conformity as necessary to some prized aspect of social life; and 3) society understands compliance to depend on the sacrifice of self-interest.¹¹⁷ Obligation may be either legal or moral. Specifically legal obligation arises where the social pressure for compliance is in the form of coercive sanction.¹¹⁸

A primary rule encodes general criteria, performative of the three cited elements. If society complies with the rule, it will have the character of law, where considered from the “internal point of view, which recognizes their performative significance.”¹¹⁹ The internal point of view acknowledges the rule as establishing reasons distinguishable from prudential motives. Legal obligation exists apart from punishment or reward. In so

¹¹⁴ Ibid., 91.

¹¹⁵ Ibid., 79, 95.

¹¹⁶ See Ibid., 91-92.

¹¹⁷ See Ibid., 84-5.

¹¹⁸ Ibid.

¹¹⁹ The meaning of the rule does not lie in any extrinsic pressure on the behavior of the subject. Ibid., 14-15; 80, 88, 96, 112. The point or purpose of law encompasses coercion, although its intelligibility does not. H.L.A. Hart, “Problems of the Philosophy of Law,” in *Essays*, 94. The project of analytical jurisprudence assumes a common will to survive. Hart acknowledges that the law is not “a suicide club.” H.L.A. Hart, *The Concept of Law*, 180, 188.

asserting, Hart does not deny that sanctions serve to bring about the level of compliance needed for the law to exist as a social fact. He asserts that legal obligation exists apart from transcendent value. But, he does not deny that law routinely enacts moral beliefs.¹²⁰

The primary legal rule specifies a class, a description of conduct, and a description of circumstances, in which the class must conduct themselves according to the description.¹²¹ These general classifications and the empirical relationships to which they advert presuppose elective goods, but no ontology or metaphysics.

In the "legal system," which Hart proposes as law's standard case, "secondary rules coordinate recognition of valid obligation-conferring rules."¹²² Primitive law lacks such formal secondary rules, relying instead on ties of kinship, a stable environment, and common belief to uphold primary rules as obligation-conferring. Where the conditions of primitive law dissolve, the law must find formal means of coordinating the recognition of obligation-conferring rules.¹²³ Thus, it adopts secondary rules. These govern the validity of primary rules.¹²⁴ The ultimate secondary rule bringing primary rules into a system is the "Rule of Recognition."¹²⁵

¹²⁰ The observance of legal form is compatible "within a system dedicated to the pursuit of the most evil aims. H.L.A. Hart, "Positivism, Law, and Morals," in *Essays*, 69-70; H.L.A. Hart, *The Concept of Law*, 199. Reference to natural benefits is required for law's intelligibility in Hart, no more than reference to metaphysical ends. H.L.A. Hart, "Legal Rights," in *Essays on Bentham*, 174-89; H.L.A. Hart, "Definition and Theory in Jurisprudence," in *Essays*, 35-42.

¹²¹ *Ibid.*, 155.

¹²² *Ibid.*, 91.

¹²³ See *Ibid.*, 84.

¹²⁴ *Ibid.*, 97-98.

¹²⁵ *Ibid.*, 97. This functions as internally supreme and externally independent. See *Ibid.* at 25. It may be implicit. See *Ibid.* at 98. It gives rise to the idea of legal system. See *Ibid.*, 92-93. See *Ibid.*, 92.

Hart compares the Rule of Recognition to "the standard metre bar in Paris." The "foundation of the legal system," it is neither valid nor invalid, and technically, it does not form a part of the legal system.¹²⁶ Both the rule of recognition and the legal system it coordinates exist as social facts to the extent that they garner compliance.¹²⁷ Their validity assumes no further moral or other value. The interior motivation out of which compliance arises is a matter of indifference, whether "calculation[] of long-term interest, altruism, regard for tradition, or attachment to social convention."¹²⁸ In fact, the law's subjects may entirely disregard the internal point of view, complying with the law out of reasons of prudence alone, without in any way affecting the law's validity. Hart terms the legal system "Janus-faced," precisely because it depends on its officials adopting the internal point of view, but on no more than external compliance from everyone else.¹²⁹

Another of Hart's secondary rules is "the rule of change," which governs the amendment and repeal of primary legal rules. Such rules allow the legal system to be more dynamic.¹³⁰ Rules of change confer powers on parties to promulgate, annul and alter primary rules. For example, private parties receive such powers under the law of catarracts and wills, and governmental actors receive them under the Constitution.¹³¹ Hart terms a third form of secondary rule the rule of adjudication. It confers the power to adjudicate

¹²⁶ Ibid., 97, 105-6.

¹²⁷ Ibid., 88, 113.

¹²⁸ Ibid., 198-9.

¹²⁹ Ibid., 101, 113. Hart holds that there is a "contextual connection between an internal statement that a given rule or system is valid and an external statement of fact that the system is generally efficacious. H.L.A. Hart, "Positivism, Law, and Morals," in *Essays*, 57.

¹³⁰ See H.L.A. Hart, *The Concept of Law*, 93-94.

¹³¹ See Ibid., 94.

cases arising under primary legal rules.¹³² It advances the legal system's efficiency by facilitating the resolution of concrete cases. It provides for such functional elements of the legal system as "judge," "court," "jurisdiction," and "judgment,"¹³³ as it does also for that, now much discussed, element of "sanctions."¹³⁴

c. A Comparison of Hart and Finnis
on the *Descriptive Meaning of Law*

Hart's and Finnis's descriptive theories share a common structure. Their resemblance reflects traits they both share with the heuristic definition. For example, both consider the law a technique, and both consider it to be a means for advancing elective values. Both bifurcate moral and legal reasoning and both allege that the law, on its own terms, is closed to moral principles or values.

In addition, Hart departs from the heuristic definition, in at least one instance, in a way which Finnis emulates. Hart rejects the idea of law as a command in favor of viewing it as a linguistic technique for implementing societal decisions. Hart employs the concept of performative use of language to alter the terms of legal positivism. His version of positivism offers a better explanation of the role of law in relation to social policy. Finnis adopts Hart's linguistic concept of the law, with the consequence that Hart's influence pervades Finnis's jurisprudence.

Yet Finnis integrates an element into his system which gives it a tenor quite different than Hart's. Hart view assertions of value and obligation as a linguistic game. They are taken "as if" true. He assumes that, other perhaps than individual self-defining freedom, values cannot be objectively communicated to others. Finnis alleges that statements of value

¹³² See *Ibid.*, 94-95.

¹³³ *Ibid.*

¹³⁴ See *Ibid.*, 95.

and obligation correspond to universal self-evident truths of practical reason. He considers Hart to overstate the dependence of legal reasoning on secondary legal rules, holding that the requirements of untrammelled practical reason, rather than convention, ultimately grounds the law's descriptive intelligibility.

In this, Finnis might seem to contradict himself, for he also holds that the law is a linguistic technique. But such is not the case. Finnis merely takes Hart's device of the "internal point of view," with its game of "as if," and takes it one step further. Finnis assumes that those playing this linguistic game further treat the law "as if" it were independent of moral reasoning, for the sake of enhancing its efficacy. But the difference between the two authors is this: Hart's language game has no point, but Finnis's has the point of practical reasonableness.

Finnis and Hart conceive of the relationship between lawmaker and legal subject differently. Hart holds the law's social meaning to be unrelated to the lawmaker's inner motives, and his linguistic "game" implies no "vertical" relationship between lawmaker and subject. Hart has an egalitarian bent, and he tends towards indifferentism on issues of public morality. By contrast, Finnis assumes that the law derives from the moral authority of the lawmaker. That authority arises with the lawmaker's role coordinating the common good. Thus, a "vertical" relationship exists between Finnis's lawmaker and subject. Interestingly, on this point Finnis is closer to the heuristic definition than is Hart, since he preserves an element of the command idea which Hart deletes. Finnis's system has a mildly authoritarian bent, and it inherently tends to foster a perfectionist public morality.

2. Hart on the Normative Evaluation of Law

Hart alleges that a bright line separating the "is" from the "ought" makes possible a more effective moral evaluation of law. He sharply distinguishes description from

evaluation. Yet, he does engage in the law's evaluation.¹³⁵ His normative jurisprudence evaluates law in the light of his critical morality. It critiques the law's ends, and it seeks to identify and resolve conflicts among them.

a. The Substantive Ends of Law

Hart expects the enlightened agent to criticize the social ends which the law advances. He further elaborates a mode of applying his social critique in normative jurisprudence. He applies this critique "from without" as it were, since he views law, in itself, as free of normative value. Finnis provides concepts for critiquing the law's ends, both contingent and universal, i.e., self-defining freedom.

(1) The Law's Descriptive Features as Normative Ends

In Hart's view, descriptive elements of law may be valued normatively. He cites three descriptive elements that may be valued in this manner: the concept of legal validity; the law's recurring de facto ends of mutual non-interference and minimum cooperation; and past value judgments encoded in existing law.

(a) Legal Validity as an Elective End of Law

Description, not evaluation, unifies Hart's jurisprudence. This emphasis on description is in harmony with the fundamental pluralism of Hart's critical morality, and with his rejection of an objective moral epistemology. Agents whose moral ideals differ can at

¹³⁵ "The identification of something as an instrument for certain purposes leaves open the question of whether it is good or bad, although such identification may indicate the standards by reference to which the question is to be answered." H.L.A. Hart, "Problems of the Philosophy of Law," in *Essays*, 111; Hart asserts that analytical jurisprudence serves the "goal of clarity and honesty in moral problems." H.L.A. Hart, *The Concept of Law*, 203-207. Its purpose is to ensure that "however great the aura of majesty or authority which the official system may have, its demands must in the end be submitted to a moral scrutiny." *Ibid.*

least agree on the tool of legal validity. In Hart's view, jurisprudence's distinctive contribution is its analysis of the law's descriptive character.¹³⁶

Legal validity becomes the focus of normative jurisprudence when the critic elects it as an ideal. When it is so elected, legal validity becomes imbued with emotive value and gives rise to moral obligation. Hart terms the ideal of legal validity "fidelity to law,"¹³⁷ and he even suggests that legal validity may be an inherently choice worthy ideal, where it serves individual security through its predictive value in relation to state power.¹³⁸

In Hart's scheme, fidelity to law functions like any ideal, as aspiration that can be weighed and traded off against other ideals. Other ideals may be attainable at times only by disregarding legal validity and acting extra-legally. In such case, Hart holds that fidelity to law, as one value, must be commensurate with the other ideals at stake.¹³⁹ He holds that the society and individuals alike undertake this commensuration, according to some original overall, noncognitive ideal of social life.¹⁴⁰

In this view, respect for fidelity to law can give rise to moral obligation where the critic seems some minimum standard of compliance with the elected ideal to be necessary. Interestingly, it also gives rise to obligation under Hart's requirement of generality. In some

¹³⁶ See *Ibid.*, 114; H.L.A. Hart, "Problems of the Philosophy of Law," in *Essays*, 118.

¹³⁷ Hart develops this value in any exchange with Lon Fuller over the grounds for *ex post facto* criminal liability for actions by Germans during the period of National Socialism. See H.L.A. Hart, "Lon L. Fuller: The Morality of Law," in *Essays*, 355-57.

¹³⁸ H.L.A. Hart, "Problems of the Philosophy of Law," in *Essays*, 115-16.

¹³⁹ See H.L.A. Hart, *The Concept of Law*, 207.

¹⁴⁰ See H.L.A. Hart, "Social Solidarity and the Enforcement of Morality," in *Essays*, 251; H.L.A. Hart, "Utilitarianism and Natural Rights," in *Essays*, 185-191.

settings, the latter requirement calls for an ideal of fair play to be realized to some obligatory degree.¹⁴¹ Such is the case, where the agent has accepted benefits due to the fulfillment by others of their legal obligation. His duty becomes to accept the cost of living up to his own obligation in turn.

(b) The Practice of Mutual Non-Interference and
Minimal Social Cooperation, as Elective Legal Ideals

As an empirical matter, Hart finds that law virtually everywhere adopts as an end, the furtherance of mutual non-interference and minimum cooperation.¹⁴² The recurrence of this end can be predicted, given the empirical postulates of a virtually universal desire to survive and certain other hypothetical elements of human behavior, as long as mutual non-interference and minimum cooperation continue to enhance human survival. Hart terms this end "the minimum content of natural law,"¹⁴³ and he proposes it as an empirical, not normative truth.¹⁴⁴ He specifically denies that he is proposing an ontological concept of nature.

Although Hart raises the matter more implicitly than explicitly, his critical morality, in fact, makes mutual noninterference and minimum cooperation, a moral obligation. The ideal of individual self-defining freedom, taken together with the requirements of generality and rationality, demands as much. Hart emphasizes the descriptive nature of their function as an end of law, to make it clear that their enactment into law is not essential to the law's

¹⁴¹ See H.L.A. Hart, "Problems of the Philosophy of Law," in *Essays*, 119.

¹⁴² See H.L.A. Hart, *The Concept of Law*, 167.

¹⁴³ *Ibid.*, 189-95.

¹⁴⁴ See *Ibid.*, 89.

validity.¹⁴⁵ As a matter of moral obligation, Hart dismisses the importance of mutual non-interference and minimum cooperation, since people, in his opinion, generally comply with such moral demands on purely prudential grounds without reflecting about them.¹⁴⁶

(c) Past Choices Enacted as Law

In Hart's view, once society enacts an elective ideal into law, it becomes part of the "fact of law," conceived of as a tool of social control. The lawmaker restates it as a set of descriptive criteria under a rule. Hart holds that such existing criteria exclude competing goals. They also can model supplementary goals. The process occurs in both legislation and adjudication. In other words, existing legal goals may be affirmed as yielding normative guidance for further social choices.

When a dispute arises under a legal rule, the judge resolving it must have recourse to the legislator's elective ideals. If the facts of the case are standard, the judges' role is mechanical. The rule's criteria determine the holding.¹⁴⁷ Where the facts of the case fall within the penumbra of the rule, the judge must use discretion in deciding precisely how it is to be resolved. The judge will have recourse both to the purpose of the rule, and to the array of societal purposes forming the rule's backdrop.¹⁴⁸

¹⁴⁵ Hart states that there exists "[t]he possibility of restating in an acceptable form the claim that there are certain objective and rationally determined criteria for the evaluation and criticism of law." H.L.A. Hart, "Problems of the Philosophy of Law," in *Essays*, 112.

¹⁴⁶ Although he concedes that, the law is essential to the moral integrity of society if only in its supplying of determinations of the abstractly necessary order of noninterference: "the omission of such things from the legal system could not be excused on the ground that the existence of a social morality made them unnecessary." *Ibid.*, 114. See also H.L.A. Hart, *Law, Liberty, and Morality*, 2.

¹⁴⁷ See *Ibid.*, 63; H.L.A. Hart, *The Concept of Law*, 132-50.

¹⁴⁸ See *Ibid.*, 123-24, 132, 200-201.

Hart considers these backdrop purposes to have determinate content, so that the judge who appeals to them is engaging in legal rather than moral reasoning. He treats these purposes as terms implied under the rule.¹⁴⁹ Within the situation being adjudicated, applicable ideals will conflict. The judge resolves the conflict from an overall pattern of social living which the legal system deems desirable. But, at some point, the law's express purposes, backdrop principles, and societally approved priorities are not enough to close a gap. Hart then permits the judge to apply his own sense of critical morality in order to do so.¹⁵⁰

(2) The Evaluation of Normative Ends Advanced by Law

Beyond the normative endorsement of the descriptive elements set out above, Hart envisions the critic engaging in an untrammelled critique of law in relation to the full spectrum of ideals the law might adopt. Hart considers available options "infinitely malleable."¹⁵¹ He isolates one set of goals related to the advancement of self-defining freedom and proposes it as universally normative, whatever other ideals a society may choose to adopt. He sets forth moral limits to law making deriving from the principles of rationality and generality. This framework varies depending on whether the idea in question is purely elective or mandatory as a means of preserving self-defining freedom.

¹⁴⁹ See H.L.A. Hart, "Positivism, Law, and Morals," in *Essays*, 70.

¹⁵⁰ See *Ibid.*, 69.

¹⁵¹ H.L.A. Hart, "Problems of the Philosophy of Law," in *Essays*, 112.

(a) Hart's General Framework for Evaluating the Ideals
Proposed for Enactment by Critical Moralities

Hart's non-cognitive ethical theory offers no objective test for which among critical moralities might be the source of the "true" or "best" ideals for legal enactment.¹⁵² Nonetheless, he asserts that the "better" proposals can be adopted over "worse," preferring the enlightened critic measuring better and worse according to his own subjective preference. Hart holds that the social critic ought to reach his judgments in a dialogue with others. Hart endorses democracy for this reason. He holds that lawmakers should debate ideals before enacting them and consult societal experience towards ongoing law reform.¹⁵³

(b) Individual Welfare Rights as a Normative End of Law

Hart posits the fullest possible exercise of self-defining freedom as a universal moral ideal.¹⁵⁴ While denying the capacity of moral agents to know the common good, he considers mutual non-interference and minimum cooperation to be normative social ideals, because they advance the exercise of self-defining freedom. Hart proposes the efficient production and distribution of the material requisites of the exercise of self-defining freedom as another universal normative goal.¹⁵⁵ Among these requisites, he cites minimal nutrition,

¹⁵² Hart holds that such moral proposals center on "watchwords like liberty, fraternity, equality, and the pursuit of happiness." H.L.A. Hart, *The Concept of Law*, 179, and he alleges that they cannot establish a unitary hierarchy of values, but that one value must be sacrificed or compromised to accommodate another. See H.L.A. Hart, "Positivism, Law, and Morals," in *Essays*, 77.

¹⁵³ See H.L.A. Hart, *Law, Liberty, and Morality*, 75-77, 80.

¹⁵⁴ See H.L.A. Hart, "Utilitarianism and Natural Rights," in *Essays*, 189.

¹⁵⁵ "That individuals need and can reasonably demand from each other . . . in order to pursue their own ends through the development of destructive human powers" H.L.A. Hart, "Between Utility and Rights," in *Essays*, 207.

housing, education, and health care.¹⁵⁶ Here, Hart envisions a common societal responsibility.¹⁵⁷

(c) Procedural Norms for Evaluating
the Mode of the Law's Enactment

Hart's critical morality of law also embraces a critique of the procedures by which the law is enacted. This critique relies upon the norms of generality and rationality which Hart develops in his ethical theory.

(1) Hart's Inter-personal Application of the Principle of Rationality
as Normative Limit on Lawmaking

Hart argues that the universal value of self-defining freedom requires that the principle of rationality be applied inter-personally. Specifically, the agent must consider inter-personal costs to other agents when he calculates the utility of a proposed action.¹⁵⁸ Hart does not derive inter-personal allocations from any concept of the common good, but offers instead a rule for inter-personal commensuration of costs and benefits.¹⁵⁹

His rule exists to determine when it is rational to accept the cost to the individual as a means to a collective end.¹⁶⁰ The question arises with the framing of every legal rule.¹⁶¹

¹⁵⁶ See H.L.A. Hart, "Problems of the Philosophy of Law," in *Essays*, 117.

¹⁵⁷ See H.L.A. Hart, "Between Utility and Rights," in *Essays*, 202, 208.

¹⁵⁸ See H.L.A. Hart, *Law, Liberty, and Morality*, 6, 47, 22; H.L.A. Hart, *The Concept of Law*, 170.

¹⁵⁹ See H.L.A. Hart, "Utilitarianism and Natural Rights," in *Essays*, 193.

¹⁶⁰ See H.L.A. Hart, *Law, Liberty, and Morality*, 47.

¹⁶¹ See *Ibid.*, 60; H.L.A. Hart, *The Concept of Law*, 157, 163.

Hart's rule provides that the law may never directly sacrifice individual freedom for any end, except for the avoidance of material harm.¹⁶²

Hart holds that an individual's freedom should be immune from infringement for the sake of merely intangible moral ideals which are unaccompanied by the material interests of other individuals.¹⁶³ Hart appeals to this principle to rule out even indirect burdens of general legislation on individual freedom.¹⁶⁴ Before an interest can count as a material one, Hart requires demonstrable evidence.¹⁶⁵ Because he views it as an impermissible moralism, Hart bars punishment for the sake of gratifying retributive feelings.¹⁶⁶

As a matter of its descriptive validity, Hart holds that the law must follow norms on its promulgation, form, and administration. He terms these norms, "principles of legality," stating that the law –

must be intelligible and within the capacity of most to obey, and in general. . . [it] must not be retrospective, though exceptionally. . . [it] may be. This means that, for the most part, those who are eventually punished for breach of rules will have had the ability and opportunity to obey.

¹⁶² The danger of democracy is that it will offend the principle that the "recognition of individual liberty as a value involves, as a minimum, that the individual may do what he wants even if it distresses others." H.L.A. Hart, *Law, Liberty, and Morality*, 47, 80. The commensuration of social ends without respect for individual autonomy is "a species of unfairness." This is the "destructively modern criticism of utilitarianism." H.L.A. Hart, "Between Utility and Rights," in *Essays*, 199.

¹⁶³ H.L.A. Hart, *Law, Liberty, and Morality*, 6, 9, 11, 34, 57, 82; H.L.A. Hart, *The Morality of Criminal Law*, 41-54.

¹⁶⁴ See H.L.A. Hart, *Law, Liberty, and Morality*, 20.

¹⁶⁵ H.L.A. Hart, *Law, Liberty, and Morality*, 57-58.

¹⁶⁶ See H.L.A. Hart, *The Morality of Criminal Law*, 20-27, 32, 43-44.

These principles serve to eliminate uncertainty which would burden individual self-defining freedom.¹⁶⁷ Hart does not specifically claim that the observance of these principles is morally obligatory. He denies that their observance gives the law an inherently moral character, as do Lon Fuller and John Finnis.¹⁶⁸ Hart alleges that the significance of these principles lies in the efficacy they lend law as a means of social control.¹⁶⁹ But, he concedes that fidelity to law can be elected as a normative ideal. The logic of his ethical theory suggests that the principles of legality should, in fact, be viewed as for the self-defining freedom of the law's subjects.

Hart's axiom that individual freedom never be sacrificed for any end other than avoiding material harm to others does not exclude paternalism aimed at preventing the individual from harming himself, as long as the harm is, in fact, material. Neither does it rule out enforcing public decency, by prohibiting public displays of lewdness or blasphemy, since the shock to unwilling observers counts as a material harm.¹⁷⁰ The prohibition of private displays of either kind would, however, be ruled out.¹⁷¹ In contrast to retributive punishment, Hart considers acceptable punishment to deter future, conduct causing the material harm.¹⁷²

¹⁶⁷ See *Ibid.*, 12; H.L.A. Hart, *The Concept of Law*, 202; H.L.A. Hart, "Problems of the Philosophy of Law" in *Essays*, 114-16; "Lon L. Fuller: The Morality of Law" in *Essays*, 343-64.

¹⁶⁸ See *Ibid.*; H.L.A. Hart, *The Concept of Law*, 202.

¹⁶⁹ See H.L.A. Hart, *Law, Liberty, and Morality*, 20.

¹⁷⁰ See *Ibid.*, 20-21, 30-33, 34, 43.

¹⁷¹ See *Ibid.*, 43-44.

¹⁷² See H.L.A. Hart, *The Morality of Criminal Law*, 20.

(2) The Principle of Generality as a Normative Limit in Lawmaking

Hart's ethical theory provides that respect for individual dignity requires that goals be pursued in accord with the principle of generality. This principle demands that goals be pursued in a way that respects equality. Thus, rules of conduct may not rely on classifications based on immutable personal attributes like race or gender. Hart's most significant application of the principle is in the arena of the evaluation of law.

The bifurcation of law and morality is axiomatic for Hart. But, he, nonetheless, treats some of law's descriptive features as inherently inviting moral evaluation under the principle of generality. One such feature of law is the principle, that "like cases be treated alike." It is this principle which gives the legal rule its basic structure even descriptively.¹⁷³ Another is the notion of "natural justice" which Hart asserts structures his secondary rules of adjudication.¹⁷⁴ A third is the "impartial attention to and consideration of competing claims to different benefits," which is essential to legislative drafting.¹⁷⁵

Hart views all of these descriptive features, in themselves, as principally relevant to the value-neutral element of the law's efficacy as a tool of social control. The first principle mentioned is, Hart believes, too diffuse to import any intrinsic moral meaning into law. He observes, for example, that classifications under legal rules may define cases as alike or unlike, and yet fail completely to respect the moral principle of individual dignity.¹⁷⁶ He

¹⁷³ H.L.A. Hart, *The Concept of Law*, 196-97; H.L.A. Hart, "Problems of the Philosophy of Law," in *Essays*, 116-17.

¹⁷⁴ H.L.A. Hart, *The Concept of Law*, 156-57, 202; H.L.A. Hart, "Law, Positivism, and Morality," in *Essays*, 81-82; H.L.A. Hart, "Utilitarianism and Natural Rights," in *Essays*, 195.

¹⁷⁵ H.L.A. Hart, *The Concept of Law*, 157, 163; H.L.A. Hart, *Law, Liberty, and Morality*, 60.

¹⁷⁶ See H.L.A. Hart, *The Concept of Law*, 161.

admits that the second goes beyond the requirements of legal efficacy to advance the equality principle. But, he says it does so only to a trivial degree. He considers respect for the principles of natural justice to be compatible with morally "odious" laws.¹⁷⁷

According to Hart, critical moral reasoning gives these three formal characteristics of law significance, only once the critic subsumes them into a specifically moral vision of individual dignity grounded in the meaning of individual self-defining freedom. Hart believes that the moral challenge of law is not the equal application of rules as such, but rather the equal enactment and application of rules without regard to race, gender or national origin.¹⁷⁸

d. Rights as a Summary Mode of Stating the Demands of a Critical Morality of Law

The concept of "rights," in the moral sense, allows both a summary statement of the concrete requirements and inner meaning of Hart's normative jurisprudence. Hart's descriptive concept of rights is that of a power on the part of the right-holder to enforce the obligation of another. The meaning of Hart's normative idea of right is quite different. Right, in this sense, serves to identify the substantive requisites of the exercise of self-defining individual freedom.¹⁷⁹ The descriptive concept of right clarifies the way a legal rule expresses meaning, the normative one clarifies whether the rule advances critical morality.

In Hart's scheme, the requisites of self-defining individual freedom, in each case subject to being expressed as a right include: an immunity from physical interference by

¹⁷⁷ Ibid., 202.

¹⁷⁸ Hart refers to the distribution of liberty, benefits and burdens, and rights and duties. Ibid., 157-58, 162.

¹⁷⁹ Hart holds that "justice can only be given account as a distinct segment of morality" if moral non-legal rights exist. H.L.A. Hart, "Law in the Perspective of Philosophy," in *Essays*, 158; H.L.A. Hart, "Utilitarianism and Natural Rights," in *Essays*, 187-88; H.L.A. Hart, "Legal Rights," in *Essays on Bentham*, 189-93.

others; a guarantee of their minimal cooperation; an immunity from intrusion by the state in the spheres of speech, association and religion, but also sexual experimentation and the use of intoxicants.¹⁸⁰ They include state support of minimal welfare needs, i.e. housing, nutrition, education and health care,¹⁸¹ and equal treatment, in all of the law's distributions of the benefits and burdens.¹⁸²

3. Hart and Finnis on the Law's Moral Evaluation: Similarity and Difference

The family resemblance between Finnis's and Hart's ethical theories and their descriptive concepts of law also extends to their theories of normative jurisprudence. However, deep-seated differences also exist in the two normative theories, and these too must be explored.

a. Similarities

Finnis, like Hart, denies that there is a metaphysical *telos* by which normative ends and constraints could be derived for critiquing law. Also, both authors agree that society constructively shapes a unique pattern of ideals that society is morally free to pursue.

Where moral imperatives and constraints do enter, they flow for both theories equally from what can fairly be called an ideal of individual fulfillment. Finnis, like Hart, evaluates law normatively for whether it advances authenticity in individual choice. To this end, both authors expect the law to ensure a regime of mutual non-interference and minimum

¹⁸⁰ Hart mentions freedoms and benefits for maintenance of life security and the development and dignity of the individual. *Ibid.*, 190; H.L.A. Hart, "Utilitarianism and Natural Rights," in *Essays*, 181-87.

¹⁸¹ See *Ibid.*, 195.

¹⁸² Hart follows John Stuart Mill in asserting that "a philosophy of basic human rights, which insists on the priority of principles protecting, in the case of each man, certain aspects of individual welfare and recognizing them as constraints on the maximizing aggregative principle of utilitarianism." H.L.A. Hart, "Legal Rights," in *Essays on Bentham*, 180. He differs from Mill in holding the principle to be an inadequate basis for the position. *Ibid.* 196, 221-22.

cooperation and to coordinate the creation and distribution in some pattern, of the basic resources and opportunities necessary for individual choice.

Both authors establish procedural constraints on the use of law as a means. With respect to the pursuit of substantive goals, for example, both treat respect for individual dignity as a constraint. Hart prohibits the direct sacrifice of individual freedom while Finnis disallows the direct action against any basic good, including the good of practical reasonableness presupposing individual freedom. Both consider equality in distribution to be a basic requirement of lawmaking. Both would reject caste systems as an invidious abuse under the principle of universalizability. Neither holds the particular individual to have any entitlement in distributive justice, beyond a right not to be subject to invidious discrimination.

Finnis and Hart's common reliance on rights language underscores that both base their ethical theories on the observed structure of moral reasoning rather than on traditional metaphysics. St. Thomas's thought could be paraphrased in modern rights terms, but it would still rest on an ontology of human dignity. This reliance on ontology would distinguish it from Finnis's no less than Hart's approach. The resemblance of Finnis and Hart's theories, in contrast, to St. Thomas, is more than superficial.

b. Differences

When one steps back to consider both systems more comprehensively at least three significant divergences between Hart and Finnis, nonetheless, appear. These go to the nature of the fulfillment the law advances, the character of the constraints the law is to respect, and the meaning of the law's moral evaluation.

(1) Differences in the Vision of Fulfillment
Which the Law Should Advance

The authors share a common emphasis on the importance of the ideal of individual decision, but their divergent interpretations of that ideal lead them to adopt different schemes of normative jurisprudence. Hart gives normative force to the requisites and priority of individual freedom, and then he leaves all other ends to political debate. Finnis understands the normative demands of individual fulfillment in relation to basic goods and the possibility of a will rectified according to a standard of integral choice. His system demands respect for individual freedom, but it assumes that freedom draws its meaning from the agent's capacity to choose well in relation to certain universal goods.

In Finnis's view, the opportunities and resources supporting individual choice, which the law is required to advance can only be advanced with the integrity essential to an upright will if they are advanced jointly with others. Thus, for Finnis, the common good is made up of more than non-interference and the distribution of the material requisites of freedom. It extends to the conditions of joint action and to the fostering of relationships suited to joint action. Such relationships include not just the bonds of utility which Hart would acknowledge under the rubric of "minimum cooperation," but also joint actions for basic goods, and even joint actions which are a realization, in themselves of the basic good of friendship. Finnis's more substantive vision of the common good is made possible by his epistemology and metaphysics which support Finnis's conceptual building blocks of integral human fulfillment and the rectification of the will.

Moreover, Finnis assumes recurring forms of joint associations at each of several orders of reality in which goods can be fostered. These forms of association determine what is materially required to satisfy the basic goods through joint action. One thinks of the form of marriage and of the family, and one thinks of the form of the state as the “complete community.” Where the realization of a basic good, the association becomes a normative end of law. Hart lacks any such concern with the normativity of associations.

Finally, Finnis conceives of the ends of law as intangible, empirically unverifiable dimensions of reason, will, and action. By contrast, Hart describes the ends of law in terms of the material outcomes of action, both individual and collective. He views them as fully comprehensible when stated in terms of interests, desires, preferences, pleasure and pain avoidance. Hart would not appear to have Finnis’s problem with “slice in time” analyses of legislative policy.

(2) Negative Moral Limits on Lawmaking’s Scope

Finnis and Hart both set moral limits on the scope of lawmaking. In both cases, these limits flow from respect for individual dignity and equality. Interestingly, the authors diverge sharply in the substantive nature of the limits they define.

(a) Individual Dignity

Hart’s individual dignity principle restricts the law’s pursuit of its ends, where they would materially burden individual freedom. By contrast, Finnis entertains parallel restrictions only where a basic good happens to be at stake in an individual’s or association’s use of freedom.

1) Direct Attacks on the Basic Good

Finnis derives limits on the law's ends from the very goods that make up those ends. Hart derives such limits exclusively from the priority he accords individual autonomy. Finnis protects possibilities of invariant substantive fulfillment from which the individual can draw. By contrast, Hart preserves the self-defining power of subjective election by the individual. The two modes of evaluation yield inverse outcomes: Hart proscribes and Finnis prescribes legislation against suicide, euthanasia, and abortion. Hart prescribes and Finnis proscribes constitutional immunities protecting these same activities.

2) Protected Associations

Hart gives a normative priority to individual autonomy over collective decision. Finnis also subordinates the state to private initiatives. But he allocates the priority to individuals only some of the time. At other times, he allocates it to various intermediate associations. Finnis allows the principle of subsidiarity to decide the level enjoying priority. The principle of subsidiarity can be considered Finnis's alternative to Hart's stark preference for individual freedom.

(b) Equality

There are crucial differences in Finnis and Hare's concepts of equality. Hart's equality principle serves primarily, a negative function by ruling out invidious distinctions among persons. In a contrast, Finnis relies on the ideal of equality to rectify the relationships the community forges in pursuit of its positive goals. Finnis, unlike Hart, has an intrinsic interest in relating equality goals to distributive and commutative challenges arising as society implements its changing substantive goals.

Finnis offers an understanding of the common good as made up of relationships of justice. The moral agent fosters an essential uprightness of his will, by cultivating mutual respect for the equality of all the participants in social life, at all times, as a matter at least of his background intention. Hart's concept of justice lacks these elements, because he lacks Finnis's metaphysics of the will and interpersonal regard for the good, which serve as their underpinnings. Finnis's concept of justice depends on reference both to the basic goods (missing in Hart) and to particular patterns of shares in benefits and burdens advancing the society's chosen ideal of fulfillment (such shares lack any necessary normative value for Hart).

The individualistic bent apparent in ordinary rights talk meshes neatly with Hart's concept of rights. Finnis's concept of rights translates the requirements of his interpersonal concept of justice. One cannot read very far into Finnis's and Hart's respective treatments of rights, before discovering this difference.

c. Finnis's and Hart's Concept of the Law's Moral Justification

Differences in the authors' descriptive concepts of law carry over into their concepts of the law's moral justification. Hart's bifurcation of law and morality means of necessity, severs his concept of moral justification from the law's descriptive character. The law takes on moral significance with the contingent choice to elect law as end or means, in particular circumstances. For Hart, recurring normative problems concerning law have no intrinsic relation to the law's nature. The closest thing might acknowledge to any essential connection between law and morality would be a necessary disvalue in society's adopting law to restrict

individual autonomy. Individual rights aptly summarize Hart's normative jurisprudence, which can be fairly reduced to a program for clearing away majoritarian obstacles to individual autonomy. Hart seeks no moral justification of either the legal system, or legal obligation. To seek to provide either, in his view, would serve as mystification inimical to the individual.

By comparison, Finnis grounds even law's descriptive meaning in the concept of moral duty. Finnis's lawmaker implicitly consults practical reason in order to administer the law's descriptive terms, even as he avoids, as a matter of specific legal technique, overtly averting to his doing so. The first purpose of the law's normative evaluation is to establish its authority or legitimacy. Where the law's authority is established, a serious presumption arises in favor of a duty to obey it. Unlike Hart, who sharply bifurcates the description and evaluation of law, Finnis cross-relates the two tasks, holding law to be a *means* to be sure, but one intrinsically subject to moral evaluation, because of its character as a means to relationships of integrity. Finnis, in contrast to Hart, considers legality, at root, to be a moral ideal, *à la* Lon Fuller.

C. The Contrast of Hart's Normative Jurisprudence to Finnis's Concept of Basic Goods

Comparing Hart and Finnis's normative jurisprudence draws one's attention to a common challenge Finnis solves with the basic goods, and Hart solves with the ideal of self-defining freedom. Both Finnis and Hart assume that the social world is a constructive effort. Societal goals effect no overarching or organic *telos* drawn from either nature or reason. Both consider the law an instrument of intra-mundane decision. Their starting point for

thinking about law is the moment of the agent's positing it as a means to a temporal end.

Both authors are heirs of Hobbes.

But Finnis differs from Hart, in employing categories of cognition about choice and action which he asserts are universal, to anchor legal discourse in relation to what he proposes as moral truth. Hart places a Lockean restraint on the Leviathan in the form of individual rights, conceived of as immunity from state power, but he acquiesces to Hobbes' notion that the individual's relation to society is essentially one of a reference to power. Finnis discovers in the cognition of the basic goods and the ideal of integral human fulfillment, a universal human reason to act jointly with and for others. The law, thus, becomes a means of completing rather than canceling the individual. He limits governmental power through immunities shielding individual freedom from societal control, as does Hart, but he also makes respect obligatory for multiple subsidiary levels of interpersonal association.

VI. DIALECTICAL CRITIQUE AND FOUNDATIONAL CONCLUSIONS

The comparative gloss of the last two chapters, together with the interpretive results of the two preceding those, offer a competent basis for a critique of John Finnis's jurisprudence. Such a critique concludes the methodological steps set out in Chapter 1. Pursuant to that chapter's Lonerganian conception, this evaluation has two parts. The first evaluates the author's ideas dialectically within the comprehensive viewpoint which has emerged in the course of the present study; the second elaborates the specific foundational points the study warrants as worthy of adoption for further work in ethical theory and jurisprudence.

A. Dialectical Critique

The study's final comprehensive viewpoint warrants a number of critical conclusions about John Finnis's "basic goods." They concern: 1) the descriptive intelligibility of human agency; 2) the nature of moral obligation; 3) the justificatory vantage of moral reasoning; 4) the concept of the common good; 5) the descriptive concept of law; and 6) the nature and scope of law's moral evaluation.

1. The Descriptive Intelligibility of Human Agency

Finnis grounds the descriptive intelligibility of human agency in the concept of basic goods. His ethical theory, inclusive of its concept of obligation, builds on this foundation. But, how much sense does the concept of basic goods make? Comparison with Aquinas and Hart yielded some confirmation for Finnis's approach. Hart and Aquinas join with Finnis in locating the intelligibility of human action in the conscious purposes underlying individual

acts. And, yet, both Hart and Aquinas challenge the validity of Finnis's more particular concept.

To understand Hart on human agency is to ask whether the terms Finnis identifies as invariable, underived and self-evident starting points about meaningful choice (basic goods) are not merely linguistic tags (certainly Finnis depends on linguistic expressions to bring them to our attention) that actually can be given infinitely various meanings according to the agent's shifting emotive preferences and internalization of social convention. Hart incites us to ask what basis there is for counting Finnis's notion of objectivity any more persuasive or reliable than his own alternative, of affirming individual self-creating freedom as the one basic value, with an intelligibility reinforced by further shared, empirically objective parameters of linguistics, individual claimants, social compulsion, desired empirical states of affairs, and survival as a theme empirically recurring in the actual use of human freedom.

Finnis suggests that unaided introspection, coupled at most with logical inference, can resolve this conflict in opinion. Finnis, as we will see, appears to claim too much for unaided introspection, but he would appear correct, at least, that it is sufficient to refute Hart's concept of the good. On balance, it appears that Hart treats individual self-creating freedom as a basic good in Finnis's sense. Admitting this good while reducing all other intelligibility in action to contingency and projection seems arbitrary. It is suspicious that doing so serves, without demonstrated justification, the purposes of Hart's simultaneous elevation of individual self-creating freedom as a first moral principle. Hart's acknowledgment of the value of life (survival) as empirically virtually universal, without conceding its universal intrinsic intelligibility, is a further instance of arbitrariness.

Introspection alone can be said to disclose at least this much: an inner experience of what could be called *general* self-evident, underived awareness of the categorical intelligibility of choice and actions. Finnis seems correct that emotion can distract from this intelligibility, but that it does not create it as such. Introspection can also confirm the additional proposition, adopted by Finnis from St. Thomas, that this basic experience of intelligibility is in the form of first principles sufficiently specific in character to give individual acts an invariant recurring structure. One can fairly supplement this latter insight by the inference drawn, each in his own way, by Aquinas, Finnis and Hume, that this categorical intelligibility originates in the mind, not outside of it. Finnis's conclusion, also found in St. Thomas, that some actions receive their intelligibility directly, but others, only mediately from such basic principles also can be confirmed introspectively. Thus far, one can consider Finnis correct and Hart mistaken, and at the same time one may hold Finnis to be in harmony with Aquinas.¹

However, the fact that thinkers as capable as Hart and Aquinas independently dispute Finnis's catalogue of goods, both regarding number and kind, would cast some doubt on Finnis's assertion that unaided introspection can alone give a closer account of the basic goods as purely self-evident principles. Narrowing the comparison to Finnis and Aquinas,

¹ Finnis's retrieval from St. Thomas of the notion that practical as opposed to speculative reason is the principal, if not exclusive basis of ethics, together with the notion that underived first principles play an essential role in the human capacity to grasp the value attainable through action is an extraordinary contribution to contemporary natural law ethics. The idea offers, in fact, the basis of a correct response of natural law to the whole tradition of modern ethics from Hobbes. Oddly, for the validity of much of their criticism of him, Finnis's opponents in natural law circles are greatly disadvantaged, both in the analysis of concrete moral norms, and in their ability to frame a methodology that is defensible in the face of modern critiques based on the naturalistic fallacy, by failing to grasp and integrate Finnis's (and Grisez's) insight. Prominent examples of such opponents include Ralph McInerny, "The Principles of Natural Law." *American Journal of Jurisprudence*, 25 (1980): 1-15, and Henry Veatch, "Natural Law and the 'Is' - 'Ought' Question." *Catholic Lawyer*, (1981): 251-65.

one notes that St. Thomas's goods of being alive, conscious, generative, and in loving relationship with others are contemplative goods, which are reminiscent of the inspiration in a gothic cathedral. The metaphor focuses on the synthesis of vertically ascending tiers of organization in a comprehensive unity in both the theory of the good and the mode of architecture. Finnis's goods of life, health, work, play, practical reason, inner tranquillity, friendship and Religion are performative, a bit more akin to the checklist in a university admissions office. The metaphor focuses on the empirically verifiable accomplishments that can be credited to an individual in a competitive temporal comparison. It is not difficult to guess which list was drawn up in thirteenth-century France, and which in a late twentieth-century first-world country. There is then, much truth in Hart's position in his conflict with Finnis -- Finnis at least somewhat exaggerates the power of unaided moral introspection to arrive at certainty over the invariable content of basic human purposes.

Finnis's contribution is, following Grisez, to retrieve St. Thomas's largely overlooked assertion that the intelligibility of action begins with underived, self-evident cognitive first principles, in contrast to any derivation of an "ought" or even a "can be" from existent objects. It is this essential insight which gives Finnis the better, at key junctures, of both his consequentialist and neo-thomist critics, and allows him so admirably to defend the concrete moral norms of the core Christian tradition. However, at least one way Finnis seems misguided is to assume that Aquinas treats the primitive cognitive experience of such principles as an immediate basis for ethical or moral theory.² Finnis's error appears in his

² Vernon Bourke notes that "Finnis passes over the distinction between ethical science and prudence." Review (reviewing *Natural Law and Natural Rights* by J. Finnis) *American Journal of Jurisprudence*, 26 (1981): 244.

claim that one can peel away, and discard as overlay, St. Thomas's speculative metaphysics and ontology while keeping his basic goods. St. Thomas's moral theory is not an unmediated awareness of the data of moral consciousness which themselves are wordless. It is an interpretation of that data made possible by metaphysics and ontology.³

Finnis's unwillingness to concede that moral theories are interpretations only partly explains the division among Hart, Finnis, and Aquinas over what belongs on the list of first principles of intelligible human action. In fact, the data of moral consciousness are complex and can be misinterpreted. For one thing, Finnis seems mistaken in assuming that analysis of choice will lead back in each case to a starting point which is a basic good. The mind has to start somewhere, but it is fully capable of seizing on a contingent concept, especially where it operates under cultural imprimatur or special emotional appeal, and as treating it as enjoying an underived intelligibility which it in fact lacks. Evidence of this is seen in Finnis's identification of goods as basic, which St. Thomas would treat as derivative.⁴

For another thing, once first principles of intelligible action are identified, they will still be conceived by the individual with color and texture deriving from conscious language, culture, social convention and infused emotion. Finnis seems to be without an entirely reliable foundation in his claim that a contrast with emotion is sufficient to sustain a reliable

³ On this point, the unanimity of traditional thomists in response to Finnis is well placed. e.g., Benedict M. Ashley, O.P. "Christian Moral Principles," *Thomist* 48 (1984): 450-60. Vernon Bourke notes that the reading of Saint Thomas which Finnis's approach entails relies on reading Saint Thomas's *De Legibus*, unintegrated into the systematic whole of the *Summa*, as though it were a "separate book on law." Vernon Bourke, Review, 245. Henry Veatch makes essentially the same point, but in relation to Aquinas's larger corpus. Review (reviewing *Natural Law and Natural Rights* by J. Finnis) *American Journal of Jurisprudence*, 26 (1981): 247-259, 256.

⁴ For one thing, the alternative of the author of the *Summa Theologica* not having the thoroughness of reflection to think of them appears as counterintuitive.

introspection of the true basics of intelligible action. The distinction between the emotions and reason would not seem sufficiently bright to serve as more than a rough pointer of where reason's first principles of action lie.

St. Thomas's approach suggests that a supplement which Finnis rejects is, in fact, required if basic goods are to be identified with sufficient reliability to sustain moral theory. Aquinas agrees with Finnis that introspection of the underived self-evident principles of intelligible action is a *sine qua non* of moral theory, but the greater persuasiveness of Aquinas's account of basic goods suggests that he is right that introspection must be steadied and guided by disciplined metaphysical reflection,⁵ tempered by humility and enriched by tradition. The latter element surely would include a community's memory of learning attained in the course of moral living over time, and, within a looser tradition, the collective record borne by religion, art and literature of the meaning to be found in human choice and action.

Unaided introspection alone would not seem to permit the observer to decide with any great certainty among the diverse lists of basic goods offered, respectively, by Finnis, Hart, and Aquinas. But, when the data of introspection are interpreted in the light of the concepts of even a tentative metaphysics, some more expansive conclusions become possible. Although Hart does not acknowledge his metaphysics, he is, in effect, in agreement with Aquinas that any basic good (or goods) of action must be grasped, at its root, as an

⁵ Henry Veatch has shown the compatibility with traditional natural-law reasoning of the claim that moral responsibility can be premised on first principles, which, are both self-evident and require the interpretation of speculative reason. Veatch's showing depends on Saint Thomas's notion of "a principle self-evident in itself, and yet not . . . evident to us." Henry Veatch, "Natural Law and the 'Is'-'Ought' Question," 261.

awareness of its potential for enhancing the being of the agent as a person. Hart's Millian notion of self-creating freedom, no less than Aquinas's highly developed notion of happiness as an excellence in the engagement of the agent's powers in real objects, has this character.⁶

In perhaps too emphatically asserting that his basic goods are not convertible with anything beyond themselves, Finnis risks undermining the possibility of such a metaphysics of basic goods in his own theory. Problematic in the same regard is his characterization of the basic goods as strictly pre-moral, that is, as free as such of any normative appeal.⁷ Hart, for example, avoids the drawbacks of this claim with his streamlined metaphysics of individual self-realizing freedom. A third problem relating to Finnis's lack of a full metaphysics of action and being can be seen in his failure to emphasize the interpersonal character of basic goods.⁸ While Finnis states that basic goods are goods "for others," St.

⁶ Finnis's natural law critics frequently point to this failing in Finnis, e.g. Benedict M. Ashley, O.P., "Christian Moral Principles," 450-60; George Constable, "A Criticism of 'Practical Principles, Moral Truth, and Ultimate Ends' by Grisez, Boyle, and Finnis," *American Journal of Jurisprudence*, 34 (1989): 20; Russell Hittinger, *A Critique of the New Natural Law Theory* (Notre Dame, Ind.: University of Notre Dame Press, 1987) 70. Henry Veatch argues that the very idea of an intelligible good which is not convertible with "being" is logically untenable, falling to Hume's naturalistic fallacy, merely in its own separate context. Once it is defined as strictly premoral, and not a means to enhanced being, the "cognition" of the good as such cannot remain a good in the sense of "requiring" in any sense that it be chosen, but may, at most, be a form which the agent *elects* to choose. Henry Veatch, "Natural Law and the 'Is'-'Ought' Question," 262. With the exception of the good of self-creating freedom, this is a consequence that Hart, for example, is quite willing to draw for the sake allegedly of dispensing with metaphysics. Janice Schultz seems to make essentially the same point as Veatch, putting it as follows: "To equate the "ought" -aspect of a principle with its prescriptivity, as the Grisez-Finnis position does, is to excise from such a principle its intrinsic relation to its foundation in human nature as its very reason for *being* authentically directive. This is to strip the principle of its inherent rationality." Janice Schultz, "Is-Ought: Prescribing and a Present Controversy." *Thomist*, 49 (1985): 1-23, 23.

⁷ This is a standard criticism among Finnis's traditional natural law critics. e.g. Ralph McInerney, *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas* (Washington, D.C.: The Catholic University of America Press, 1987), 55.

⁸ This problem is well highlighted by Russell Hittinger. Hittinger points out the oddness of the notion that a grieving person is grieving over the loss of an instantiation of life, rather than a person, charging that Finnis has a description of friendship without mutuality, and that Finnis overall lacks an account of "interpersonality." *A Critique of the New Natural Law Theory*, 77, 114, 181.

Thomas clarifies the formulation by characterizing the basic goods, each in its own way, with the exception perhaps of the preservation of life, as *essentially* a form of mutuality with other agents.

Finnis's lack of metaphysical clarity may lead him to identify as basic principles of intelligible action principles which are neither basic, nor fully intelligible. Their claim to be descriptively neutral, their performative character, and their discounting of the intrinsically interpersonal and contemplative character of human fulfillment all point to their, in fact, being conditioned by time, circumstance, and perhaps even somewhat by authorial temperament. Even if one prescind from whether Finnis is correct with regard to the number and kinds of basic goods, a deeper and yet more difficult aspect of critique arises following comparison with Hart and Aquinas. These issues concern the nature of the intelligible meaning grasped within a first principle of action. Hart and Aquinas are each at least relatively clear on the question. Hart gives his first principle noncognitive, emotivist meaning, and a psychological mechanism for correlating objective circumstances and a priori subjective value judgments. Aquinas gives his first principles content as the participation in the human mind of "divine light."

When we turn to Finnis we find no account of the intelligibility of the first principle other than the ascription to it of a name, e.g., "play," and concrete examples of its instantiation. Essentially, Finnis seems to use objective states of affairs he deems instantiations to give content to his subjective concept, and then, circularly, his subjective concept to define the objective instantiation. Whatever value Finnis sees here in avoiding metaphysics or speculative reason, the penalty is a measure of obscurity. The skiddishness

his theory elicits in many readers is traceable to their sense of this circularity. Rather than true primitive insights into underived possible actions, the suspicion arises, rightly or wrongly, that his "basic goods" are merely the touchstone of interpretive attitudes towards concrete actions he wishes to ensure will be designated right or wrong at the end of an anticipated train of moral reasoning.⁹

Finnis's reasoning about the subject-object distinction becomes particularly troubling through his failure to explain how various human capabilities, relationships with other persons, or other features of the real world are apt for "instantiating" the cognitive concepts of basic goods, or to account for the nature of the "instantiation" of a good once it has come to be through completed action.¹⁰ Because he offers no metaphysical account of what is involved in knowing a basic good, he cannot proceed to these other levels of explanation.

⁹ This particular criticism becomes most insistent from the perspective of a critic who does not "deeply" hold the same "moral views" Finnis finds "intuitively sympathetic." Such a critic is unwilling to start from a shared likening for "concrete moral opinions" and looks for speculative arguments making "sense" as "philosophy." David A. J. Richards, "Kantian Ethics and the Harm Principle: A Reply to John Finnis," *Columbia Law Rev.* 457, 459 (1987). Richards observes that Finnis's definition of the goods is, strikingly, of a form designed to cut off the need for argument (which is, for Finnis, by definition, not called for) precisely at a level of foundational moral analysis calling for argument and evidence at every point. Indeed, Finnis's very definition of self-evidence, as a property of judgments assent to which does not need 'the proof of argument' . . . is also a definition of prejudice. (citation omitted). David A. J. Richards, Review (reviewing *Natural Law and Natural Rights* by J. Finnis), *Ethics* 93 (1982): 169, 170; William H. Wilcox, Review (reviewing *Natural Law and Natural Rights* by J. Finnis), *Cornell Law Review* 68 (1983): 408-420, 414-15 ("While his claims about what is valuable may well be correct, I find little to agree with in his arguments as to why this is true").

¹⁰ Brian Johnstone raises questions regarding Finnis's co-author, Germain Grisez, on essentially this point. Brian V. Johnstone, "The Structures of Practical Reason: Traditional Theories and Contemporary Questions." *Thomist*, 50 (1986): 417-66. For Grisez's response, see Germain Grisez, "The Structures of Practical Reason: Some Comments and Clarifications." *Thomist* 52 (1988): 269-291.

The aptness of the matter of action for instantiating a good, and the reality of the instantiation once effectuated both seem a matter of pure intuition.¹¹

Comparison with St. Thomas underscores the deficits that Finnis brings to reasoning about moral action. St. Thomas would dispute Finnis's assumption that the self-evidence and underived status of basic goods leaves them mute respecting nameable content that could put them into intelligible relation with other dimensions of reality. Through the role he assigns in ethics to speculative reason, St. Thomas gives basic goods content, although self-evident and underived principles of action, as intrinsic means to the agent's happiness or self-realization, as objective excellence in the operation of specific human faculties, as a means to subjective satisfaction of particular appetites, as providing integration into the human community, and relationship with God, both as First Cause and Last End. It is this content that permits St. Thomas coherently to explain how the matter embraced in external action can "instantiate" cognitive principles of conduct, and to explain the nature of the reality completed action yields as its fruit.

Critically, Aquinas is able to assert that prudence can ascertain the real value of existent singulars for embodying the good promised by the mind's first principles. Here Aquinas offers a bona fide alternative to the naturalistic fallacy of deriving an "ought" from

¹¹ Hittinger develops the point accurately. He states: "The problem . . . is how we might move from the *ratio* of the goods to principles governing the *ordinatio* of the goods, in terms of both hierarchy and order." He argues that "status and meaning of data and mode of derivation are locked within intuition." Unfortunately, Hittinger's critique of Finnis is marred by his continuing to speak as if first principles of action could be derived from a speculative philosophy of nature or theoretical "account of a natural power." *A Critique of the New Natural Law Theory*, 164. On this key point, Finnis seems right and in harmony with St. Thomas, and his critics, including Hittinger, wrong. The act of learning is different from the act of being. Hittinger, "Natural Laws 'Law'." *American Journal of Jurisprudence* 39 (1994): 1-32.

an "is."¹² But Aquinas's middle path allows reason to find intrinsic value in real things would not please Hume. This raises the issue of whether a moral philosopher need or should go any farther than St. Thomas's theory allows in trying to satisfy this member of the Scottish Enlightenment.¹³ It also raises a question as to whether Finnis has gone farther than he should in this regard and whether in doing so he has placed himself in a metaphysically untenable situation.

Comparison with Hart demonstrates that the issue is not whether a metaphysically laden theory (Aquinas) is superior to a metaphysically austere one (Finnis). Hart, although far from being free of metaphysical assumptions, has considerably fewer than Finnis has. The comparison between Hart and Finnis highlights that Finnis's problem is not a lack of metaphysics, but a metaphysics not fully accounted for or sufficiently developed. Among the elements missing in Hart, one finds in Finnis the assertion of a free will in the theological sense and the notion of a personal identity subsisting beyond empirical verification as references implicit in the core meaning of basic goods. Finnis likewise introduces the

¹² My reading of St. Thomas is that he believed that practical reason is capable of three fundamental acts of understanding pertaining to action. It grasps the first principle of action, more or less Finnis's basic good; it "reads" the value of singulars for "instantiating" the concept when they are united with the agent's will; and it recognizes the union of the agent's powers with the object when the action is successfully completed. The key issue here is how prudence grasps the value of a singular. While I have alleged that Finnis substitutes an unclarified intuition for a rational conclusion at this point, his natural law opponents seem to assume that practical reason consults speculative theory about human nature for an answer to this question, for which he, in my opinion, rightly faults them. I believe that St. Thomas is saying, and I concur in what I understand him to say, that while speculative theory has a role to play, practical reason can, itself grasp the value of natural objects "as means" to the end of the first principles. The most obvious example would be the intrinsic human dignity and suitability to relationships of friendship grasped in encounter with other agents. It is unclear to me whether St. Thomas is asserting that practical reason somehow relies on insight into the will's innate, but unarticulated evaluative attitude towards existent things, in assigning value to singulars.

¹³ Veatch takes the position that Hume, not the natural law moralist, must now be taught a lesson." Henry Veatch, "Natural Law and the 'Is'-'Ought' Question," 258; *see also* Errol Harris, "Natural Law and Naturalism," *International Philosophical Quarterly* 23 (1983): 115-124.

concept of "instantiated" goods as something beyond the accomplishment of concrete states of affairs, a position also entirely unknown to Hart. Nowhere does Finnis attempt to give a full account of the metaphysics or ontology in which these elements find their meaning or are consistent with the other elements contributing to action's intelligibility, e.g. language or empirical observation.

By not calling attention to the metaphysical elements in his theory, Finnis may possibly permit it to circulate with less resistance in quarters dominated by the ingrained assumptions of contemporary thought, accustomed to such current theoretical alternatives as positivism, the good reasons school of ethics, and linguistic philosophy. He rephrases the classic arguments of the tradition to delete terms that would elicit rejection by his contemporaries. However, he thereby submerges essential aspects of his cognitive and moral psychology, and he, thereby, interferes with the efforts of others consistently to develop or apply it.

In sum, Finnis is to be commended for reminding ethical theory of the availability of underived cognitive first principles of practical reasoning, as response to the "is-ought" problem. Among other valuable properties, this insight delivers a sound basis for concrete moral norms. And, he is right to find the concept at work in the thoughts of St. Thomas Aquinas. But, Finnis's development of the idea is doubtful. He overstates what unaided introspection can establish in the way of knowledge about such principles, and he fails to develop a sufficient metaphysical theory to support their interpretation and application. His concept seems specifically to call correction or emendation to resolve the following problems: 1) it does not explain how action for basic goods enhances the agent's being,

alone or in community with others; 2) it treats basic categories of intelligible action as morally neutral; 3) it does not specify the conscious participation of reason in the experience of the good; and 4) it lacks essential openness to interpersonal fulfillment as a constitutive element of the good.

2. The Nature of Moral Obligation

Finnis locates the meaning of moral obligation in the necessity of maintaining diachronic consistency in respecting the conceptual content of reason, one is to be practically reasonable. This notion of obligation implies not only the moral agent's ability to know underived, self-evident concepts of intelligible basic good, just discussed, but to measure diachronic consistency in action in relation to them. Finnis's definition of moral obligation is obviously the second most critical element in his system of thought after the concept of the basic goods itself. Its cogency likewise is subject to negative critique within this study's comprehensive viewpoint emerging in relation to the other two thinkers.

Notwithstanding their differences, Hart and Aquinas together challenge Finnis's basic conception of moral obligation, agreeing that it has a meaning altogether different than that subscribed to by Finnis. By integrating a version of the teleology characterizing their work into his thought, Finnis, moreover, invites critique based on the alternative notion of obligation found in these two thinkers. The perspective Hart and Aquinas actually share on obligation appears to arise from a deeper necessity in the nature of connections possible between teleology and obligation.

In sum, Hart and St. Thomas Aquinas dispute that one can derive moral obligation from a teleology of self-perfection alone as Finnis purports to do. In their views, a pattern

of action charted within the reason or will of the agent alone cannot form the basis of obligation, but at most offer a mode of self-perfection. Hart and Aquinas each subsume at least elements of their own teleologies of self-perfection into their overall framework of obligation. As a preliminary, one can ask why Finnis's reliance on his notion of self-perfection does not make an ancillary contribution to his notion of obligation which would satisfy these other thinkers.

Hart would answer this preliminary question by citing the incoherence of Finnis's notion of self-perfection. Like Finnis, he understands teleology as a pattern of "choiceworthy" goods and ideals emerging unilaterally in the mind of the agent, but he rejects the possibility of a consistent pattern of choosing in relation to these ideals. He sees insurmountable obstacles to consistency in evolving random circumstances. He holds that no checklist of practical reasonableness could protect the agent from self-contradiction in relation to any overarching ideal. Hart suggests that in claiming to avoid self-contradiction, Finnis, in fact, presupposes the very teleological orderliness of an objectively known reality, with which he purports to dispense. Hart would deny the cogency of Finnis's ideal without even reaching the issue of its potential relevance to moral obligation.

Although Aquinas, like Finnis, relies on the notion of a rectified will, his idea of rectification is not derived through the internal consistency of the will in relation to concepts, but the will's "external" consistency in relation to the realities the concepts mediate. Aquinas does not consider conceptual consistency a basic good, as his treatment of "prudence of the flesh" shows. Neither does he treat complete conceptual consistency as self-perfection, as his definition of authentic happiness shows, resting as it does on the agent's

self-perfection in consistent respect for objective values centering on God as the *Summum Bonum*. Aquinas would deny the cogency of Finnis's concept of a rectified will as a concept of self-perfection, before he even reached the point of its potential sufficiency as a basis of moral obligation.

Aquinas and Hart disagree vigorously over whether happiness can be objectively predicated of choices apart from the subjective emotion of the agent, and whether inner satisfaction and peace hinge on a will rightly inclined to objective modes of being, but they agree that a failure to attain to a standard of self-perfection, whatever it may be, is no violation of obligation. Failure to act in accordance to an ideal may make a person objectively or subjectively "unhappy," but it entails no moral fault or violation of any duty.¹⁴

For both Hart and Aquinas, the basis of obligation lies in something other than an ideal of self-perfection. For both thinkers, obligation arises with the experience of the claims of other agents. They agree, more specifically, that among claims made by other agents, those which the authority of the community, as a whole, asserts are obligatory. They concur also that obligation has an outer and inner aspect.

Hart grounds obligation in relation to the temporal community. Its outer dimension is the community's attributable of guilt and its threat of shunning. St. Thomas grounds obligation in relation to a cosmic order of law and reasonable beings under God. Its external

¹⁴ Without perhaps distinguishing as fully as he might between the teleological impulse of intelligible action and its limit in moral obligation, Hittinger touches on this point by saying that Finnis's framework, in its injunction to follow a life plan, for example, lacks any "principle of efficacy." *A Critique of the New Natural Law* (South Bend, Ind.: University of Notre Dame Press, 1987) 143. Although Hittinger's critique of Finnis is largely concerned with issues of the philosophy of religion, a theology of revelation, and Christian ethics, with which this study has not been concerned, the outcome of the present study is to agree with Hittinger's pervasive theme that a credible notion of moral obligation requires that knowledge of God be brought into the foundations of practical reason.

dimension has two aspects: the loss of integrity in function through the comes of sins and the retribution of those, including God, when the agent's bad acts have offended.

In an effort to ground obligation in reason without conceding the ontological priority of God as does Aquinas, Finnis opposes emotion and cognition. This tension replaces that existing between self-interest and regard for others found in both Aquinas and Hart. It also replaces the tension between the universal and particular good, found in Aquinas. For his trouble, Finnis introduces an unwelcome element of dualism into his conception of the person, but fails to arrive at a credible notion of obligation.

St. Thomas sees the inner dimension of obligation in divine ordinances governing action, apprehended by practical reason as self-evident precepts. Lacking an explicit metaphysics or ontology, Hart finds the internal dimension of obligation in the "internal point of view" adopted by convention among those members of society participating in the language game of morality. In this view, moral precepts, are sufficient "reasons" for action simply because they are treated as such. Aquinas and Hart concur that obligation is other-oriented. Even in Hart, it directs action for the purported good of others in the community. Hart finds that some conventional precepts fail to rise to this level, and serve something other than the good of others, but so too does St. Thomas.

Where both Hart and Aquinas, each in his own way, postulate an "inner" principle obligation, which is other-oriented -- one grounded in ontology and one not, Finnis, by contrast, postulates a principle of obligation that is self-oriented. In contrast to Hart's ideal of self-creating freedom, Finnis's self-oriented principle of perfection is not even oriented to the holistic completion of personal being, but rather only to a particular performative task

within the self. His conception of self-perfection, moreover, seems metaphysically problematic. It introduces dualism into the concept of the person, by creating a mysterious and unaccounted-for "self within the self," for the task of rectifying the will. The person is not the integrating principle of everything he contains; emotions, cognition, and will, who finds his happiness by due relationship with God and neighbor, as in St. Thomas. He is on the one hand, simply the subsisting (hopefully rectified) will on the other he is the intellect who compares all assesses action for a better it is in accord with the First Principle of Morality. This division within the self compounds the dualism cited earlier, arising from the opposition Finnis places between emotion and cognition.

St. Thomas, unlike Hart, possesses a metaphysics which subsume his ethics of self-perfection and his ethics of obligation into a nearly seamless whole. But like Hart, St. Thomas considers obligation as providing a reason the agent's own intellect cannot itself ordain, because it specifies the concrete good of another person. In contrast to Hart's, St. Thomas's moral philosophy can coordinate self-perfection and obligation to others in a unitary framework because it assumes the ontological priority of a divinity fairly and reasonably specifying the good of both the self and the other. Hart and Aquinas are in accord that practical reason cannot conceive of the *concrete* good of other agents. St. Thomas, in contrast to Hart, can treat the "indicative" necessity of self-perfecting choice as morally obligatory, by postulating a duty to God, as other, to pursue self-perfection.

In their concepts of obligation, St. Thomas and Hart differ with Finnis, by holding obligation to be more than, or other than even complete rationality. Hart considers conventional moral obligation to arise heteronomously in a social practice, outside of individual moral reasoning. Critical morality transforms these community standards into

autonomous ones, out of noncognitive, emotivist conviction or sentiment. St. Thomas considers all the principles of practical reason to reflect the participation of the light of God, but he considers the principle of moral obligation, in particular, to bear a directiveness originating from the *telos* of a community fulfillment beyond the agent's individual capacity reasonably to ordain. Conceptually, the First Principle of Natural Law, the fountainhead of obligation, has an intrinsically relational character, i.e. "as ordained by another than the agent, for the good of others than the agent."

Finnis's concept of obligation seeks to reject classical metaphysics, without, however, accepting the consequences of that rejection as they effect Hart. These consequences make themselves felt principally on the plane of concrete moral norms. Finnis stands with Aquinas against Hart on suicide, abortion, contraception, homosexuality and suicide. Similarly, Finnis aligns himself with Aquinas against Hart on priority of the community authority over undirected individual freedom.

To reserve his similarity to Aquinas in the wake of a perceived collapse of classical metaphysics, Finnis substitutes a new metaphysics of will and obligation. In his favor, he retrieves St. Thomas's strategy of locating a principle of obligation within cognition, a foundation notably lacking in a modern thinker like Hart.¹⁵ But, Finnis premises this implicit

¹⁵ Hittinger speaks of "religion's" appropriate role in the foundations of practical reason. Perhaps, he does so, as a kind of circumlocution, out of respect either for God, or for his readers' sensibilities. But, if Hittinger means the word on its face, he merely shifts, and does not solve the problem of Finnis's foundations. One of Finnis's key mistakes in Hittinger's terms, is make religion "foundational" when it should be viewed as "implicational." *A Critique of the New Natural Law* (South Bend, Ind.: University of Notre Dame Press, 1987) 156. To solve the problem in Finnis's theory, *God* must be part of the "foundations," but religion part of the "implications." The foundations come from God as First Cause. Religion, as a virtue, comes in the implications of Man's appropriate response to God. Thomas's basic goods, understood as generic modes of human being, including bodily existence, procreation, knowledge, and friendship, are a matter of foundations. Their pursuit in the form of real "instantiations" is part of "implications," including knowledge of and friendship with God as Last End. Religion enters as a virtue within this implicational relationship. Hittinger does not help matters by

metaphysics on an innate tendency within the will towards self-perfection through consistency in its response to reason. He rejects St. Thomas's idea of self-transcendence via integration into interpersonal relationships. In making this shift, he arguably loses any concept of moral necessity deserving to be called obligation.

3. The Justificatory Vantage of Moral Reasoning

The unity of each author's justificatory vantage arises from the quest for a "oneness" out of "many." Finnis arrives at the "oneness" of the will's consistent orientation to reason, begins with "many" of reason's multiple first principles of action. Hart and Aquinas, each in its own way, begins with the "many" of multiple agents' legitimate claims to equal respect, and arrives at the "oneness" of the agent's individual fulfillment.

Hart makes the individual's critical moral judgment in the service of his own self-creating freedom his unifying principle. The cost of unity on these terms is an irreducible split between individual fulfillment and community satisfaction and a clash between the demands of egoism and altruism. It has the character of a Hobbesian balance of wills, with the proviso that each individual is sovereign. Its notion of critical morality enthrones the individual.

St. Thomas champions trust in God's providential care for the common good of all, as his principle of unity. St. Thomas sees moral obligation as leading to a self-perfection, that surpasses human understanding.¹⁶ Morally right conduct serves to integrate the agent

moving religion from the category of descriptive pre-moral good to the primary source of moral obligation.

¹⁶ Lloyd Weinreb asserts that Saint Thomas holds that the affirmation of the first principles of practical reason implicitly entails an affirmation not just the intelligibility but of the justice of the cosmos. Lloyd Weinreb, *Natural Law and Justice* (Cambridge: Harvard University Press, 1987), 7, and Robert George seems mistaken in arguing otherwise, namely, that, for St. Thomas "the ontological and moral orders can (and often enough apparently) do

into a moral community oriented to its own perfection and to that of the individual. The agent apprehends obligation through reason, but the meaning of obligation surpasses the agent's rational comprehension. The agent's individual pursuit of self-perfection implicitly advances universal fulfillment ordained by a higher intelligence in unseen ways.

By contrast, Finnis simply does not seek unity within a frame of reference within the individual will to deal with the problem of the multiplicity of persons. He asserts that to know basic goods entails knowing that they are goods for others, but, he does not account for why others are due anything.¹⁷ He also envisions the agent ordaining the concrete good of others, whereas both Aquinas and Hart consider such to be per se impossible. Finnis's position is the less tenable, given his admission that the third requirement of practical reasonableness leaves the balance to be honored between one's own fulfillment and that of others incompletely determined, and thus, open to his own arbitrary decision.

Hart excludes notions of divinity from his vantage. The requirements of his critical morality flow from the sovereignty of the individual. St. Thomas just as clearly conceives

diverge." Robert P. George, "Recent Criticism of Natural Law Theory" (review essay reviewing *Natural Law and Justice* by Lloyd Weinreb and *A Critique of the New Natural Law Theory* by Russell Hittinger) *University of Chicago Law Review* 55 (1988): 1371-1429, 1374. George is wrong in trying to separate Saint Thomas' faith in providence from his moral foundations. Aquinas views human beings as "authorized" by God to contest the natural flow of events to the utmost of their ability for the human good, but as required to submit, at the boundary of what right reason allows, to the effects of both sin and natural disaster. The correctiveness of this submission to Providence arises, not alone with supernatural revelation, but already with the first principle of natural law. Aquinas does not mean to suggest that God justifies suffering as such, as Weinreb seems to suggest, but that compliance of moral obligation, even at the cost of loss, is simultaneously, an act of trust that in the really long run and overall, God can and will bring the universe to a just outcome. While Weinreb merely assumes and does not demonstrate the truth of his claim that Aquinas's position is incompatible with human freedom, he reminds us correctly that Aquinas's moral theory depends, not only on analogical reasoning, but on some form of theodicy. Weinreb is correct in questioning whether Finnis can adopt Saint Thomas' objectivity in moral choice, without also accepting his assumptions in natural theology. Weinreb is right that Aquinas' natural theology is permeated by a Christian ethos.

¹⁷ Finnis's treatment of the values of justice and friendship likewise lacks an account of how they reflect anything beyond immanent inclinations within ourselves. Hittinger, *A Critique of the New Natural Law Theory*, 18.

of sovereignty in divine terms. His vantage specifically makes divinity the fountainhead of obligation, ontologically prior to, higher than, and other than the mind of the agent. Finnis seems to conceive of sovereignty in divine terms, but to divide it between Man and God. He has the agent conceive of himself as on essentially equal terms with a divine friend who, as metaphysically impossible as this sounds, reaps the advantages of the agent's autonomous ordinances respecting what is to be.

Dialectical comparison with Hart and Aquinas raises the question of whether Finnis can cogently merge self-perfection and obligation as he does. Finnis never adequately explains why or how compliance with rules of consistency should be considered self-perfecting or fulfilling. Here one runs up against Finnis's less than fully developed metaphysics of the will, and of subsisting personal identity.

Finnis believes that his theory stands in continuity with St. Thomas, but to read St. Thomas is to come to justifiable doubt that Finnis is right in his belief on this point. Aquinas gives an account of a complete and irrevocable union with God, available to moral agents through the use of their reason and will, and elevated by grace. Aquinas envisions this state occurring in a definitive way after death. He believes a foretaste of it is possible through joy in created truth during this present life. He also develops a notion of a double punishment awaiting those who make morally bad choices. First, they suffer the frustration of the innate tendencies of human desire (here St. Thomas validates St. Augustine's description of hell). Second, they experience damnation through the demerit they have earned by opposing a superior will. St. Thomas accounts for the reality of the outcome of action by its ultimate fittingness or unfittingness.

To study Hart is further to underscore Finnis's failure to explain why a consistent will is fulfilling or self-perfecting. It is hard to see why even a sociopath or monomaniac who sets aside Finnis's First Principle of Morality, without compunction, could not find more than enough intelligible activity to last a lifetime, especially with a little luck or, more aptly stated, with a bit of prudential care. Finnis does not show what benefit flows from a rectified will, nor does he ultimately establish why a sternly rectified will is any better than a wildly inconsistent one. Finnis at most shows that the latter agent inescapably 'knows' himself to be crazy, he does not show why he should be dissatisfied to be so.

Finnis's system allows him to avoid Hart's exaggerated individualism, with its extreme dynamic of contrast between egoism and altruism. But, Finnis's mode of affirming the social dimension of the good comes at the cost of a loss of respect for the mystery of the other person, since Finnis calls for the agent's legislating the other person's concrete good. It also empties social life of its intrinsic appeal since Finnis derives the value of social life only indirectly through the opportunity it poses for the rectification of a metaphysically undetermined individual will.

A dialectic of comparison with Hart and Aquinas also casts doubt on the soundness of Finnis's moral methodology. The unity of Finnis's method flows exclusively from his First Principle of Morality. Thus, he conceives of the moral life exclusively as duty. He derives all of his overarching teleologies as means to satisfying prior obligations. His 'all or nothing' approach leaves much intelligible action outside of the scope of duty and

undetermined by morality.¹⁸ The impoverishment comes to light when one compares the diversity and complexity of forms of reasoning converging to form the moral vantages of both Hart and Aquinas, but especially of Aquinas.

Both Hart and Aquinas understand moral reasoning to be inseparable from the creative aspirations and ideals of the teleology of fulfillment, constituting the dynamic ground of personal consciousness. They understand goods to be intelligible only as steps towards individual perfection. Obligation enters at the juncture of integration of the individual in community. In St. Thomas, no less than Hart, moral meaning, although subsumed ultimately in a single perspective on obligation, flows alongside the practical intelligibility of choice, from multiple sources. In this sense, Finnis is more at odds than either Hart or Aquinas with the trend of post-modernism. A more substantial concern is Finnis's loss of the teleology of virtue so important in the indicative ethics of aspiration organizing the greater part of the moral theology of St. Thomas Aquinas.

Within his ethics of obligation, Finnis recasts the middle axioms of obligation, which in St. Thomas have the form of interpersonal requirements of justice, to make them requirements of consistency in moral reasoning. This revision calls for a critique under the comprehensive viewpoint of the present study. One can applaud Finnis's desire to affirm that acts may be intrinsically immoral in the absence of harm or injustice to other persons, under his all-important Seventh Principle of practical reasonableness. But Aquinas, in a view he shares with Finnis, bases the conclusion that intrinsically wrong acts can exist without

¹⁸ For instance, religion as a "good" includes the practice of ritual human sacrifice, and yet the good becomes morally evil when referred to the First Principle of Morality. Hittinger responds that here "Nature appears to speak with a forked tongue." *A Critique of the New Natural Law Theory*, 112.

demonstration of harm to others on the moral agent's duty in justice to God to choose in accord with the requirements of self-perfection.

Finnis's conception of the violation of the duty of self-perfection entailed in intrinsically wrong action not involving demonstrable harm to others, remains purely a matter of errors in *mentation*. Aquinas's arises through deviation from a *real* mean. Finnis's austere metaphysics restrict the understanding of immorality to the phenomenon of inconsistencies in the will's inner orientation to reason. The consequence is that Finnis's assertion that any particular material act is immoral appears arbitrary. The cost to self-perfection, in each case, seems unexplained. By contrast, Aquinas's metaphysics permit him to view each violation of reason's first principles as turning away from the potentiality of being itself. As Aquinas says,

In every genus, worst of all is the corruption of the principle on which the rest depend. Now the principles of reason are those things that are according to nature, because reason presupposes things as determined by nature, before disposing of other things according as it is fitting.¹⁹

Given Aquinas's metaphysics of being wrongful acts intrinsically make manifest a concomitant readiness to reject God as the source of being, and to act unjustly where the good of others is at stake. Aquinas, for example, offers a more plausible metaphysical ground than Finnis, for the empirically observed practical correlation between two such practices as contraception and abortion.

¹⁹ *Summa Theologica* II-II, 154,12.

4. The Concept of the Common Good

When it comes to concepts of community, the relation of greater resemblance shifts to Hart and Finnis, with St. Thomas assuming a position of contrast. This affinity contrasts with the greater resemblance between Hart and Aquinas with respect to the formal structures of moral reasoning, or Aquinas and Finnis, perhaps, with regard to metaphysical rudiments. Because Hart boldly asserts that his theory of moral community dispenses with any meaningful idea of the common good, whereas Finnis declares the idea decisive in his deployment of ethical theory in both the descriptive and normative analysis of law, Finnis's unmistakable broader pattern of resemblance to Hart on the point, should elicit careful attention.

Finnis's similarity to Hart, and dissimilarity to Aquinas on the question of the nature of community can be traced to the emphasis Finnis, in common with Hart, places on Hume, as well as to their mutual rejection, following this emphasis, of any overarching *telos* from which interpersonal relationships could derive common public meaning. As a consequence of this point of similarity, Finnis and Hart alike have no choice but to construct notions of human community from elements of meaning found exclusively in individual experience.

Hart's minimal "metaphysics" of self-creating freedom sustains an affirmation by critical morality of a common framework of rights. Individuals have a right to society's coordination of the negative conditions of freedom and of the distribution of the basic means supportive of individual choice. Other than these functions, the individual alternately experiences the state as either simple coercion or as the expression of an accidental congruence among individual interests.

For Hart, participation in society may have an ethical meaning for reasons of significance to the individual. But, its only common meaning arises from the instrumental advantage it offers in the pursuit of projects of individual freedom. The minimum content of natural law which Hart finds all societies enforce reflects no common or unifying purpose but only the accidental but recurring preoccupation of individuals with survival.

Finnis posits a duty among individuals to coordinate action in common, for the sake of enhancing the conditions of action. Finnis concedes that the grammar of rights can adequately express his notion of duty. Thus, his duty to advance the basics of action need not be seen as differing appreciably from Hart's notion of positive welfare rights.

If Finnis's concept of the common good transcends Hart's individualism, it does so in one of three ways. He holds that individuals have a duty to act jointly for basic concepts of good. He asserts that they have a duty to acquiesce to the public projects of the community's rulers. He requires the community rulers to respect the principle of subsidiarity in the distribution of power and opportunity.

In short, Finnis's concept of the common good is the aggregation of individual goods undertaken according to various procedures of coordination. One may compare these procedures to the principles of separation of powers in American constitutional law. The substantive goals of the participants do not matter, as long as they carry them out in conformity with a set of rules balancing opportunity and power. Finnis's scheme differs from Hart's to the extent Finnis imposes a duty on the individual to act in concert with others, and fits "individual liberty" into a structure of "subsidiarity," checking governmental power. Finnis, of course, requires that the group observe the constraints of all of his modes

of responsibility. Like Hart's principles of universalizability and rationality, these requirements offer, at bottom, formal, and not substantive shape to life with others.

For Hart and Finnis alike, the fulfillment an agent finds in society remains individual fulfillment. Hart sees this as the aggregation of the individual satisfaction derived from the exercise of individual self-creating freedom. Finnis conceives of it as the aggregation of wills rectified by consistency in respect for what reason requires by way of joint action. Finnis purports to include within the common good "instantiations" of goods. Many of these "institutions" are further states of the will, but the metaphysically shadowy, even incoherent character of an "instantiation" makes it difficult to distinguish from Hart's sum of individual satisfactions. The only certain distinction between the two authors lies in Finnis's multiplication of formal deontological procedures for coordinating the activities of diverse individuals in a single orderly pattern.

These procedures form a maze the individual must negotiate without contradiction, if he is to have a will integrally open to the fullest spectrum of practical reason. Compliance with these procedures calls for the election of certain common substantive goods. But, it is difficult to see what difference this makes other than that Finnis requires conformity with external convention (within the limits established by the principle of subsidiarity), where Hart forcefully rejects such conventionalism.

With this stated exception, Finnis's essentially procedural concept of the common good can be distinguished from Hart's only with difficulty. The vine of friendship and love may grow on Finnis's lattice of procedural duty, but neither friendship nor love form the distinctive basis of Finnis's notion of the common good (the Good of Friendship has no more

to do with the common good, for Finnis, than any other basic good). There seems to be no reason to suppose that love and friendship will grow more readily under Finnis's framework than under Hart's coordination of self-realizing freedom.

St. Thomas's concept of the temporal common good as respect for the meaning of consent and authority, expressive of love and friendship, appears more satisfactory than the concepts entertained by either Finnis or Hart. It rests upon the metaphysical postulate of wills capable of a reciprocal real union in love, which gives rise to a community of being, on all levels of intrinsic human flourishing. Admittedly, Aquinas's concept poses the danger of an unwarranted interpretation of moral necessity to contingent organic social relationships. It is understandable that Finnis desires to propound a concept of the common good acceptable to those of liberal inclination by freeing it of obligatory organic notions of the social order and opening it to a greater appreciation for individual initiative and freedom.

St. Thomas's view of the temporal community might appear to be unduly optimistic. It might seem insufficiently cognizant of sin and the finitude of reason. But one could accommodate these concerns *within* St. Thomas's system of thought. Moreover, Finnis's belief that he can clear away St. Thomas's more substantive notion of the common good with a mere citation of Hume's naturalistic fallacy argument appears facile to say the least. St. Thomas's idea of prudence, assuming as it does his self-evident principles of action and his capacity of the moral agent to assess the value of singulars, including possibilities for civic friendship among one's fellow citizens, provides an answer to Hume more compelling than Finnis's response. Finnis, for his part, cannot be said to have demonstrated the metaphysics of obligation and will on which his own approach depends.

5. The Descriptive Concept of Law

Three elements comprise Finnis's descriptive concept of law: linguistic technique, the moral obligation to coordinate one's good with others, and the efficacy of a de facto pattern of rule-based coordination for the common good in the society at hand. The first of these elements represents Finnis's adoption of the idea of the law as a self-authenticating practice of observing rules as the source of peremptory reasons for acting (legal obligations) from Hart. And, yet the second and third elements show that Finnis seeks to avoid taking in the bargain Hart's assumption that law is only of instrumental value. By anchoring the law's descriptive intelligibility in the eighth requirement of practical reasonableness, Finnis purports to justify a vision of law as a linguistic technique and simultaneously (if covertly) a moral phenomenon. But can one coherently borrow Hart's idea of the law as a linguistic technique, while rejecting his insistence on its value neutrality?

Finnis alleges that the denial of the very connection of law and morality which Hart takes as axiomatic for the definition of law is actually a "game" serving hidden moral purposes. But Hart would certainly respond that Finnis's imputation of a moral significance to legal technique can be no more than elective. The law's subjects may or may not give it credence depending on the attitudes of participants.

Hart's critique exposes a deep logical flaw in Finnis's descriptive concept of law on its own terms. Finnis asserts that the eighth requirement of practical reason is the *necessary* basis of the law's descriptive meaning. Yet, Finnis also alleges that human agents act for basic goods in association with others not merely through law in Finnis's sense, but through every devisable instrumental means. They are capable of coordinating their interaction

without any necessary reference to the First Principle of Morality, much less any of its correlated requirements, including the Eighth.

On Finnis's own theory, a group of any size could deploy a system of linguistic rules aiming at legal obligation free of any but instrumental value. Their system of rules might advance, say the pre-moral basic good of "friendship," or in a theocracy, "religion." It could advance any combination of basic goods the particular group desired. No reason exists to exclude conceptions of the good in flagrant violation of one or more of Finnis's requirements of practical reasonableness. By the same token, a particular group might seek to further the common good in informal ways unrelated to the manner distinctive to law.²⁰

In truth, Hart would be correct. Finnis's links the law as linguistic technique with the eighth requirement of practical reasonableness purportedly as a matter of necessity, but actually in an elective choice. The choice is of Hart's "fidelity to law." Either Finnis elects this value himself and seeks to impose it on others, or he alleges that societies virtually universally elect this value, in fact. If his assertion is the latter one, the linkage remains accidental (like the one seen in Hart's minimum content of natural law).

Finnis asserts that legal technique bearing a necessary relation to moral purpose (the moral coordination of society), and that this moral purpose is self-evident in reason. He alleges also that this moral purpose is necessarily advanced by this technique. Finnis

²⁰ Ruth Gavison seems to make this same point, when she states that: "No one denies that strongly evaluative conceptions of Finnis' type may be helpful and useful in some contexts," but that Finnis's own methodology of concept formation, based in Weber, suggests that "there is nothing methodologically unsophisticated about advancing conceptions of law that are not morally evaluative." Ruth Gavison. "Natural Law, Positivism, and the Limits of Jurisprudence: A Modern Round" (review essay reviewing *The Authority of Law: Essays in Law and Morality* by J. Raz and *Natural Law and Natural Rights* by J. Finnis) *Yale Law Journal* 91 (1982): 1250-1285, 1268.

assumes this bilateral necessity without establishing it, in either direction. Moreover, Finnis's distinctive metaphysical postulates leave him without the means to establish this necessity.

Finnis departs from Hart in the more precise form he gives the concept of law as linguistic device. Their divergence on this point merits close attention because it discloses the mildly authoritarian tendency of Finnis's definition. Hart's concept of law as a linguistic practice requires that a system of rules, both exists as a matter of verbal formulae and as a matter of social observance. Hart refers to the latter dimension of law as its "efficacy." He describes it as a morally neutral pattern of de facto compliance. He substitutes this notion of efficacy for the earlier, inherently authoritarian, idea of the command of the sovereign, which Bentham and Austin espouse. Hart jettisons the more vertical definition found in Bentham and Austin, not merely from his linguistic analyses, but, by reason of his individualist and democratic aspiration.

Finnis, in fact, shifts the descriptive meaning of law back towards the direction of the vertical, somewhat authoritarian sense of Hart's precursors. He requires an efficacy of law, different from Hart's morally neutral reception of rules. His efficacy has the sense of a societal prime-mover *intentionally* implementing a true version of the common good as Finnis enunciates it.

St. Thomas's concept of civil law depends, in its own way, on a notion of moral obligation. The alternative which it, of course, provides, in this sense, to Hart's positivism is more coherent than the one Finnis offers. A comparison with Hart shows that the mild authoritarianism and fatal arbitrariness of Finnis's descriptive concept of law flow from his

distinctive concept of the common good. Finnis's difficulties in the area of coherence flow from his substitution of the idea of an essentially extrinsic coordination of individual performances in joint endeavors for St. Thomas's idea of an essential human fulfillment attainable through civic friendship.

Finnis sees law as pressing an extrinsic technique into the service of an abstract duty. St. Thomas understands law, including its linguistic dimension as a reality, inherently constituting the moral perfection of all the law's participants. The law is not a technique, but a living union of many minds, freely and reasonably sharing in a single idea of what is to be done, and, many wills virtuously inclined towards the realization of this common ideal.

According to Aquinas's concept of law the law cannot be considered in purely extrinsic terms. It inherently expresses a dialogic relationship with the character of civic friendship. Even in matters of utility and art, St. Thomas observes that the law's linguistic techniques, i.e. the law has the form of a precept, derive essential meaning from their relation to the reasonable pursuit of civic friendship.

The contrast between Aquinas and Finnis on the issue of the moral obligation to obey law underscores the element of authoritarianism in Finnis. For Aquinas, obligation is only a means to the end of the universal happiness which is the fulfillment of civic friendship. Even as means, its authority is contingent on the subjects' consent. Compliance with law, for its part, fulfills the law's subjects' capacity for happiness, by enabling him to participate in the bond of friendship devoted to the happiness of the whole community. Finnis's concept of law exhibits a tendency to conventionalism. With its emphasis on generalized obedience,

in contrast to the open play of moral discourse providing the context of St. Thomas's notion of the reception of law. St. Thomas denies that the law can be received formalistically, as Finnis and Hart propose that it can. He holds that the law can be understood and followed only within a moral order of peace, justice, social welfare, and personal virtue. St. Thomas's descriptive concept of law precisely defines the place authority has in a moral relationship.

6. The Law's Normative Evaluation

Finnis adopts Hart's language of human rights with the proviso that he uses it to express, no more or less, than the requirements of justice. Still, Finnis's notion of justice can be expressed fully in the language of rights, only because it is already a narrowing of St. Thomas's concept of justice. Finnis considers the requirements of justice to be procedures insuring the rectification of individual will. The goal is intrinsically individualistic. Thus, although he implies the opposite, Finnis's endorsement of individual rights language is other than accidental.

Aquinas summarizes his normative evaluation of civil law in terms not of rights but of virtue. The purpose of the law is to habituate its subjects in virtue by orienting them to the common good. Finnis cannot evaluate the law in these terms because he lacks the concept of virtue, even within the confines of individual moral life. And, he does not possess the ontology or metaphysics that would allow him to frame one. Aquinas conceives of law as habituating the agent's faculties to real fulfillment in common with others, yielding in each of the law's subjects the comprehensive social virtue, "legal justice." Finnis

envisions it as integral respect for concepts of reason, yielding a rectified will in each of the law's subjects.

Aquinas's virtue ethics encompasses a double set of evaluative criteria, i.e. prudence and justice. Finnis, by comparison, restricts his vantage on the rights and requirements of practical reasonableness, and so loses half of the scope of Aquinas's. He fails to integrate the perspective of prudence. This failure impoverishes Finnis's vantage in more than one way. It leaves it without the means of meaningful moral analysis of the more concrete requirements of peace and justice. It leaves the same lacuna regarding society's utilization of material resources. In sum, it cannot objectively evaluate its concrete and creative progress towards the fulfillment of civic friendship. Finnis leaves this question to the essentially emotivist lens of individual conceptions of the social good.

B. Foundational Commitments

The methodological framework, borrowed from Bernard Lonergan at the dissertation's outset, extends the idea of evaluation beyond dialectical critique to decision about the due starting points of theory. The present study has devoted much of its attention to interpreting Finnis on his own terms. It has sought to bring his work into clearer profile by dialectical comparison with two major alternatives. But its purpose is not one of perspectivism, not even critical. Its purpose, as announced at the outset, was to reach, where possible, conclusions about the reliable foundations of jurisprudence, relating to ethical theory and its notions of the good and justification.

This final chapter will now set these conclusions forth under the following headings:

1) principles of intelligibility in practical reasoning; 2) the character of moral obligation; 3)

the nature of justification; 4) the common good; 5) the descriptive nature of law; and 6) the law's normative evaluation.

1. The Descriptive Intelligibility of Moral Agency

Human reasoning about choice and action depends universally upon self-evident, invariant, and underived first principles for its intelligible direction. In this conclusion, Finnis appears correct. Hart is mistaken in asserting that the principles of choice and action are other, at least, than his value of self-realizing choice itself, merely the product of shifting emotive preferences of individual or society. Hart's denial of such universal principles of intelligibility appears to be not incidental, but to arise from the blinders of an unjustifiable preference for individual autonomy for its own sake.

But the influence of linguistic patterns and concrete societal practices on consciousness also have a role in mediating human awareness of these conceptual starting points. Such contingent influences may cause the agent to credit merely instrumental or concomitant enjoyments with the intelligibility actually deriving from some more primitive or basic level of knowing to which the agent may not have conscious access. Such apparent intelligibility is "parasitic" on buried knowledge. It can, nonetheless, very well serve as the first conscious principle of an individual's train of thought in a particular case. Here, there is a certain truth in Hart's characterization of the way plans of action receive their content.

Support for this conclusion can be taken from the example of the proliferation of basic goods in Finnis. Finnis misidentifies ends as basic goods, which St. Thomas Aquinas would hold to be instrumental goods or satisfactions associated with basic goods. Finnis's

performative version of basic goods, moreover, appears to reflect a cultural overlay rather than the intrinsic requirements of practical reason.

It is the work of ethical theory to clarify an account of basic goods. Such an account cannot rely alone on the agent's consciousness of the basic goods themselves, but it must paraphrase them, relying on linguistic terms and theoretical content drawn from both tradition and speculative metaphysics. Ethical theory's account can be evaluated for more than mere accuracy of introspection. It must be judged by the criteria of coherence, tradition, and theoretical integrity. Such evaluation would surely favor St. Thomas Aquinas's account of basic goods grounded in a metaphysics of being, in which "the good and being are convertible."

Finnis draws unjustifiably sharp distinctions between instrumental and basic goods, and between pre-moral and moral objects of action. With regard to the first distinction, the culturally conditioned elements of proposals for action, stressed by Hart, i.e. those relating to preferences for particular instrumentalities and concomitant pleasures, nonetheless, participate in the meaning of the first principles of action, in a way that makes them conduits for real human fulfillment, experienced merely as more or less remote from the basic modes of being human, to use St. Thomas's terminology.

Finnis's overly stoic approach misses the truth that "half the fun of the party is getting there." First, when shared they (like a glass of wine or a joke) can mediate friendship, that is, if they are savored together. In addition, they may contribute to a healthy equilibrium in the agent's emotional self, when chosen as virtuous means.

The character of Finnis's distinction between pre-moral intelligibility and moral obligation also appears mistaken. His assertion seems unsustainable that actions have an intelligibility without positive or negative implications for the agent's fulfillment as a human being. St. Thomas would appear correct that the first principle of human action is some envisioned enhancement of the agent's being, so that it has an inherently moral meaning, even though that meaning is not, as such, one of moral obligation.

Finnis is mistaken, as well, in implying that the first principles of practical reason can be applied in intuitive leaps, "willy nilly" as he likes to put it, without reliance on rational correspondences between the more specific idea of the good to be done and the characteristics of real objects to be attained through the application of the agent's powers. The intelligibility of action is not exhausted by reference to basic goods as cognitive first principles. It also derives from reliable inference of the real value of existent singulars for realizing the good promised in the concept. Speculative reason has a role to play in ethics at this point. Action aims at the agent's real fulfillment. In distinguishing basic goods from "mere" interests, Finnis concedes that the basic goods are "anthropomorphic" in the sense of always being specifically the insight of human reason. But, here Finnis does not go far enough. The good to be done can never be understood except as a means to the enhancement in being of a particular agent. Finnis's failure to grasp this truth leads him into an overly abstract notion of the good, and, as well, induces him to overstate his incommensurability thesis.

Finnis allows that the moral agent may commensurate diverse "instantiations" of the basic goods. According both to Aquinas and Finnis, such commensurations accord with a

standard which the agent ordains for his own happiness or, in Finnis's terms, for his "life plan." It occurs in the community's legal ordinances for the common good. Such commensuration is not, as Hart asserts, arbitrary. It is a means to the agent's fulfillment, individually and in community with others. The generic parameters of that fulfillment are objective, in either St. Thomas's or Finnis's sense of that term. But, in the pursuit of their own happiness, agents may weigh the number of children they will have against the amount of time they will spend as political organizers, without any compromise of rationality.

Finnis rightly rejects the commensuration of goods as the consequentialists pursue it. But, he fails to identify the more precise element in their commensurations which is objectionable. He is wrong to suggest that concrete instantiations cannot be commensurated. Agents have routine authority to engage in such commensurations for their own happiness. Nor are Finnis's expositions of the "willy nilly" violations of one incommensurable good by another in a concrete circumstance persuasive. St. Thomas's framework for analyzing wrongs flowing from contempt for the incommensurability of goods exposes the simplistic and obscure nature of Finnis's reasoning. The incommensurability of goods in most settings results from the incommensurability of the dignity of the persons possessing them.²¹ One may not involuntarily take a kidney from a donor to give to a scientist for study because the good of life and the good of knowledge are incommensurable. It is because the loss of the

²¹ Here the discussion arguably might better shift from the framework of self-perfecting intelligibility of action to an interpersonal one of moral obligation in the strict sense, but it will continue within the former framework for the sake of better tracking Finnis's treatment of the question.

kidney by a *person* is incommensurable with the gain of knowledge about the kidney by *another person*.²²

In some situations, the consent of the person making the sacrifice can supply the commensuration necessary to justify the transfer to the other. The donor may elect to transfer the good as a means to his own happiness. It could be fairly asked whether the donation of a kidney to science might provide an example. In other situations, the authorization of the state could supply the needed commensuration. An example would be the state expropriation of property from one person and its transfer to another. In such a case, the responsible authority's judgement regarding what is for the common good commensurates the gain and loss at stake.

Not even consent can prevent some forms of sacrifice from offending against the incommensurability of persons. Such is the case wherever the realized or "instantiated" good being taken is essential to the full functioning of the person. There are actions, moreover, whose intelligibility lies solely in self-fulfillment without any gain or loss to another. Finnis holds, and Aquinas agrees, that such actions may, under circumstances, be intrinsically violative of the teleology of self-perfection. Aquinas considers the wrongfulness of the act, strictly speaking, to arise from an implicitly interpersonal notion of moral obligation, i.e. the agent's accountability before God.

²² Kent Greenawalt's analysis of incommensurability tends to support my conclusion on this point. Kent Greenawalt, "Criteria for Political Action and the Duty to Obey the Law," *Catholic University Law Review* 36 (1986): 1-44, 15-23. Finnis is, nonetheless, correct that the incommensurability principle bars the adoption of the consequentialist thesis. This is true even after the principle of double effect is deployed to further restrict the absolute scope of harms that must be passively endured for the sake of moral integrity.

St. Thomas would hold that the agent may commensurate goods largely as he likes in pursuit of happiness, but that this freedom does not extend to the wanton destruction of a good without higher purpose. He also would hold that the agent may not destroy any aspect of his own being, even for a higher purpose. He may not commit suicide, for example. He may not donate both kidneys while alive to science. He may not subject himself to an experiment in brainwashing for the sake of science. If an agent wantonly preferred lower over higher goods, this too could be wrongful, even where it sacrificed no one's good but the agent's. An example would be the reading of comic books over available classics for no reason but sloth.

In a few cases –which happen to be central to the Christian moral life-- a commonly cited example being contraception, neither effecting any demonstrable tangible harm nor diminishing any faculty of the agent's being would still be wrong because it contradicts the self-evident principle that something is a basic good. This outcome occurs when the concrete matter, by nature, inherently and uniquely symbolizes the possibility of realizing the principle. Common examples are all from the sexual domain. If a couple were infertile and incapable of having a child, forms of nonvaginal intercourse would not entail a rejection of conception (it being, in any case, impossible) but they would still be wrong. In fact, St. Thomas would hold them to be the worst kind of acts because they would turn against a first principle of action itself. The harm, although intangible and indemonstrable would be real. The act would disrupt the agent's attitude of attending to the first principles of practical reason and also the habitual inclination of the agent's appetites and powers to follow that principle. In this train of thought, Aquinas assumes that practical reason can discern

meanings present in the operation of the agent's faculties and in external objects. These potential intangible harms place these faculties and external objects beyond the scope of the agent's creative interpretation of material circumstances in pursuit of happiness. An act undertaken for one reason (marital affection) is wrong because the good it advances is incommensurable with a good of which the faculty and external object necessarily remind the agent (procreation).

2. The Nature of Moral Obligation

Finnis appears persuasive in his foundationalist assertion that one can know moral obligation as a self-evident, underived first principle of human choice and action. And yet, he appears mistaken in holding that moral obligation can be understood in relation to the concepts of reason alone. In fact, moral obligation is only secondarily intelligible in relation to those concepts and the realization of fulfillment they mediate through choice and action. It is principally intelligible in relation to the interpersonal nature of reality and its real requirements. Just as the basic goods, in various ways, correspond to realities outside of the agent, so too, in its own way, does the first principle of moral obligation.

The reality to which this principle corresponds is, moreover, not merely that of other human agents as moral equals, it is also, necessarily, that of God as the ground of the agent's being. It is not possible to dispense with notions of God from an account of ethics as Finnis does, and at the same time, to preserve the scope he attempt to give moral obligation.²³

²³ My assumption is that natural theology in some form is sufficient to articulate a moral theory on this basis. But, it is possible that the thomistic approach I am endorsing is actually historically dependent on the Christian tradition. Elizabeth Anscombe, "Modern Moral Philosophy," in *The Collected Philosophical Papers*, vol. 3, *Ethics, Religion, and Politics* (Minneapolis: University of Minnesota Press, 1981), 30.

Specifically, Finnis's avowal of removing the notion of "law" from the concept of "natural law" hardly seems tenable. Noncognitivism has this much truth -that the experience of moral obligation transcends other forms of the experience of rational necessity. Without God, obligation necessarily has a less prominent role in moral reasoning, and even then obligation remains intelligible only in relation to the claims of other agents. Moral obligation is simply not intelligible as an element internal to reason. Understanding the transcendence which lends moral obligation its intelligibility necessarily depends on the analogical modes of reasoning St. Thomas employs, or on some parallel to them. Patterns of relationship, immanent in reason itself, such as those Finnis tries to establish, are not sufficient.

3. The Nature of Justification

Finnis appears persuasive in arguing that the morality of action is a matter of the proportion of means and ends willed within the abstract proposal for action. He also appears justified in holding that due proportion may be intrinsically lacking in the portion of the proposal describing the external action, and in asserting that this is alone enough to make an act immoral, apart from the agent's further intention or other consequences. Finnis defends the idea of intrinsically evil act, in keeping with the weight of Christian tradition. But, the intrinsic evil of such acts arises in a more specific manner than Finnis allows. In most cases, it arises from the principle of justice, which affirms the incommensurability of human dignity. In a few cases, it arises from the inherent meaning of certain external objects and human faculties for one or another basic good.

Moreover, the vantage of moral reasoning from which the agent assesses the morality of human acts is both more unified, and more diverse than Finnis allows. Regrettably,

Finnis's mistaken assumption that acts can have an intelligibility distinct from their value as means to the end of the person's fulfillment robs his system of its unity. The genus of human action presupposes a teleology of fulfillment rightly implying that every human act is subject to moral assessment. Finnis, nonetheless, creates an extensive separate class of intelligible action which is morally indifferent.

Finnis's sacrifice of unity does not, regrettably, result in a gain in genuine attention to complexity or subtlety. To the contrary, he narrows his conception of the whole of the moral life to the observance of obligation. This constriction excludes reference to ideals, aspirations, and, above all, virtue which are desirable elements in a comprehensive moral vantage. This loss of diversity in modes of moral reasoning flows from Finnis's fundamental mistake which consists of limiting his notion of self-perfection to the integrity of the will. Ethical reasoning needs a broader basis than that supplied by human fulfillment conceived as a quality of will. It requires the requisites of a reasonable integration of all of the moral agent's essential drives and powers, including those, although human and personal, are not specifically rational. The role Finnis assigns emotion as a general contrast negatively defining the appeal of obligation is not tenable. Emotion opposes reason only when reason first opposes itself.

4. The Concept of the Common Good

Finnis correctly assumes that an essential reference to any viable concept of moral obligation must include a concept of the common good. His aim of conceiving of the common good in a manner which allows for greater societal pluralism than does St. Thomas is a fair one. His caution regarding the dangers for human freedom poses by organic

concepts of the political or societal whole is well founded, as is his wish to question the warranted scope of St. Thomas's faith in the capacity of human reason to know the nature of true fulfillment in civic friendship.

However, Finnis's derivation of a notion of the common good from the duty to preserve the integrity of one's will yields an understanding of social and political life more constricted and constricting than St. Thomas's. The thomist tradition suggests that participation in the good of the community yields some essential fulfillment of the person, inclusive of his essential drives and inclinations, rather than merely an indirect means to individualized, interior self-perfection. Skepticism deriving from an awareness of the fallenness of human nature notwithstanding, the concept of fulfillment properly sustains the duty, not the duty the concept. Finnis does not succeed at synthesizing a concept of the common good which both elevates individual freedom and pluralism and advances a substantive vision of the political community because to do so would require grounding in political theory, metaphysics and theology, which are not sufficiently admissible in his system of ethics.

5. The Descriptive Nature of Law

Contemporary natural law theory appropriately aspires to retrieve a concept of the civil law which is grounded in the common good. Finnis's integration of an awareness of the linguistic dimension of legal precepts is, moreover, an exceptionally important contribution to natural law jurisprudence. His careful analyses in this area need to be, in some form, appropriated by a credible contemporary natural law jurisprudence.

As it stands, Finnis has insufficiently weaned Hart's idea of the social practice of law, as a morally neutral language game from its positivist roots. His reliance on Hart introduces an unacceptable extrinsicism into his descriptive jurisprudence.²⁴ The task of integrating the valid insights of linguistic philosophy into natural law reasoning requires a more adequate metaphysics than Finnis offers.

Its extrinsicism and mildly authoritarian bent are flaws in Finnis's descriptive concept of law. It is essential to the natural law perspective that even the descriptive fact of law begins, as both St. Thomas and Lon Fuller recognize, with the interpersonal relationships among lawgiver and subjects. It seems fairly certain that Finnis's acceptance regardless of his intention, of the idea of the law, as pure technique, ensures that he can never reach a concept of law truly inclusive of these relationships. A natural law concept of law, even as a descriptive matter, must rest upon a vision of the common good as some form of human fulfillment. Finnis's terms of moral obligation and the extrinsic coordination of action are not sufficient for this purpose. Even Lon Fuller's notion of the essential relationship of reciprocity between lawmaker and subject is superior to that which Finnis offers.

The systematic character of modern law is an important empirical feature of modern legal systems as Finnis suggests that it is. But, this feature of modern legal systems need predominate in the study of law only from the "lawyer's eye" view. Finnis unnecessarily makes it central to his theoretical concept of law. The more adequate descriptive meaning

²⁴ One notes that Finnis has a highly academic quality as a writer in jurisprudence. He incorporates Grisez's basic goods version of ethical theory, virtually without alteration. He similarly incorporates significant portions of Hart's British analytical concept of law without substantial alteration. Finnis's original theoretical contribution lies in his fashioning the terms of a synthesis of Hart and Grisez.

of law is to be discerned from a point of view other than that of the legal technician.²⁵ Once Finnis adopts the viewpoint of the legal technician, the narrowing of his perspective is too great to be corrected by the supplementary moral perspective of Grisez's basic goods theory.

6. The Normative Evaluation of Law

Finnis provides for the moral evaluation of law by means of a theory of justice. His restatement of Thomas and Aristotle on justice fulfills the desideratum in a contemporary retrieval of these sources. One can concur that Aristotle and St. Thomas both require some re-working to eliminate time-bound organicism from their underlying conceptions of the common good. Finnis usefully emphasizes the concept of equality as the consistent and dispassionate observance of principles of distribution and commutation, rather than of any particular substantive measure of allocation. And, he is right (for more than one reason) in declining egalitarianism, whether of Rawls or utilitarian provenance, as a substitute for the organicist concepts he eliminates.

However, Finnis's concept of the common good as a formal coordination of individual life plans leaves him without a fully credible moral orientation in the pursuit of justice. For example, it leaves him without an adequate standard of the minimal measures of justice, especially in distributions aimed at meeting basic human needs. Here, even favoring the distribution of the requisites of Hart's theory of personal autonomy signals, in its own way, what is missing in Finnis. The good to be advanced in common cannot be just

²⁵ Philip Soper seems to be making essentially this point in relation to Finnis, when he states: "But the positivists's predilection for certainty and ascertainability when it comes to identifying 'laws' (or rules or orders or norms) within a society cannot be carried over to this general level of legal theory as a reason to prefer whichever 'interpretation' is easier to apply." "Legal Theory and the Problem of Definition," (review essay reviewing *Natural Law and Natural Rights* by J. Finnis) *University of Chicago Law Review* 1170-1200, 1199.

the formal pursuit of action on behalf of the categories of basic goods, even on a consistent basis. It needs to include real and substantive fulfillment of persons in community.

Finnis's normative evaluation of law narrowly concerns itself with violations of justice. It stops short of offering a framework for evaluating the "regnative prudence" of lawmakers, pursuing the community's realization of flourishing. This reasoning necessarily has an open-texture in which moral and political evaluation, and the evaluations proper to justice, prudence and art move forward in an overall continuity of cross-connection. An independent reason for declining Finnis's option of premising all moral evaluation of law on an abstract moral duty, is that it unduly narrows the scope and diversity of relevant forms and sources of moral reasoning, and simultaneously introduces an unwelcome dichotomy into political and moral reasoning. While not incorrect in itself, Finnis's theory of justice is at least incomplete, since it lacks a foothold for true prudential judgments concerning substantive aspirations of the common good.

C. Final Conclusions

Even those who do not agree with John Rawls' book *A Theory of Justice* have praised it for the nobility which they perceive in its revival of a systematic critique of the justice of social and political institutions. Finnis merits similar appreciation for his work *Natural Law and Natural Rights*, since, in anglo-American circles at least, it has single-handedly revived the concept of comprehensive and unitary natural law moral theory sustaining the systemic moral evaluation of law and legal institutions, based on a general ethical theory.²⁶ Finnis's

²⁶ "Only yesterday it would have been quite difficult to find even a single legal, political, or moral philosopher of note who would not have dismissed natural law doctrine as being utterly discredited philosophically. This is not so today, especially since the publication of Professor Finnis' book. Indeed, this change in philosophical

jurisprudence is the same touchstone for natural law theorizing in anglo-American circles, that Rawls's work is for its sphere.

But, Finnis surely deserves more substantial recognition than this. His fidelity to the objectivity of reasoning about right and wrong, the unity of his reasoning about law and morality, and his openness to contemporary insight into the characteristics of both legal order and the intelligibly human maps a number of the essential criteria of a credible renewal in natural law thinking. In particular, his re-discovery of the idea of first principles of moral reasoning and moral obligation as underived, self-evident forms of cognition supplies an essential foundation to the renewal of natural-law thinking. On this point, Finnis's opponents would do well to puzzle a bit longer over what he is saying.

At the same time, Finnis, like others before him, suffers through the implicit influence of the very ideas he seeks to leave behind. At the very least, Finnis simulates an independence from metaphysics which, in fact, he does not possess. The outlines of his metaphysics, when brought to light, calls for fuller development. In view of the weaknesses outlined above, it would seem reasonable to question whether those metaphysics would be tenable, if they were adequately developed. As stated, Finnis's more specific concepts of morality and law lack the necessity he claims for them, reflecting instead what appears to be temperamental preference. Not infrequently, they appear to interfere with understanding the underlying but unstated sources of conviction at work in his conclusions on concrete questions of right and wrong. His claim of continuity with Aquinas regrettably will interpose

opinion apparently has been wrought by Professor Finnis almost singlehandedly." Henry Veatch; "Natural Law and the 'Is'-'Ought' Question," 251.

for some a new barrier to reading and understanding Aquinas accurately. If one were to name one leading cause of these weaknesses, it might be Finnis's unwarranted conception that reliable knowledge regarding moral truth and obligation resembles logical argumentation.

Finnis's merit lies, then, not in his proofs of truths which are of a nature to be known in a manner perhaps not admitting of logical proof, but rather in the meaning of his work for the tradition inspiring him.²⁷ Alisdair MacIntyre's notion of tradition-dependent ethics here may suggest the nature of the affirmation which can be accorded John Finnis. While Finnis's pre-modern precursor Thomas Aquinas still sets the standards of elegance, coherence, or persuasive intellectual appeal for the natural law tradition, Finnis's insistence on the salience of the notions of common good, the unbreakable tie between moral obligation and human fulfillment, and the objective morality of human acts makes its own essential contribution to the conditions of its revival.

²⁷ "Successful or not, I think this Grisez-Finnis position is singularly illuminating, and its failure can be most instructive." Henry Veatch, *Human Rights: Fact or Fancy* (Baton Rouge, La.: Louisiana State University, 1985), 96.

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