

The Thomistic Conception of Natural Law: Does It Commit the Naturalistic Fallacy?

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Abstract

Does Thomistic Natural Law theory commit the naturalistic fallacy? Ralph McInerny seems to think that Thomistic Natural Law, as Thomas Aquinas himself articulates it, escapes any potentially defeating criticism derived from the Naturalistic fallacy as described most notably by G. E. Moore and David Hume, which states that morality is not derivable from any natural property. The naturalistic fallacy, if successful in its purpose, deals a fatal blow to the school of moral philosophy that strives to adhere to traditional Thomism. In response to the criticism rooted in the Naturalistic fallacy, scholars like John Finnis insist that Thomistic Natural Law must, at the very least, undergo a re-articulation to answer this challenge. Their theory, new Natural Law Theory, subtly, but significantly departs from Thomism by replacing the *telos* with a deontological ethic. Thomistic Natural Law, traditionally understood, has much to offer contemporary philosophy in its own right—independent of newer, similar theories, and does not need any major revision to answer the challenge posed by either version of the naturalistic fallacy.

The Thomistic Conception of Natural Law:
Does It Commit the Naturalistic Fallacy?

In the history of Western civilization the concept of Natural Law has permeated the writings of political scientists and philosophers alike. Natural Law theory as conceptualized by Thomas Aquinas (1225-1274) most accurately accounts for the manner in which man moralizes and in turn formulates positive law, by insisting that ethics are necessary for the formation of a legal system.¹ Natural Law as understood by Classical Realism is intuitive and universal—everyone everywhere recognizes it. Thomas Aquinas asserted that Natural Law is accessible to everyone through the exercise of human reason. He also understood positive law as a manifestation of the Natural Law which itself extends from the nature of God; it is imprinted onto the ordered structure of the cosmos and accessible to rational man either through introspection or through observation of the order, logic, and morality of the universe. As a rational creature, man is capable of ascertaining what constitutes an ethical way of life. Aquinas argues that, since human beings are by nature rational beings, it is morally appropriate that they should behave in a way that conforms to their rational nature.² From this Aquinas derives his concept of moral law as formulated from the nature of human beings.³

One of the most challenging criticisms leveled at Natural Law theory as a whole, and ostensibly most devastating to Thomistic Natural Law theory, the naturalistic fallacy

¹ John Finnis. *Aquinas: Moral, Political, and Legal Theory (Founders of Modern Political and Social Thought)*. (New York: Oxford University Press, USA, 1999), 3.

² Frederick C. Copleston, *Aquinas*, Pelican philosophy series. (Harmondsworth, Middlesex: Penguin Books, 1955), 223.

³ Thomas Aquinas, *Saint Thomas Aquinas Aquinas, the Treatise On Law: [being Summa Theologiae, I-II; QQ. 90 through 97]*, trans. R J. Henle (Notre Dame: University of Notre Dame Press, 1993), 160.

as formulated by G. E. Moore in his seminal book, *Principia Ethica*.⁴ Moore's naturalistic fallacy is closely related, but not identical to David Hume's earlier formulation. Scholarly use of the locution "naturalistic fallacy" often fails to convey clearly a univocal meaning. The phrase can refer to either a theory proposed by Hume (also denoted as the Is-Ought Problem), or a related (but not identical) one presented by G.E. Moore in *Principia Ethica*. Conventional scholarly usage, such as that of Antony Flew's also seems to allow for the conflation of the Humean and Moorean versions.⁵

Clarification of Terms

The confusion created by the indeterminate meaning of "naturalistic fallacy" requires clarification. When critics of Natural Law theory accuse Aquinas of committing the naturalistic fallacy it is difficult to determine which fallacy or what combination of fallacies is referenced. In this thesis, a special effort will be made to elucidate the meaning of an author's reference to the naturalistic fallacy. Moore's version will be referred to as the Definist fallacy, and Hume's as the Is-Ought Problem.

Both the Humean version and Moore's Definist fallacy served as catalysts, prompting John Finnis and Germaine Grizes, to rehabilitate Thomistic Natural Law theory by creating the New Natural Law theory.⁶ Other more traditional Thomists like Russell Hittinger, Alasdair MacIntyre, Ralph McInerny, Henry Veach, and Anthony Lisska attempt to counter the criticisms of Hume, Moore, or both to maintain the validity and relevance of Thomistic Natural theory. Both the New Natural Law theorists and the more traditional Thomists agree that contemporary philosophy has, as a general rule, too

⁴ G. E. Moore, and G. Scott Davis, *Principia Ethica*. (New York: Barnes & Noble Books, 2005), 43-44.

⁵ Antony Flew, *A Dictionary of Philosophy* (New York: St. Martin's Press, 1979), 240-41.

⁶ Joseph Boyle, "Natural Law and the Ethics of Tradition" in *Natural Law Theory*, ed. Robert P. George (New York: Oxford University Press, 1992), 7.

hastily dismissed Thomistic Natural Law theory for other theories of Natural Law, or even legal positivism.

Different Natural Law Solutions

The more traditional Thomists disagree with Finnis and the New Natural Law theorists regarding how Aquinas's *Treatise on Law* ought to be interpreted. The New Natural Law theorists insist that either one or both of the articulations of the naturalistic fallacy are devastating for Thomistic Natural Law (traditionally understood). The more traditional Thomists adamantly adhere to the traditional understanding of Thomistic Natural Law theory. Both schools of thought insist that their interpretation most faithfully translates Thomistic Natural Law Theory into an analytic or contemporary philosophical context.

Thomistic Moral Theory

Thomas Aquinas merged what he considered to be the best element of Stoic ethics, namely their conception of the cosmic *logos*—the guiding, logical, natural order in the world—with the Aristotelian notion of the final *telos* or purposeful end of every object.⁷ He thought that a theory of Natural Law which combined these two elements, could most accurately account for both the natural state of man and the rational ethic man ought to follow.⁸ In other words the Thomistic ethic is both eudaimonistic and teleological.⁹

⁷ A G. Sertillanges, *The Intellectual Life: Its Spirit, Conditions, Methods*, A Newman paperback (Westminster, Md.: Newman Press, 1959), 23.

⁸ Louis P. Pojman, *Ethics: Discovering Right and Wrong*, 5 ed. (Belmont, CA: Wadsworth Publishing, 2005), 45-46.

⁹ Frederick Copleston, *Medieval Philosophy From Augustine to Duns Scotus*, New edition ed., vol. 2 of *A History of Philosophy* (New York: Image, 1993), 398.

The Overlap Thesis

Natural Law theory accepts that law can be spoken of in both a factual sense of actual social power and practice and as a set of ethical reasons for an action. Legal positivism as a Natural Law theory criticizes what it perceives as an unfounded synthesis of two distinct understandings of Natural Law—descriptive and ethical. Natural Law theorists attempt to incorporate both of these into one cohesive system. So within this basic understanding of Natural Law there is an important distinction to make between two theories: Natural Law moral theory and Natural Law legal theory. Thomas Aquinas argues that the discussion and study of Natural Law theory belongs simultaneously in two areas of philosophy, advocating an overlapping system that bases positive law on the foundation of ethics.

The *Summum Bonum*

One of the most important phrases in the moral philosophy of Thomas Aquinas is in this famous dictum. “[B]onum est faciendum et prosequendum, et malum vitandum.”¹⁰ That is, “good is to be done and pursued, and evil avoided.”¹¹ A proper understanding of what Thomas means by the term “good” provides the key to discovering how Thomistic moral philosophy ought to be understood. The *Summum Bonum*, the Highest Good, God Himself, informs all of Thomistic thought. If human happiness consists in *theoria*, in contemplation of the “highest and noblest object,” then happiness lies intrinsically in contemplating God, Himself.¹² Goodness, for Thomas Aquinas has its locus in the very nature of God.

¹⁰ Thomas Aquinas, *Summa Theologiae*. Corpus Thomisticum, <http://www.corpusthomisticum.org/sth2094.html> (accessed February 1, 2011). I-II 94.2 *Respondeo*

¹¹ Translation my own.

¹² Copleston, *Medieval Philosophy From Augustine to Duns Scotus*, 398.

Though this might seem too explicitly religious a basis for an ethical (and by extension) Natural Law theory, one must keep in mind that God as the *Summum Bonum* is the focal point for all of Aquinas's writings. Any attempt to interpret the vast body of his work apart from an awareness of the most essential scaffolding upon which he forms and hangs his complex philosophy, does him a great disservice. A thorough understanding of Thomistic moral theology and by extension Natural Law depends first upon a fair and accurate understanding of what Thomas Aquinas taught and wrote. Further criticism of fundamental Thomistic assertions remains within the realm of external retrospection, and as such extraneous to the present concern of understanding Thomistic philosophy on its own.

Thomistic Vocabulary

The section of the *Treatise on Law* that most pertains to the question at hand is Question 94: "Concerning the Natural Law." In the first Article of this question Aquinas describes the teleology that provides the basis for his Natural Law system, while also elucidating the manner by which the intellect comes to recognize Natural Law. This Question will provide the majority of material for exegesis:

For it is said, that everything to which a man is inclined by his nature pertains to the Natural Law. Now, each thing is inclined naturally to an operation which is suitable to it in accord with its form, thus fire is inclined to give heat. For this reason, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason.... Therefore this is the first precept of the law; that which is good is to be done and pursued, and evil avoided. Upon this principle all

other precepts of the law are based: so all the things that Practical Reason apprehends as man's good, pertains to the precepts of Natural Law.¹³

This excerpt from the *Summa Theologiae* is drawn from perhaps the most important passage in the *Treatise of Law* and provides the context for discerning the proper interpretation of Aquinas's Natural Law theory. Any attempt to evaluate Thomistic Natural Law requires a careful placement of this Natural Law theory in the greater context of Thomistic moral philosophy.¹⁴ The entire body of Aquinas's moral thought provides the necessary foundation for any exegetical insights into the *Treatise on Law*.

Speculative and Practical Reason

All men have the same, basic rational capacities, so it would seem that the Natural Law would manifest itself in the same manner to everyone. Aquinas argues in Question 94, Article 4 that the Natural Law is universally accessible to everyone. He uses his careful distinction between speculative and practical reason as his means for elaborating how the Natural Law can at once be universally the same, and express itself differently in particular situations.¹⁵

Speculative reason is engaged with "necessary things, which cannot be otherwise."¹⁶ Practical reason, however is preoccupied with contingent matters, and "therefore, though there is some necessity in the universal principles, the more we

¹³This translation is my own. (Thomas Aquinas, *Summa Theologiae*. Corpus Thomisticum, <http://www.corpusthomisticum.org/sth2094.html> (accessed February 1, 2011). *Treatise on Law* Q 94.)

¹⁴ John Finnis, *Natural Law and Natural Rights* (Clarendon Law Series) (New York: Oxford University Press, USA, 1980), 398.

¹⁵ Aquinas, trans. R. J. Henle *Saint Thomas Aquinas Aquinas, the Treatise On Law*, 260.

¹⁶ *Ibid*, 261.

descend to matters of detail, the more frequently we encounter defects.”¹⁷ In matters of action, which Natural Law encompasses, “Truth and or practical rectitude is not the same for all, as to matters of detail, but only as to general principles....”¹⁸ Neither is “truth or rectitude” the same for all nor, where it is the same, is it equally known by all.¹⁹

Speculative reason concerns itself with obtaining knowledge to understand and explain reality, in the manner of syllogisms, definitions, and judgments. The first principles of speculative reason are self-evident, indemonstrable principles (i.e. “Being is;” the law of non-contradiction). Practical reason governs knowledge which pertains to action, and carrying out the “good” requires the cooperation of the will, and begins with the end, the *telos*. The first principles of practical reason are analogous to the first principles of speculative reason. So the speculative principle: “something cannot both exist and not exist in the same place in the same way” is analogous to the *synderesis* rule, “good is to be done and pursued and evil avoided.”²⁰

Aquinas offers an example of a situation where a general principle seems to be contradicted. He refers to the general principle that anything that is borrowed should be returned to its original owner. “This is true for the majority of cases: it may happen, however, in a particular case that it would be harmful, and therefore, unreasonable, to restore goods held in trust.”²¹ He then provides a specific instance in which it would be wrong to restore borrowed property to its original owner: “For instance if they are claimed for the purpose for fighting against one's country.”²² The Natural Law, then, can

¹⁷ Ibid, 260-261.

¹⁸ Ibid, 261.

¹⁹ Ibid.

²⁰ Ibid, 248.

²¹ Ibid.

²² Ibid.

manifest itself rather differently in particular circumstances. Therefore, particular differences merely suggest that as one is further removed from the basic principles legitimate differences in opinion emerge, and emerge with greater frequency.

Aquinas asks Question 94, Article 5: “Whether the Law of Nature Can Be Changed?”²³ He answers that “with regard to the first principles of Natural Law, the Natural Law is altogether unchangeable,” yet regarding the “secondary principles” or particular circumstances, the Natural Law remains unchanged, but can manifest itself in different ways.²⁴ In addition, Natural Law may be augmented “for the benefit of human life” and is supplemented “both by the Divine law and by human laws.”²⁵ In other words, the Natural Law can be supplemented as far as dictating the proper course of action for a particular case, but this does not entail a “change” of the law.

Aquinas is forced, however, to explain some difficult events in Scripture, as when God commanded Abraham to slay Isaac or the prophet Hosea to take a “wife of fornication.”²⁶ Or even more problematically, the genocidal decrees God makes to the Israelites. How does Aquinas explain? “By the command of God, death can be imposed on any man, guilty or innocent, without any injustice whatsoever.”²⁷ Nevertheless, Aquinas is not asserting that these exceptional cases are not additions to the Natural Law, but that as additions they do not change the law.

Precepts

Aquinas asserts that Natural Law has basic, guiding precepts by which the Natural Law is discovered by the human intellect. In other words, just as certain “principles” of

²³ Ibid, 268.

²⁴ Ibid, 269

²⁵ Aquinas, *Summa Theologiae*. I-II Q. 94. A. 5.

²⁶ Aquinas, trans. R J. Henle *Saint Thomas Aquinas Aquinas, the Treatise On Law*, 268.

²⁷ Ibid, 269.

speculative reason exist similar to the law of non-contradiction, in the same way principles of Natural Law exist. These principles are self-evident, in one of two ways: either they are “self-evident in themselves” or they are “self-evident to different people.”²⁸ The three most basic principles of Natural Law are as follows:

I. Good is to be done and pursued, and evil avoided.²⁹

II. The procreation and the education of offspring ought to be pursued.³⁰

III. Humans goods are those goods to which humans have natural inclinations (i.e. to “know the truth about God” and the achievement of societal harmony).³¹

Different Kinds of Law

Aquinas distinguishes between four different types of law which necessitate his use of the word “law” analogously between the distinct definitions.³² Many of the misunderstandings of his theory originate from an improper characterization of his use of the word “law” as univocal rather than analogical. The strength of Thomistic Natural Law theory lies in the careful distinctions between Eternal Law, Natural Law, Human Law, and Divine Law.

Eternal Law

The first type of law that Aquinas addresses is eternal law. Eternal Law is the ideal order and design of the universe in the mind of God—“The very Idea of the government of things in God the Ruler of the universe.”³³ There are two sides to this Thomistic conception of eternal law. In one sense this law is transcendent, utterly

²⁸ Ibid, 245.

²⁹ Aquinas, *Summa Theologiae*. I-II Q. 94. A. 2.

³⁰ Ibid.

³¹ Ibid.

³² Aquinas, trans. R J. Henle *Saint Thomas Aquinas Aquinas, the Treatise On Law*, 149.

³³ Ibid, 154.

ineffable and integrated within the mysterious divine nature. In another sense Eternal Law is immanent and accessible as it permeates the entire universe—it is the basic, orderly structure of the *cosmos*.

Natural Law

The second type of law, Natural Law, is observed in the human inclination to do good and avoid evil. “It is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them....Wherefore [human nature] has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the Natural Law.”³⁴ Natural Law enables humans to participate in the Eternal law—it is the universal, human, moral impulse.

Human Law

The third type of law that Thomas Aquinas introduces is Human Law. Human Law is essentially temporal law, or positive law—the application of Natural Law to legal systems. Human Law is man-made and created by governments for the practical organization and regulation of society. Traffic laws and courtroom regulations are examples of Human Law. Aquinas argues that there is no Human Law in an ontological sense—Human Law is a convention. However for conventional or positive law to be just, it must be in agreement with Natural Law by logical extension and reflection.

Divine Law

The fourth type of law that Thomas Aquinas introduces is Divine Law, whose jurisdiction specifically and exclusively entails special revelation.³⁵ Divine Law includes

³⁴ Ibid, 159-160.

³⁵ Ibid, 166-167.

those laws only accessible to men through Scriptures or Church Tradition, and consists of a unique set of specific and direct divine commands. Divine Law is specifically needed for four reasons:

- I. Man's final and last end, his *telos* transcends the mere natural;³⁶
- II. There is a need in any ethical system for dependable and accurate moral principles;³⁷
- III. God alone has the ability to judge one's internal disposition and motive.³⁸
- IV. "Human Law cannot punish or forbid all evils."³⁹

Interaction Among the Different Laws

In the Thomistic conception of these four laws, divine commands will always be perfectly consistent with God's nature which is revealed in the cosmos. The distinctions and analogies that Aquinas offers between the four different types of law provide the form and structure for his Natural Law theory. Natural Law functions as one aspect of Aquinas's conception of law. Thomistic Natural Law has to be understood within the context of the greater system of which it is a small, but important part.

Criticisms of Natural Law Theory

One of the most challenging criticisms leveled at Natural Law theory as a whole, and Thomistic Natural Law theory in particular, is the naturalistic fallacy as formulated by G. E. Moore in his seminal book, *Principia Ethica*.⁴⁰ Though chronologically later than Hume's Is-Ought Problem, Moore's Definist Fallacy, could arguably function as the more general fallacy of which the Is-Ought Problem is a specific instance. Hume's

³⁶ Ibid, 171.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Moore, and ed. G. Scott Davis. *Principia Ethica*, 43-44.

iteration lodges a logical criticism against Natural Law theories, whereas Moore constructs a strictly analytic, linguistic problem for Natural Law theorists.

David Hume's Is-Ought Problem

David Hume describes the Is-Ought problem as a type of criticism against any Naturalistic ethic.⁴¹ He illustrates what he sees as a logical fallacy inherent to it. He asserts that nearly all of the preceding Naturalist ethicists have illicitly derived prescriptive statements from descriptive statements.

In every system of morality which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surprised to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, it is necessary that it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it.⁴²

Latent in this excerpt from Hume's, *A Treatise on Human Nature*, is his assertion that it is illogical to derive an "ought" from an "is," a prescription from a description, a

⁴¹ The author uses the term "Naturalistic" to mean that Cognitivist, meta-ethical category, which asserts that the "good" is derivable in at least some sense from natural properties.

⁴² David Hume, *A Treatise of Human Nature (Oxford Philosophical Texts)* (Oxford: Oxford University Press, USA, 1740), 178.

moral value from a fact. A simple, logical illustration will serve to elucidate Hume's meta-ethical point:

(1) a. Maria is in need of a 1300 on her GRE in order to get into her graduate school of choice.

(2) a. Maria can get a 1300 on her GRE if she cheats.

Hume asks: Can we logically infer the following conclusion?

(3) a. Maria ought to cheat on her GRE.⁴³

Or, more simply:

(1) b. *Factual premise*

(2) b. *Factual premise*

(3) b. *Prescriptive conclusion*

Hume insists that both these arguments are invalid as neither conclusion (3)a nor conclusion (3)b can be logically inferred from premises (1)a and (1)b and (2)a and (2)b, respectively. According to Hume, the reason that conclusion (3) is illicitly derived from premises (1) and (2) is because this argument moves from a descriptive premise to a prescriptive conclusion without a major prescriptive premise. Thus far Hume's point seems perfectly legitimate—he is merely stating a logical rule of inference. His essential criticism focuses upon a lack of clarity in the philosophical writings he encountered. If Hume's Is-Ought Problem is merely a logical one wherein a premise is absent from an argument, then Hume's Is-Ought Problem allows for a fairly easy loophole for the

⁴³ This paradigm for this illustrative argument is drawn from: (Pojman, Louis P. *Ethics: Discovering Right and Wrong*. 5 ed. Belmont, CA: Wadsworth Publishing, 2005. pg. 209).

Natural Law theorist.⁴⁴ The only step necessary to resolve the logical problem Hume presents, is to insert a major premise into the argument he criticizes.

- (1) Maria is in need of a 1300 on her GRE in order to get into her graduate school of choice.
- (2) Maria can get a 1300 on the GRE if she cheats.
- (3) Anyone who needs a 1300 on their GRE ought to cheat.

Therefore,

- (4) Maria ought to cheat on her GRE.⁴⁵

Hume criticizes any type of Naturalism which derives an “ought” from an “is.”

The appropriate response to this criticism, as demonstrated syllogistically, is merely to assert that there is an implied “oughtness” in many factual statements. A simple insertion of a prescriptive premise corrects the form and clarifies the meaning of the argument.

Prominent, contemporary Thomist, Ralph McInerny, in response to Hume, merely asserts that there is value in the universe, and that factual information in many cases entails evaluative information.⁴⁶ In addition, prominent Virtue Ethicist and Aristotelian Philippa Foot, seems to think that Hume is simply wrong when he asserts that factual statements are utterly distinct from evaluative statements.⁴⁷ Aquinas would respond similarly. He would assert that the teleological nature of humanity and all of creation in itself,

⁴⁴ “Naturalist” in the sense of the ethical school under the umbrella of the Cognitivists, and in direct contrast to Non-Naturalism.

⁴⁵ This paradigm for this illustrative argument is drawn from: Pojman, Louis P. *Ethics: Discovering Right and Wrong*. 5 ed. Belmont, CA: Wadsworth Publishing, 2005. pg. 212.

⁴⁶ Ralph M. McInerny. *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas*. (Washington, D.C.: Catholic University of America Press, 1997), 48.

⁴⁷ Philippa Foot *Virtues and Vices: And Other Essays in Moral Philosophy*. (Berkeley: University of California Press, 1981), 70.

demonstrates that the prescriptive is often interwoven into the descriptive.⁴⁸ If everything has a specific purpose for which it is designed specifically, if the universe is inherently charged with and undergirded by Divine order and structure, then creation on a trajectory toward its *telos* entails an inherent moral standard written into the structure of the universe.⁴⁹ Applying this insight to the example cited above, if cheating is not in accord with Maria's *telos* as a human being in a human society because it involves a) stealing from her fellow test-takers, b) lying to her future administrators and employers, and c) losing (at least temporarily) her fellowship with her Creator (which is the ultimate purpose of her existence), then the act of cheating can be seen to be objectively contrary to the law that is written in human nature.

Hume's criticism of Naturalism, as a primarily logical one seems to attack the lack of clarity in the writings of the Naturalist philosophers of his day. The Is-Ought Problem as a logical critique of Naturalism, appears to criticize a very poor articulation of such a theory.⁵⁰ At the very most, Hume's criticism is merely a counter-assertion to the Naturalistic and Thomistic assertion that the universe is inherently eudaimonistic and teleological. Moore's naturalistic or Definist fallacy enlarges upon the debate that takes place in the discursive space that exists between these two assertions.

⁴⁸ Aquinas, *Saint Thomas Aquinas Aquinas, the Treatise On Law: [being Summa Theologiae, I-II; QQ. 90 through 97]*, trans. ed. R.J. Henle, 63.

⁴⁹ Janet Coleman, "MacIntyre and Aquinas" in *After MacIntyre: Critical Perspectives On the Work of Alasdair MacIntyre*. Edited by Horton, John, and Susan Mendus, (Notre Dame, Ind.: University of Notre Dame Press, 1994), 72.

⁵⁰ McNerny, *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas Aquinas*, 56.

G.E. Moore's Definist Fallacy

Moore's attempt to do away with any naturalistic ethic, hinges on his argument that the "good" cannot be defined—at least in naturalistic terms.⁵¹ "Whatever definition be offered, it may be always asked, with significance, of the complex so defined, whether it is itself good."⁵² As an intuitionist Moore denies any natural basis for the "good," which is *sui generis*, simple, and unanalyzable.⁵³

Moore's Definist problem, the naturalistic fallacy, arises in any attempt to answer the question "What is Good?" with a naturalistic answer. Commentator Arthur N. Prior describes Moore's Definist problem:

[The naturalistic fallacy works under] the assumption that because some quality or combination of qualities invariably and necessarily accompanies the quality of goodness, or is invariably and necessarily accompanied by it, or both, this quality or combination of qualities is identical with goodness. If, for example, it is believed that whatever is pleasant is and must be good, or that whatever is good is and must be pleasant, or both, it is committing the naturalistic fallacy to infer from this that goodness and pleasantness are one and the same quality. The naturalistic fallacy is the assumption that because the words 'good' and, say, 'pleasant' necessarily describe the same objects, they must attribute the same quality to them.⁵⁴

⁵¹ D. F. Wright, "Diagnosing the Naturalistic Fallacy: Principia Ethica Revisited." *Southern Journal of Philosophy*. 1994 (32, no. 4: 465), 474.

⁵² Moore, and ed. G. Scott Davis, *Principia Ethica*. 67.

⁵³ Anthony J. Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction*. (Oxford: Clarendon Press, 1996), 62.

⁵⁴ Arthur Prior. *Logic and the Basis of Ethics*. (Oxford: Oxford University Press, 1949), 1.

Prior summarizes Moore's Definiest fallacy accurately. This fallacy applies to the relationship between those things denoted as "good" and the definition of the "good" itself.⁵⁵ According to Prior, Moore asserts that to commit the Definiest fallacy is to assume that the good is at all definable.⁵⁶ Though there is some continued debate over the definition and application of Moore's articulation of the Definiest fallacy, for present purposes Prior's definition seems to convey a sufficiently accurate explanation.

Moore's argument begins with his suspicion that Utilitarianism (or any sort of Naturalistic ethic) depends on a logical error. To this end he formulates the Open Question Argument. This argument takes the form of *modus tollens*.

- (1) If chocolate is the good, then the question "Is chocolate good?" is meaningless.
- (2) The question "Is chocolate good?" is not meaningless (i.e. it is an open question).
- (3) Therefore, chocolate is not (analytically speaking) equivalent to good.

Whereas: *modus ponens*

- (1) a. If John is a bachelor, then the question, "Is John married?" is meaningless.
- (2) a. John is a bachelor.
- (3) a. Therefore, the question, "Is John married?" is meaningless.
- (4) a. Therefore, "good" and "chocolate" do not have the same relationship that the terms "bachelor" and "married" do.⁵⁷

The Open Question Argument claims that any endeavor to define the term "good" using some set of empirical, natural properties always forms an open question. Moore

⁵⁵ McInerney. *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas*. 49.

⁵⁶ Prior. *Logic and the Basis of Ethics*. 1.

⁵⁷ Lisska. *Aquinas's Theory of Natural Law: An Analytic Reconstruction*. 60.

illustrates a counter-example by citing the description of a horse which can be described and defined by its make-up of different natural properties (legs, tail, head, and hair).⁵⁸ Moore concludes that moral properties cannot be equated to, made up of, or described as parts of natural properties.

Anthony Lisska, after analyzing Moore's Definist fallacy, notes the different Natural Law theory criticisms of Moore and Hume. He mentions two different Natural Law answers to the charge of the Definist fallacy. John Finnis, Joseph Boyle and Germain Grisez formulate an almost Kantian Thomism, whereas Anthony Lisska, Ralph McInerny, Henry Veatch, and (to a less precise degree) Alasdair MacIntyre attempt to defend a more authentic or traditional Thomism.

The New Natural Law Response

In many ways New Natural Law Theorists agree with the traditional Thomists in their interpretation of Thomistic Natural Law. A discussion of the differences in interpretation and articulation of Thomistic Natural Law and the subsequent review of the different reactions prompted by varying contemporary criticisms rooted in the naturalistic fallacy help to illustrate the nuances in opinion among Natural Law theorists.

Response to Hume

The New Natural Law theorists argue that Thomistic Natural Law cannot withstand the barrage of analytic criticism—at least in its traditionally understood form. John Finnis, Germaine Grisez, and Joseph Boyle are the three most prominent New Natural Law theorists.⁵⁹ Finnis, in particular, superimposes a quasi-Kantian concept of practical reason onto Thomistic Natural Law theory, insisting that basic human goods are

⁵⁸ Moore, and ed. G. Scott Davis. *Principia Ethica*. 67.

⁵⁹ George, "Natural Law and Human Nature," in *Natural Law Theory: Contemporary Essays*. (Oxford England: Clarendon Press; 1992), 31.

self-evident.⁶⁰ Finnis attempts to restructure Natural Law in order to account effectively for two important concerns in the contemporary philosophical context. These two issues are: Hume's Is-Ought Problem, and the contemporary perspective on substance, or essence.⁶¹

In fact, Finnis and Grisez have asserted in almost Kantian or Cartesian fashion that Natural Law theories must eschew invalid deductions (i.e. the Humean Is-Ought). They merely assert that traditional Thomism does fall prey to the Is-Ought Problem and they modify Natural Law theory accordingly. "There can be no valid deduction of a normative conclusion without a normative principle, and thus ... first practical principles cannot be derived from metaphysical speculations."⁶² In other words, Finnis and Grisez see no way to maintain a traditional conception of ontology in Aquinas's writings, which ties into Finnis's second area of concern: "a modern view of essence or substance."⁶³

Self-Evidence

The New Natural Law theorists insist that Thomism as interpreted by McInerny, Veatch, and others, assumes a definition of "essence" or "substance" that is medieval, and anachronistic. That is, in its traditional sense, Thomistic Natural Law cannot withstand contemporary criticism, nor does it articulate in the appropriate analytic language, a conception of essence that at all coheres with Descartes' project and further developments by Quine and Russell.⁶⁴ Finnis subtly restructures Thomistic Natural Law so that self-evident, incommensurable principles take the place of Aquinas's conception

⁶⁰ Lisska. *Aquinas's Theory of Natural Law: An Analytic Reconstruction*. 186.

⁶¹ *Ibid*, 161.

⁶² John Finnis and Germaine Grisez, "The Basic Principles of Natural Law: A Reply to Ralph McInerny." *American Journal of Jurisprudence*, 26 (1981), 24.

⁶³ Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction*. 162.

⁶⁴ *Ibid*.

of self-evidence (*per se nota*) and *synderesis* (“the law of our intellect insofar as it is a *habitus* containing the precepts of natural law which are the principles of human acts.”)⁶⁵

Finnis writes:

Aquinas asserts as plainly as possible that the first principles of natural law, which specify the basic forms of good and evil and which can be adequately grasped by anyone at the age of reason (and not just by metaphysicians) are *per se nota* (self-evident) and indemonstrable. They are not inferred from speculative principles. They are not inferred from facts. They are not inferred from metaphysical propositions about human nature, or about the nature of good and evil, or about the function of a human being, nor are they inferred from a teleological conception of nature or any other conception of nature. They are not inferred or derived from anything.⁶⁶

The type of self-evident principles that Finnis refers to are different, albeit subtly, from the traditional Thomist understanding. As already mentioned, Aquinas believed in an inherently rational structure by which man ascertains basic morality. *Per se nota*, according to Aquinas, does not mean “self-evident” in the same way that Descartes, Kant, Russell, Quine, and ultimately, Finnis use that term. Outside of the *Treatise on Law*, in the *De Veritate* (“On Truth”), Aquinas describes his conception of self-evidence as follows:

Just as there is a certain natural *habitus* of the soul whereby it knows the principles of speculative science, which we call the understanding of the

⁶⁵ This translation is my own. (Thomas Aquinas, *Summa Theologiae*. Corpus Thomisticum, <http://www.corpusthomisticum.org/sth2094.html> (accessed February 1, 2011). I–II, 94, 1, ad 2.

⁶⁶ Finnis, *Natural Law and Natural Rights*. 33–34.

principles, so too in the soul is there a certain natural *habitus* of the first principles of actions, which are the natural principles of natural law; and this *habitus* pertains to *synderesis* and exists in no other power than reason.⁶⁷

Thomistic self-evidence, then, cannot be interpreted properly in light of the typical, modern, rationalist understanding of self-evidence. Aquinas would not define self-evidence in the narrow sense that modern philosophy, probably since Descartes, and certainly since Kant has been accustomed to do. The Thomistic conception of self-evidence distinguishes between two different understandings: “intrinsic self-evidence and self-evidence with regard to people.”⁶⁸ Aquinas distinguishes between propositions which are known by all, and propositions which require diligent study or a requisite amount of wisdom: “Some propositions, however, are known only to the wise who understand the meaning of the term....it is self-evident [*per se notum*] that an angel is not circumscriptively in a place, but that is not manifest to the unlearned who cannot grasp it.” Therefore, when Finnis and others attempt to interpret consistently *per se nota* as a specific kind of Cartesian or Kantian “self-evidence,” they are failing to take into account Aquinas’s looser use of *per se nota*.

The Thomistic understanding of the inherent rational structure of the *cosmos* which leads to its eudaimonic and teleological ethic differs from the view of Finnis, Boyle, and Grisez. The Kantian self-evident ethic that Finnis attempts to merge with Thomism ignores the natural basis on which Thomistic Natural Law theory hinges. It

⁶⁷ This translation is my own. (Thomas Aquinas, *De Veritate*. Corpus Thomisticum, <http://www.corpusthomisticum.org/sth2094.html> (accessed February 1, 2011). Q. 16, A 1.

⁶⁸ R. J. Henle, *Saint Thomas Aquinas Aquinas, the Treatise On Law: [being Summa Theologiae, I-II; QQ. 90 through 97]*, (Notre Dame: University of Notre Dame Press, 1993), 263.

would seem that any Natural Law theory would, as Russell Hittinger suggests, “require a commitment to law as in some sense ‘natural,’ and nature as in some way normative.”⁶⁹

The New Natural Law Theory Is Incompatible

New Natural Law Theory, in an effort to avoid the ostensible pitfall of the naturalistic fallacy (in all of its various manifestations), asserts that moral claims cannot be derived from “facts about human nature,” that moral claims can only derive from “premises that include still more fundamental reasons for action.”⁷⁰ The New Natural Law theory abandons the central pursuit of Thomistic Natural Law theory—the reconciliation of the natural world with human reason—a reconciliation achieved by the apprehension of the inherent rational order of the *cosmos*.

Finally, New Natural Law theorists are arguably incorrect in asserting that traditional Thomistic Natural Law theory has to be revised on the basis that it falls prey to the naturalistic fallacy. Traditional Thomism does not allow for Finnis’s interpretation of self-evidence that he formulates specifically to avoid any criticism related to the Humean Is-Ought Problem. In addition, the revisions undertaken by Finnis, Grisez, and others, although intriguing and perhaps enlightening in their own right, cannot pretend to demonstrate the authentic Thomistic Natural Law legacy.

Conclusion: Traditional Thomism Requires No Revision

Traditional Thomists effectively counter the criticisms presented by both Hume’s Is-Ought Problem and Moore’s Definist fallacy. McInerney delivers a rather scathing indictment of the Is-Ought criticism of naturalistic ethics. He decries Hume’s assertion as an egregious case of missing the point, in that it wrongly assumes an artificial

⁶⁹ Russell Hittinger, *A Critique of the New Natural Law Theory* (Notre Dame, Ind.: University of Notre Dame Press, 1987), 8.

⁷⁰ George, “Natural Law and Human Nature,” 32-33.

disconnect between the “is” and the “ought.”⁷¹ This makes puzzling the New Natural Law theorists’ suggestion that the Is-Ought problem provides too strong a disincentive to traditional Natural Law theories. Scholars like John Finnis insist that Thomistic Natural Law must, at the very least, undergo a re-articulation to achieve the respect of analytic philosophy. Though this is an understandable position given the unfashionable and perhaps difficult metaphysical claims that Thomism relies on, citing the naturalistic fallacy as an *ultima facie* reason to do away with Thomistic Natural Law, traditionally understood, is untenable.

The traditional Thomistic Natural Law legacy demonstrates that Thomistic Natural Law, traditionally and properly understood, has much to offer contemporary philosophy in its own right—independent of newer, similar theories. Thomistic Natural Law requires only a proper interpretation to offer a valid message to analytic and contemporary philosophy. Re-interpretations, like the New Natural Law theory, though legitimate and rich theories in their own right detract from the profundity, accessibility and expansive applicability of Thomistic Natural Law, authentically understood.

⁷¹ McInerny. *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas Aquinas*. 48.

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