

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

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

By reflecting on the basic goods of human nature, especially those most immediately pertaining to social and political life, natural law theorists propose to arrive at a sound understanding of principles of justice, including those principles we call human rights. In light of what I’ve already said about how natural law theorists understand human nature and the human good, it should be no surprise to learn that natural law theorists typically reject both strict individualism and collectivism. Individualism overlooks the intrinsic value of human sociability and tends mistakenly to view human

beings atomistically. Collectivism compromises the dignity of human beings by tending to instrumentalize and subordinate their well-being to the interests of larger social units. Individualists and collectivists both have theories of justice and human rights, but they are, as I see it, highly unsatisfactory. They are rooted in important misunderstandings of human nature and the human good. Neither can do justice to the concept of a human **person**, that is, a rational animal who is a locus of intrinsic value (and, as such, an end-in-himself who may never legitimately be treated as a mere means to others' ends), but whose well-being intrinsically includes relationships with others and membership in communities (beginning with the family) in which he or she has, as a matter of justice, both rights and responsibilities.

I'm sometimes asked whether natural law theorists suppose that rights are "hard-wired into our nature." I fear that this metaphor is more likely to mislead than to illuminate. Human rights exist if it is the case that there are principles of practical reason directing us to act or abstain from acting in certain ways out of respect for the well-being and the dignity of persons whose legitimate interests may be affected by what we do. I certainly believe that there are such principles. They cannot be overridden by considerations of utility. At a very general level, they direct us, in Kant's phrase, to treat human beings always as ends and never as means only. When we begin to specify this general norm, we identify important negative duties, such as the duty to refrain from enslaving people. Although we need not put the matter in terms of "rights," it is perfectly reasonable, and I believe helpful, to speak of a *right* against being enslaved, and to speak of slavery as a violation of human *rights*. It is a right that people have, not by virtue of being members of a certain race, sex, class, or ethnic group, but simply by virtue of our humanity. In that sense, it is a **human** right. But there are, in addition to negative duties and their corresponding rights, certain positive duties. And these, too, can be articulated and discussed in the language of rights, though here it is especially important that we be clear about by whom and how a given right is to be honored. Sometimes it is

said, for example, that education or health care is a human right. It is certainly not unreasonable to speak this way; but much more needs to be said if it is to be a meaningful statement. Who is supposed to provide education or health care to whom? Why should those persons or institutions be the providers? What place should the provision of education or health care occupy on the list of social and political priorities? Is it better for education and health care to be provided by governments under socialized systems, or by private providers in markets? These questions go beyond the application of moral principles. They require prudential judgment in light of the contingent circumstances people face in a given society at a given point in time. Often, there is not a single, uniquely correct answer. The answer to each question can lead to further questions; and the problems can be extremely complex, far more complex than the issue of slavery, where once a right has been identified its universality and the basic terms of its application are fairly clear. Everybody has a moral right not to be enslaved, and everybody an obligation as a matter of strict justice to refrain from enslaving others; governments have a moral obligation to respect and protect the right and, correspondingly, to enforce the obligation.

What I've said so far will provide a pretty good idea of how I think we ought to go about identifying what are human rights. But in each case the argument must be made, and in many cases there are complexities to the argument. One basic human right that almost all natural law theorists would say belongs in the set is the right of an innocent person not to be directly killed or maimed. This is a right that is violated when someone makes the death or injury of another person the precise object of his action. It is the right that grounds the norm against targeting non-combatants, even in justified wars, and against abortion, euthanasia, the killing of hostages, and so forth. Of course, in the case of abortion, some people argue that human beings in the embryonic or fetal stages of development do not yet qualify as persons and so do not possess human rights; and in the case of euthanasia, some argue that permanently comatose or severely retarded or demented people do not

(or no longer) qualify as rights-bearers. I think that these claims are mistaken, but I won't here go into my reasons for holding that the moral status of a human being does not depend on his or her age, size, stage of development, or condition of dependency. I've presented this argument in great detail in numerous places. Here I will say only that people who do not share with me the conviction that human beings in early stages of development and in severely debilitated conditions are rights-bearers, may nevertheless agree that **whoever** qualifies as a person is protected by the norm against direct killing of the innocent.

The natural law understanding of human rights I am here sketching is connected with a particular account of human dignity. Under that account, the natural human capacities for reason and freedom are fundamental to the dignity of human beings—the dignity that is protected by human rights. The basic goods of human nature are the goods of a rational creature—a creature who, unless impaired or prevented from doing so, naturally develops and exercises capacities for deliberation, judgment, and choice. These capacities are God-like—albeit, of course, in a limited way. In fact, from the theological vantage point they constitute a certain sharing—limited, to be sure, but real—in divine power. This is what is meant, I believe, by the otherwise extraordinarily puzzling Biblical teaching that man is made in the very image and likeness of God. But whether or not one recognizes Biblical authority or believes in a personal God, it is true that human beings possess a power traditionally ascribed to divinity—namely, the power to be an uncaused causing. This is the power to envisage a possible state of affairs, to grasp the value of bringing it into being, and then to act by choice (and not merely by impulse or instinct) to bring it into being. That state of affairs may be anything from the development of an intellectual skill or the attainment of an item of knowledge, to the creation or critical appreciation of a work of art, to the establishment of marital communion. Its moral or cultural significance may be great or, far more commonly, comparatively minor. What matters for the point I am now making is that it is a product of human reason and

freedom. It is the fruit of deliberation, judgment, and choice. We may, if we like, consider as a further matter whether beings capable of such powers could exist apart from a divine source and ground of their being. But I don't think it makes sense to deny that beings whose nature is to develop and exercise such powers are lacking in dignity and human rights and may therefore be treated as mere objects, instruments, or property.

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

One might then ask whether human beings are in fact rational in anything more than an instrumental sense. Can we discern any intelligible reasons for human choices and actions? Everybody recognizes that some ends or purposes pursued through human action are intelligible at least insofar as they provide means to other ends. For example, people work to earn money, and their doing so is perfectly rational. Money is a valuable means to a great many important ends. No one doubts its instrumental value. So even skeptics do not deny that there are instrumental goods. The question is whether some ends or purposes are intelligible as providing **more than merely instrumental** reasons for acting. Are there intrinsic, as well as instrumental, goods? Skeptics deny that there are intelligible ends or purposes that make possible rationally **motivated** action. Natural

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

Of course, there are plenty of people today who embrace philosophical or ideological doctrines that deny the human capacities I maintain are at the core of human dignity. They adopt a purely instrumental and essentially non-cognitivist view of practical reason (*e.g.*, Hume’s view that reason is nothing more than “the slave of the passions”) and argue that the human experience of deliberation, judgment, and choice is illusory. The ends people pursue, they insist, are ultimately given by non-rational motivating factors, such as feeling, emotion, or desire. “The thoughts are to the desires,” Hobbes has taught them to suppose, “as scouts and spies, to range abroad and find the way to the thing desired.” Truly rationally motivated action is impossible for creatures like us. There are no more-than-merely-instrumental reasons for action—no basic human goods. Now, if proponents of this non-cognitivist and subjectivist view of human action are right, then it seems to me that the entire business of ethics is a charade, and human dignity is a myth. But I don’t think they are right. Indeed, I don’t think that they can give any account of the norms of rationality to which they must appeal in making the case against reason and freedom that is consistent with the denial that people are capable of more-than-merely-instrumental rationality and true freedom of choice. I do not deny that emotion figures in human action—obviously it does, and on many occasions it (or other subrational factors) does the main work of motivation. But I maintain that people can have, and often do have, basic reasons for their actions—reasons provided by ends they

understand as humanly fulfilling *and desire precisely as such*. These ends, too, figure in motivation.

Now, if I and other natural law theorists are correct in affirming that human reason can identify human rights as genuine grounds of obligation to others, how can we explain or understand widespread failures to recognize and respect human rights and other moral principles? As human beings, we are rational animals; but we are imperfectly rational. We are prone to making intellectual and moral mistakes and capable of behaving grossly unreasonably—especially when deflected by powerful emotions that run contrary to the demands of reasonableness. Even when following our consciences, as we are morally bound to do, we can go wrong. A conscientious judgment may nevertheless be erroneous. Some of the greatest thinkers who ever lived failed to recognize the human right to religious liberty. Their failure, I believe, was rooted in a set of intellectual errors about what such a right presupposes and entails. The people who made these errors were neither fools nor knaves. The errors were not obvious, and it was only with a great deal of reflection and debate that the matter was clarified. Of course, sometimes people fail to recognize and respect human rights because they have self-interested motives for doing so. In most cases of exploitation, for example, the fundamental failing is moral, not intellectual. In some cases, though, intellectual and moral failures are closely connected. Selfishness, prejudice, partisanship, vanity, avarice, lust, ill-will, and other moral delinquencies can, in ways that are sometimes quite subtle, impede sound ethical judgments, including judgments pertaining to human rights. Whole cultures or subcultures can be infected with moral failings that blind large numbers of people to truths about justice and human rights; and ideologies hostile to these truths will almost always be both causes and effects of these failings. Consider, for example, the case of slavery in the antebellum American south. The ideology of white supremacy was both a cause of many people's blindness to the wickedness of slavery, and an effect of the exploitation and degradation of its victims.

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

Natural law theorists do not deny that God can reveal moral truths and most believe that God has chosen to reveal many such truths. However, natural law theorists also affirm that many moral truths, including some that are revealed, can also be grasped by ethical reflection apart from revelation. They assert, with St. Paul, that there is a law “written on the hearts” even of the Gentiles who did not know the law of Moses—a law the knowledge of which is sufficient for moral accountability. So the basic norms against murder and theft, for example, though revealed in the Decalogue, are knowable even apart from God’s special revelation. The natural law can be known by us, and we can conform our conduct to its terms, by virtue of our natural human capacities for deliberation, judgment, and choice. The absence of a divine source of the natural law would be a puzzling thing, just as the absence of a divine source of any and every other intelligible order in human experience would be a puzzling thing. An atheist’s puzzlement might well cause him to re-consider the idea that there is no divine source of the order we perceive and understand in the universe. Such a re-consideration figures in the accounts given by some eminent modern philosophers of their religious conversions—examples among Anglophone philosophers include Elizabeth Anscombe, Michael Dummett, Alasdair MacIntyre, Peter Geach, Nicholas Rescher, and John Finnis. It is far less likely to cause someone to conclude that our perception is illusory or that our understanding is a sham, though that is certainly logically possible.

The question then arises: Can natural law—assuming that there truly are principles of natural law—provide the basis for a regime of human rights law without consensus on the existence and nature of God and the role of God in human affairs? In my view, anybody who acknowledges the human capacities for reason and freedom has good grounds for affirming human dignity and basic human rights. These grounds remain in place whether or not one adverts to the question: “Is there a divine source of the moral order whose tenets we discern in inquiry regarding natural law and natural rights?” I happen to think that the answer to this question is “yes,” and that we should be open to the possibility that God has revealed Himself in ways that reinforce and supplement what can be known by unaided reason. But we do not need agreement on the answer, so long as we agree about the truths that give rise to the question, namely, that human beings, possessing the God-like (literally *awesome*) powers of reason and freedom, are bearers of a profound dignity that is protected by certain basic rights.

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

It is sometimes regarded as an embarrassment to natural law thinking that some great ancient and medieval figures in the natural law tradition failed to recognize—and indeed have even

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

This right, and other human rights, are denied and attacked today from various quarters, and in many parts of the world are routinely violated. The ideological justification for their denial and violation can be religious or secular. In some parts of the world, religious freedom and other basic human rights are denied in the name of theological truth. In other parts of the world, the threats are from secularist ideologies. Where secularist ideologies are liberal in form, it is often claims to an overarching right to autonomy that are asserted to justify choices, actions, and policies that natural law theorists believe are unjust and undermine the common good. If the natural law view of these matters is correct, then it is moral failings conspiring with intellectual errors that sustain ideologies

that compromise human rights. In a certain sense, the failings are at opposite poles. Yet, from a natural law vantage point, partisans of the competing ideologies make valid criticisms of each other. Radical Islamists, for example, harshly condemn the decadent features of cultures in which an ideology of expressive and/or possessive individualism flourishes. On the other side, expressive individualists denounce the subjugation of women and the oppression of religious dissenters where fundamentalist Islam holds sway.

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

Of course, people who reject the natural law understanding of human dignity and human rights will differ from natural law theorists on questions of what constitutes progress and decline. From an Islamist point of view, the type of religious freedom defended by natural law theorists will be regarded as licensing heresy and religious irresponsibility. Natural law ideas will be seen as just a rhetorically toned down form of western liberal secularism. By contrast, from a liberal secularist point of view, natural law ideas about abortion, sexuality, and other hot-button moral issues will be regarded as intolerant and oppressive—a philosophically gussied up form of religious fundamentalism. In the end, though, natural law ideas—like Islamist or liberal secularist ideas—will

have to stand or fall on their merits. Anyone who wonders whether they are sound or unsound will have to consider the arguments offered in their support and the counterarguments advanced by their critics.

[Perhaps it goes without saying that there are competing accounts of natural law and natural rights among people who regard themselves as natural law theorists. I have in various writings associated myself with what is sometimes called the “new natural law theory” of Germain Grisez and John Finnis. But whether there is anything much that is really *new* in our approach is questionable. The core of what Grisez, Finnis, and I say at the level of fundamental moral theory is present, at least implicitly, in the writings of Aristotle, Thomas Aquinas, and other ancient, medieval, and early modern thinkers. Some commentators have insisted that what we say is fundamentally new (and, from the point of view of our critics within the natural law camp, wrongheaded) because we are resolute about respecting the distinction between description and prescription and avoiding the fallacy (as we see it) of proposing to derive normative judgments from purely factual premises describing human nature. An example of the fallacy is the putative inference of the value of knowledge from the fact that human beings are naturally curious and desire to know. But here we are being faithful to the methodological insights and strictures of Aquinas. Contrary to what is sometimes supposed, he recognized that what would later come to be called “the naturalistic fallacy” is indeed a fallacy, and was stricter about avoiding it even than was David Hume, who is sometimes credited with “discovering” it.

If, standing on the shoulders of Aristotle and Aquinas, we have been able to contribute something significant to the tradition of natural law theorizing, it is founded on Professor Grisez’s work showing how what he calls “modes of responsibility” follow as implications of the integral directiveness of the most basic principles of practical reason—

principles that direct human action towards basic human goods and away from their privations. The modes of responsibility are intermediate in their generality between the first and most general principle of morality (“always choose in ways that are compatible with a will towards integral human fulfillment”) and fully specified moral norms that govern particular choices. The modes include the Golden Rule of fairness and the Pauline Principle that evil may not be done, even for the sake of good. They begin to specify what it means to act (or to fail to act) in ways that are compatible with a will towards the fulfillment of all human beings in all the respects in which human beings can flourish.

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

theorists do not believe in purely “deontological” moral norms. Practical reasoning is reasoning about *both* the “right” and the “good,” and the two are connected. The content of the human good shapes moral norms inasmuch as such norms are entailments of the basic aspects of human well-being and fulfillment considered integrally.

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

Another feature of the natural-law account of human action that is stressed by those of us who are regarded as “new” natural law theorists is the set of distinctions between various modes of voluntariness. We understand morality as fundamentally a matter of rectitude in willing. In sound moral judgments and upright choices and actions, the will of the agent is oriented positively towards the human good integrally conceived. In choosing and acting, one is not, of course, pursuing every human good—that is not possible—but one is pursuing at least one basic human good well, and if one is choosing and acting in a morally upright way, one is respecting the others. Yet, is it not obvious that many upright choices—choices of good ends sought by morally good means—have

some bad consequences? For example, do we not know with moral certainty that by constructing a system of highways on which drivers of automobiles are authorized to drive at a speed of, say, 65 miles per hour we are permitting a circumstance to exist in which several thousand people each year will be killed in driving accidents? Indeed, we do. But according to the natural-law understanding of human action, there is a real and sometimes morally critical distinction between *intending* harm to a basic human good (and thus to a person, since human goods are not mere abstractions, but are aspects of the well-being of flesh-and-blood human beings) and accepting foreseen harm as a *side-effect* of an otherwise morally justified choice. One can intend harm in two different ways: as an end-in-itself or as a means to some other end. One intends harm as an end when, for example, one seeks to injure or kill someone out of hatred, anger, or some similarly powerful emotion. One intends harm as a means when, for example, one seeks to kill a person in order to recover on the victim's life insurance policy. The key thing to see is that intending death (whether as end or means) is distinct from accepting death as a side-effect (even if the side effect is clearly foreseen, as we foresee, for example, the deaths of motorists and passengers on the highways in ordinary accidents).<sup>1</sup>

Let me conclude with one more proposition stressed by so-called “new” natural law theorists, namely the fact (or in any event what we believe to be the fact) that by our choices and actions we not only alter states of affairs in the world external to us but also at the same time determine and constitute ourselves—for better or worse—as persons with a certain character. Recognition of this self-shaping or “intransitive” quality of morally significant choosing leads to a focus on virtues as habits born of upright choosing that orient and dispose us to further upright choosing—especially in the face of temptations to behave immorally. People sometimes ask: Is

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<sup>1</sup> Although the distinction between intending, on the one hand, and accepting bad side effects, on the other, is often pertinent to moral evaluation on a natural-law account, one should not suppose that it is impossible to violate moral norms in accepting side effects. On the contrary, one may behave *unjustly*, for example, in accepting bad side effects, even where one has not run afoul of the norm against intending, say, the death or injury of an innocent human being. See, e.g., R. George, *In Defense of Natural Law* (Oxford: 2001), p. 106.

natural law about rules or virtues? The answer from the point of view of the “new natural law” theory is that it is about *both*. A complete theory of natural law identifies norms for distinguishing right from wrong as well as habits or traits of character whose cultivation disposes people to choose in conformity with the norms and thus compatibly with a what we might call, borrowing a phrase from Kant, a good will, viz., a will towards integral human fulfillment.

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