The New Natural Law Theory

Christopher Tollefsen

The New Natural Law (NNL) theory, sometimes also called the New Classical Natural Law theory, is the name given a particular revival and revision of Thomistic Natural Law theory, initiated in the 1960s by Germain Grisez. Grisez’s initial collaborators included Joseph Boyle, John Finnis and Olaf Tollefsen. More recently, Robert P. George, Patrick Lee, Fr. Peter Ryan, S.J., Gerard Bradley, William E. May, Christian Brugger, and Christopher Tollefsen have done work on the NNL.

Articulation and defense of the theory began with the publication of Grisez’s interpretative essay on St. Thomas’s first principle of practical reason, in 1965.1 Although that essay established some of the controversial theses of the new view, in particular, that the foundation of practical reason is in a foundational practical recognition of certain basic goods, and that no inference from theoretical truths concerning human nature is necessary or possible, Grisez was there attempting to provide an accurate interpretation of St. Thomas’s thought. Subsequent work, while deeply indebted to St. Thomas, has not been primarily exegetical,2 and in some particulars clearly conflicts with the positions of St. Thomas.

The distinctive, and often disputed, areas of contribution by the New Natural Lawyers include at least the following five, which will be the focus of the remainder of this article:

1. The foundations of moral thought and practical reason;
2. The casuistry of the New Natural Lawyers, especially as regards issues of taking life, procreation, and truth-telling;
3. The nature of human action;

---

2 The main exception to this is John Finnis, Aquinas: Moral, Political, and Legal Theory (Oxford: Oxford University Press, 1998).
The New Natural Law Theory

4. The nature of political authority and the political common good; and
5. The ultimate end of human beings.

1. Foundations of moral thought and practical reason

In his early works, Grisez articulated a number of theses that have been developed by the New Natural Lawyers in the subsequent four decades. Further foundational considerations were defended by Grisez, Finnis, and Boyle in several books and articles, and in essays written individually by the three thinkers.³ The most important of the core theses are the following:

First, the New Natural Law view holds that practical reason, that is, reason oriented towards action, grasps as self-evidently desirable a number of basic goods. These goods, which are described as constitutive aspects of genuine human flourishing, include life and health; knowledge and aesthetic experience; skilled work and play; friendship; marriage; harmony with God, and harmony among a person’s judgments, choices, feelings, and behavior. As grasped by practical reason, the basic goods give foundational reasons for action to human agents. Moreover, they are recognized as good for all human agents; it is equally intelligible to act for the sake of the life of another as for one’s own life.

Second, these goods, and most of their instantiations in action, are held to be incommensurable with one another. That is to say, there is no natural hierarchy of goodness such that one good may be said to offer all the good of another plus more. Rather, each of the goods is beneficial to human agents, and

hence desirable, in a unique way; each offers something that the other goods do not. The same is generally true of particular instantiations of the goods: one way of working, playing, or pursuing knowledge, for example, may offer benefits that are not weighable by a common standard of goodness in relation to instantiations of the other goods, or even instantiations of the same good. This point about incommensurability has emerged as central to the defense of the possibility of free choice, especially in recent work by Boyle.4

Third, and in consequence of the first two points, the judgments of practical reason in recognizing the basic goods and directing agents to pursuit of those goods are not yet moral. Rather, practical reason’s apprehension of and directedness to the goods is a condition for human actions, all of which, to be genuine actions, must be oriented to some good. Morality enters in only at the level of deliberation and choice as regards which goods, or which instantiations of goods, to pursue when faced with desirable options for choice. The New Natural Lawyers have offered various formulations of a first principle of morality, which captures a reasonable openness to all the goods across all persons. In Grisez’s most recent work, he argues that human agents should always make a “contribution to integral communal well-being and flourishing, and they always can and should avoid intentionally impeding or detracting from integral communal fulfillment.”5 This formula replaces an earlier formula which prescribed that agents must will and act in ways open to “integral human fulfillment.”6 The differences between these will be discussed in the section on the ultimate end.


6 See Grisez, Boyle, and Finnis, op. cit.
The New Natural Law Theory

All three claims have been disputed. Against the first, some Thomist and Natural Law thinkers have insisted that “ought” must be derived from “is,” and that theoretical knowledge of human nature is necessary for deriving moral norms. Against the second, many have objected that there is a hierarchy of goods, with theoretical knowledge, or knowledge of or friendship with God at the top. Those who object on either of these two grounds object thereby to the first principle of morality, as do proportionalisists, who deny that it is always wrong intentionally to act against basic goods. Others object to the claim that the first principle of practical reason is other than the first principle of morality. Finally, among the New Natural Lawyers there is some disagreement as to whether or not practical reasonableness, understood as moral virtue, should be understood as a basic good.

2. Casuistry and applied ethics

The casuistry of the New Natural Law theory is in large part a function of a working out of the implications of the first principle of morality, a principle that requires openness to, pursuit of, and no intentional damage to, the basic goods across all persons. Beginning in the 1970s, Grisez, Boyle, and Finnis began to specify the first principle in terms of a set of “modes of responsibility.”

---

11 For the denial of the claim that moral virtue is a basic good, see Germain Grisez, “Natural Law, God, Religion, and Human Fulfillment,” American Journal of Jurisprudence 46 (2001): 3-36.
modes direct agents to certain kinds of acts, and away from others, by taking into account the ways in which emotions and non-morally integrated feelings could distort an agent’s openness to the goods, and to other persons’ fulfillment in the goods. Thus, through hostility towards a good, on the one hand, or enthusiasm for some good, on the other, agents might be tempted to damage or destroy an instance of the goods. Or, through arbitrary preference of self, or those close to one, an agent might unfairly allow damages to be inflicted on another while pursuing a good himself.

These modes of responsibility can in turn be further specified with respect to particular kinds of actions. The best known work of the New Natural Lawyers has focused on the specification of two of the modes mentioned above, both of which forbid intentional damage or destruction of a basic good, whether because of hostility, or because of enthusiasm for some good. In a 1970 essay, “Toward a Consistent Natural Law Ethics of Killing,” Grisez started to work out the consequences of these principles, arguing that not only homicide, suicide, direct abortion, and euthanasia are always and everywhere wrong, but also that capital punishment and intentional killing in war are also morally forbidden.

The New Natural Law approach to the morality of contraception is shaped by similar considerations. In contraception, they argue, a couple considers the possibility of a baby, wishes not to have a baby, and chooses means to ensure that a baby is not brought about. The couple thus acts contrary to the good of human life in their choice to contracept. One feature of this view is that contraception is not, as so interpreted, a sexual sin or wrong: it is a separate choice from the choice to engage in sexual intercourse, and could be

12 Grisez, in Volume 1 of The Way of Our Lord Jesus Christ lists eight such modes. The list is slightly different in Germain Grisez, The Way of The Lord Jesus Christ, Volume 3: Difficult Moral Questions (Quincy, IL: Franciscan Press, 1997).

made by those with no intention to engage in such intercourse.\textsuperscript{14} This view has drawn criticism from some who think contraception is by its nature a sexual sin.\textsuperscript{15}

As evident in the examples given, the New Natural Law position holds that there are moral absolutes, that is, norms that specify certain acts as of a sort that are always and everywhere not to be done.\textsuperscript{16} A further example of a moral absolute can be seen in the New Natural Law approach to lies and lying. Following both Augustine and Aquinas, the New Natural Lawyers hold that it is always wrong to lie. Lies are almost always a violation of justice and are always unloving to one’s interlocutor, and they always violate the integrity and authenticity of the liar.\textsuperscript{17} Recent criticism has attempted to show that in some circumstances these harms are outside the liar’s intention.\textsuperscript{18}

In more recent years, the New Natural Lawyers have developed an account of a specifically sexual morality around two claims: first, that marriage is one of the basic human goods, distinct from life or friendship; and second, that the human person is a rational animal, a living organism of the human species. (The latter claim is central as well to the casuistry in regards to


\textsuperscript{15} See Janet Smith, \textit{Humanae Vitae: A Generation Later}, Washington, D.C.: The Catholic University of America Press, 1991. Grisez et. al. deny neither that the contra-life wrong of contraception is typically practiced by those who intend to have sexual intercourse, nor that the use of contraception is typically a wrong against the good of marriage. But the tyrant who poisons his people’s water with a contraceptive is not committing a sexual wrong as such.


abortion, embryo-destructive research, and euthanasia. Both claims are implicated in a further claim, that in the good of marriage, couples form a union of persons not just morally or spiritually, but also bodily, in the act of marital intercourse. Because sexual intercourse actualizes a biological function that can only be actualized by the couple together, the couple are, in marital intercourse, literally “one flesh,” and this one flesh union is the physical realization of the basic good of marriage.19

The New Natural Lawyers see general principles of sexual morality as flowing from these claims. Sexual intercourse between non-married couples does not realize the basic good of marriage (as they are not married); nor does it, in and of itself, actualize the good of friendship. So it merely appears to be instantiating a basic good. On the other hand, sexual acts that are not of the marital, i.e., reproductive, type fail to effect a one-flesh union between persons. In either case, (i.e., in choosing to pursue pleasure through one flesh union, or in pursuing it through some other sexual act) without instantiating the basic good of marriage, agents treat both their own bodies and those of their sexual partners as instruments to the satisfactions of the conscious self. In other words, they attempt a dualistic separation of the conscious self from the organic body. This dualistic separation is central to philosophical defenses of extra and non-marital sexuality; and to defenses of abortion, embryo destructive research, and euthanasia of those who do not yet possess, or are not yet, conscious selves.20


The New Natural Law Theory

The New Natural Law account of sexual morality has been particularly controversial.21

3. Theory of Action

Many of the particular claims in applied ethics made by the New Natural Lawyers are supported by considerations concerning the nature of human action, and indeed, an account of their casuistry is incomplete apart from a consideration of the nature of action. The New Natural Law’s applied ethics specifies a set of moral norms that direct practical deliberations and choice in relation to basic goods. Among the norms are certain moral absolutes that single out types of deliberate behavior that damage or destroy instances of basic goods. Yet if the formula were not further specified, it would be unlivable: because the context of choice is that of incompatible options for action, all of which offer some good not available in the other option(s), all choices involve at least that damage to goods which results from foregoing the choice of a good.22 And because the world is structured according to morally neutral laws of causation, even an act aimed only at a genuine good can have consequences, in the near or far term, that are damaging to instances of basic goods. So moral absolutes must be specified in terms of the concept of intention: it is always wrong, not to cause damage, but intentionally to damage a basic good.

Accordingly, the New Natural Lawyers need an account both of what it means to intend something, and an account of the circumstances under which it is permissible to allow, or accept as a side effect, damage to a good that is not intended.


LYCEUM

The account of intention can be expressed using the helpful notion of a proposal for action. In acting, agents seek to bring about some state of affairs in which a good or goods will be instantiated (agents thus envisage the state of affairs as offering a benefit). An agent’s proposal for action is her proposal to do such and such in order to bring about that state of affairs. Included in the proposal is both the state of affairs sought – the end – and the instrumentalities by which she will bring about that end – the means. “Intention” for the New Natural Lawyers encompasses both the end (including the good-related benefit which is anticipated in that end) and the means by which the end will be brought about.23

A central point, however, for the New Natural Law account at this juncture is that intention is thus an agent-centered, or first-personal reality. It is from the point of view of the agent as seeking some good that a proposal is considered and adopted. What the agent intends is thus a matter of this proposal, and of nothing else: facts of the world, of causality, or of the proximity of one effect to another do not determine the agent’s intention; and it is thus only by adopting the perspective of the acting person that an agent’s action can be best understood.24

From this perspective, certain consequences that might, in a more “objective” or third-personal account of action appear intended, will not in fact be so. Thus Grisez, Boyle and Finnis have argued that craniotomy, in which a fetus’s head is crushed to facilitate removal from the mother, need not involve an intention to kill the child.25 The intention rather can be “to change the dimensions of the child’s skull to facilitate removal.” Less controversially, but

The New Natural Law Theory

utilizing the same understanding of action, refusal of life-saving treatment need not be suicidal if it is done to avoid the burdens of treatment, and the provision of death-hastening analgesics, on the one hand, and the use of lethal force in prevention against rape or attack, on the other, need not be homicidal, i.e., it need not involve an intention to kill.

The account of intention is further brought to bear in an area where the absolute prohibition of intentional killing might be thought to have consequences in conflict with traditional Catholic teaching. Pacifism is, in the opinion of many, not a defensible position within the Christian tradition, but if intentional killing is ruled out, then war might seem morally suspect. One traditional way of allowing the use of lethal force, not only in war, but also in the state’s prosecution of justice, is to hold that the prohibition on intentional killing applies only to private citizens, and not to agents of the state. The New Natural Law view denies that this is the case; so justified killing in war must be outside the intention just as is justified killing in self-defense. Gerard Bradley has attempted to extend this analysis to the case of the killing of convicted criminals.26 As Bradley and Brugger both point out, however, if the execution of criminals is to be justified as defense, and the criminal’s death is not to be, when permissible, intended, then such executions should not be considered capital punishment.27

Moral norms forbidding certain intentions are negative: they exclude certain options. But, as Grisez points out, upright persons must actively pursue and promote the good; this requires the forming of upright commitments, as well as other more particular actions.28 Such actions inevitably have side effects – consequences that are not intended – some of which are negative in their impact on fundamental goods. These consequences might be relatively

LYCEUM

direct – an agent’s action might harm himself or some other agent – or they might bear on the action of another: one agent’s actions for the sake of a good might assist some other agent in doing something morally wrong. Where such assistance is not intended (which would be always morally wrong) it is considered material cooperation (assistance that is intended to help is formal cooperation). The cooperation is thus itself a side effect. What norms, then, govern the acceptance of negative side effects?

What is at stake here is a consideration of the reasons for adopting some proposal, and acting in accordance with it, and the reasons against so acting, where those reasons do not include the sorts of intention-specified moral absolutes already discussed. The New Natural Lawyers argue, following traditional Catholic casuistry in some respects, that the reasons for acting must be proportionate to the reasons against acting.29 A number of considerations must be taken into account to judge whether the reasons for and against are proportionate; thus, the judgment called for is a judgment of prudence, both in the case of side effects in general, and of material cooperation. Prudence must, however, take into account in a special way, fairness in the acceptance of side effects. If an agent’s willingness to accept negative side effects is due primarily to the fact that those side effects will be suffered by another, and not the agent himself, then the agent is unfair in accepting those side effects. The Golden Rule expresses the relevant norm: Do unto others as you would be done by. An

29 However, to identify the need for a ‘proportionate” reason is not to accede to “proportionalism.” Richard McCormick gives a succinct account of that theory: “Common to all so called proportionalists . . . is the insistence that causing certain disvalues [i.e., evils] . . . in our conduct does not by that very fact make the action morally wrong . . . . These evils or disvalues are said to be premoral when considered abstractly, that is, in isolation from their morally relevant circumstances. But they are evils . . . The action in which they occur becomes morally wrong when, all things considered, there is not a proportionate reason in the act justifying the disvalue.” Richard A. McCormick, “Killing the Patient”, in Considering Veritatis Splendor, ed. John Wilkins (Pilgrim Press, 1994), 17. This approach effectively denies the existence of intrinsically evil acts, and hence moral absolutes. For criticism, see Grisez, 1983, op. cit., ad Finnis, 1991, op. cit.
agent who would feel aggrieved were he in the position of the recipient of the burdens, rather than the benefits, might not be acting fairly.

In judgments concerning material cooperation, the prudent agent must consider the various bad effects, both of the wrongful act with which the agent is cooperating, and of the act of cooperation itself, and must also consider the strength of the reasons against materially cooperating. The prudent agent then makes a judgment in relation to the standard set by the first principle of morality, the standard of “integral communal fulfillment,” and in particular as that standard has been brought to bear on an agent’s life in the form of his or her vocational commitments, and the responsibilities and duties that have resulted from those commitments. A similar prudential judgment is called for in cases that do not involve cooperation. So, for example, a particular array of benefits and burdens resulting from a possible medical treatment might or might not be consistent with one’s vocational commitments and responsibilities. These commitments and responsibilities thus provide the standard by which those benefits and burdens can be commensurated in judgment and decision. These considerations are a necessary part of the New Natural Law casuistry discussed above.

4. Political Authority and the Political Common Good

In 1979, Grisez and Boyle published Life and Death with Liberty and Justice; in 1980, Finnis published Natural Law and Natural Rights. Together the two books marked the beginnings of a “discussion of political theory” carried on between the three thinkers.30 Grisez and Boyle describe their early part in this discussion as conceding “somewhat too much to political theories that are

prevalent in the United States."\textsuperscript{31} By this, they refer to an indebtedness to John Rawls’s antiperfectionism. In \textit{Life and Liberty} Boyle and Grisez allowed that it would be wrong for the state to incorporate substantive moral values, such as the good of life, into its governing principles, and hence into its conception of the common good of the state. In part this was motivated by a need to find a principled limit on the state’s sovereignty over the lives, including the moral and religious lives, of its subjects.

Finnis’ work in \textit{Natural Law and Natural Rights}, by contrast, argued for a perfectionist account of the state: the basic goods of human persons were not to be ruled out of the practical considerations at the heart of political rule, as in Rawls’s work. Yet Finnis too, like Grisez and Boyle, has been sensitive to the need for liberty in the state, and the limits of state sovereignty over individuals; all three oppose the view, encouraged by what Finnis calls a “quick” reading of Aquinas, according to which “government should command whatever leads people towards their ultimate (heavenly) end, forbid whatever deflects them from it, and coercively deter people from evil-doing and induce them to morally decent conduct.”\textsuperscript{32}

Accordingly, Grisez, Finnis and Boyle have converged on an account of political authority and the common good that, while rooted in the basic goods, nevertheless sees the state as a “community co-operating in the service of a common good which is instrumental, not itself basic.”\textsuperscript{33} Political authority is necessary because individuals, families, and groups, while sufficient in one sense for the pursuit of all the basic goods, including the goods of marriage and religion, are nevertheless thwarted in their pursuit of these goods by (a) lack of social coordination; (b) the hostility of outsiders; (c) the predatory behavior of some insiders; and (d) circumstances beyond the control of individuals that

\textsuperscript{31} Grisez and Boyle, 1998, op. cit., 222-223.


\textsuperscript{33} Ibid., 5.
leave them in conditions of more than usual dependence but without the usual personal and social aids, as, for example, widows, orphans, the sick, and the disabled.

Political authority, and optimally, a political authority itself subject to law, is necessary to efficiently and fairly pursue these goals; but together, these goals comprise a set of conditions instrumentally necessary for individuals and groups to directly pursue the basic goods, individually and cooperatively. The political common good is thus described by Finnis as “the whole ensemble of material and other conditions, including forms of collaboration, that tend to favor, facilitate, and foster the realization by each individual [in that community] of his or her personal development.”

In putting forth this account of political authority and the common good, Finnis has criticized the idea, mentioned above, that the common good includes the complete well-being, including the moral well-being, of the state’s citizens. In contrasting this Aristotelian idea with what he takes to be the true Thomistic view, Finnis has drawn criticism from some Thomists, who read St. Thomas as more similar to Aristotle than does Finnis. He has also generated some debate internal to the New Natural Law theory concerning the proper limits of political authority.

Finnis holds that recognition of the instrumental nature of the state means that, as George summarizes his position, “law and the state exceed their just authority – thus violating a principle of justice – when they go beyond the protection of the public moral environment and criminalize ‘even secret and truly consensual adult acts of vice.’” But, says George in response, “it does not follow, or so it seems to me, from the instrumental nature of the political common good that moral paternalism, where it can be effective, is beyond the

---

34 Ibid.
scope of that good.” And so George, unlike Finnis, holds that the legitimate limits on legislation where morality is concerned are prudential, not principled.

5. The Ultimate End of Human Beings

As Grisez notes, “Thomas Aquinas held that the true ultimate end for all human beings is God alone, attained by the beatific vision.” Grisez’s argument with Aquinas on this point has resulted in a reframing of the first principle of morality.

St. Thomas argues to the above claim about the beatific vision from the claims that only the beatific vision could be absolutely fulfilling to human beings and that the final, or ultimate, end of human beings must be absolutely fulfilling. It follows from these two claims that the beatific vision is the ultimate end. However, the second of these claims implies, as Thomas shows, that only a perfect good can be taken as one’s final end; and this in turn implies that an agent can will only one final end at one time (since willing a second would imply that the first was in some respect imperfect). But, argues Grisez, this claim is false: someone living in God’s love who nevertheless commits a venial sin has two ultimate ends, one God, the other the end intended in the venial sin. So the claims that imply that agents can intend only one end – that the ultimate end must be absolutely fulfilling, and that only what is regarded as a perfect good can be willed as a final end – are false; thus St. Thomas’ argument about the beatific vision is unsound.

By contrast, Grisez’s views on our ultimate end are shaped by his understanding of what we are directed to by the principles of practical reason: the indiscriminate “well-being and flourishing of ourselves and everyone else;” we thus “reasonably take as our ultimate end an inclusive community of human

---

persons along with other intelligent creatures and God – insofar as we know
other intelligent creatures and God and can somehow cooperate with them
and/or act for their good.”

Our ultimate end is not, therefore, the beatific vision, but a state of
affairs that includes all persons with whom or for whose sake we can act,
including God, with whose creative activity we cooperate in pursuing basic
goods. Grisez calls this state of affairs “integral communal fulfillment.” By
revelation we can know that we are promised the immortality necessary to
achieve this state of affairs, which adequate reflection reveals to be dynamic and
increasing in perfection, rather than static and “complete,” or unimproveable.

This new account of the ultimate end is meant to replace an earlier
account of the ultimate end and the first principle which, in a sense, divided
what the new account unifies. In an earlier essay, Grisez had argued that the
ultimate end of human beings was a state of affairs: a cooperative relationship
with God. And Grisez, Finnis, and Boyle in a different essay had argued that
an ideal – integral human fulfillment – specified the morally good will by way
of the first principle of morality.

On the new account, by contrast, there is still a state of affairs posited
as the ultimate end, but it is much broader: integral communal fulfillment,
understood as including a relationship between all persons capable of
cooperation, human, angelic, and divine. Grisez argues that this state of affairs,
which he identifies as the kingdom of heaven, is itself the object of intention of
all upright persons (although not all upright persons have as complete or
adequate an understanding of this end as have those possessed of Christian
revelation). So the first principle of morality is now linked together with the
ultimate end and prescribes the intending of that end by all upright persons.

What, then, of the beatific vision? This issue lies outside the
boundaries, strictly speaking, of any natural law account; but Grisez has argued

---

41 Grisez, 2001, op. cit.
that by revelation, human agents can come to know that through baptism they may be reborn as adopted members of God’s family, children of the Father. As members of the divine family, they are promised a sharing in the divine life, a sharing that is entirely a gift, and not, strictly speaking, a human good, since it is not a fulfillment of human nature as such. Nevertheless, because of their divinized nature, this sharing in the divine life will really be fulfilling. Grisez notes that by their “faith and hope, which fulfill them with respect to harmony with God, [the baptized] accept that gift and anticipate enjoying it.”

Grisez’s (2001) discussion of the final end drew much attention and criticism in the symposium of which it was a part, in the *American Journal of Jurisprudence*. His further developments (in 2008) of the view will undoubtedly be of continuing interest.

University of South Carolina
Columbia, South Carolina

---

43 Grisez, 2008, op. cit., p. 60.