
On not saying more than we know: New Natural Law Theory and anti-theoretical ethics

Sobre no afirmar más de lo que sabemos: la Nueva Escuela del Derecho Natural desde una perspectiva ética anti-teórica

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RECIBIDO: 05/10/2020 / ACEPTADO: 13/12/2020

Abstract: I say something about the relationship of Finnis's work in ethics to my own, then summarise and criticise Finnis's new natural law theory. My own view is an anti-theoretical view: there is no reason to expect any neatly systematic ethical theory to be true just because it is neatly systematic. The doubts that naturally arise about new natural law theory are mostly of this nature: they are based on suspicion of schematisms. I close with some positive suggestions about resources for ethics, in particular «the common understanding of humanity».

Resumen: Este trabajo, que constituye una reflexión personal sobre de la aportación de Finnis en el campo de la ética, presenta un resumen acerca de, y una crítica hacia, la nueva escuela de la ley natural del autor. Desde mi propia perspectiva antiteórica, no hay razón para esperar que una teoría ética exquisitamente sistemática sea verdadera por el sólo hecho de que exhiba una pulcra ordenación sistemática. Las dudas que naturalmente surgen alrededor la nueva teoría del derecho natural son, en su mayoría, de esta naturaleza: se sospecha de incurrir en esquematismos. Concluyo con algunas sugerencias positivas sobre los recursos para la ética, con mención particular para el «entendimiento común de la humanidad».

Keywords: ethics, new natural law, Finnis, neo-Aristotelianism, anti-theoretical ethics, deontological ethics

Palabras clave: ética, nueva ley natural, Finnis, neo-Aristotelismo, ética anti-teórica, ética deontológica.

«There is one mistake to which [philosophers] all seem liable, almost without exception: they confine too much their principles, and make no account of that vast variety that nature has so much affected in all her operations. When a philosopher has once laid hold of a favourite principle, which perhaps accounts for many natural effects, he extends the same principle over the whole creation, and reduces to it every phenomenon, tho' by the most violent and absurd reasoning. Our own mind being narrow and contracted, we cannot extend our conception to the variety and extent of nature, but imagine that she is as much bounded in her operations as we are in our speculation¹.

The difficulty in philosophy is: not to say more than we know².

Amicus Plato, sed magis amica veritas³.

¹ HUME, D., «The sceptic», at <https://davidhume.org/texts/empl1/sc>

² WITTGENSTEIN, L., *The Blue and Brown Books*, Blackwell, Oxford, 1969, p. 45.

³ BACON, R., *Opus Majus*, Part 1, Ch. 5 (cp., Aristotle, *Nicomachean Ethics* 1096a 15).

I

I am happy to record my philosophical debt of gratitude to Professor John Finnis for writing *Natural Law and Natural Rights*⁴. My first encounter (in about 1996) with this remarkable book, one of the most important works in anglophone normative ethics in the second half of the twentieth century, was absolutely revelatory. It decisively shaped my own philosophical views for the next 12 years.

Here, in New Natural Law Theory (NNLT), was a moral theory that offered to outflank Kantianism by giving a clear and decisive explanation of how both human nature *and* reason are essentially involved in giving an account of good and bad, right and wrong. Here was a view that got us away from the misdirected agent-centrism (the «reflexive deformation») of virtue ethics, by getting us to focus not on our own dispositions, but on the world to which those dispositions are responses: as I later hinted in a book-title of my own, on *values* not on *virtues*⁵. Here was an account that could explain what was really wrong with consequentialism, by showing how ethics is structured around a fundamental asymmetry between pursuit of the good and pursuit of the bad, and how to construct a theory of reasons that is in no sense quantitative or «maximising». Here was a theory of moral psychology that explained very clearly and directly how motivation and justification are connected; and here was a metaethical view that vindicated realism against both subjectivism and relativism. And it was a neat, streamlined, simple, and straightforward theory – at the time I thought that was a good thing – with long and deep historical roots that ran all the way back to Aquinas, Aristotle, Augustine, and Plato.

NNLT struck me at once – it still does, more or less – as quite possibly the most plausible moral theory on the market, and my own convictions moved on very quickly from the broadly virtue-ethical outlook that, in earlier work, I had developed from my reading of Plato, Aristotle, Anscombe, Foot, and Hursthouse, to an enthusiastic embrace of something close, at least in its essentials, to Finnis's or Grisez's own version of the theory. There were always questions in my mind; but I defended my own version of NNLT in my first monograph in normative ethics, *Understanding Hu-*

⁴ FINNIS, J., *Natural Law and Natural Rights*, Oxford University Press, Oxford, 1980.

⁵ See CHAPPELL, T. (ed.), *Values and Virtues*, Oxford University Press, 2007.

*man Goods*⁶, and in a number of journal articles and in a collection of essays co-edited with David Oderberg⁷.

Then in 2009 my second book on normative ethical theory, *Ethics and Experience*⁸, registered a sharp move away not only from new natural law theory, but from anything that might be called a moral theory, in the sense of a maximally simple systematisation of our first-order ethical view. In work since 2009 – and in particular in *Knowing What To Do*⁹ and in the book I am currently finalising, *Epiphanies* – I have become an increasingly convinced anti-theorist in ethics. I am still well aware of my own intellectual debt to Finnis and other writers of his school. And if I thought any moral theory was tenable, it would either be NNLT, or virtue ethics, or a blend of the two. But I don't, and in this paper, I want to say a bit about why not.

My criticisms of NNLT come in three broad groups. First, and most generally, I reject NNLT because it is a moral theory, and I reject moral theory. Secondly, I have particular doubts about some (perhaps most) of the theses specific to NNLT. And thirdly, I wonder with NNLT – as I wonder, indeed, with any outlook in normative ethics, whether or not it is strictly speaking a moral theory – how exactly it is to be socially and psychologically realised. In sections II-IV of this essay, I take these concerns in order.

II

«In science theorists hope to find a few principles from which everything else will be deducible. There are more serious reasons than purely aesthetic for wanting that – clarity, the hope that the drive towards it will reveal error wherever it exists, the subsumption of many diverse phenomena under one satisfying description. But in the case of moral philosophy what defines the subject is a highly heterogeneous set of human concerns, many of them at odds with many others of them, many of them incommensurable with many others of them. In this case there is no reason to think that what is needed is a theory to discover *underlying order*. This is not a subject after all where very much is hidden. Or rather what is hidden is hidden in a psychological or interpretive sense. There is no question of a secret axiological ordering

⁶ CHAPPELL, T.D.J., *Understanding Human Goods*, Edinburgh University Press, Edinburgh, 1998.

⁷ CHAPPELL, T.D.J. and ODERBERG, D. (eds.), *Human Values*, Macmillan, London, 2004.

⁸ CHAPPELL, T.D.J., *Ethics and Experience*, Acumen, London, 2009.

⁹ CHAPPELL, T.D.J., *Knowing what to do*, Oxford University Press, Oxford, 2014.

principle. There is no deeper level of reality, comparable to the microscopic or sub-microscopic level explored by chemistry and physics, which it is the moral philosopher's duty to probe. And where one can make no sense of there being such a level, the idea, urged by some moral philosophers, of finding the 'simplest theory' which 'will save the phenomena' (in the normal acceptance of the phrase) is nearly meaningless»¹⁰.

In everyday English people use «moral theory» both as an uncountable noun denoting an area of study (*c.p.* «social theory», «genetic theory»), and also as a countable noun denoting intellectual edifices like utilitarianism or Kantianism. I have of course no objection to «moral theory» in the area-of-study sense; as a professor of ethics, I am paid to work in that area. But I do object to moral theory in the intellectual-edifice sense: as I see it, it is not the point of moral theory to produce a moral theory. Not, at any rate, in the systematic sense.

And what is a systematic moral theory? Most basically and paradigmatically, a systematic moral theory is a function from descriptions of situations to verdicts about action-guidance (or, in more cautious versions, verdicts about rightness). Calling it, in this rather Fregean style, a *function* helps bring out why theory-builders have so often been obsessed with simplicity. What systematic moral theory offers is, at root, the project of building a single, uniquely true, inferential-deductive structure of thought that explains, predicts, and justifies as much as possible of the content of normative ethics, the first-order moral, and does so as parsimoniously as possible (and systematic moral theorists characteristically think *a lot* is possible, though not necessarily everything. To avoid trivialising my statement of what systematic moral theory is, my own position as an anti-theorist should not be counted as an instance of systematic moral theory, only with the rider «... but very little systematising is possible»).

¹⁰ WILLIAMS, B. and WIGGINS, D., «Preface» to Aurel Kolnai, *Ethics, Value and Reality* [1955], Dunlop, F., and Klug, B. (eds.), Athlone Press, London, 1977, pp. xxiv-xxv. WITTGENSTEIN, L., *The Blue Book*, *op. cit.*, pp.17-18: «Now what makes it difficult for us to take this line of investigation is our *craving for generality*... [this] has another main source: our preoccupation with the method of science. I mean the method of reducing the explanation of natural phenomena to the smallest possible number of primitive natural laws; and, in mathematics, of unifying the treatment of different topics by using a generalisation. Philosophers constantly see the method of science before their eyes, and are irresistibly tempted to as and answer questions in the way science does. This tendency is the real source of metaphysics, and it leads the philosopher into complete darkness. I want to say here that it can never be our job to reduce anything to anything, or to explain anything. Philosophy really is 'purely descriptive'».

Paradigms of systematic moral theory are Kantianism and utilitarianism and the «triple theory» offered¹¹ by Parfit in *On What Matters*¹²; also, and this of course is the present point, NNLT.

Since systematic moral theory is a focal-case concept, there are marginal cases as well as paradigms. How much such systematicity, or any very neat and pithy function from situation-description to action-guidance, is taken to be possible in any particular theory is obviously a question of degree; so too is how systematic the system in question is. Again, some theories that might seem to deserve the title of «systematic moral theory» are avowedly only attempts to speak about *part* of the first-order moral. John Rawls' most famous book only propounds a theory of *justice*, not of the rest of normative ethics; some other philosophers have only taken themselves to be saying *something* about the truth in normative ethics by proposing, e.g., a doctrine of the virtues, and have made no claim to be stating the truth about *everything* in normative ethics.

But about any version of systematic moral theory, I want to ask three questions: «What counts as success?», «Who is it about?», and «Who is it for?»¹³. Let me take these questions in order.

What counts as success? «Systematicians», I said above, «seek to explain as much *as possible* on the basis of as few assumptions *as possible*». What does «as possible» mean in this context? The game of theory-building tends to be played by generalisation and counter-example. That is why, in debates in normative ethical theory, we routinely hear remarks like this: «There is this supposed counter-example, but the theory *can* accommodate it in the following way...». Consider well the power of this small word *can* (or indeed *can't*): a small word, but a highly elastic one. Time and again we are told that some theory is off the hook if some putative counter-example proves to be one that it *can* explain or accommodate. What kind of *can* is this?

In one sense, a theory *can* explain a counter-example just if its explanation is barely logically consistent, is an in-principle possibility – no matter how absurd

¹¹ For a fuller discussion of *On What Matters* see my review in *Philosophical Investigations* (see, CHAPPELL, T.D.J, «Climbing Which Mountain? A Critical Study Of Derek Parfit, *On What Matters*», *Philosophical Investigations*, vol. 35, n. 2, 2012, pp. 167-181). Note that I say that Parfit offers us a triple theory in *On What Matters*. In correspondence with me in 2011-2013, Derek Parfit was emphatic that he was *only* offering his theory, not asserting it.

¹² PARFIT, D., *On What Matters*, Oxford University Press, Oxford, 2011.

¹³ Compare three questions that Bernard Williams (*Ethics and the Limits of Philosophy*, Penguin, London, 1985, p. 23) wants to put about any «pretended justification of the ethical life»: «To whom is it addressed? From where? Against what?»

its explanation will seem to any realistic person who uses her imagination¹⁴. But we need to ask not merely whether the theory *can* explain the counter-example in that very minimal sense, but also whether it *does* explain it, in a way that is even remotely faithful to the phenomena. In practice, I think, one of the places where moral theory and moral reality most frequently part company is round about here.

I once reviewed a book that centrally claimed that «you *can* do normative ethics without any appeal at all to moral principles». I pointed out in my review (which I fear lost me at least one friend) that you *can* drive from México to Alaska in reverse gear. But it's one thing to say that this *can* be done (at all), and another to say that doing it is good driving, or worthwhile, or fun, or anything other than a total pain in the neck. Or again, in one plain sense of «can», you *can* represent pi as exactly 3, as the US state of Indiana is often alleged to have legislated in 1897¹⁵, and then find ways of adjusting your mathematics elsewhere. When people say to the Indianian mathematicians (or pseudo-mathematicians) «You really can't do that», what they say is true, and absolutely right. But they don't mean that there can't be such a law; because there can; because there is (allegedly, anyway). What they mean is that the pi = 3 law makes a mess of maths in all sorts of other ways.

The critique of moral systematising that I want to offer is closely parallel to this response to the Indianian pi. To consequentialisers such as Douglas Portmore, in fact to pretty well all moral theorists who want to systematise, to tidy things up, to tell me «This *can* be represented as that», I want to say «In some sense you can: it's a logically possible theory, and/or it's a psychologically possible belief (bear in mind that it is psychologically possible to believe the logically impossible). But in another sense you can't – because if you adopt that theory, it will make a mess of ethics in all sorts of other ways». And just likewise I often feel impelled to say to defenders of NNLT against objections of various kinds: «Just because this move is *logically available to you* doesn't mean it's *convincing*».

¹⁴ «Being soberly truthful does not exclude, but may actually demand, the imagination» (WILLIAMS, B., «Contemporary Philosophy: A Second Look», *Essays and Reviews*, Oxford University Press, Oxford, 2003, p. 34). Part of the reason why is that the imagination has a restrictive as well as an expansive role. An inability to find some scenario imaginable, whether that scenario is proposed in a novel or as a philosophical thought-experiment, can be, as we say, «a failure of imagination». But such an inability can also be a *success* of imagination, reflecting – and exposing – the basic unrealisticness of the scenario proposed. It is not only the doggedly literalistic or the aesthetically (or philosophically) uncooperative who find holes in plots. Sometimes there *are* holes in plots, and pointing them out is not perversity or obtuseness; it is simply correct.

¹⁵ In fact, Indiana didn't do that: see https://en.wikipedia.org/wiki/Indiana_Pi_Bill

Who is moral theory about? A further and fundamental issue in moral psychology that is not typically attended to in moral theory brings us to my second question, «Who is it about?» The issue I mean is nicely captured if we simply ask: «*Whose* moral psychology?»

To illustrate what I mean by this, I will quote a précis of an important debate in moral psychology. This précis, which I think is accurate, is paraphrased from something that I came across recently while refereeing for a journal.

Suppose X forms a moral judgement «F-ing is wrong». We will then expect X to come to have at least some motivation to avoid F-ing. But: *why* will X have this new motivation? According to *judgement internalists*, X acquires the new motivation not to F because there is an internal connection between moral judgements and motivation. Either moral judgements themselves are states of motivatedness or they have a direct power to produce motivations in people, at least insofar as they are rational. So on these views, motivation necessarily follows from the judgement (if X is rational), which explains X's new motivation.

According to *judgement externalists*, X's judgement that «F-ing is wrong» will lead to a motivation not to F only if X already has a distinct second-order motivation to acquire motivations not to do what X thinks is wrong. Whether X has this second-order motivation is a contingent fact about X – it is external to X's moral judgement itself and also something X need not have just in virtue of being rational. At the heart of this debate is then the question of which one of these explanations is more plausible.

The point of my question «Whose moral psychology?» is that I see no good reason why the judgement-internalist and judgement-externalist explanations described here couldn't *both* be plausible, and indeed correct, about different people, or even about the same person at different times. Of course, you could exclude the possibility that both could be true by defining either externalism or, more likely, internalism as a view about what *must* happen. But then the debate has been drained of interest by stipulation. For surely the original interest of the discussion lay in trying to make sense of the variety of actual moral psychologies; and defining it away is not making sense of it.

If we try to return to making sense of that variety then we may note that, for example, «moral judgements» might themselves be «states of motivatedness» in some people, but not in others. Or someone might change their views about what «wrong» means: at one time they might take «wrong» to mean «simply not to be done, *full stop*», at another they might read it as «forbidden in the distinctively moral way of forbidding things» – and then, of course, it

will be a wide-open question for them whether «the distinctively moral way» is one that they should care about (either overridingly, or a lot, or at all).

Those are just two possibilities, and history and comparative sociology may well provide arrays of examples of other possible setups. My central point is just that it is entirely conceivable, indeed it is entirely probable, that different societies, and different ages, realise different moral psychologies¹⁶. Even if we restrict ourselves to our own society, there too it is completely unclear why we should think that exactly one pattern of moral motivation is realised, or that there is exactly one form that something worth calling «moral belief» or «desire» (if anything is) can take in us, or that there is (therefore?) exactly one pattern of moral-motivational explanation; or that it is the task of the philosopher to unveil this unique formation. On the contrary, everything else we know encourages us to see diversity here, not uniformity. We should not be too quick, then, to assume that there is just one timeless moral agent or subject that moral psychology – and moral theory in general – is always unproblematically about. So likewise, with human beings; our species has a history, and we should not shy away from the possibility that that history is not just philosophically dispensable. Perhaps there is no such thing as a human essence; or perhaps there is, but that essence is essentially historical and mutable. We come here, for the first time, to the question how NNLT relates to human history; but not the last.

I turn to my third question: *Who is moral theory for?* Suppose I put together in my philosophical writings, in fully systematised form or something close to it, what I take to be a complete (or more or less complete; or completable) account of what is right and good and to-be-done, and why. If I do this, then I am doing no more and no less than some of the classic moral philosophers have done – notably, for instance, Kant, Bentham, the Mills, Sidgwick, and Richard Hare. It is what plenty of contemporary moral philosophers have done too, such as Thomas Scanlon, Bernard Gert, Derek Parfit, Philip Pettit, Rosalind Hursthouse, Brad Hooker, Peter Singer, and many others. But if I do this, then who am I addressing; who is my audience? Who is supposed to use or take up what I have written, and what counts as (successful) use or uptake?

On the face of it, much contemporary writing in moral theory is addressed only to philosophers. Certainly, for the most part, it only gets read

¹⁶ See MACINTYRE, A., *After Virtue*, Ch. 1, Duckworth, London, 1981, for the similar point that Humean moral psychology might well be true of a certain kind of person in a certain milieu, and Moore's again of another.

by philosophers. But obviously a moral theorist might, and perhaps should, write with a higher ambition than this. She could aim to have her moral theory taken up and used, not only by other philosophers in their theoretical comparisons of the merits of different possible moral theories, but by the populace in general. What would it be like for that to happen?

The most obvious way for a moral theory to get used is for it to become, or provide, a *decision procedure*, a way for actual agents to make actual decisions. People on the street would use the theory in making choices in real time; the theory would be, sociologically, on a par with other choice-rules that some people have sometimes deployed, like «Does doing this bring me contentment/ joy/ fulfilment?» or «What would Jesus do?» or «Is this the way of the Buddha?» or «Is this living out Torah?».

Some moral theories, both classic and contemporary, do explicitly tell us that they aim to provide a decision procedure for any agent. So, very famously, Kant says that for any action to have moral worth, «it is not enough that it should conform to the moral law – it must also be done for the sake of the moral law» (*Groundwork* ref.). *Any* action must be done that way, on pain of being morally worthless: lifesaving acts, acts of spontaneous generosity to strangers, things I do to express my deep and abiding love for my wife – none of them have any moral worth at all, if they are not done «on the motive of Duty» and «for the sake of the Moral Law».

This doctrine about the unique evaluative status of moral motivation is perfectly clear and explicit in Kant, but it is a hard saying. It is difficult to read it as anything but an extreme form of *moralism*, of the implausible and inhumane idea that, if we are to be good people at all, then morality must explicitly and directly dominate our practical thinking at all times. Unsurprisingly, many reflective Kantians have sought to dilute or moderate the starkness of what Kant actually says. Mostly they have done this either by widening out what counts as «acting on the motive of Duty», so that it can include, *e.g.*, acting on the virtues and sentiments that Duty requires us to have, with no need for Duty itself to appear *directly* in the motivational story. Or they have tried narrowing down the scope of Kant's requirement that our acts should have «moral worth», *e.g.*, by saying that there's no need for *everything* we do to have moral worth, either because «moral worth» means something very specific in Kant, and/or because for Kant there are other kinds of worth besides moral, and/or because all that's needed is that a few of our *cardinal* actions and/ or *course-setting* decisions should have that special kind of worth.

The point of these manoeuvres is to leave it open to the Kantian (or neo-Kantian?) theorist to give a plausible answer to my question who their moral theory is for: who uses it or is supposed to use it, what counts as successful uptake of their theory. In some of these manoeuvres the theorist is already steering close to an account of who moral theory is for that is surely not available to any fully orthodox follower of Kant, but which has been central to the utilitarian tradition at least since John Stuart Mill. This is to say that distinctively moral-theoretical (e.g., utilitarian) thinking need not be found in our *decision procedure* (DP) at all. Its natural home is, rather, in our *criterion of rightness* (CR).

On this view – one familiar version of which is the «two-level» version of utilitarianism – we can allow that people whom our theory counts as good people actually proceed, in deciding what to do, by whatever method you like. That method of deliberation need not use the very same kind of reasoning as we deploy when assessing actions for rightness, wrongness, or permissibility. So we can think in our DP about, say, the rules of traditional morality, or what it would be nice to do, or indeed anything else you like; maybe even Kantian considerations. Provided that our DP reliably produces the results that are approved by our criterion of rightness, and provided of course that our CR is the utilitarian one, it really doesn't matter. Actually, we *ought* to deliberate in a non-utilitarian way, if that is the way of deliberating that produces the best utilitarian results. And so, it is that many consequentialists are happy to allow that the best DP will not only be non-utilitarian, but actually anti-utilitarian.

But this line of thought just gives new urgency to my original question, who such a moral theory is supposed to be for. On the two-level picture, who actually *uses* the moral theory – who actually does any moral thinking at all in the theory's own terms? And when?

One notorious answer, most famously championed by Henry Sidgwick in *The Methods of Ethics*, draws the line that divides the two levels of moral thinking between different social groups. There is a utilitarian elite who do the moral theorising for the rest of society, and there is the non-utilitarian rest of society for whom they do it.

Sidgwick admits that, on naive non-utilitarians, the effect of exposure to actual utilitarian thinking is mainly one of repulsion, demoralisation, and loss of moral motivation. Surprisingly, he does not see this in the most obvious light, simply as evidence that utilitarianism is false; simply as a case where we see with particular clarity the silliness, unreality, and tin-eared-ness of utilitarianism in all its stark, tedious inhumanity. Instead, he tells us, it just shows how important it is that the non-utilitarian populace *should not know* that this is how

things are: it shows that his utilitarian elite need to keep their deliberations, and in fact their very existence, secret from most of the population.

Bernard Williams famously named Sidgwick's position the «Government House» view, and he intended the name with, as his teacher Ryle would have said, deliberate abusiveness. But actually, Williams' name is too kind to Sidgwick's view. Williams' epithet references British white administrations in African imperial colonies. For sure, those administrations thought that they were an elite with elite motivations. But Government House was (typically) a grand building on a hill, deliberately placed in the most prominent available position in the main town of the colony (as it is, for example, in St. Helier in Jersey, where Government House sits proudly on the side of St. Saviour's Hill, overlooking the town. I don't mean that the Bailiwick of Jersey has ever been much like an African imperial colony)¹⁷. Except in cases of extreme political volatility, British colonial governments were happy to be quite open, indeed pretty ostentatious, about what they were doing for what they took to be the public good. Unlike Sidgwick's utilitarians, they did not think that it was part of their mission to *hide themselves*, or to be systemically deceptive not just about what they were doing, but even about the very fact that they existed. It is true that there have been plenty of cases in the real world – and more in *e.g.*, paranoid spy and dystopic fiction – where something like Sidgwick's picture of an invisible elite controlling everything has actually been realised. But that just reinforces the obvious conclusion: that to anyone with the slightest predilection for a democratic, open, and equal society, any such arrangement as Sidgwick's is bound to be completely unacceptable, both politically and ethically.

If the two levels of two-level utilitarianism are not realised in politics and sociology, the other obvious place where they might be realised is, apparently, in psychology: within the individual's mind and/or character. But it is not clear that the two levels that the utilitarian needs can really be part of any more stable or transparent structure in first-personal psychology than they can in their political realisation. The differences, and the tensions, between the kinds of deliberative material that the utilitarian needs to have present at the two levels are simply too great. A utilitarian whose own psychology is two-level will often have to say to herself – or at some level implicitly acknowledge; or perhaps try to hide from herself – things like «my (non-utilitarian) motivating reason for phi-ing is *p*, but my (utilitarian) justifying reason for phi-ing is *not*

¹⁷ https://en.wikipedia.org/wiki/Government_House,_Jersey

p, but r». It is not clear how, without irrationality of some kind, she can admit this to herself *and carry on being motivated by the non-utilitarian reason p*. Our own motivating reasons – at any rate our all-things-considered ones – present themselves to us as our justifying reasons (though of course not necessarily as our *morally* justifying reasons – I might hold myself justified in doing something immoral). To say (in the present tense and the first person) that the reason why I am justified in an action is not the reason why I am motivated to do that action is, at best, a joke at my own expense, and something close to a Moore-paradoxical or blindspot utterance.

This kind of problem about the transition from the statement of a moral theory to its social and psychological realisations – the problem, as I have put it, of who the theory is *for* – comes up for NNLT too. The theory is presented as started from points about *anyone's* motivations; but ordinary people do not represent their own motivations in anything much like the way NNLT represents them, as ways of bringing about effects that constitute pursuit, respect, or violation of the various goods that it recognises. Who then are the specialists who do so represent ordinary people's choices? And how are those specialists to mediate their results *to* ordinary people?

The point is not simply that there is a technical vocabulary in play; of course anyone is entitled to mint a technical vocabulary, so long as it shows its worth in justificatory and explanatory results, and in social and psychological instantiations or representations of that technical vocabulary. The point is not even that NNLT faces an unanswerable question about how these social and psychological instantiations are to be realised. The point is, though, that (as Alasdair MacIntyre has spent his distinguished career insisting) any moral theory implies a sociology and a psychology; and that this question, of how to realise NNLT's theory in social and psychological reality, has not in fact been answered by NNLT's adherents.

A further worry of mine about NNLT is sociological in a different and more political sense: it is a further indeterminacy that I see in NNLT about what, and who, the theory is supposed to be *for*. Is it meant as a theory *for the church* to follow? Or *for society at large* to follow? It seems to me to be insufficiently clear, in typical expositions including Finnis's, which of these two ways we are to understand the view. But given obvious facts about religious and moral diversity in society today, it is not obvious that NNLT as typically offered, including by Finnis, can serve both purposes; at the very least, it cannot serve both in the same way. And if we try to make it serve both, we end up ei-

ther with incoherence, or with coercion, or with both – as indeed is currently the case in the USA.

This question about who NNLT is for will keep coming up in the rest of this essay. But in III, I turn to a closer look at the structure of NNLT itself, and at some of the problems that that structure raises.

III

These too are problems about saying more than we actually know. Or, to use a metaphor of Wittgenstein's, they are problems about forcing the jigsaw puzzle to come out as we want it to, instead of allowing it to come out as it should:

«It seems to us as though we had either the wrong pieces, or not enough of them, to put together our jigsaw puzzle. But they are all there, only mixed up; and there is a further analogy between the jigsaw puzzle and our own case. It's no use trying to use force in putting them together. All we should do is look at them *carefully* and arrange them»¹⁸.

Wittgenstein's deployment of a jigsaw metaphor might remind us, if we happen to know the book, of Iain Banks's Uncle Hamish (who not coincidentally is a fundamentalist):

«Closer inspection revealed that [Uncle] Hamish was putting the jigsaw puzzle together upside down; every cardboard flake was grey, turned the wrong way up... Hamish peered down at the jigsaw puzzle, toyed with a couple of the pieces, looking for a place to fit them in what he had already completed. The squint bottom edge of the puzzle, some small spaces between joined pieces, a few tiny flecks of cardboard... and a small pair of collapsible scissors lying on the bedspread near the pillows indicated that Uncle Hamish had – not to put too fine a point on it – been cheating»¹⁹.

For systematising moral theorists, there is a real danger that something will get lost by their systematising. Their practice of moral theory is always in danger of becoming a kind of forcing of the issue; and a forcing of the pieces

¹⁸ WITTGENSTEIN, L., *The Blue and Brown Books*, *op. cit.*, p. 46.

¹⁹ BANKS, I., *The Crow Road*, Abacus, London, 2005, pp. 309-310.

into holes that they don't really fit. This danger is, I think, a real one for Finnis's theory, just as it is for other moral theories.

To show what I mean by raising this worry, let me first offer a quick summary of what NNLT actually says. It is summarisable, I suggest, as the following five theses:

- a. A list theory of the good: There is a variety of incommensurably different basic goods (seven in *Natural Law and Natural Rights*): life, practical reasonableness, friendship, religion, health, play, truth/understanding.
- b. A naturalistic grounding: These basic goods arise, biologically, from our human nature and its needs.
- c. A heavenly *telos*: The ultimate fulfilment achieved, in heaven, by the ideal combining of the basic goods in our individual and social life constitutes, theologically, our *eudaimonia*/ *beatitudo*.
- d. A moral psychology: All action is rationally explicable, if at all, then by being directed to the basic goods.
- e. A normative ethics: All action is morally justifiable, if at all, then by its being a pursuit of some basic good(s) which does not also violate but respects all basic goods.

Of these five theses, I can set c aside at once. It seems right to me. I suppose it's just possible that other critics might see c as controversial; if so, over to them.

If I have a doubt about c, it is a doubt that I might perhaps share with Simone Weil. I doubt that the ideal combining of the goods in any plausible List is either necessary or sufficient for our ultimate happiness. Jesus said «Blessed are those who mourn», and also (to the bandit dying horribly on the cross next to him) «Today you shall be with me in paradise». I think Jesus meant that ultimate happiness is consistent, and can be co-existent, with extreme suffering. If so, the ideal combining of the goods in most plausible lists is not necessary for ultimate happiness. Conversely, given a description of the goods in some plausible list as ideally combined, does it follow automatically that the person who enjoys those goods is ultimately happy? I'm less sure here; but perhaps, only if you stipulate it (perhaps you could do this by fixing the list). If so, then the latter is not sufficient for the former either.

I turn to a, about which I have a number of questions. First, what does it mean to say that the goods are incommensurable? «Incommensurable» is Finnis's word. Does he mean what, *e.g.*, Broome (and standard economic the-

ory) means – that x and y are incommensurable iff none of these three is true: $x > y$ or $y < x$ or $y = x$?

Apparently not, because Finnis thinks the basic goods are all *equally* goods. He seems to mean not what can be *equated* with what for value, but what can be *exchanged* for what. *I.e.*, his word *seems* to mean «no trade-offs». But it can't mean that: everyone sane allows *some* trade-offs. The question is only: which ones?

Secondly, why is it just these seven goods? As I already asked in *Understanding Human Goods*, why not say that *individual humans* are separate basic goods? (Individual humans are, after all, about as un-trade-off-able as anything). Why not say that works of art are separate basic goods? Why not allow that new basic goods might be discovered?

To put the questions even more pointedly: What are the rules of the stipulating-basic-goods game? Can anyone play? The list of goods was supposed, originally, to be derived from reflection on people's motivations; it is that reflection that is supposed to get us to seven basic kinds of ultimate objective. But first, it is not clear why, if we can go this far in reflective reduction to basic kinds, we can't go *further* – say, to a single good that we might just call eudaimonia, or indeed utility. What is supposed to stop us doing that? The answer seems to be considerations about «incommensurability»; but as already noted, these considerations might well be thought to stop the reductive process a long way *before* we get to Finnis's seven basic goods if they stop us anywhere – as well as *beyond* those goods.

Moreover, virtually all adherents of NNLT deny that *pleasure* is a basic good – when it seems perfectly clear, as a matter of anthropology, that plenty of actions of ours are motivated by pleasure in and of itself, so that pleasure seems to have as solid a title as any objective of action to count as a basic good. Furthermore some adherents of NNLT, including Finnis at times, claim that *marriage* is a basic good – when it seems perfectly clear, as a matter of anthropology, that people who get married *get married for reasons*. That is to say, when people marry, they aim to achieve some further goods by marrying. But that in turn is to say that marriage, though it is a good, is not a *basic* good in NNLT's sense. The denial of pleasure's status as a basic good, and the insistence sometimes heard on marriage's status as a basic good, add to our uneasy sense that the theory of the goods is being gerrymandered to bring about particular results in normative ethics.

Perhaps more deeply worrying is that there seems to be a kind of confusion of levels in the claims that are now offered by NNLT's adherents about

what basic goods should be recognised. The levels confused are those of different degrees of *social concreteness*. Marriage is an institution with a traceable history of specific social realisations. If marriage is, as such, a good for humans, it stands on quite a different level of analysis from «play» or «friendship» or «understanding» or «health». We come back here to the question of NNLT's uneasy relation to history, sociology, and actual realisations in human life of the goods that it posits. It does not seem too strong to me to say that the lists of goods that NNLT offers are often not only worryingly silent about these realisations, but actually incoherent in their relation to any possible realisations. How are we to set the rules of the game of stipulating which goods are basic, and what counts as keeping those rules?

On b: The answer to that is supposed to be that the rules of the game are set by appealing to «human nature». But what human nature would that be, exactly? At this point NNLT seems to run into the same kind of problem as one often sees in those forms of virtue ethics that presuppose what we might call zoological naturalism. The problem is nicely summarised by James Lenman, commenting on the views of Philippa Foot and Michael Thompson:

«[I]t seems extraordinary... that Foot in the course of the whole argument of *Natural Goodness* does not mention Darwin once... The whole modern Darwinian synthesis of evolutionary theory and genetics is similarly off the page in a paper by Michael Thompson from which Foot, McDowell and Hursthouse all draw inspiration. Thompson does briefly consider that it might be relevant to advancing our understanding of what life is to make some reference to DNA but dismisses this as doing no more to advance our understanding than 'pointing to a few gorillas and turnips'²⁰. Surely this remark is *wildly* ill-judged. It is as if a proposal that we might grow in understanding of what proteins are by saying something about amino-acids were dismissed as of no more value than pointing to a few sausages»²¹.

The moral that Lenman draws is that, if you want to base your ethics on zoology and anthropology, then you should base it on the zoology and anthropology of the 21st century AD, not the 4th century BC. That seems entirely right

²⁰ THOMPSON, M., «The Representation of Life», <https://www.pitt.edu/~mthomps/ readings/life.pdf>

²¹ LENMAN, J., «The Saucer of mud, The Kudzu vine and the uxorious cheetah: Against neo-Aristotelian naturalism in metaethics», *European Journal of Analytic Philosophy*, vol. 1, n. 2, Rijeka, 2005, pp. 37-50.

to me, though it prompts a further question: does modern zoology, in fact, have any place at all for the idea that nature sets us goals? Or if it does, do the goals it sets us (*e.g.*, fighting, fleeing, fornicating) look all that promising as a basis for ethics? What would a schema of the basic goods look like, if it took its goals directly from some of the more down-to-earth or cynical versions of sociobiology?

Here a charitable (but, no doubt, nonetheless unwelcome) interpretive suggestion is as follows: Zoological naturalists like Foot and Thompson – and like the proponents of NNLT – don't really mean to appeal to *zoology* at all. Not at any rate to *modern* zoology, zoology as a serious 21st century science. What they *seem* to want to appeal to is more like *folk* zoology; hence all the Aristotle (how ironic, given that Aristotle's work is the first great *rejection* of folk in favour of scientific zoology).

This is, of course, a scandalous suggestion. But it can be scrubbed up into something respectable. Let's understand the zoological naturalists as appealing to what Wittgenstein calls *the common behaviour of mankind*:

The common behaviour of mankind is the system of reference by means of which we interpret an unknown language... What we are supplying are really remarks on the natural history of human beings; we are not contributing curiosities, however, but observations which no one has doubted, but which have escaped remark only because they are always before our eyes²².

A Wittgensteinian «natural history of humanity» is not a contribution to zoology. It is not science at all. It is a kind of phenomenology of our life together, if I can use that word without evoking its inside-the-skull connotations: «this is simply what we do»²³. In this life together I think we find quite a lot of what the zoological naturalists are actually looking for: *e.g.*, in particular, chains of explanation/ justification that lead back to a variety of types of objectives that are *per se* eligible in the way that NNLT-style basic goods are meant to be.

The trouble for NNLT here is, of course, twofold. It is first that a Wittgensteinian natural history of our life together does not offer anything that is (as we might put it) *socially abstract* in the way that most of NNLT's goods are – all human life is conditioned by *particular* forms of social concreteness.

²² WITTGENSTEIN, L., *Philosophical Investigations* I, 206, 415, Basil Blackwell, Oxford, 1958 (2nd Edition).

²³ *Ibid.*, I, 217.

Secondly, and connectedly, the trouble is that what such an account of our life together offers in the way of «basic» and «intrinsically intelligible» objectives for action is *not a closed list* – what is on the list is open, mutable, not neatly fixed to any particular number of goods, and always subject to social and political contestation. To my eye, this is all as it should be; but then, these are some of the considerations that drove me out of orthodox adherence to NNLT, and in a Wittgensteinian and anti-theoretical direction, in the first place.

These thoughts bring me to d: the claim that all action is rationally explicable, if at all, then by being directed to the basic goods. Combined with NNLT's thesis that there are just seven basic goods, I think d is unhelpfully reductive in two distinct ways.

First, d claims to trace back the motivation of all action to those seven goods. But a moment's reflection on the sheer variety of the objectives of action suggests that this thesis is either false or trivial. Life is, quite simply, more complicated than that²⁴. Nothing philosophically speaking is gained by ignoring these complications; it doesn't make action any more explicable to ignore them. The opposite is true. And as above, there is a worrying lack of concreteness at this point in NNLT; where is its sociology? Where is its psychology? There is no such thing as *the human being as such*; all human beings live in particular times and particular societies, and those times and societies are essential to their being.

Secondly, d apparently makes what I regard as a cardinal error about the nature of action and reasons for action. It apparently assumes that all action has the shape of *pursuit of some objective*. But that's simply untrue: reasons can be future-based, past-based, present-based, and other things.

For a clear example of this conception of action as pursuit of objectives, consider this, from Bence Nanay:

«... in order for an agent to perform an action, she needs to represent its goal as well as the way in which she will bring about this goal... performing the action of reaching for the cup implies representing it as reachable. The same argument applies for any other goal-directed action: each time we are Q-ing an object, we must represent it as Q-able²⁵.

²⁴ WITTGENSTEIN, L., *Philosophical Investigations* I, 23, *op. cit.*

²⁵ NANAY, B., «Action-oriented perception», *European Journal of Philosophy*, vol. 20, n. 3, 2012, pp. 430-446.

Behind this, it seems, lurks an instrumental conception of action as being always and only about nothing but taking the means to some antecedently given end (For Nanay the opposite of «goal-directed action» seems to be «pointless action», not «action that is worth doing but not because it is goal-directed»). But what object am I representing as Q-able, what object am I Q-ing, when I play the violin, greet a friend on a railway platform, say the Mass, dance at my brother's wedding, award a Nobel prize, sit down to read Homer for the evening, pause to watch a bee cleaning its legs, laugh in an oppressor's face?

An ideologically-driven conception of the nature of action, true (or interestingly true, or true without distortion) at most only of *some* actions, is so quickly and so unobtrusively set up as the essence and paradigm of *all* action. Since that conception is naturally seen as a *consequentialist* one, it is odd, to say the least, to find this conception so near the surface in NNLT.

I turn now to e: the thesis that all action is morally justifiable, if at all, then by its being a pursuit of some basic good(s) which does not also violate but respects all basic goods.

Here I want to object, first, that then everything depends on *what we count* as pursuit/ respect/ violation of any good. What are the rules for this game? Can anyone play? It's not that we have *no* intuitive sense that *some* actions are *obviously* violations of some important values, others *obviously* pursuings or respectings of some important values. It's rather that we cannot stretch these intuitions *to cover the whole of our moral experience*. And shouldn't try.

Secondly, what is the explanatory value of saying *e. g.* «murder is wrong because it violates the good of life»? Is that really an *explanation*? Isn't «violations of the good of life are wrong *because they're things like murder*» a good deal more illuminating?

Of course, you could insist that explanatory illumination is one thing, and (real, theoretically deep) justification is another: it might not be clear *to us*, but that doesn't mean it isn't really, ultimately, metaphysically, *clear*. If anyone has this inclination, then, apparently, they are committing themselves to pursuing the project of a full-blown quasi-scientific theory of morality – which is not however a theory that sheds any direct explanatory illumination. As people now say: Good luck with that.

Also, and perhaps above all, there is a third objection to e. This is that, in endorsing it, we are moving rather rapidly from careful, exploratory, provisional, quasi-phenomenological claims about the rational structure of action to absolute and unqualified claims about what kinds of actions are absolutely

excluded morally speaking. But why should thoughts of the former sort guarantee any thoughts at all of the latter sort? Here too I think NNLT says more than its proponents know – and more than any of us *could* know.

IV

The objections to *new* natural law are not, necessarily, objections to natural law as such. But for my money a natural law approach to ethics, to be plausible, would need to be a quite different sort of ethics, and not in the systematic sense a *moral theory* at all.

I suggest in closing that an unsystematic natural law ethics can draw upon resources from three places in particular. The first is, unsurprisingly no doubt, Aquinas, whose *Summa* is indeed a summary, but is not for that reason to be understood as a *system*. The second source is perhaps more surprising: it is the later Wittgenstein's account of *die gemeinsame menschliche Handlungsweise*. The third source – and this I take to be a source seriously neglected by NNLT – is orthopraxy: the life of the church, as actually lived today, and as actually centred upon our sharing in worship, in the reading of the scriptures, and in the eucharist. In saying this I find myself inclined to agree with Stanley Hauerwas that the «Christian ethics» offered in *Natural Law and Natural Rights* (and in *The Way of the Lord Jesus* and similar works) is not in fact nearly Christian enough, precisely because it is an abstract system that floats free of the actual life and experience of the church. In ecclesial terms what we need is an ethics that is built, *not from the Vatican down, but from the parish up*.

The new *old* natural law ethics that we might offer, as a possible alternative to the new natural law ethics, will not be a «definitive» ethics, in the way that NNLT often seems to be intended; there will be a certain tentativeness and Montaignean (perhaps even Kantian) humility about it. But what it will have is precisely what, it seems to me, NNLT tends to be in danger of lacking: the authenticity of groundedness in the practice and experience, both of the church, and also of the wider society that the church seeks to address, and sometimes even reaches.

In the words of Iris Murdoch²⁶, «a moral philosophy should be inhabited». Despite what may perhaps seem from this essay, I still have a great deal of

²⁶ MURDOCH, I., *Sovereignty of Goodness*, Routledge & Kegan Paul, Oxford, 1970, p. 47.

sympathy for NNLT (you should see what I have to say about the *other* moral theories.) I would be more sympathetic still to NNLT, if I was clearer – if the theory itself was clearer – exactly how it is, in Murdoch’s sense, «inhabited». But I suspect that if NNLT were clearer about that, then it would be radically reconfigured. And in particular it would cease to be, in the sense that I have impugned here, a systematic moral theory.

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