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Educational materials for New Natural Law Theory

INTRODUCTION TO NEW NATURAL LAW THEORY

In this article, Christopher Tollefsen extrapolates the central contributions of the contemporary theory of natural law known as the New Natural Law Theory. With [Aquinas](#) as their starting point, the New Natural Law Theorists—principally Germain Grisez, Joseph Boyle and John Finnis—have formulated new articulations of natural law-thinking in the areas of moral thought and practical reason, human action, political authority, and teleology (or, the ultimate end of human beings). The New Natural Law Theory argues that practical reason (which directs human beings to certain actions) is capable of grasping as self-evidently desirable certain basic goods. These goods are enumerated as: life and health; knowledge and aesthetic experience; skilled work and play; friendship; marriage; harmony with God; and personal harmony or consistency in judgment, feeling, and action. It is in choosing to act for these basic goods that morality comes into play. For the New Natural Lawyers, the first principle of morality is that human agents ought to contribute to integral human well-being and flourishing and ought to avoid intentionally impeding or detracting from integral communal fulfillment. In order to accurately determine moral action, one necessary consideration is whether the person has acted with the *intention* to damage a basic good. Other important considerations include the fairness of accepting certain side effects that also damage basic goods. Acting morally is, for the New Natural Lawyers, as important for the individual person as for the well-being of the entire community. Hence, an understanding of the role of political authority and the end to which humans are aiming, both individually and collectively, is of central importance. Following the prescriptions of the first principle of morality, political authority is similarly enjoined to act for the integral well-being and flourishing of the people under its jurisdiction and to avoid intentionally impeding or detracting from integral communal fulfillment. It is the final realization of this integral communal fulfillment, in cooperation with the divine, that constitutes the ultimate end of human beings.



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JOHN FINNIS

Of the New Natural Lawyers (John Finnis, Joseph Boyle, and Germain Grisez), John Finnis is the most well-known. Born in 1940, Finnis is a philosopher specializing in the philosophy of law. He is a Professor of Law at University College, Oxford and at the University of Notre Dame. He teaches jurisprudence, political theory, and constitutional law. His faculty profile can be found [here](#).



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GLOSSARY OF TERMS FOR NEW NATURAL LAW THEORY

anti-perfectionism:

a term used in reference to [John Rawls](#)'s political theory to denote his opposition to the perfectionist approach to moral and political theory. For Rawls, a condition of morality in political authority is that the state must be neutral to various ideas of the good, allowing various reasonable comprehensive doctrines to exist within a pluralistic society. Like many liberal political theorists, Rawls believes that the state should provide a neutral framework within which different conceptions of the good can be pursued in order to ensure that justice is fair. (See also [PERFECTIONISM](#))

basic goods:

possibilities or ends for action that are self-evidently good in-and-of themselves and are beneficial to, and constitutive of, integral human flourishing. New Natural Lawyers hold that life, health, knowledge, aesthetic experience, work, play, friendship, marriage, and harmony with God are all basic goods. (See *also* [INCOMMENSURABLE](#), [INTEGRAL](#), [FLOURISHING](#) and [SELF-EVIDENT](#))

casuistry:

the determination of right and wrong in questions of conduct or conscience by analyzing cases that illustrate general ethical rules; a method of reasoning to resolve moral problems by applying theoretical rules to particular instances.

flourishing:

a term derived from the [Aristotelian](#) word *eudaimonia*, meaning happiness. The term “flourish” is preferred to “happiness” because it implies a consistent manner of acting to promote the instantiation of basic goods over the course of a complete life and within a community.

incommensurable:

1) impossible to measure or compare; 2) lacking a common quality on which to make a comparison. In New Natural Law theory, the basic goods cannot be ordered according to a hierarchy of value, or goodness, because they are incommensurable, or, uniquely good.

instantiate; -ed; ing; ion(s):

a term used regularly to indicate the concrete representation of an abstract principle; used especially in New Natural Law Theory for the realization of a basic good in a particular state of affairs.

integral:

1) essential or necessary for completeness; constituent; 2) possessing everything essential; entire. In New Natural Law, integral human fulfillment is the state of affairs in which the basic goods are harmoniously instantiated.

perfectionism:

a term in contemporary moral and political theory referring to an account of the good human life and human well-being. Perfectionist theorists (such as [Aquinas](#) or Finnis) advance an objective account of the human good and then develop an account of ethics and/or politics that is informed by this account of the good. In politics, the perfectionist favors political institutions and state policies that do the best job of promoting good human lives in the circumstances in which they function. (See *also* [ANTI-PERFECTIONISM](#)).

practical reason:

reason oriented towards action; the faculty by which human beings determine how to act

self-evident:

a proposition knowable in itself, without reference to a third, or mediating term; hence not demonstrable by deductive argument. Not all propositions self-evident in themselves are also self-evident to us.



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OUTLINE OF ESSAY ON NEW NATURAL LAW THEORY

I. Introduction—New Natural Law Theory

A. New Natural Law is a contemporary theory that revives and revises [Thomas Aquinas](#)'s understanding of natural law.

B. New Natural Law contributes to five main areas of natural law thinking:

- i. moral thought and practical reason
- ii. casuistry
- iii. human action
- iv. political authority and political common good
- v. ultimate end

II. Foundations of moral thought and practical reason

A. Germain Grisez articulates three theses in Thomas Aquinas's writings on natural law that have formed the basis of subsequent developments in New Natural Law theory. The claims of the New Natural Law theory are as follows:

i. Practical reason, or reason oriented towards action, grasps as self-evidently desirable such basic goods as: life and health; knowledge and aesthetic experience; skilled work and play; friendship; marriage; harmony with God; and personal harmony or consistency in judgment, feeling, and action.

ii. The basic goods are incommensurable or non-hierarchical. That is to say, no basic good is "more good" or "better" than another basic good. Each basic good is uniquely beneficial for human beings and conducive to human flourishing.

iii. The practical reason that recognizes the basic goods and the basic goods themselves are pre-moral, or not yet moral. Morality enters in only at the level of deliberation and action, when a human agent chooses which basic good to pursue or instantiate when faced with multiple desirable options for choice.

B. Given these premises, the New Natural Law theory's first principle of morality is: human agents ought to contribute to "integral communal well-being and flourishing" and ought to "avoid intentionally impeding or detracting from integral communal fulfillment."

III. Casuistry and applied ethics:

A. New Natural Lawyers Grisez, Finnis, and Boyle specify the first principle of morality in terms of "modes of responsibility," actions or attitudes of either a positive or negative nature with respect to the basic goods.

B. Modes of responsibility imply the regulation of certain actions in order to ensure that the basic goods are not damaged (either through hostility or enthusiasm). Consequently, such actions as homicide, suicide, direct abortion, euthanasia, capital punishment, and intentional killing in war are understood to be categorically harmful to the basic goods.

C. Moral absolutes are derived from these actions that are categorically harmful to the basic goods. Hence, such acts (e.g. lying) are morally forbidden and must never be done.

D. More recent development of these principles has implications for sexual morality.

IV. Theory of action:

A. The applied ethics of New Natural Law Theory are related to, and supported by, the nature of human action.

B. Because every choice necessarily involves damage to another good to the extent that it is neglected in favor of another good that is chosen, actions are distinguished by intention. Actions that cause damage are not necessarily immoral. Only acts done with the intention to damage a basic good are absolutely morally forbidden.

C. An account of intention is therefore necessary for determining moral absolutes.

D. For New Natural Lawyers, intention encompasses both the ends of an action (i.e. the goal or aim of an action) and the means by which the end will be brought about.

E. Intention is necessarily a “first-person reality.” The intention of a person cannot be determined or understood solely through the effects of his or her actions.

F. The effects of certain actions, which appear from a third-person perspective to be intended, need not, in fact, be intended. Such effects may be foreseen, but in this case, if they are not intended, they are side-effects of the intended action. For example, the use of lethal force to prevent rape need not involve an intention to kill.

V. Political Authority and the Political Common Good:

A. New Natural Law theories of political authority and common good are articulated in Grisez and Boyle's *Life and Death with Liberty and Justice* and Finnis' *Natural Law and Natural Rights*.

B. Grisez and Boyle advance a theory of limited government that is indebted to contemporary liberal political theorist [John Rawls](#).

C. Unlike Grisez and Boyle (following Rawls), Finnis argues that the basic goods should factor into the practical considerations of the government. However, his theory still greatly limits state sovereignty compared to some understandings of Aquinas, according to which the government is believed to have a responsibility to cultivate all-around virtue in the people of a political community.

D. New Natural Lawyers understand political authority to be an instrumental and not basic good in the service of communal fulfillment.

i. Political authority is necessary instrumentally in cases of social coordination, protection against hostile outsiders, justice within the political community, and when individuals find themselves in circumstances of more than usual dependence.

E. Political authority ensures that individuals and groups can efficiently and fairly pursue the basic goods individually and cooperatively.

F. Hence, political good strives for the common good which is none other than the conditions that “favor, facilitate, and foster” the realization of integral human fulfillment for each individual in that community.

VI. The Ultimate End of Human Beings:

A. New Natural Law Theory argues for an understanding of the ultimate end that re-frames Aquinas' view that the ultimate end of all human beings is union with God through the beatific vision.

B. New Natural Lawyers hold that, whereas Aquinas believed one could only will one final end at once, it is possible to will more than one ultimate end at one time.

C. Grisez argues that the ultimate end is “integral communal fulfillment, understood as including a relationship between all persons capable of cooperation, human, angelic and divine.” This state of affairs also called the “kingdom of heaven.”

D. The ultimate end is linked to the first principle of morality and pertains to all “upright” rational persons.



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STUDY GUIDE FOR NEW NATURAL LAW THEORY

Part I. Basic Interpretation of New Natural Law Theory

If you are interested in the thought of the New Natural Lawyers after reading Tollefsen’s essay, please go to the [Primary Source Documents](#) to read some of the essential passages from the works that relate to this article. As you go back to the primary sources, keep in mind the following questions:

1. What are the basic goods in the New Natural Law Theory? Why are they important?
2. What is the first principle of morality in New Natural Law Theory? From what premises is it derived?
3. What is the role of political authority according to the New Natural Lawyers?
4. What is intention and why is it important for New Natural Law Theory’s account of human action?
5. What is the ultimate end of the human person according to the New Natural Law Theory?

Part II. Connections to Other Thinkers

In order to understand the New Natural Law Theory more completely, it is important to place it in its proper context. The New Natural Law Theory has become an important voice in contemporary debates about ethics and morals and the legitimate scope of political authority. As evident in the essay, the New Natural Law Theory draws heavily upon the classical, and especially Thomistic, traditions of natural law. However, contemporary liberal political theorist [John Rawls](#) has also been influential. As you look deeper into New Natural Law Theory, consider these questions in order to see how it fits into the broader history of ideas:

1. The essay begins by acknowledging the influence, albeit revised, of Aquinas on New Natural Law Theory. Try to distinguish some of the similar concepts and terms held by the New Natural Lawyers and Aquinas. For example, the New Natural Law Theory’s first principle of morality is that human agents ought to act in a way that contributes to “integral communal well-being and flourishing” and ought to “avoid intentionally impeding or detracting from integral communal fulfillment.” From what premises is this principle derived? How does this prescription for morally upright action relate to Aquinas’ first precept of the natural law that “good is to be done and pursued, and evil avoided” ([I-II, Q. 94](#), a. 2)?
2. Tollefsen notes that, despite the influence of John Rawls on some of the early works of Grisez and Boyle, the New Natural Lawyers advance a theory of political authority similar to that of Aquinas. Finnis’ perfectionist view of political authority, however, argues for greater limitations on political authority. Compare the views of Finnis and [Aquinas](#). Tollefsen writes that Finnis (as well as Grisez and Boyle) oppose the Thomistic view that “government should command whatever leads people towards their ultimate (heavenly) end, forbid whatever deflects from it, and coercively deter people from evil-doing and induce them to morally decent conduct.” Is this a correct reading of Aquinas? Would Aquinas regard this as the states’ infringement on individual sovereignty? Does Aquinas’ vision of the role of government depend upon a different

- understanding of freedom? What is freedom for Aquinas?
3. For Aquinas, the positive laws that are the basis of political authority reflect the natural law, which is derived from the Eternal Law—God’s law ordering everything in the universe for all time towards its final perfection and fulfillment. Where does political authority come from according to New Natural Law Theory? Do these accounts of legitimate political authority require the presence of a divine lawgiver?
 4. How do these accounts differ from the social contract theories of [Hobbes](#) and [Locke](#)?
 5. Compare Aquinas’ understanding of the common good with the New Natural Law Theory’s understanding of “integral human fulfillment and communal well-being.” Are these the same thing? How are these iterations different and what is important about what they each emphasize?
 6. Tollefsen asserts that the basic goods “are recognized as goods for all human agents; it is equally intelligible to act for the sake of the life of another as for one’s own life.” Compare this claim with Hobbes and Locke who emphasize the natural right of self-preservation.
 7. Tollefsen also argues that preference of self, or those close to one, is purely “arbitrary.” Hobbes and Locke would disagree. Describe what is different about the premises of the New Natural Lawyers and Hobbes and Locke to account for this disparate understanding of action.
 8. Compare [Hobbes](#)’s concept of self-preservation as a fundamental right with the New Natural Lawyer’s idea of life as a basic good.
 9. For Hobbes and Locke, the natural right of self-preservation can lead to highly individualistic societies—every man looking out for himself. Compare this to the New Natural Lawyer’s understanding that human flourishing is only completely integral when in the context of communal fulfillment.
 10. Compare the New Natural Lawyer’s theory of political authority with Hobbes’s. Why is it advantageous in Hobbes’ theory to have political authority vested in one all-powerful monarch who is, himself, unbounded by law? Why do the New Natural Lawyer’s, on the other hand, believe that “a political authority itself subject to law, is necessary” in order to create the conditions that “favor, facilitate, and foster” the realization of the personal development of individuals in a community?
 11. In the essay, Tollefsen explicitly notes the influence of John Rawls on some of the New Natural Lawyers, particularly in relation to their theories about political authority and the role of government. How else is Rawls influential for the New Natural Lawyers? On what issues do they disagree?

Part III. Critical Interpretation of New Natural Law Theory

With a basic understanding of the claims of New Natural Law theory, let us examine the arguments more critically. Are the arguments persuasive? Can we expand on the New Natural Lawyer’s thoughts to determine what they would say about issues they did not directly address? Use the questions below as your guide:

1. Understanding the moral absolutes that must guide human action in the New Natural Law theory is rather complex. Although it is fairly apparent that intentional homicide qualifies as an action that damages (or in this case, actually destroys) the basic good of life, what does it mean to damage or harm the basic good of play or aesthetic experience? Can you think of some concrete examples?
2. Why is intention so important for the New Natural Law theory’s account of human action? Are you persuaded by the argument? If the effect is the same, why do the New Natural Lawyers distinguish between causing damage and intentionally causing damage? Furthermore, if intentionality is inherently a “first-person reality,” is it really possible to determine the intention of an agent short of acquiring a truthful testimony?
3. According to the New Natural Law theory, every choice for action in some sense damages basic goods, as some goods will always be foregone or neglected for the sake of the one good being chosen. Is this a problem in the theory? Are you persuaded by their argument for resolving this issue? Can you think of another way to resolve the problem?

4. Consider the claim that the basic goods are, in-and-of themselves, pre-moral or not yet moral. How can they be morally neutral if they are already designated as “good”?
5. Given the tradition of natural rights in America, it is much easier to think of the unalienable rights to “life, liberty and the pursuit of happiness,” than it is to think of acting to pursue and promote the basic goods with a view to integral communal fulfillment. How do rights and basic goods relate? Are they necessarily at odds? Can you think of a way to reconcile them?

Part IV. Contemporary Discussions

New Natural Law Theory may be new on the scene, but it is proving an important theory in political and moral debates. Therefore, let us now turn to some contemporary issues to see how New Natural Law Theory might be applied to them.

1. As Finnis asks of himself in an article on New Natural Law Theory: is natural law theory compatible with limited government? To what extent do you think the principles of the New Natural Law Theory are compatible with limited government and constitutionalism in the American tradition? How have the Constitution and the Declaration of Independence been interpreted with respect to the basic goods of the New Natural Law theory? Where have the basic goods been upheld by law? When have the basic goods been harmed by law, according to New Natural Law Theory?
2. The New Natural Lawyers hold that marriage is a basic good. Furthermore, as Tollefsen writes in the essay, this claim, along with the premise that “the human person is a rational animal, a living organism of the human species,” provides the basis for general principles of sexual morality. What is the position of the New Natural Lawyers with respect to same-sex marriage? Is same-sex marriage for them a basic good in the way that the marriage of a man and a woman is a basic good? How does sexual morality fit into this discussion? Why would, as Tollefsen writes, principles of sexual morality flow from the claim that marriage is a basic good rather than marriage as a basic good flowing from principles of sexual morality? What is the difference?
3. Tollefsen, summarizing Grisez’s work in the 1970 essay “Toward a Consistent Natural Law Ethic of Killing,” describes homicide, suicide, direct abortion, euthanasia, capital punishment, intentional killing in war, and contraception as morally forbidden actions without exceptions. This is a conclusion based on principles graspable by unaided human reason. Although most people agree that murder is morally forbidden, many of the other items listed are highly controversial. Most people who argue for the permissibility of contraception or euthanasia, for example, still acknowledge that life is a basic good. What arguments do they advance? How would New Natural Lawyers respond?
4. Given the emphasis on the “modes of responsibility” that direct us towards certain actions and away from others as well as the emphasis on integral communal fulfillment, what do you think the New Natural Law Theory would say about individual and state responsibility in humanitarian efforts to relieve poverty or end war?
5. Systems of ethics are often divided into two opposing modes: one that is based on law and one that is based on virtue. The New Natural Lawyers seem to want to bring the two together, despite the difficulty of harmonizing these two systems of ethics. In the public square today, we continue to debate the proper relationship between law and virtue. Do you think the New Natural Law Theory proposes a way to bring the two together? Is a harmonious relationship between law and virtue necessary in order for “integral communal fulfillment” to be meaningfully achieved? Or can you see another way for this state of affairs to be brought about? What do contemporary arguments contribute to the debate?