subtopic

New Natural Law Theory

THE NEW NATURAL LAW THEORY
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The New Natural Law (NNL) theory is the name given a particular revival and revision of Thomistic Natural Law theory.[1] The distinctive, and often disputed, areas of contribution by the New Natural Lawyers include the following five, which will be the focus of the remainder of this entry:

1. The foundations of moral thought and practical reason;
2. The casuistry of the New Natural Lawyers;
3. The nature of human action;
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 commentary[2] on St. Thomas's account of the first principles of practical reason, Germain Grisez articulated a number of theses that have been developed and augmented by the New Natural Lawyers in subsequent decades.[3] The most important 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.[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 that 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]

2. *Casuistry and applied ethics*

In the 1970s, Grisez, Boyle, and Finnis began to specify the first principle in terms of a set of "modes of responsibility." These 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.[7] 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.[8] Grisez and his collaborators also argued in support of the Catholic teaching on the impermissibility of contraception.[9]

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.[10] This 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, are always unloving to one's interlocutor, and they always violate the integrity and authenticity of the liar.[11]

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 New Natural Lawyers see general principles of sexual morality as flowing from these claims.[12]

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.[13] 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.

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.[14]

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.[15]

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.[16] The intention rather can be "to change the dimensions of the child's skull to facilitate removal." Less controversially, but 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.

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.[17] 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."[18] By this, they refer to an indebtedness to John Rawls's antiperfectionism. In *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 *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."[19]

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."[20] 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 leave them in conditions of more than usual dependence but without the usual personal and social aids.[21]

Political authority, and optimally, a political authority itself subject to law, is necessary in order to pursue these goals efficiently and fairly; 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."[22]

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."[23] 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.[24] 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."[25]

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.[26] 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.[27]

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.

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[1] The theory was 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.

[2] Germain Grisez, "The First Principle of Practical Reason: A Commentary on the *Summa Theologiae*,

1-2 Question 94, Article 2," *Natural Law Forum* 10 (1965): 168–201.

[3]See especially Grisez, Ibid.; John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980); Germain Grisez, *The Way of the Lord Jesus*, vol. 1, *Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983); Germain Grisez, Joseph Boyle, and John Finnis, "Practical Principles, Moral Truth, and Ultimate Ends," *American Journal of Jurisprudence* 32 (1987): 99–151; John Finnis, Joseph Boyle, and Germain Grisez, *Nuclear Deterrence, Morality, and Realism* (Oxford: Oxford University Press, 1987).

[4] This point about incommensurability has emerged as central to the defense of the possibility of free choice, especially in recent work by Boyle. See Joseph Boyle, "Free Choice, Incomparably Valuable Options, and Incommensurable Categories of Good," *The American Journal of Jurisprudence* 47 (2002): 123–41; Joseph Boyle, "Free Choice, Incommensurable Goods, and the Self-Refutation of Determinism," *The American Journal of Jurisprudence* 50 (2005): 139–63; see also, for the defense of free choice, Joseph M. Boyle, Germain Grisez, and Olaf Tollefsen, *Free Choice: A Self-Referential Argument* (Notre Dame, Ind.: University of Notre Dame Press, 1976).

[5] Germain Grisez, "The True Ultimate End of Human Beings: The Kingdom, Not God Alone," *Theological Studies* 69, no. 1 (2008): 57.

[6] See Grisez, Boyle, and Finnis, "Practical Principles."

[7] Grisez, in Volume 1 of *The Way of the Lord Jesus* lists eight such modes. The list is slightly different in Germain Grisez, *The Way of the Lord Jesus*, vol. 3, *Difficult Moral Questions* (Quincy, Ill.: Franciscan Press, 1997).

[8] Germain Grisez, "Toward a Consistent Natural Law Ethics of Killing," *American Journal of Jurisprudence* 15 (1970): 64–96.

[9] Germain Grisez, Joseph Boyle, John Finnis, and William E. May, "Every Marital Act Ought to Be Open to New Life: Toward a Clearer Understanding," *The Thomist* 52, no. 3 (1988): 365–66.

[10] For a defense of moral absolutes, see John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington, D.C.: Catholic University of America Press, 1991).

[11] See Germain Grisez, *The Way of the Lord Jesus*, vol. 2, *Living a Christian Life* (Quincy, Ill.: Franciscan Press, 1993); John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998); and Joseph Boyle, "The Absolute Prohibition of Lying and the Origins of the Casuistry of Mental Reservation: Augustinian Arguments and Thomistic Developments," *American Journal of Jurisprudence* 44 (1999): 43–65.

[12] See Patrick Lee, "The Human Body and Sexuality in the Teaching of Pope John Paul II," in *John Paul II's Contribution to Catholic Bioethics*, ed. Christopher Tollefsen (Dordrecht, The Netherlands: Springer, 2005), 107–20; Patrick Lee and Robert P. George, *Body-Self Dualism in Contemporary Ethics and Politics* (Cambridge: Cambridge University Press, 2007).

[13] See Joseph Boyle, "Sanctity of Life and Suicide: Tensions and Developments within Common Morality," in *Suicide and Euthanasia*, ed. Baruch A. Brody (Dordrecht: Kluwer, 1989), 221–50.

[14] See John Finnis, Germain Grisez, and Joseph Boyle, "'Direct' and 'Indirect:' A Reply to Critics of Our Action Theory," *The Thomist* 65 (2001): 1–44; Finnis, *Aquinas*.

[15] See, e.g., Christopher Tollefsen, "Direct and Indirect Action Revisited," *American Catholic Philosophical Quarterly* 74, no. 4 (2001): 653–70; and Christopher Tollefsen, "Is a Purely First Person Account of Human Action Defensible?" *Ethical Theory and Moral Practice* 9, no. 4 (2006): 441–60.

[16] Finnis, Grisez, and Boyle, "'Direct' and 'Indirect'"; Christian Brugger, "Action, Intention, and Self-Determination," *Vera Lex: Journal of the International Natural Law Society*, n.s., 6, nos. 1–2 (2005): 79–106.

[17] As Grisez and Boyle note: Germain Grisez and Joseph Boyle, "Response to Our Critics and Our Collaborators," in *Natural Law and Moral Inquiry: Ethics, Metaphysics, and Politics in the Work of Germain Grisez*, ed. Robert P. George (Washington, D.C.: Catholic University of America Press, 1998), 222. Robert P. George has also contributed extensively to this discussion of political philosophy. See Robert P. George, *Making Men Moral* (Oxford: The Clarendon Press, 1993); and Robert P. George, *In Defense of Natural Law* (Oxford: Oxford University Press, 1999).

[18] Grisez and Boyle, "Response to Our Critics," 222–23.

[19] John Finnis, "Is Natural Law Theory Compatible with Limited Government?" in *Natural Law, Liberalism, and Morality*, ed. Robert P. George (Oxford: Oxford University Press, 1996), 7.

[20] Ibid., 5.

[21] Persons in such conditions include widows, orphans, the sick, and the disabled.

[22] Finnis, "Limited Government," 5.

[23] Grisez, "True Ultimate End," 38.

[24] See also Peter F. Ryan, S.J., "Must the Acting Person Have a Single Ultimate End?" *Gregorianum* 82, no. 2 (2001): 325–56.

[25] Grisez, "True Ultimate End," 55.

[26] Germain Grisez, "Natural Law, God, Religion, and Human Fulfillment," *American Journal of Jurisprudence* 46 (2001): 3–36.

[27] Grisez, Boyle, and Finnis, "Practical Principles."

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