REVIEWS

Recent Criticism of Natural Law Theory

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A noteworthy feature of contemporary philosophy in the English-speaking world and beyond is a reawakening of interest in practical reason. The willingness to take reasons for action seriously in descriptive and prescriptive jurisprudence, as well as in political philosophy and ethics, has been a mark of many notable philosophical achievements over the past three decades. In jurisprudence, the works of H. L. A. Hart, Joseph Raz, and Ronald Dworkin certainly come to mind. In political philosophy, one immediately thinks of the competing theories of justice developed by John Rawls and Robert Nozick. In ethics, a long list of contributions would only begin with those of Alan Donagan, Alan Gewirth, Philippa Foot, David Wiggins, and John McDowell.

The revival of interest in practical reason has brought in its wake renewed philosophical attention to theories of natural law. Long relegated to merely historical interest (at least outside of Roman Catholic intellectual circles), natural law theory is once again a competitor in contemporary philosophical debates about law, politics, and morals. What this means, for one thing, is that the writings of St. Thomas Aquinas, Hugo Grotius, Francisco Suarez,

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and other leading scholastic natural law theorists have again found an audience in the secular academy. Moreover, a number of contemporary authors have developed modern theories of natural law. While certain of these theories remain more or less within the scholastic tradition, not all do. The natural law theory recently advanced by Michael S. Moore, for example, shares little more than a label with the theory of, say, Aquinas.

In the past year, two significant books on the subject of natural law theory have been published. The first, Lloyd Weinreb's *Natural Law and Justice,* is a profoundly ambitious study. It not only charts the history of natural law theory through the ages, but also presents a sophisticated philosophical argument that, if valid, makes philosophy a largely meaningless exercise. He argues that all efforts to develop a credible theory of natural law are doomed and yet, that it is impossible to devise an alternative to conceiving of problems in moral and political philosophy as problems of natural law. The second book, Russell Hittinger's *A Critique of the New Natural Law Theory,* presents a detailed case against a particularly influential modern theory. Hittinger's target is the theory of natural law originally developed by Germain Grisez, and widely publicized in John Finnis's influential book *Natural Law and Natural Rights.* Weinreb also singles out this theory for detailed criticism, citing it as an especially significant example of contemporary "deontological" natural law theories.

In what follows, I shall largely, though not exclusively, focus on this recent criticism of what, following Hittinger's convention, I shall refer to as "the Grisez-Finnis natural law theory." My claims are that neither Weinreb nor Hittinger represents the theory accurately or presents compelling arguments against it. Before taking up criticisms of the Grisez-Finnis theory in particular, however, I shall describe Weinreb's general argument and criticize his treatment of Aquinas's theory of natural law.

I. **WEINREB'S NATURAL LAW AND JUSTICE.**

A. 'Ontological' Natural Law and the 'Normative Natural Order'

Among Lloyd Weinreb's goals in *Natural Law and Justice* is to "restore[] the original understanding of natural law as a theory

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about the nature of being, the human condition in particular." Weinreb claims that contemporary natural law theorists, among whom he counts not only Finnis, but Lon L. Fuller, David A. J. Richards, and Ronald M. Dworkin, have abandoned this understanding, which he labels "ontological." These theorists, as he reads them, seek to replace ontological understandings of natural law with "deontological" understandings. A natural law theory is deontological, as Weinreb uses the term, when it purports to identify principles of moral rectitude independently of inquiries into the nature of (human) being(s). Whereas yesterday's natural law theorists derived basic principles of natural law from knowledge of (human) nature, today's natural law theorists eschew the strategy of deriving the moral "ought" from the "is" of (human) nature.

According to Weinreb, the questio vexata of ancient and medieval natural law theory concerned human freedom in a causally determined universe. He asserts flatly that "[t]he question that Thomas Aquinas and others answered was, 'How can human beings be part of the natural order and still be free and morally responsible?'" This is a problem, Weinreb supposes, because

[f]ull moral responsibility seems to require that an act be both free and determinate. Unless a person's act is free, that is, self-determined, he is not morally responsible for it. But unless the circumstances of his act and the personal qualities that make him act as he does are determinate, the act seems to be the product of arbitrary occurrences as far as he is concerned and not something for which he individually is responsible. Yet if the circumstances and his personal qualities are determinate and determine his act, then once again the act is not self-determined and he is not morally responsible. In order for a person to act freely in the relevant moral sense, his act must be determined; but if it is determined, he is not free.

Moral responsibility, as Weinreb understands it, both requires, and is inconsistent with, causal determinacy. We experience ourselves as self-determining choosers, and this experience of freedom grounds our very notion of moral responsibility. Yet, on reflection, we must acknowledge a causally determinate background order without which human acts would seem arbitrary (only a causally

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4 Weinreb, *Natural Law and Justice* at 7 (cited in note 1).
5 Id at 3.
6 Id at 6.
determinate background can provide *reasons* for action) and, thus, lacking in moral significance.

The great natural law theorists of the past, as Weinreb reads them, proposed to solve the problem by positing a "normative natural order."

The contradiction in the idea of freedom is overcome by the supposition that the conditions and circumstances of a person's act compose a determinate background order that is itself normatively ordered: personal responsibility extends not only to what a person does but also to what he is and all the circumstances of his life. For Weinreb, "[t]hat solution . . . was the core of the old natural law." But, if he understands Aquinas and his predecessors correctly, then Weinreb surely is right in saying that their solution, from our vantage point at least, "seems hopeless." Belief in the sort of normative natural order he describes would apparently require us to conclude that natural evils such as deadly childhood illnesses "and all the other 'accidents' of our lives are not misfortunes but are deserved." This, as Weinreb observes, "is not only incomprehensible but morally outrageous." The modern insight is that laws of nature, which produce, among other things, deadly childhood illnesses, are not normative. Children stricken with meningitis, for example, do not "deserve" the disease. What "is" is not necessarily what "ought to be." The ontological and moral orders can (and often enough apparently do) diverge.

Having rejected belief in a normative natural order as a solution to the problem squarely faced by their predecessors, modern natural law theorists, according to Weinreb, have attempted to change the subject. They simply ignore the problem of causal determinacy, and are thus able to present "natural law . . . as a response to the problem of freedom in a morally indeterminate . . . universe." In short, they separate ontology from morality. While prescinding from the former, they reduce the latter to political theory and, ultimately, jurisprudence. "The question now is simply,

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7 Id at 6-7.
8 Id at 7.
9 Id.
10 Id.
11 Id.
12 Id at 4-5.
13 Id at 63.
‘How can we be obligated to obey the law?’”\textsuperscript{14} The dispute is no longer one with skeptics over the grand question of the nature of reality; it is with legal positivists over the comparatively mundane question of obligation. But, according to Weinreb, neither natural law theorists nor legal positivists can avoid the problem of freedom and cause. It lurks in the background, informing the terms of the debate over obligation, and rendering that controversy ultimately unresolvable. “Beneath the surface of an apparently inconsequential dispute,” says Weinreb, “there lingers the central puzzle of the human situation.”\textsuperscript{15}

B. An Overview of Weinreb’s Account of Natural Law and Justice

Weinreb’s book is divided into two parts. In the first, entitled “Natural Law,” he presents a largely historical account of what he views as the failures of traditional natural law theorists to come up with a satisfactory answer to the ontological question. He then provides a brisk review of what he sees as the unsuccessful strategy of early modern and Enlightenment thinkers, from Hobbes to Kant, to transfer the problem of “the normative basis of human existence”\textsuperscript{16} from nature to the civil state. Finally, he offers a critical philosophical analysis of the efforts of modern natural law theorists to come up with a credible deontological alternative to the ontological question. His considered judgment is that the traditional authors failed because their question is unanswerable, and their successors fail because there is simply no avoiding that question.

[T]he puzzle of human freedom in a determinate, causally ordered universe persists for ordinary persons and philosophers alike. The vocabulary and the conceptual context have changed; but we endorse answers to the problem in our daily lives and in our philosophizing, because we must. We could not carry on otherwise.\textsuperscript{17}

In the second part, entitled “Justice,” Weinreb broadens his analysis by examining the attempts of certain contemporary thinkers to treat the problems of moral and political philosophy as problems about “the nature of justice” rather than about whether

\textsuperscript{14} Id at 3.
\textsuperscript{15} Id at 12.
\textsuperscript{16} Id at 67.
\textsuperscript{17} Id at 4.
nature is just.¹⁸ In the thought of liberal political theorists such as John Rawls and Robert Nozick, and in the work of their communitarian critics, among whom Weinreb includes Alasdair MacIntyre, Michael Sandel, and Michael Walzer, the separation of ethics from ontology obscures the antimony of freedom and cause. Yet, this antimony undercuts the efforts of deontological natural law theorists no less thoroughly than it did those of their ontological predecessors. To obscure the antimony is not to eliminate it. It re-emerges in the form of analogous antinomies of desert and entitlement (in respect of individual justice) and liberty and equality (in respect of justice in the social order) within the concept of justice. Such antinomies are ultimately rooted in the antimony of freedom and cause (in respect of a putatively normative natural order).

Desert, Weinreb says, is an implication of moral responsibility, which in turn presupposes freedom. The upshot of this connection with moral responsibility and freedom is that desert is “insistently individual.”¹⁹ Entitlement, by contrast, “is based on the application of a rule according to its terms, without regard to individual qualities that the rule ignores.”²⁰ The fulfillment of individual justice, as Weinreb understands it, would require a perfect harmony of desert and entitlement. Unfortunately, however, conflict between these elements of justice “is not an occasional, regrettable lapse but is inherent and unavoidable.”²¹

The very concept of desert requires a background order of entitlement. For example, we regard persons as entitled to natural assets. When people successfully make use of their natural assets, we treat them as deserving (e.g., a prize in a footrace). However, the ground of that initial entitlement cannot itself be desert. As Weinreb puts it, “if every one of a person’s qualities has itself to be deserved, the idea of a person as the subject of desert loses meaning.”²² But where the ultimate ground of desert is (unde- served) entitlement, in what serious sense can persons be understood as deserving? A way out of the dilemma could, of course, be a notion of free choice that would provide, at least in some respects, an ultimate ground of desert not reducible to sheer entitlement. But to appeal to such a notion, according to Weinreb, is precisely to confront the antimony of freedom and cause that

¹⁸ Id at 126.
¹⁹ Id at 10.
²⁰ Id.
²¹ Id.
²² Id at 205 (emphasis in the original).
exercised the ancient and medieval natural law theorists. So, as Weinreb sees it, inquiry into the nature of justice ultimately reintroduces the "ontological" problem of the justice of nature.

Similarly, liberty and equality—the elements, for Weinreb, of a just social order—inherently contradict each other. Just as freedom requires a determinate causal background with which it is ultimately inconsistent, and just as desert requires a background order of entitlement with which it is ultimately inconsistent, liberty (the social analogue of desert and freedom) requires a background of equality with which it is ultimately inconsistent. According to Weinreb, "[L]iberty and inequality, equality and restriction of liberty, are the same, except that we ordinarily use the former member of each pair to indicate our approval and the latter to indicate disapproval." Hence, every attempt to advance liberty comes at a cost in terms of equality. But to the extent that inequalities are tolerated, the conditions of liberty are erased. Inasmuch as one is "less" equal, one is unfree. Yet enforced equality would destroy liberty.

Weinreb maintains that attempts to overcome this antinomy by reference to a principle of "equality of opportunity" fail for reasons familiar to those acquainted with the current debate about justice. There seems to be no principled way to avoid either broadening the meaning of equality of opportunity to the point of requiring equality of results (thereby directly eliminating liberty) or narrowing it to a mere formalism (thereby sacrificing the substantive equality that serves as a condition of liberty). So, under Weinreb's analysis, Nozick rightly charges Rawls with throwing over liberty for the sake of equality. But, by the same token, Nozick must plead guilty to jilting equality for the sake of liberty. And since liberty presupposes a background order of equality—an order which the concept of equality of opportunity cannot provide—liberty itself cannot survive under Nozick's scheme. Unfortunately for egalitarian and libertarian theorists of justice alike, the very concept of justice is "antinomic."

If Weinreb's arguments are telling, moral and political philosophy are doomed to frustration. The antinomy of freedom and cause that, according to Weinreb, eventually undid ontological theories of natural law reemerges to undo every modern alternative, whether they be deontological natural law theories or theories of justice. Contrary to what the older natural law theorists supposed,

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23 Id at 225.
Weinreb insists, "[w]e cannot be part of nature and at the same time apart from it."24 Yet it is ultimately untenable to hold that we are merely part of nature or that we are apart from it. We cannot hold that we have free will (which would set us apart from nature) because this would, he says, require us to deny the determinate background of causality upon which the concept of free will depends. We cannot hold that we are determined (which would make us merely a part of nature) because "whether we explain it or not, [our] experience of freedom remains."25 And we cannot hold that we have free will and are at the same time determined (which would make us part of nature and at the same time apart from it) because "every compatibilist solution depends on a confusion of the manner in which we experience freedom and cause with the propositions that are necessary to sustain either."26

C. Weinreb on Aquinas’s Natural Law Theory

For Weinreb, as for most commentators, Aquinas occupies a central place in the history of natural law theorizing.

Aquinas stated the theory that has defined natural law as a school of thought. It is because they can be perceived as precursors or anticipations of his theory that earlier statements of Cicero and others . . . are regarded as part of the natural law tradition, even when they do not use that term. And it is their association with his theory, however abstract, that qualifies subsequent theories as within the tradition.27

Sympathetic interpreters of Aquinas differ on the question of whether he supposed that “nature is normative.” Neo-scholastic natural law theorists understand Aquinas as saying that the standard of moral uprightness for human actions is conformity to (human) nature. In this sense, norms of human action, including moral norms, are implicit in the natural order. Ethics begins with a speculative inquiry: What is human nature like? This question concerns the human telos, viz., it intends knowledge of the natural ends constitutive of human fulfillment. Once we acquire such knowledge, we can judge proposed actions according to their conformity, or lack of conformity, to these ends.

It is at this point that what Aquinas, following Aristotle, calls

24 Id at 263.
25 Id at 126.
26 Id at 201 n *.
27 Id at 53-54.
the practical intellect takes over. According to neo-scholastic interpreters, "good," in this formulation, simply refers to those actions that conform to properly human ends; "evil" refers to those actions that fail so to conform. Hence, the human intellect operating in its practical mode directs us according to its first principle to act in a morally upright fashion. But thus understood, the first principle of practical reason presupposes knowledge of what is morally upright and what is not. Such knowledge is acquired by the intellect operating in its speculative mode. The crucial point is that under this interpretation sound practical thinking depends upon a methodologically prior speculative (e.g., metaphysical—or "ontological"—and theological) inquiry. Such an inquiry yields the philosophy of (human) nature upon which moral philosophy rests. Inasmuch as we derive moral norms from speculative knowledge of (human) nature, nature is indeed normative.

The neo-scholastic interpretation of Aquinas's moral philosophy has been challenged precisely on the question of the normativity of (human) nature. In an influential article published in 1965, Germain Grisez attacked the claim that Aquinas identified moral norms by reference to speculative knowledge of human nature. Aquinas, Grisez argues, did not propose his first principle of practical reason as a moral imperative. Rather, Aquinas supposed that such a principle controls all coherent practical thinking—whether morally good or evil. "Good," as Grisez understands Aquinas's formulation, refers not only to what is morally good, but to whatever within human power can be understood as intelligibly worthwhile; "evil" refers to any privation of intelligible goods. Interpreted in this way, the principle neither presupposes a knowledge of right and wrong nor, a fortiori, enjoins us to choose the morally upright
course of action. The work done by the first principle is more primitive. It states a condition of any coherent practical thinking, viz., that one's reasoning be directed toward some end that is pursuable by human action. Even morally wicked choices, to the extent that they are intelligible, meet this condition (although, as we shall see, not so well as morally upright choices). Consider, for example, a choice that treats another person unfairly. To the extent that such a choice has an intelligible point, it will be consistent with the first principle of practical reason, despite its immorality. Understood as a directive, the first principle is weak: It requires only coherence, not full moral rectitude.

Under Grisez's interpretation, Aquinas believed that ultimately any choice has its intelligibility by reference to the intelligible end(s) for the sake of which one terminates one's deliberation and acts. Our initial intelligent grasp of these ends requires no knowledge of metaphysical anthropology or any other speculative discipline, although various sorts of speculative knowledge (including sound metaphysics) can help one to pursue these ends more intelligently. The most basic knowledge of these ends is, rather, the fruit of practical insights. The practical intellect itself grasps certain ends as reasons for action that require no further reasons. They are intelligible as ends-in-themselves. As such, their intrinsic choiceworthiness is, as Aquinas says, per se nota (self-evident). It is by reference to such an end-in-itself, as the ultimate term in a more or less complex chain of practical reasoning culminating in a choice, that a non-baffling account of that choice can be given. Once one brings such an end into focus, no further questions relevant to the choice necessarily arise for someone seeking such an account.

For Aquinas, as Grisez reads him, the ends that the practical intellect grasps as ultimate reasons for action are properly understood as intrinsic human goods and, as such, aspects of human fulfillment. As goods "to be done and pursued" they are fundamental determinations of the first principle of practical reason, and, thus, basic precepts of natural law. They are not, however, singly and directly criteria of moral rectitude. Knowledge of human goods does not by itself resolve moral questions because it does not exclude some choices which, while intelligible, are morally wrongful. Rather, our intelligent grasp of human goods is what makes moral questions possible.

For example, is it morally wrongful for a scientist to kidnap a child and subject her to deadly experiments—not, let us suppose, out of any malice, but in a sincere quest to identify the causes and
cure for a ravaging communicable disease? The question arises by virtue of our grasp of the genuine human goods at stake in a decision either way. Let us suppose that a moral norm does in fact forbid the kidnapping and experimentation. As Grisez understands Aquinas, the first principle of practical reason could not have generated this moral norm because a choice to go through with the kidnapping and experimentation would not be incoherent. The wrongfulness of such a choice would not consist in its being unintelligible. To the contrary, the goods of knowledge (here, scientific knowledge) and life and health (here, the lives and the health of victims and potential victims of the disease) provide the intelligible ends by reference to which even the morally wrongful choice would be intelligible.

But in view of the goods that the scientist could realize by carrying out the kidnapping and experimentation, it is worth asking whether a moral norm forbidding the decision to do so would itself come into conflict with the first principle of practical reason. The answer is that it does not; for the choice not to kidnap and experiment is also intelligible. The life and health of the child, among other goods, are the ends that provide the intelligibility of this alternate choice. The moral norm provides a decisive reason for choosing between two courses of action, both of which are consistent with Aquinas's first principle. It excludes as wrongful one of the intelligible choices. As a moral norm, it does not identify the "good[s] to be done and pursued"; rather, it guides and structures human choice and action respecting such goods.32

According to Grisez, Aquinas did not bequeath us a systematic account of moral norms. Nor did he establish the link between the specific moral rules he did articulate and the self-evident first principles (i.e., the determinations of the first principle of practical reason) specifying the goods "to be done and pursued." In his own natural law theory of morality, Grisez has sought to remedy these inadequacies. In so doing, he freely departs from Aquinas at a

32 Of course, nothing changes if the correct moral norm requires a different result. Let us suppose not only that the scientist may kidnap the child and experiment on her but also that a moral norm commands this course of action. Either choice in the face of the putative moral norm in control of this situation would remain intelligible. The goods of life and health (here, the life and health of the child) would provide the intelligible determinants by reference to which the putatively immoral choice of not going through with the kidnapping and experimentation would be intelligible. Reference to these goods would provide a non-baffling answer to the question "why didn't you do it?" His choice not to do it, while, we are supposing, immoral, would be perfectly consistent with the first principle of practical reason.
number of points, while retaining Aquinas's fundamental theory of practical rationality as he understands it. Later, I shall discuss Grisez's revisions and development of Aquinas's moral theory. For the moment, however, I simply want to highlight the implications of Grisez's interpretation of Aquinas's theory of practical reason.

Grisez's Aquinas does not propose to judge the morality of acts by their conformity to human nature. The knowledge of human goods that sets practical inquiry in motion and ultimately accounts for the intelligibility of human choices is not the fruit of metaphysical anthropology or any other speculative discipline. Nor can speculative inquiry generate moral norms by reference to which human beings can uprightly guide and structure their choosing in respect of human goods. Such norms are needed, but they cannot be derived from (human) nature. Thus, under Grisez's interpretation of Aquinas, nature is "normative" neither in Weinreb's sense nor in the neo-scholastic sense.

While Weinreb cites Grisez's article in a footnote to his own discussion of Aquinas's first principle of practical reason, he makes no reference to the interpretive dispute in which it figures as a central text. Indeed, almost immediately after stating Aquinas's principle, he baldly asserts that "natural law thus directs us to fulfill our natural inclinations."\(^\text{33}\) Weinreb does not even consider Grisez's alternative account. He states that natural law "is a reflection of human nature, the natural human inclinations toward appropriate human ends."\(^\text{34}\) The role of reason, he says, is "to translate the natural inclinations into practical decisions and actions."\(^\text{35}\)

If one accepts Grisez's interpretation of Aquinas's first principle of practical reason, then the idea of a normative natural order has no place in Aquinas's ethics. If one rejects Grisez's interpretation in favor of something like the neo-scholastic reading of Aquinas, an idea of what might be called a normative natural order is, indeed, required. But Weinreb's idea of such an order is nothing like what neo-scholastics (whose interpretation of Aquinas's first principle Weinreb seems to share) have in mind. When neo-scholastics claim that, for Aquinas, natural law theory hinges on matters of ontology (or metaphysics), they do not mean that the central problem that must be addressed is that of human freedom in the face of causal determinism. Rather, they mean that moral norms must be derived from speculative knowledge of (human)

\(^{33}\) Weinreb, *Natural Law and Justice* at 58 (cited in note 1).

\(^{34}\) Id at 59.

\(^{35}\) Id.
According to the neo-scholastics, Aquinas's idea of a normative natural order does not purport to account for the putative responsibility of individuals for conditions and events in their lives over which they apparently exercise no control. As they interpret him, Aquinas saw no need for any such account because, contrary to what Weinreb says, he simply did not identify the problem of freedom and cause as one that natural law was meant to solve.

It is not that Aquinas failed to recognize that moral norms, if they exist, are norms for free choice. Nor is it that he was unaware that free choice was a philosophical problem. Indeed, he considered the matter of free choice directly in several of his works. But having satisfied himself that some free choice exists in human affairs (i.e., that some events in the world are brought about by human choosing that, while conditioned in various ways by causes beyond the control of the chooser, remains in important respects free), Aquinas aimed in his moral philosophy, and thus in his theory of natural law, at clarifying the intelligibility (rather than the possibility) of human choices and identifying norms by reference to which reason could guide such choices reliably.

That the neo-scholastic reading of Aquinas is on this crucial point superior to Weinreb's is evident, I think, from the first sentence of the Prologue to the second main part of the Summa Theologiae—the part principally concerned with morals and containing Aquinas's fullest statement of his theory of natural law:

[M]an is said to be made to God's image, in so far as the image implies an intelligent being endowed with free-will and self-movement: now that we have treated of the exemplar, i.e., God, and of those things which come forth from the power of God in accordance with his will; it remains for us to treat of His image, i.e., man, inasmuch as he too is the principle of his actions, as having free-will and control of his actions.

Under the neo-scholastic reading of Aquinas, moral norms are, as I have noted, implicit in, and derivable from human nature. Knowledge of that nature—what is intended by the inquiring intellect in the (speculative) discipline of metaphysical anthropol-

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36 Thomas Aquinas, Summa Contra Gentiles Book II, ch 47 (Burns, Oates & Washbourne, 1929); Thomas Aquinas, Summa Theologiae I, q 82, a 2 (Christian Classics, 1981); id at 1-2, q 10, a 2; Thomas Aquinas, De Veritate q 22, a 6 (Henry Regnery, 1954).

37 Thomas Aquinas, Summa Theologiae I-2 Prologue (Benzinger, 1947) (emphasis in the original).
ogy—is, therefore, under this reading, the key to moral philosophy. But this sort of knowledge is not knowledge of some supposed "justice of nature." The "natural order" is normative precisely inasmuch as it provides moral norms for free human choosing. The normativity of that order has nothing to do with the ascription of moral responsibility "to what [a person] is and all the circumstances of his life." 38

Weinreb seems to assume that Aquinas's theory of nature included something like the empiricist notion of causality that dominates modern understandings of the natural order. It is only in light of some such notion that the problem of freedom and cause, as Weinreb describes it, becomes an issue (in moral and political philosophy or anywhere else). But Aquinas's theory of nature was Aristotelian rather than modern. It allowed ample room for chance events. Aquinas understood the basic mode of causality to be the causality of the end—i.e., that for the sake of which the event happens. (This is commonly described as the "teleological" view of nature.) Under this understanding of the world, the belief that intelligent agents act freely for ends is not an anomaly, but rather a paradigm case of the way people behave. We correctly judge this to be defective physics. (We do not believe, for example, that love moves the sun and the other stars.) But, defective or not, it does not give rise to the problem of freedom and cause that Weinreb supposes Aquinas used natural law to solve.

Under Aquinas's theory, the whole of creation (everything other than God) can be divided into two parts: that which does not presuppose human thinking and free choice to be as it is, and that which does. It is the former that is "natural"; the latter is not. While both parts, inasmuch as they depend ultimately on God's free action, are suffused with meaning and value (by virtue of the contributions of human intelligence and free action), the meaning and value of nature is provided by divine intelligence and free choice alone.

Weinreb says of Aquinas that

He started from the unquestioned propositions that the universe is the creation of a providential God and that it displays its Creator's purpose in all its aspects; hence, it is orderly throughout, and its order is normative. 39

While Aquinas left very little "unquestioned," there is not much

38 Weinreb, *Natural Law and Justice* at 6-7 (cited in note 1).
39 Id at 63.
else to quibble about in this particular statement until the final clause, with which various sorts of Thomists would not only quibble but quarrel—at least if it is understood as Weinreb suggests we understand it. As I have observed, the whole of creation is, for Aquinas, suffused with meaning and value by divine intelligence and free choice. The universe is, indeed, ordered to the purposes of a providential Creator. But as Aquinas saw it, this does not rule out the proposition that some aspects of creation also are suffused with meaning and value by human intelligence and free choice. The natural (moral) law concerns meaning and value insofar as it is within the ambit of human intelligence and free choice. The natural law is a participation in the eternal law because even that part of creation subject to the norms of the natural law ultimately depends upon divine intelligence and free choice. Nothing that is lies outside of the divine plan. But, contrary to what Weinreb implies, personal responsibility, for Aquinas, extends only to a person’s free choices. Such responsibility extends “to what [a person] is and all the circumstances of his life” only insofar as these depend on his prior free choices. Whatever does not depend on free choices is the responsibility of someone else—ultimately God.

Since Aquinas perfectly well understood that persons are often victims of evils for which they bear no responsibility, he recognized the need for a theodicy. But even here Aquinas made no appeal to a normative natural order under which “nature does justice.” His theodicy was not designed to get God off the hook by showing that persons somehow deserve all they receive. As a Christian philosopher, Aquinas wanted to show that the evil to be found in the world is not chosen by God. God accepts the evil for the sake of the good, otherwise unattainable, that God will in His wisdom bring out of situations involving evil. As with any theodicy, there is ultimately a mystery about this, for the norms (if any) governing divine causality (if it exists) cannot be known by the human intellect. But this mystery has nothing to do with an alleged contradiction at the core of the idea of human freedom and responsibility. Weinreb misreads Aquinas’s theory of natural law in supposing that that theory was proposed in an effort to overcome any such contradiction.

D. Weinreb on Finnis and “Deontological” Natural Law

Among those whom Weinreb classifies as contemporary “deontological” natural law theorists, John Finnis alone works self-consciously within the tradition of Aquinas. Weinreb singles out Finnis’s work for special praise. “In his book Natural Law and
Natural Rights . . ., John Finnis has developed the most substantial and serious contemporary theory to which the label of natural law attaches.”40 As Finnis himself observes, however, there is “not . . . much that is original” in his arguments.41 The natural law theory of morality Finnis proposes as a foundation for the political theory and jurisprudence he defends is, as he says, “squarely based” on the work of Germain Grisez.42 And, as we have already seen, Grisez’s approach to ethics builds upon his own understanding of Aquinas’s theory of practical rationality. In the years since Finnis’s book was published, Grisez and Finnis have collaborated on a number of projects (usually along with Joseph M. Boyle, Jr.), and have developed their ethical theory in important respects. I will deal with what is perhaps the most significant of these developments in the present section.

Weinreb’s basic criticism of Finnis’s natural law theory is that it is based on the mistaken “belief that, if one reflects carefully about the human condition, the principles of moral action are a self-evident basis for the determination of concrete obligations.”43 Weinreb supposes that Finnis “[r]eject[s] explicitly any proof for his claims except the self-evident truth of the claims themselves.”44 In one instance, Weinreb refers (dismissively) to “Finnis’ apparent claim that his position on [the subject of abortion] is a self-evident truth.”45 More generally, Weinreb suggests that “even those who agree with [Finnis] on the merits may suppose that he has confused self-evidence with personal conviction.”46 And, while allowing that “[t]he conclusions that Finnis reaches may be correct,” Weinreb flatly accuses Finnis of “repeatedly [suggesting that] arguments opposed to his own are . . . accepted only by persons who have not thought carefully or are blinded by bias or self-interest or convention.”47

On this last point, Weinreb offers no citation to Finnis’s writings, nor could he have done so. He has simply misunderstood the implications of Finnis’s account of the reality of immoral choosing.48 This account does not imply that arguments opposed to Fin-

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40 Id at 108.
41 Finnis, Natural Law and Natural Rights at vi (cited in note 3).
42 Id at vii.
43 Weinreb, Natural Law and Justice at 115 (cited in note 1).
44 Id at 109.
45 Id at 296 n 32.
46 Id at 113.
47 Id at 112.
48 Finnis offers this account as part of his reply to moral skeptics who cite the diversity...
nis's own are only accepted by those who are thoughtless, biased, or self-interested. What Finnis, like most moralists, does suppose is that persons (and whole cultures) can, in their practical thinking, be led astray by factors such as bias, self-interest, convention, and emotion. It is hardly fantastic to think, for example, that such factors had something to do with the blindness of many Americans of another age to the immorality of slavery. But, while virtually no one today is unimpressed (or admits to being unimpressed) by arguments against slavery, it is worth noting that even certain arguments directly in support of slavery were accepted by some people who were not "careless in their thinking or blinded by bias, self-interest, or convention." Nothing in Finnis's account requires him to deny this in order to hold both that pro-slavery arguments were wrong, and that those who accepted them were wrong in so doing.

Weinreb's substantive objections to Finnis's theory have mainly to do with Finnis's appeals to self-evidence. Since putatively self-evident propositions do figure crucially in the moral theory Finnis defends and deploys, it is worth attending closely to these objections. I shall argue that Weinreb has seriously misunderstood the place of propositions claimed to be self-evident in the Grisez-Finnis theory of morality. Contrary to what Weinreb supposes, those subscribing to the theory do not hold conclusions in normative ethics to be self-evident. Once I have cleared away this interpretive mistake, I shall explain what sorts of principles they do suppose to be self-evident and offer a defense of the plausibility of such principles.

Weinreb makes a basic interpretive error in supposing that Finnis thinks that his conclusions (whether about abortion or any other issue in normative ethics or political theory) are self-evident. Specific moral norms (like a norm about abortion or its legal regulation) are, under the Grisez-Finnis theory, derived from more general moral norms that guide human choice and action in respect of intrinsic human goods. Any such derivation requires an argument. One must argue one's way to a conclusion. If, as Grisez and Finnis suppose, human life is an intrinsic good of persons, and if, as they further suppose, a general moral norm forbids direct attacks on such intrinsic goods, then abortion, if it destroys the human life of a person directly (i.e., either as an end or, what is more likely, as a means to another end, rather than as a foreseen and accepted side-effect of an otherwise morally acceptable choice) is immoral. But if
a specific moral norm does forbid abortion, that norm is not, for Finnis and Grisez, self-evident.

As it happens, both Grisez and Finnis accept the argument that a specific moral norm forbids abortion. It will be still more illuminating for the present purpose, however, if we consider a question of the justifiability of killing on which they disagree. Their dispute has to do with whether a specific moral norm forbids the killing involved in capital punishment. Finnis takes the position that capital punishment does not (necessarily) involve direct killing. His argument is that the action of public authorities in executing someone guilty of a sufficiently grievous crime may immediately and in itself instantiate an intrinsic good, viz., the good of justice, thus enabling the killing accurately to be characterized as something other than the taking of life as a means to an ulterior end. Capital punishment may, therefore, be morally permissible. Grisez disagrees. In his view, the intentional structure of any choice to kill as a punishment is such that executing even those guilty of the most heinous crimes cannot but be characterized as the choice of an evil means to a good end. What is important to notice for our purposes about this dispute is that neither Finnis nor Grisez supposes that the other is failing to grasp a self-evident point. Each, to be sure, believes his own position to be correct and, therefore, by logical entailment, his interlocutor’s position to be mistaken. But both understand the question as one to be resolved by argument, not by an appeal to self-evidence. The intentional structure of the choice to kill as a punishment—the decisive issue in the debate for Finnis and Grisez—requires, as they explicitly acknowledge, analysis. It is not self-evident.

So, if specific moral norms are not supposed to be self-evident, what sorts of principles are supposed to be? The answer is: the first principle of practical reason, and its determinations; and what Grisez and Finnis call the first principle of morality. These are the (underived) foundational principles that provide the ultimate premises of moral arguments. While they may be defended by

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49 See John Finnis, Fundamentals of Ethics 130 (Georgetown, 1983).
50 See Germain Grisez and Joseph M. Boyle, Jr., Life and Death With Liberty and Justice 400 (Notre Dame, 1979). For what it is worth, I agree with Grisez.
52 The theory of morality Finnis defends and deploys in his book is foundationalist. And any foundationalist theory will rest ultimately upon principles that are themselves thought not to be deducible or derivable from still more fundamental premises. Various foundationalists argue that their first principles are basic intuitions, or necessary truths, or
dialectical arguments designed either to rebut arguments against
them, or show up the defects or inadequacies of ethical theories
that attempt to do without them, they cannot themselves be de-
duced or inferred or otherwise derived from more fundamental
premises. One cannot argue one’s way to them (the way one can,
on the basis of more fundamental premises, argue one’s way to a
conclusion). The claim that they are self-evident does not imply
that they are undeniable or, still less, that no one denies them.
What it does imply is that the practical intellect may grasp them,
and practical judgment can affirm them without the need for a der-
ivation. (Which is not to say that they can be grasped without an
understanding of the realities to which they refer.)

The reader will recall that the determinations of the first prin-
ciple of practical reason refer to the intrinsic goods that render
human choices intelligible, according to Grisez’s interpretation of
Aquinas, by providing ultimate reasons for action. These determi-
nations thus serve as first practical principles—the most basic
precepts of natural law. The goods to which they refer are, in the
Grisez-Finnis parlance, “basic human goods.” Included under this
rubric is anything an instantiation of which can be intelligibly cho-


self-evident precepts.
53 Finnis, Boyle, and Grisez, Nuclear Deterrence at 277 (cited in note 51).
54 On this locution, see Finnis, Natural Law and Natural Rights at 64 (cited in note 3).
55 Grisez and Finnis, both individually and in their collaborative works, categorize the
basic goods differently at different times. Not much turns on the differences.
56 Finnis, Natural Law and Natural Rights at 85-90 (cited in note 3).
me tell a little story designed to demonstrate how Grisez and Finnis suppose we can grasp first practical principles that refer to basic human goods.

E. The Identification of a First Practical Principle

I regularly employ as a teaching assistant a graduate student named Adam. He has been remarkably successful as a teacher because he combines extraordinary intellectual curiosity and ability with genuine dedication to the education of his students. Indeed, he sometimes devotes himself so fully to his teaching that he is left with but little time for his own projects. Now, let us suppose that I discover that Adam has taken a part-time job on the late-night shift (9 p.m. - 3 a.m.) flipping hamburgers at the local Burger King. Naturally, my curiosity is aroused. I wonder why, in view of all the other demands on his time and energy, he has made a choice to spend time that he could, after all, devote to reading, writing, relaxing, being with friends, enjoying himself, getting some sleep, and the like, sweating over a hot grill in a noisy fast-food restaurant. I know that Adam is not irrational, so I assume, of course, that there must be some coherent explanation.

So, let us suppose that I ask him about it. Now, if he responds to my inquiry by saying that he took the job to earn some extra money, I would hardly find his explanation baffling. I am well aware of the utility of money. One can, after all, spend it on things one needs or wants. One can save it for a rainy day, enjoying the peace of mind that comes, I am told, with financial security. One can even collect and study money, in the form of bills or coins, as a hobby or amusement. Of course, I would suppose that if Adam took the job to earn money, he sought the extra income for some such reason. But if, contrary to my supposition, Adam should inform me that he wants the money just for its own sake, I would find his decision to take the job simply unintelligible.

Let us suppose I press him on the matter: "Surely, Adam, you want the extra money for a reason. Are there things you want to purchase with it?" "No, I already have enough money to buy anything I'll ever want." "Then, do you want it for the power or prestige available to those known to be wealthy?" "No, I am a Ghandian; I have no interest in such things." "Do you want it in order to give it away to a friend, or to a cause, or to the poor?" "No." "Then perhaps it is not the money you want, after all. Perhaps your reason for taking the job is that you enjoy that sort of work." "Are you kidding? Only a fool would work as a short order cook except to make money. As I said, the money is what I'm after. But
I'm not after it for any ulterior reason. It is an end-in-itself."

Well, this conversation would leave me baffled. The curiosity aroused in the first instance when I learned of Adam's decision to take the part-time job would remain unsatisfied. A question that the inquiring intellect cannot but consider relevant—why do you want the money?—would remain unanswered. The putative desirability of money for its own sake just "does not compute." So, Adam's account would leave me scratching my head in bewilderment. I would remain unable to make sense of his decision to take the job. It is not that I would view Adam's choice as somehow immoral or even imprudent. Questions of moral rectitude or prudence would simply not be reached. I would be stuck contemplating the (ir)rationality of the choice. Under Adam's account, his decision to take the job would seem utterly pointless, and therefore irrational. It would seem to violate Aquinas's first principle of practical reason (as Grisez interprets it).

The general lesson to be drawn from reflection on the matter thus far is that money can only have (important) instrumental value. It cannot serve as a reason for action that requires reference to no further reason in order to ground the action's intelligibility. If we trace a chain of practical reasoning culminating in a choice back to its ultimate term, and find that that term is money sought as an end-in-itself, the data provide no intelligibilities for the inquiring intellect to pick out.

But let us now suppose that Adam's account of his decision to take the job does not end with his desire to earn some additional money. In reply to my inquiry, he says that he wants the extra money for a reason—to buy an expensive medicine. Of course, I immediately suppose that he, or someone close to him, is ill. But, again, what if my supposition is incorrect? When I ask after his health, he says, "Oh no; it is kind of you to ask, but I'm not sick. No one I know is sick. I'm not buying the medicine to administer it to anyone. Medicine is worth having just for its own sake." "Have you become interested in pharmacology?" "Nope." "You haven't started a medicine collection, have you?" "Of course not." This conversation leaves me no less baffled than the one about money. Inasmuch as medicine, like money, is something of instrumental value rather than intrinsic value, it fares no better than money as an intelligible ultimate reason for action. It is not an "explanation stopper."

Of course, since Adam is a rational person, his account of his decision would not stop with the reference to medicine. He would give a reason for wanting the medicine. Let us suppose that his
reason is that his sister has been afflicted with a serious illness that only a costly medicine can cure; so he has decided to take the job in order to earn the money to buy the medicine needed to restore his sister’s health. If Adam’s explanation stops here, has he left me baffled? Not at all. I now have the data I need to make sense of Adam’s decision, and, thus, to understand it as, at least, rational. I can now see the point of his decision to take the part-time job. Acting for the sake of (his sister’s) health as an end-in-itself is perfectly intelligible. The intelligibility of health as a reason for action need not be supplied, as in the case of money or medicine, by some more fundamental reason.

Of course, there is nothing to stop me from asking Adam why health is something he wants his sister to have. But there would be nothing baffling about the straightforward reply that, beyond any instrumental value health might have for his sister, health is one of those things worth having just for its own sake. Adam’s decision, and the chain of practical reason culminating in that decision, are completely intelligible simply by reference to (his sister’s) health as something intrinsically valuable. And this intelligibility is available to anyone inquiring into the matter—regardless of whether the inquirer himself would have acted as Adam did had a loved one of his own been ill.\(^6\)

Grisez and Finnis notice that we do not grasp the intelligibility of health as something intrinsically valuable in the same way we come to understand the purely instrumental value of things like money or medicine. Instrumental values can (only) be established by way of deductions or inferences from still more fundamental premises. But intrinsic values, as *ultimate* reasons for action, cannot be deduced or inferred. We do not, for example, infer the intrinsic goodness of health from the fact, if it is a fact, that people everywhere seem to desire it. (Although this sort of anthropological information can figure usefully in dialectical arguments—especially those meant to rebut claims that our belief in the intrinsic goodness of health is merely culturally induced.) We see the point of acting for the sake of health, in ourselves or in others, just for its own sake, without the benefit of any such inference. Acts performed for the sake of health (even where we do not approve of them—e.g., when the scientist kidnaps the child in order to find a cure for the ravaging disease) do not strike us as utterly pointless. It is in this light that Grisez and Finnis claim that principles such

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\(^{6}\) Of course, affirming the intrinsic value of health does not preclude acknowledging that health, like other intrinsic goods, has tremendous instrumental value as well.
as "health is a good to be promoted and protected" are "self-evident."  

Once we have traced a chain of practical reasoning back to its ultimate term (e.g., health), if that term provides for its own intelligibility, it enables us to make sense of those terms in the chain of reasoning that do not supply their own intelligibility (e.g., medicine and money). The principle that we grasp in (at least implicitly) affirming the intrinsic value of the end indicated by the ultimate term is self-evident. Generalizing from our inquiry into Adam’s practical reasoning, we can affirm, as a self-evident practical truth, the proposition that "health is a good to be done and pursued" (i.e., preserved protected, restored). Thus, we have identified a basic precept of natural law.  

It must be emphasized that this is no more than a general prescription to act for the sake of health. As such, it is weak. It does not, for example, say anything about when, if ever, it is wrong not to act for the sake of health. Nor does it indicate whether it is ever right to sacrifice health ultimately for the sake of some other intelligible end. While it grounds the intelligibility and, thus, our

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58 Adam or his sister might value her health, in part, because it enables her to participate in a sport which she enjoys and for which she has a special talent. They might be interested in restoring her health, in part, to enable her to finish her own studies, or find her own job, or care for an aged aunt. But besides all the respects in which they may value health instrumentally, Adam’s acting to restore his sister’s health—or a fortiori, his own—just for its own sake is perfectly intelligible. People make such sacrifices all the time, sometimes for profound reasons, other times for trivial ones. But if someone chooses to do something at a cost to his health, we shall only be able to understand that choice as rationally grounded (regardless of how we evaluate it morally) if it is made for the sake of some other ultimate end, the self-evident point of which we can grasp. Health is certainly not the only basic human good. Indeed, someone who, while enjoying perfect health, never had occasions to participate in other intrinsic goods—no opportunities for friendship, or recreation, or inquiry, or any other activity by which one participates in basic goods other than health—would hardly find his life satisfactory. The variety of basic goods reflects the range of respects in which human persons can flourish (and decline).  

While I am on the subject of the diversity of ultimate reasons for choice and action, I should point out that reason is not the sole human attribute capable of projecting goals and motivating behavior. The fact that passion shares this capability with reason raises interesting questions for the Grisez-Finnis theory. Why, for example, do "emotional satisfaction" or "pleasure" not count as basic goods? They are after all, "explanation stoppers" in the sense that they often provide the ultimate term in accounts of human behavior. "Why did Joe have a drink?" "Because he was thirsty." Is any additional information needed to ground the intelligibility of Joe’s action? No. It is perfectly understandable that someone would seek to quench his thirst for no other reason. But if this is so, are we not forced under the Grisez-Finnis theory to recognize the satisfaction of desire as a basic good? Weinreb does not raise this sort of skeptical challenge to Finnis’s theory, so I will not respond to it here. A full defense of the Grisez-Finnis theory would, however, include such a response, which would work out in detail the relationships among emotion, motivation, and basic practical
judgment of the rationality of Adam’s decision, it says nothing about whether that decision was morally required or even permissible.

F. From First Practical Principles to Moral Norms

Under the Grisez-Finnis theory, first practical principles and basic precepts of natural law (i.e., those concerning the basic goods) do not state moral propositions. As determinations of the first principle of practical reason, they are, in a sense, “pre-moral.” They identify as self-evidently choiceworthy not only moral goods, but also non-moral goods (e.g., health, friendship, knowledge, and play). Taken together, they exclude as unchoiceworthy only pointless activity. They are action-guiding in the sense that they are principles by which reason directs human choices toward intelligible ends. But if these were the only action-guiding principles, then there would never be a reason to choose (as distinct from an explanation for choosing—e.g., one’s tastes, desires, sheer preferences) one intelligible course of action over another. For example, there may be an intelligible reason to play Russian roulette (“play”) and an intelligible reason not to play it (“life” and the other goods attainable by the living). Are there reasons on the basis of which we can judge the choice to play, despite its intelligibility, less than fully reasonable? If there are such reasons, principles that are analytically distinct from the first practical principles must supply them. If these principles of full practical reasonableness could be identified, they would provide standards for distinguishing merely rational choices from morally upright ones. By prescribing some choices as morally required and proscribing others as immoral, such principles would accomplish what the determinations of the first principle of practical reason by themselves cannot do.

The Grisez-Finnis theory presents a set of general moral principles that, while analytically distinct from the basic practical principles and derived from a still more abstract foundational moral principle, in effect, put the ensemble of basic practical principles to work in concert. The role of these moral principles is to structure and guide human choosing between intelligible human goods. In Natural Law and Natural Rights, Finnis labelled these principles “requirements of practical reasonableness.” In their collaborative work, however, Grisez and Finnis follow the former author’s usual practice of referring to them as “modes of responsibility.”
shall do so here as well.

Insofar (but only insofar) as the Grisez-Finnis theory understands the intelligibility of human choices as grounded ultimately in human goods (understood as constitutive aspects of human fulfillment), it is "teleological."60 Weinreb's labelling notwithstanding, Finnis's natural law theory is by no means purely deontological.61

In its teleological dimension (but only in this dimension), it resembles consequentialist ethical theories as well as certain neo-Aristotelian and neo-scholastic natural law theories.

Any teleological theory of practical reasoning that identifies more than one human good will need, if it is to ground a theory of morality, a principle or set of principles capable of guiding human choice and action in respect of the various goods. For consequentialists, the master principle of ethics directs the chooser to act in the way most likely to produce the best net proportion of good to bad consequences, overall and in the long run. Grisez and Finnis reject this principle on the ground, among others, that it assumes what is false, viz., that the instantiations of human goods (and bads) are commensurable in such a way as to make possible the intelligent weighing or measuring of "value" necessary to consequentialist calculations. As *ultimate* reasons for action, the human goods, and their instantiations, must be irreducible to one another or to any more fundamental category. Thus, they are incommensurable.62

Grisez and Finnis maintain that the principle proposed by many neo-Aristotelian and neo-scholastic moralists as an alterna-

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60 The theory is not "teleological" in any sense that implies a commitment to a consequentialist principle of moral judgment, on the one hand, or a teleological view of nature, on the other.

61 Under pure deontological theories, practical reason identifies moral norms without reference to human goods.

ative to consequentialism is no more plausible. This principle sup-
poses that speculative inquiry can identify an objective hierarchy
among the goods. It directs the chooser, at least in certain conflict
situations, to act for the sake of the superior good. Grisez and Fin-
nis deny that anything in our grasp of fundamental practical prin-
ciples warrants the conclusion that there is an objective hierarchy
among the basic goods to which these principles refer—at least in
any sense of “hierarchy” relevant to choice. Indeed, they suspect
that any claim that such a hierarchy exists supposes the false the-

Grisez and Finnis propose their “modes of responsibility.” These
are put forward as a set of general norms by reference to which
various forms of unreasonableness in choosing in respect of human
goods can be identified. But what do Grisez and Finnis take to be
the standard of (un)reasonableness? The answer to this question
remained obscure in Finnis’s book and in Grisez’s early work. As
presented, the modes of responsibility, while intuitively appealing
to many readers and defensible dialectically against various criti-
cisms, appeared to pop out of nowhere. Especially perplexing to
some readers was the mode that forbids acting directly against a
basic good, i.e., “doing evil that good might come of it.” Even some
readers who found Grisez’s and Finnis’s criticisms of consequen-
tialism and neo-scholasticism compelling felt uncomfortable with
an apparently ungrounded moral norm capable of generating moral
absolutes (e.g., no direct killing, no torture).

Perhaps the most important development in this theory since
the publication of Finnis’s book is what Grisez and Finnis call the
“first principle of morality.” As formulated in their most recent
collaborative work, this principle enjoins persons to “choose and
otherwise will those and only those possibilities whose willing is
compatible with integral human fulfillment.” If sound, this prin-
ciple provides an intelligible grounding for the various modes of
responsibility. The modes themselves are, in effect, specifications
of this first principle. They exclude as practically unreasonable
(i.e., immoral) various types of willing inconsistent with a will that
is well-disposed toward all of the human goods.

The concept of integral human fulfillment, as it figures in the

Finnis, Boyle, and Grisez, Nuclear Deterrence at 283 (cited in note 51) (emphasis
removed).
Grisez-Finnis statement of the first principle of morality, is easily misunderstood. It is not meant to indicate a supreme good above or apart from the basic goods. The basic human goods are reasons for action in a sense that integral fulfillment cannot be. But the fulfillments offered by basic goods, while genuine, are incorrigibly partial. No choice, or set of humanly possible choices, can bring about overall fulfillment. In none can one realize every humanly fulfilling possibility. The very open-endedness of the basic goods precludes this. The possibilities realized in and by human choices and actions are aspects, but only aspects, of complete human well-being. Inasmuch as no human choice, or set of choices, can realize anything more than aspects of complete human well-being, integral fulfillment cannot be a grand operational objective (whether of an individual, a community, or the whole human race). As Finnis and Grisez put it, "[e]thics cannot be an architectonic art in that way; there can be no plan to bring about integral human fulfillment."  

Thus, for Grisez and Finnis, the principle of integral human fulfillment is an ideal: not in the sense of a Platonic form of the good existing in a realm transcending this world, but in the sense of something that, while not a direct object of choices or attainable by and in them, can nevertheless be imagined (if imperfectly) and even wished for, and so can provide the standards by which choices may reasonably be guided. The first principle of morality, in making reference to this ideal, does not direct us to choose in such a way as to bring about (or contribute to a project of bringing about) integral human fulfillment, for any such principle would be worse than utopian. It would direct us to do what in principle cannot be done. Any such principle would itself be an ideal—and a

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44 Id.
45 The possibility of there being possibilities for choice the willing of which is compatible with integral human fulfillment depends on a particular (and controversial) theory of human action. Under this theory, the commonly accepted model of action—that under which an agent (i) wants to bring about a certain state of affairs; (ii) makes plans to bring it about by causal factors within his power; and (iii) carries out a set of performances to bring it about—must be rejected as inadequate. The theory proposes a more complex model under which persons choose not just for extrinsic purposes, but for ends which are intrinsic to themselves as persons—goods, in other words, in which they participate. A person's actions have moral significance as voluntary syntheses of the person with human goods in three ways: when one chooses something for its intrinsic value; when one chooses something as a means; and when one voluntarily accepts side-effects (good or bad) brought about incidentally to acting in the other two ways. All of this is rejected by consequentialists, for example, who deny that voluntarily accepted side-effects can be outside of the scope of an intelligent agent's intention in any morally significant way. Finnis, Boyle, and Grisez formally set out and defend their action theory (against consequentialist and other criticisms) in Nuclear Deterrence especially at 288-91 (cited in note 51).
useless one at that; it would be both too general to actually guide choices and incapable (in view of incommensurability and the lack of an objective hierarchy of basic goods) of rational specification. But the first principle of morality, though it makes reference to an ideal (which is not a principle), is itself not an ideal. It directs us to do something that can be done. It says that in choosing partial fulfillments, as we inevitably must, we should treat every possible human fulfillment for what it is; i.e., an essential aspect of integral human fulfillment.

This treatment has implications, for we often have incentives, and therefore confront temptations, to treat integral human fulfillment in some of its aspects (i.e., to treat some types of fulfillments or the fulfillments of some human beings) as expendable for the sake of others. When we act on these incentives, we opt for possibilities the willing of which is simply incompatible with the guiding ideal. We choose with a bad will, and hence, immorally.

Under the Grisez-Finnis theory, the modes of responsibility are derived from the first principle of morality. They identify the various incentives to choose incompatibly with a will to integral human fulfillment, and they direct the chooser not to act on these incentives. The modes thus provide premises for the often complex moral analysis by which persons can reason their way to specific moral norms. While our grasp of the modes gets moral argument off the ground, it does not always make such argument easy. Often, extremely careful and insightful analysis is required to determine whether a proposed act of, say, killing is direct and therefore impermissible; or, where an act of killing is clearly indirect, it sometimes takes equally subtle analysis to establish the fairness or

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66 Grisez and Finnis (both individually and in collaborative works) have formulated the modes in various ways. Finnis's list of the modes, as set out in chapter V of Natural Law and Natural Rights is reported in Weinreb, Natural Law and Justice at 110 (cited in note 1). Grisez's most detailed presentation of the modes is in his massive theological work, The Way of the Lord Jesus, Volume I, Christian Moral Principles ch 8 (Franciscan Herald, 1983).

67 In addition to the mode that rules out doing evil for the sake of good, thus generating some absolute specific moral norms, Grisez and/or Finnis have identified modes forbidding, among other moral evils, unfairness, fanaticism, laxity, and dilettantism. The specific moral norms derived from these latter modes, unlike those derived from the one prohibiting the doing of evil for the sake of good, are, according to the Grisez-Finnis theory, rarely absolutes. For example, the specific norm requiring promise-keeping, derived ultimately from the mode forbidding unfairness, while ordinarily in force when one has made a promise, is non-absolute. This is because there are circumstances in which it is not unfair to break a promise. There are no circumstances, however, in which the norm against direct killing, e.g., of non-combatants (even as a means of winning a just war), is not in force. Inasmuch as this norm is derived from the mode against doing evil for the sake of good, it is absolute.
unfairness (forbidding unfairness is one of the modes) of the act.

Under the Grisez-Finnis theory, the identification of the modes is necessary because the first principle of morality, if left unspecified, is too general to make possible the derivation of specific moral norms. In the absence of modal specifications, one could not begin to derive norms about, say, abortion or capital punishment (not to mention economic justice or political participation) from an injunction to choose with a will toward integral human fulfillment. Such norms cannot be derived immediately from so abstract a principle. Thus, Grisez and Finnis sometimes describe the modes as "intermediate" moral principles; they occupy a place between the very abstract first principle and the most concrete and specific moral injunctions. Inasmuch as the modal specifications of the first principle of morality are derived from that principle, they, unlike the determinations of the first principle of practical reason, are not self-evident. But the first principle of morality itself, as an underived principle, is self-evident.

Is this a case in which Grisez and Finnis have, to recall Weinreb's charge, "confused self-evidence with personal conviction?" I think not. Of course, the charge cannot be rebutted by presenting a derivation of the first principle of morality; a successful derivation would prove that the principle is not self-evident, but rather dependent upon premises still more fundamental. So any defense of the claim that it (or any other principle) is self-evident will have to be a dialectical defense, rather than a derivation.

The principal dialectical arguments for the first principle of morality demonstrate the failures or inadequacies of proposals that would deny the principle or leave it out of account. Especially powerful in this regard are arguments that reveal crucial flaws in the general moral principles put forward in theories that share with the Grisez-Finnis theory a concern for directing choice and action respecting human goods. If, for example, consequentialist principles go awry in treating basic human goods as commensurable,

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68 See, for example, Grisez, Christian Moral Principles at 189 (cited in note 66); Finnis, Fundamentals of Ethics at 70 (cited in note 49); and Finnis, Boyle, and Grisez, Nuclear Deterrence at 284 (cited in note 51).

69 The status of the intermediate moral principles as derived principles was, in Natural Law and Natural Rights, unclear. Some critics interpreted Finnis as claiming that these norms were somehow derived from the first practical principles. Other read him as claiming that they were underived and, therefore, self-evident. Neither interpretation was wholly implausible. Clarification of the matter awaited the development of the theory to include an underived first principle of morality.

70 See section II.A. for a general explanation of how dialectical arguments may be employed in defense of self-evident propositions.
then an adequate alternative will have to treat basic goods as incommensurable. But to do so, a general moral principle would have to direct choosing in a way respectful of each basic human good and each human individual as an ultimate locus of incommensurable values.71 This, of course, is exactly what the first principle of morality, as formulated in the Grisez-Finnis theory, is designed to do.

In the absence of some understanding of human goods, knowledge of the first principle of morality would not be possible. Does this confute the alleged self-evidence of this principle? No. If anything, it establishes that our grasp of the principle is not, as some have charged, a mere intuition. Rather, it, like our grasp of first practical principles, is accomplished by intelligent reflection on data. Our practical intellects pick out intelligibilities in the data provided by our grasp of first practical principles, thus making possible additional practical—in this case moral—judgments.

Here, I think, it is worth spelling out briefly the relationship between the first principle of practical reason, its determinations, and the first principle of morality. We have already seen that, under the Grisez-Finnis theory, practical knowledge in its "pre-moral" aspect is directive (although not fully normative). It directs action toward intelligible ends and, thus, away from pointlessness. It identifies goods as "to be done and pursued." Thus, immoral choices are not irrational. (Indeed, purely irrational acts are not "chosen" in any morally significant sense.) One chooses immorally for a reason. The intelligibility of immoral choices, like that of all rational acts, is grounded ultimately in the goods for the sake of which they are made. These goods are, as we have seen, the subjects of first practical principles. Any immoral choice is, thus, consistent with at least one such principle. The immoral choice responds to the directiveness of that (or those) principle(s). The good available in such a choice can be sought as a genuine benefit. But it is a benefit that comes only at the cost of ignoring the directiveness of other practical principles.

The goods that are treated as something other than irreducible, incommensurable aspects of integral human fulfillment in an immoral choice are themselves, of course, the subjects of practical principles. Thus, the responsiveness of immoral choices to the first principles taken as a whole (i.e., to the first principle of practical reason) is imperfect. Indeed, they are imperfect in a sense in which

71 In the next section I shall discuss the complex question of the relationship between human goods and the persons whom they fulfill.
morally upright choices cannot be judged imperfect. Let me explain.

In any morally upright choice, there will be "goods to be done and pursued" that are not done and pursued. No choice can bring about integral human fulfillment by perfectly realizing every possible human good. But the directiveness of first practical principles does more than identify goods as "to be done and pursued." It identifies the damaging of these goods as "to be avoided." A choice that is rational inasmuch as it responds to a practical principle, can still be less than fully reasonable in its failure to respect a different practical principle. To choose with a will toward realizing a certain good is to choose rationally. Both morally upright and immoral choices embody this sort of willing. But to choose with a will that another good be sacrificed or damaged is to seek a goal "at the expense of reason, part of whose directiveness will have been ignored by choice." 72 Such choosing is the mark of immorality—not because it contradicts the first principle of practical reason, but inasmuch as it responds to it imperfectly.

Does this imply that the first principle of morality is unnecessary because the determinations of the first principle of practical reason themselves are sufficient to forbid immoral choices? No. By making knowledge of the ideal of integral human fulfillment (and what is inconsistent with that ideal) possible, first practical principles provide the occasion (i.e., the data) for judging that a principle of complete reasonableness would direct action by reference to that ideal. Unless the judgment is made, and the principle formulated, however, there is no ultimate ground for full moral normativity, as distinguished from practical directiveness. Does this imply, then, that the first principle of morality is deduced or inferred from pre-moral practical principles? Again, the answer is no. The judgment is made in light of the data provided by the first practical principles, but it is not the fruit of a derivation from those principles. Such principles do not provide the grounds of the epistemic legitimacy of an affirmation of the first principle of morality. Those grounds are provided by the proposition stated in the principle itself. There is, for example, no relationship of entailment between the first principle of practical reason, and/or its determinations, and the first principle of morality.

G. Free Choice, Causality, and Moral Responsibility

I presented the foregoing lengthy exposition and defense of the Grisez-Finnis theory to correct Weinreb’s account of the role of self-evident principles in the Grisez-Finnis natural law theory and to answer his criticism of Finnis’s appeals to such principles in *Natural Law and Natural Rights*. This, as I understand it, is the heart of Weinreb’s case against “deontological” natural law theory of the Grisez-Finnis sort. Having assumed that Finnis’s work confuses self-evidence with personal conviction, Weinreb does not develop a detailed case against the Grisez-Finnis theory for failing to solve what Weinreb himself takes to be the central puzzle of moral and political philosophy (and, indeed, human existence itself), namely, the “ontological” problem of human freedom in a causally determinate universe. I shall conclude my discussion of Weinreb by remarking on how the question of freedom and cause can be handled under the Grisez-Finnis theory.

Weinreb is correct to suppose that the problem of human freedom, i.e., self-determined action, is crucial in moral and political philosophy. In the absence of some free choice in human affairs, there could be no moral norms because such norms govern only free choices. Anyone who proposes a moral norm presupposes some free choice. But this presupposition does not establish that free choices are possible. It might be the case, after all, that no human actions are self-determined and, therefore, that there are no moral norms. If it is more reasonable to believe in complete determinism than in some free choice, then it is more reasonable to disbelieve than to believe in any moral norms. If, as Weinreb argues, the issue is inherently unresolvable, then no moral theory (and no moral norm) can be secure. Indeed, if Weinreb’s argument goes through, there would appear to be no practical point to moral theorizing.

Recognizing the relevance of free choice to moral theory, Grisez, together with Joseph M. Boyle, Jr. and Olaf Tollefsen, took up the problem directly in a book published in 1976 entitled *Free Choice: A Self-Referential Argument*. Therein, the authors presented an argument for the proposition that someone can make a free choice. The argument is self-referential in the sense that it proposes to establish the falsity of the proposition that nobody can make a free choice by reference to the very act of asserting that proposition as true. Reducing a very lengthy and dense argument to its central propositions, here is a summary: The arguments made by those who deny free choice will, like any other arguments purporting to ground rational affirmations, presuppose both the
existence of norms of rationality which prescribe unconditionally, and the physical and psychological possibility of one's refusing to adhere to such norms. Rational affirmation of the proposition that there are no free choices is possible only for one who chooses between the alternatives of, on the one hand, adhering to the prescriptions of the norms of rationality appealed to by those who argue against free choice, or, on the other hand, refusing to adhere to those prescriptions. But this choosing is itself an instance of free choice. So any argument that there cannot be free choices is ultimately self-refuting.

Retorsive arguments against complete determinism are familiar to contemporary philosophers. Determinists commonly defend themselves against such arguments by accusing their interlocutors of begging the question of whether reasons are anything other than causes (of behavior). The argument developed by Grisez and his co-authors is an especially compelling version of the retorsive argument for free choice inasmuch as its focus on the role of norms of rationality denies determinists this escape route. But Weinreb's case is not, the reader will recall, an argument for determinism as such. So, even if successful, the self-referential argument for free choice is not sufficient to meet Weinreb's challenge to theorists of natural law and justice. It is certainly the case, as Weinreb argues, that free choice is possible only against a background order of causality. Otherwise, the immediate consequences (if any) of self-determined human actions would be utterly random and unpredictable. Such actions would be merely arbitrary insofar as they would lack a rational ground. There would be no intelligible point to performing some action rather than another (or no action at all). Where there are no reasons for action, choice is pointless. In the absence of reasons, there could be no intelligent self-determined action, but merely arbitrary human behavior.

Determinists have long attempted to establish that unless human actions are caused, they are arbitrary. Defenders of free choice have countered with the proposal that free choice need only suppose the existence of reasons for action in order to avoid the implication of arbitrariness. Determinists reply that reasons, if they exist, are merely causes by another name. But among the problems with this reply is the fact that reasons differ from causes in that the former, unlike the latter, can exist without bringing about effects. One can have reasons to perform an act, yet not perform it. This is because one can, at the same time, have reasons not to perform the act. All questions of morality aside, either way one will act (or not act) on the basis of reasons. One's action (or
inaction) will be rationally grounded and, thus, intelligible. Despite its being the fruit of choice, rather than causation, the rational grounding of one's action (or inaction) prevents it from being "arbitrary" in the strong sense alleged by determinists.

But Weinreb could argue, as critics of free choice have argued, that even if a choice between two live alternatives is "not arbitrary" in the sense that either alternative has an intelligible point, such a choice is in itself arbitrary in the sense that it lacks sufficient conditions apart from the person's choosing itself. There may be a "reason" grounding—and thus making intelligibly choiceworthy—each of the options, but in the absence of a reason to choose between them, the choice of one over the other is either determined (by desire, taste, etc.) or unintelligible—in other words, the intelligibility of an event depends upon its cause. But this is precisely what the proponent of (some) free choice denies in the first place: His whole point in claiming that someone can make a free choice is that the categories of "causally determined" and "random" do not exhaust the possibilities.

To assert that someone can make a free choice is precisely to claim that a class of actions (viz., free choices) have their own intelligibility without reference to something else (e.g., causes). If the critic of free choice (or one who holds free choice to be antinomic) responds by invoking a "principle of sufficient reason" (which, in Leibniz's famous formulation, holds that "there can be no fact real or existing, no statement true, unless there be a sufficient reason why it should be so and not otherwise"), he opens himself up to a different retorsive argument because there is no sufficient epistemic reason to accept the principle of sufficient reason itself.\footnote{73 See Joseph M. Boyle, Jr., Germain Grisez, and Olaf Tollefson, Free Choice: A Self-Referential Argument 86-87 (Notre Dame, 1976), citing Gottfried Wilhelm Von Leibniz, Monadology § 32 at 235 (Robert Latta translation 1898).}

Moreover, one may admit a qualified principle of sufficient reason under the terms of which there must be a reason for everything except those things (e.g., free choices) by reference to which other things are ultimately explained. Adoption of a principle of sufficient reason qualified in this way comports with the view that there are boundaries of explanation (i.e., that explanation does not go on ad infinitum). At the boundaries, the intellect picks out intelligibilities in realities that are intelligible in themselves, and can therefore be understood without further explanation. Someone arguing on the basis of a principle of sufficient reason is hardly in a position to deny this supposition, for he himself implicitly relies on
it in appealing to a principle of sufficient reason. Any such principle is either at the boundaries of explanation, and intelligible in itself, or else unintelligible. There is no sufficient reason for it (which is by no means to say that it is false).

Much earlier I quoted Weinreb’s assertion that unless the circumstances of a person’s act, together with the qualities that make him act as he does, are determinate, his act seems to be “the product of arbitrary occurrences as far as he is concerned and not something for which he individually is responsible.” This claim grounds the alleged antinomy of freedom and cause that Weinreb thinks is the central, unavoidable, yet unresolvable, question of moral and political philosophy. I think that his claim is confused. “Arbitrary” refers to human action, while “occurrence” refers to what happens apart from action. To the person choosing, the choice he is making seems “arbitrary” only in the trivial sense that he perceives nothing forcing him to make it. It does not seem “arbitrary” in the sense of irrational or non-rational, because whatever he opts for does not seem to him pointless. The choice does not, however, seem like an “occurrence.” It seems like something he is doing, not like something that is happening to him. From his own point of view, at least, he is determining the outcome.

Of course, the particular options a person faces may have little or nothing to do with that person’s (or, for that matter, anyone else’s) free choices. The sheer givenness of a set of options does not mean that the choice between them is not free, nor does it mean that one cannot be responsible for choosing one way rather than another. Free choice does presuppose causality—otherwise there could be no determinate options for choice—but it does not presuppose a measure of causality with which it is incompatible. When we have a free choice to make, lots of things that are already determined, including everything that brings us to that point, provide the open alternatives among which we must choose and make our choosing possible. All that it means to say that this is a free choice is that nothing causes us to make the choice one way rather than another.

Implicit in many arguments that actions must either be caused or are random is the so-called phenomenalist conception of the self. Under this conception, the self is a collection of discrete ex-

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74 Weinreb, *Natural Law and Justice* at 6 (cited in note 1).
75 On the role of the phenomenalist conception of the self in many arguments against free choice, see Boyle, Grisez, and Tollefsen, *Free Choice* at 81 (cited in note 73).
periences bundled together only by various regularities. Any event, then, that is not integrated into these regularities by a cause, must be the product of mere chance. A "free choice" made by such a self would be a random event. And, as Alasdair MacIntyre argued many years ago, "[w]hat is random is no more free than what is caused."  

Were the phenomenalist conception of the self compelling, it would provide profound support for Weinreb's alleged antinomy. But a great many arguments can be marshalled against the phenomenalist conception, and Weinreb does not argue for it.

Implicit in the free choice position is an alternative conception of the self as substantially, but not completely, integrated. For a person to make a free choice that is not merely random but truly his, he must have a character and personality. Without these, there is no self capable of understanding the intelligible goods promised by the options, deliberating about them, and acting. But, at the same time, his character and personality must be sufficiently open that these causal factors do not determine the choice. The conception of the self as substantially, but incompletely, integrated comports well with our common sense understanding of human agency. Under this conception, persons partially determine their characters and personalities by their own free choices. Heredity, environment, and free choice together account for a person's character. Free choice accounts for the possibility of self-determined changes (for better or worse) in character, and hence for the possibility of, for example, repentance and reform.

The more or less determinate self that makes a free choice determines itself further in that choice. The choice, in a sense, then, "lasts" in the character and personality of the chooser—at least until the chooser makes another choice incompatible with it (thus re-orienting his character and personality by his own free choice). The upshot of this self-constituting quality of choices is that subsequent acts performed in accord with a character established by one's free choices are acts for which one can reasonably be held (and hold oneself) morally responsible. Weinreb is correct to say that "[f]ull moral responsibility seems to require that an act be

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76 A.C. MacIntyre, *Determinism*, 66 Mind 28, 30 (1957).
77 See Boyle, Grisez, and Tollefsen, *Free Choice* at 82 (cited in note 73).
78 Id at 83.
79 On the "lastingness" of choices, see Finnis, *Fundamentals of Ethics* at 139-44 (cited in note 49).
Both free and determinate." But he is wrong to suppose, if indeed he does suppose, that any self that is determinate enough to enable a person's act to be his own is completely determinate, and therefore incapable of doing anything other than whatever it does.

As we have seen, a central feature of the Grisez-Finnis moral theory is its account of ultimate reasons for action. The first principle of practical reason and its determinations guide action by reference to these reasons. Thus, they make free choice possible without implying "arbitrariness" in any sense that would undercut moral responsibility for one's actions. If these principles are sound, we need not account for every aspect of non-arbitrary human action by reference to causality. Causal factors will bear on human choice and action in a wide variety of ways, but some free choice can exist against the background causal order without contradiction. Moral norms, if they can be identified, provide the standards for fully reasonable (free) choosing where free choice exists. Moral and political philosophy are not, then, as Weinreb's arguments would lead us to conclude, doomed to frustration by an antinomy at their core. A theory of natural law, including a natural law theory of justice, need not adopt the implausible proposal that the causal natural order parcels out illness and health, plenty and privation according to the desert of the recipients in a desperate effort to dissolve the alleged antinomy.

II. RUSSELL HITTINGER'S A CRITIQUE OF THE NEW NATURAL LAW THEORY.

Russell Hittinger's A Critique of the New Natural Law Theory is both narrower in its scope and less ambitious in its claims than Weinreb's book. Hittinger's work is a critical examination of the Grisez-Finnis natural theory—a theory Hittinger identifies as a product of the movement abroad in contemporary moral philosophy to recover a credible "pre-modern" tradition of ethics. This movement, which he labels "the recoverist project," is generated, in his view, by widespread disillusionment with what appears to be stalemate between utilitarianism and deontology in modern discourse about ethics. It was in reaction to this apparent stalemate, according to Hittinger, that Alasdair MacIntyre, perhaps the most prominent "recoverist," set about diagnosing what he called the "interminability" of contemporary moral debates in his influential

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60 Weinreb, Natural Law and Justice at 6 (emphasis in the original) (cited in note 1).
61 Hittinger, A Critique at 2 (cited in note 2).
treatise *After Virtue.* 82 Other “recoverists,” as Hittinger reads them, include Alan Donagan, Stanley Hauerwas, Elizabeth Anscombe, and, from a distinctively Marxist perspective, Ernst Bloch.

Hittinger justifies his focus on the Grisez-Finnis theory, which “[f]or lack of a better term” he labels “the new natural law theory,”83 on three grounds: First, Grisez and Finnis claim to have recovered Aquinas’s theory of natural law in a way that both avoids the standard Enlightenment and post-Enlightenment criticisms of Aquinas theory, and (according to Hittinger) “rescue[s] [that theory] from the problems inherent in the rest of Aquinas’s work”84 Second, “they contend to have retrieved the systematic core of natural law theory in a way that is congruent with the older tradition and in a way that is persuasive to contemporary ethicians”;85 Third, Grisez has recently undertaken to apply his natural law ethical theory to Roman Catholic moral theology in a massive project the first volume of which has now appeared.86 The adequacy of the Grisez-Finnis theory for moral theology is an important focus of Hittinger’s criticisms of the theory, but I will refrain from addressing these criticisms here. I shall concentrate instead upon Hittinger’s critique of the Grisez-Finnis theory as a philosophical theory of morality.

Hittinger’s thesis is that the Grisez-Finnis “project” fails, in the end, because it does not “interrelate systematically practical reason with a philosophy of nature.”87 The “reclamation of natural law,” Hittinger declares, “obviously requires a commitment to law as in some way ‘natural,’ and nature as in some way normative.”88 This is a commitment which, as we have already seen, Grisez and Finnis steadfastly decline to make. They reject not only the rather perplexing idea of a normative natural order that Weinreb identifies as “the core of the old natural law,” but also the neo-scholastic position that nature is normative in a way that enables us to derive moral norms from speculative knowledge of human nature acquired prior to the achievement of practical knowledge. Thus, they deny the rational basis of an identification of “the natural” with “the morally good” (and therefore deny the presupposition that the most basic moral norm is the imperative: “follow nature”). One

82 MacIntyre, *After Virtue* at 6 (cited in note 62).
84 Id.
85 Id (emphasis in the original).
86 Id.
87 Id at 8.
88 Id.
cannot derive the moral *ought*, according to Grisez and Finnis, from the *is* of human nature (or the human condition, or human *being*).

A. Practical Reason as Autonomous

Hittinger’s book brings together a range of criticisms of the Grisez-Finnis theory marshalled over the years by neo-scholastic and neo-Aristotelian commentators, including Ralph McInerny, Vernon Bourke, and Henry Veatch. The chief criticism, perhaps, is the charge that relates to the proposition that practical reason operates autonomously. In other words, Grisez and Finnis contend that practical reason operates on its own first principles without dependence upon methodologically antecedent knowledge drawn from speculative disciplines like anthropology, metaphysics, or theology. Critics contend that this theory embraces Kantian deontology and borrows all of its problems. As Veatch has put it, “though the hands are those of Germain Grisez, the voice is that of Immanuel Kant.”

Hittinger, it seems, agrees. The fundamental problem with Kantian moral theory, according to neo-scholastics (and others), is that, in refusing to ground morality in a concern for human well-being, it renders moral rules ultimately pointless. But if human well-being is identified as, in some sense, the ultimate ground of the intelligibility of moral norms, then some substantial knowledge of “the (human) good” becomes necessary if we are to discern “the (morally) right.” Yet, the glaring teleological dimension of the Grisez-Finnis theory marks an obvious difference with Kantian ethics. As we have seen, the first practical principles and the basic precepts of natural law refer, under the Grisez-Finnis theory, to basic human goods. In this respect, at least, the theory is radically unlike Kantian deontology. So, we must ask, in what sense do neo-scholastic critics of the Grisez-Finnis theory suppose that theory to be Kantian?

Hittinger suggests the answer. In maintaining that the axiological knowledge needed to get moral theory off the ground comes as the product of purely practical reflection, rather than a speculative inquiry into human nature, Grisez and Finnis, in effect, accept Kant’s supposition that ethics can dispense with the philosophy of nature. The Grisez-Finnis theory resembles Kantianism above all in its declaration of the methodological independence of ethics from metaphysics (or ontology). In Weinreb’s pithy formulation, it

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represents a theory of "natural law without nature." Such an approach, in Hittinger's judgment, attempts "to recover natural law theory by way of shortcuts." And, for him, no less than for Weinreb (although for a different reason), shortcuts will not do.

Hittinger's critique of the Grisez-Finnis theory begins with a set of arguments purporting to show that the attempt to identify human goods without appeal to a speculative philosophy of nature falls into a sort of intuitionism that leaves the basic goods vulnerable to skeptical attacks. Indeed, he implies that Grisez and Finnis themselves seem to perceive this inasmuch as they regularly marshal evidence acquired by various sorts of speculative inquiry (e.g., anthropological data) in support of the putatively self-evident basic goods. Arguments based on evidence of this sort ought to be unnecessary, Hittinger suggests, if the practical intellect can grasp the first principles that refer to basic goods without inferring anything from speculative knowledge of the goods as natural human ends.91

In criticizing Weinreb's account of Finnis's appeals to self-evidence, I discussed the familiar charge that the Grisez-Finnis theory of first practical principles is based on intuitions. Here I wish to say a word about the use of dialectical arguments in defense of propositions claimed to be self-evident. Dialectical argumentation focuses on the relationships between propositions (including putatively self-evident propositions) to be defended and other knowledge. The point of such argumentation is to highlight the unacceptable implications of denying the propositions to be defended, or the inappropriateness of relying on certain evidence (shown to be inapt or defective) to deny or cast doubt on those propositions.

Now, speculative arguments can be useful in casting doubt upon propositions alleged to be self-evident practical truths. For example, the presentation of anthropological evidence tending to show that no form of friendship existed in certain non-Western cultures prior to their contact with the West, while not itself a disproof of the self-evident value of friendship, would cast substantial doubt on the proposition that friendship is intrinsically valuable. It would provide an occasion for anyone who judged friendship to be objectively good to at least rethink the matter. One would be surprised to learn that a self-evidently worthwhile human end was unknown (or known but unvalued) by a substantial part of mankind.

In carefully rethinking the matter, perhaps one would discover

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90 Hittinger, A Critique at 198 (cited in note 2).
91 Id at 44-45.
a mistake in one's practical judgment about friendship. Perhaps it would transpire that, while friendship is not intrinsically valuable, its historically contingent, but very close, links with certain more fundamental goods in one's own culture deflected one's understanding of the matter, leading one falsely to conclude that the value of friendship is intrinsic (rather than, say, merely instrumental). On the other hand, perhaps, even after a searching reconsideration, one's judgment of the intrinsic worth of friendship would not change. In this event, one would likely find the anthropological evidence perplexing in light of one's considered practical judgment. The phenomenon of a widespread failure to grasp what one judges to be a self-evident practical truth would itself demand an explanation; it would set a substantial question for further speculative inquiry.

Just as speculative arguments can cast doubt on propositions claimed to be self-evident practical truths, speculative arguments can be effective in rebuttal. An effective speculative argument of this sort does not establish the self-evidence of a self-evident practical truth. It simply removes a particular doubt about that truth. For example, an argument that established that the apparent non-existence of friendships in certain non-Western cultures can be accounted for by the failure of Western anthropologists to appreciate the distinctive forms and expressions of friendship in such cultures, would itself remove the doubts raised by the disturbing anthropological evidence. But, one might ask, can there be doubts about self-evident truths? Yes—precisely because such truths are not mere intuitions or innate ideas. They are grasped by intelligent reflection on data presented by experience (e.g., one's own direct or indirect experiences of friendships). And any such grasp involves an act of understanding. Many factors capable of derailing understanding respecting non-self-evident propositions, whether practical or speculative, are equally capable of impeding sound judgment in respect of self-evident propositions. Thus, we would do well to follow Aquinas in distinguishing propositions that are self-evident to everyone, from propositions that are self-evident only to the wise. It is possible for anyone to fail to grasp a self-evident truth; just as it is possible for anyone to mistakenly suppose that what is in reality a derived proposition (or even a false proposition) is a self-evident truth.

Dialectical arguments are, I think, especially powerful in re-

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Aquinas, *Summa Theologiae* at 1-2, q 94, a 2 (cited in note 29).
buttal. However, they may be employed affirmatively in support of a self-evident practical truth, often with persuasive force. For example, the considerable anthropological evidence tending to show that various forms of friendship, knowledge, and religion are to be found in virtually all cultures, while not evidence of the self-evidence of the value of these realities (for there can be no "evidence" of "self-evidence"), does show that a practical judgment of their intrinsic worth comports well with the data. It places something of a burden on anyone who would deny the proposition stating this practical judgment to account for the universality of phenomena such as friendship, intellectual inquiry, and worship. Any theory that proffers an explanation proposing a sociologically deterministic or psychologically reductionistic account will be subject to the increasingly familiar criticisms of all forms of determinism and reductionism. Perhaps someone skeptical about basic goods could meet these criticisms. But here the skeptic would, in any event, be the party attempting to rebut dialectical arguments supporting self-evident practical truths (but not, of course, establishing their self-evidence).

In view of the foregoing analysis, I see no warrant for Hittinger's suspicion of Grisez's or Finnis's use of evidence procured by way of speculative inquiry in support of propositions they hold to be self-evident practical truths. But Hittinger has another, more substantial, argument against the proposal that first practical principles are not derived from speculative knowledge. He argues that there are respects in which at least a certain minimum amount of speculative knowledge is indispensable to our practical judgments. For example, a basic understanding of the integral organic functioning of the human body (i.e., of being alive) is a condition of any judgment, including any practical judgment, about the status of life and health as basic goods. Grisez himself has implicitly acknowledged this, as Hittinger points out, especially in his early work on contraception. There, as Hittinger reports, Grisez argued, for example,

that the good of life must be judged as a whole rather than in relation to the end of each faculty or physiological power. Accordingly, respiration and nutrition cannot be said to be basic human goods. However, from a biological point of view, the "work of reproduction is the fullest organic realization of the living substance." [Citation omitted] In other words, it differs

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93 Germain Grisez, *Contraception and the Natural Law* (Bruce, 1964).
from respiration in the sense that it bestows the good of life as a whole, and therefore ought to be included within the basic good of life.\(^{94}\)

Hittinger assumes that Grisez’s use of this sort of argument shows that he “does in fact directly rely upon anthropological, if not metaphysical, evidence for including procreation in the list of basic goods.”\(^{96}\) Grisez indeed judges that the generation of a new human life is not merely an instrumental end, but is intelligibly worthwhile just for the sake of the new life generated. Hittinger’s claim is that the above-quoted passage shows that Grisez himself relies “upon a theoretical [i.e., speculative] argument concerning what is essential or accidental to human organicity”\(^{98}\) in reaching this judgment. As Hittinger sees it, then, Grisez’s own analysis of at least one basic human good is “not consistent with his understanding of the inferential and deductive underviability of the basic practical principles.”\(^{97}\)

Is Hittinger’s allegation of inconsistency telling? No. His argument rests on a misunderstanding of what Grisez expects to get out of arguments like the one Hittinger cites. Grisez need not, and, in fact, does not, deny that a certain minimum amount of speculative knowledge is needed as a condition of practical judgment. (Nor does he deny that additional speculative knowledge has any place in moral reasoning.) While practical knowledge is not derived from propositions about the realities judged to be intelligibly choiceworthy, practical judgments (i.e., that something is a “good to be done and pursued”) are not, according to Grisez, made in the complete absence of data for reflection. Without a basic understanding of the realities one is supposed to be making practical judgements about (e.g., life, friendship, religion), one simply could not judge. In the complete absence of speculative knowledge of what Hittinger calls human organicity, for example, no practical judgment of the intelligibility of life or health as an ultimate reason for action would be possible. Can we make sense of someone’s choice to act just for the sake of preserving, or protecting, or transmitting human life? It will be impossible to answer that question unless we first have some basic idea of what “human life” is; thus, some speculative (i.e., biological) knowledge is a condition of our practical knowledge of the goods of life and health. But to ac-

\(^{94}\) Hittinger, A Critique at 62 (cited in note 2).
\(^{95}\) Id.
\(^{96}\) Id at 63.
\(^{97}\) Id.
knowledge the need for a minimum of biological knowledge as a condition for reaching axiological judgments of this sort is not to imply that such judgments are inferred, deduced, or otherwise derived from the biological knowledge.

Even perfect knowledge of human organicity, including perfect knowledge of what is essential and what is merely accidental to it, could not provide a warrant for judgments about the intelligibility of choosing life or health as ends in themselves (although such knowledge would profoundly enhance our capacity to preserve and promote these goods). The intelligibility of such choices, to the extent that they are intelligible, will be picked out of the data by insights that, while not unconditioned by speculative knowledge, are not logically entailed by it. Any such insight will therefore be not only fundamental, but fundamentally practical.

In arguing that Grisez smuggles speculative knowledge illicitly (on his own terms) into judgments about basic goods, Hittinger claims (without citation) that among the terms Grisez variously employs "for the 'goods'... [are] 'tendencies' [and] 'basic inclinations.'" This report comes after, and seems to support, Hittinger's claim that "[a]ll of Grisez's goods have content derived from inclination." Now, the fact that something is a "tendency" or "basic inclination" is straightforwardly an item of speculative knowledge. To treat the fact that humans "tend" or are "basically inclined" toward something as a logical warrant for a judgment of the intrinsic value of whatever the tendency or inclination is toward, is to suppose that knowledge of basic practical principles can be derived from speculative knowledge. Were Hittinger's report accurate, Grisez would be guilty of an inconsistency in his treatment of first practical principles. But Grisez never implies, much less says, that basic goods are "tendencies" or "basic inclinations." Hittinger's claim that Grisez "employs" these terms for the goods has no basis in anything Grisez has written.

Hittinger's misunderstanding of Grisez's theory of basic goods is further evident in his assertion (again without citation) that, for Grisez, "goods are defined as actions which are attractive to the agent." Not only does Grisez carefully distinguish goods from the actions by which persons may participate in goods, he never defines the goods by reference to their attractiveness to the persons who participate in them. Any value theory that does define
“good” as what is “attractive to the agent” flirts (at a minimum) with subjectivism. But Hittinger does the Grisez-Finnis theory an injustice by implying that a derivation of value from a speculative philosophy of nature is necessary to rescue that theory from subjectivism. Nowhere in the theory is the intelligibility of first practical principles made to depend upon the attractiveness of the basic goods to the acting person (which is to deny neither that basic goods can be attractive nor that their attractiveness can motivate action).

At one point, Hittinger accuses Grisez of holding an axiology in which the basic goods “are curiously Platonic-like forms.”\textsuperscript{101} The charge is untenable. Repeatedly, and in virtually all of their works on ethics, Grisez and Finnis make the point that goods do not exist in some transcendent realm, but are constitutive aspects of persons. To cite perhaps the most forceful statement, Finnis says in *Natural Law and Natural Rights* that

\begin{quote}
the basic aspects of human well-being are . . . not abstract forms, they are analytically distinguishable aspects of the well-being, actual or possible, of you and me—of flesh-and-blood individuals.\textsuperscript{102}
\end{quote}

Hittinger seems to assume that the Grisez-Finnis theory must rely on some mysterious Platonic notion of the good because it does not propose to derive basic goods from speculative knowledge of human nature. But, as a critique of the Grisez-Finnis theory of practical knowledge, this assumption simply begs the question. Grisez and Finnis claim that first practical principles are self-evident truths grasped in non-inferential acts of understanding. It is this claim that Hittinger set out to prove false. But this proof cannot be accomplished by a gratuitous assertion—directly contrary to what Grisez and Finnis actually say—that basic goods are “curiously Platonic-like forms.”

Does the Grisez-Finnis axiology imply a wall of separation between knowledge of human nature and knowledge of human good? Indeed, does the Grisez-Finnis theory implicitly deny that humans have a (knowable) nature? Neo-scholastic critics of the Grisez-Finnis natural law theory frequently raise these questions, and they are suggested at various junctures in Hittinger’s analysis.\textsuperscript{103} The

\textsuperscript{101} Id at 187.
\textsuperscript{102} Finnis, *Natural Law and Natural Rights* at 371-72 (cited in note 3).
\textsuperscript{103} Hittinger frequently implies an affirmative answer to the first question and, at least once in his book, implies an affirmative answer to the latter. See Hittinger, *A Critique* at
answer to both questions is "no." To see why, it will be useful to distinguish the epistemological mode of inquiry from the ontological mode in respect of basic goods. Grisez and Finnis maintain not only that human beings have a nature, but also that human nature is a worthwhile object of speculative inquiry. They follow Aquinas, however, in maintaining that we come to know human nature by knowing human potentialities; and that we come to know these by knowing their actuations; and that we come to know these, in turn, by knowing their objects.¹⁰⁴ And how do we come to know the objects of human acts? Not by reflection on human nature, for it was the question of human nature that prompted our inquiry in the first place. Rather, we come to know the objects of the actuations of human potentialities by grasping self-evident first practical principles. The objects of human acts are the intelligible ends of such acts, i.e., the basic human goods to which first practical principles refer.

Knowledge that comes as the fruit of practical reflection becomes available to (i.e., provides data for) speculative inquiry (e.g., in metaphysics or theology). On the basis of one's practical grasp of the intelligible ends of human acts, one may derive propositions about the nature of human beings. The point is that in the epistemological mode of inquiry, our (practical) knowledge of human good(s) is methodologically prior to our (speculative) knowledge of human nature. The latter knowledge presupposes the former: It is not, as neo-scholastics suppose, the other way around.

Let us shift for a moment to the ontological mode. Here, if we reflect on Aquinas's methodological principle, it is clear that the human goods are goods for (i.e., fulfillments of) human beings precisely because human beings have the nature they do. As Finnis says, "[t]he basic forms of good grasped by practical understanding are what is good for human beings with the nature they have."¹⁰⁵ Were human nature otherwise, human goods would be correspondingly different. In this sense, the basic human goods depend, ontologically, upon human nature. So, in the ontological mode of inquiry, an account of the human goods will refer back to human nature: "Why are these the ends fullfulling of human beings?" "Be-

¹⁰⁴ For a clear and concise statement, see John Finnis, Natural Inclinations and Natural Rights: Deriving "Ought" from "Is" According to Aquinas, in L.J. Elders, S.V.D. and K. Hedwig, eds, Lex et Libertas, 30 Studi Tomistici 43 (Libreria Editrice Vaticana, 1987) (NB: The title of Finnis's article is misleading.).

¹⁰⁵ Finnis, Natural Law and Natural Rights at 34 (cited in note 3).
cause human nature is constituted as it is.” But this answer in no way entails that our knowledge of the ends as human fulfillments is derived from prior speculative knowledge of human nature.

B. Goods and Persons

Near the end of a discussion of Grisez’s stated opinion that “Kant’s view of moral principles is not so much false as grossly inadequate,” Hittinger raises some questions about “the meaning and implications of shifting one’s focus from persons to goods.” Hittinger asks:

Does this not assume, or suggest, that goods and persons are strictly co-extensive both ontologically and in terms of actions which bear upon them? Is moral agency, for instance, something more than the sum of the parts of the goods with which practical reason is interested? In other words, is there something of value in personhood that needs to be affirmed in terms quite different from merely our concern for goods which fulfill persons?

Alan Donagan shares Grisez’s interpretation of Aquinas’s theory of practical reasoning and has, in his own Kantian “respect for persons” ethics, defended many of the specific moral norms defended by Grisez and Finnis. Still, Donagan has long criticized the Grisez-Finnis theory along the lines Hittinger’s questions imply. Here it must be recalled that, under this theory, basic human goods, while analytically distinguishable from the persons whom they fulfill, are not extrinsic purposes of human action, but rather intrinsic aspects of persons. In the earliest statement of the theory, Grisez held that persons “actualize and receive the human goods into personal existence.” But, from the point of view of action in respect of a person, the person is not a value standing alongside the values that are constitutive aspects of the person. To act for the sake of a person, for example, is to favor some constitutive aspect(s) of that person’s well-being—i.e., to promote or preserve or

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107 Id at 29.
108 Id at 29-30. It is worth noting that the criticism implicit in the last of these questions will seem especially compelling to anyone who supposes—wrongly—that “our concern for the goods which fulfill persons” can be judged a “mere” concern inasmuch as these goods are mere tendencies, inclinations, attractions, or are in some other sense subjective.
110 Grisez, Contraception at 78 (cited in note 93).
protect basic goods as instantiated in that person.

Of course, one respects or loves the person for the sake of whom one acts as a unity, not as an amalgam of distinct parts. But the good that is sought in a choice made for the sake of the person is, in the end, only that which one supposes can be attained in the choice. There can be no act for the sake of the person considered apart from the various aspects of his well-being and fulfillment. Specific actions undertaken for the sake of a person are directed toward these aspects. But it is, as I have said, regard for the person as a unity that motivates specific actions. In view of the complex relationship between goods and persons, Hittinger's questions are far from trivial; but they are hardly embarrassing ones for the Grisez-Finnis theory.

Elsewhere, in accusing Grisez of an equivocation on the question of whether "the emphasis or focus of morality [is] given to the goods, or to my own fulfillment," Hittinger ignores an important feature of the Grisez-Finnis account of the relationship between basic goods and the persons whom they fulfill. The problem of whose flourishing, or whose good, is the ultimate point of moral norms is a perennial issue in discussions of eudaimonistic ethical theories. Is the rational basis of one's obligation to choose in a morally upright fashion ultimately a concern for one's own flourishing (which would be somehow profoundly damaged by one's own immoral choice)? Or, is it a concern for the flourishing of others, one's own well-being aside? In the Grisez-Finnis theory, it is, as we have seen, a regard for the ideal of integral human fulfillment, which would include, in principle, one's own flourishing as well as everyone else's. Thus, the theory excludes, again in principle, an essentially egoistic account of moral obligation.

Hittinger generates this alleged equivocation by interpreting in a strictly individualistic sense a reference to "human self-limitation" in Grisez's formulation of what one avoids in morally good choices. Not only is there no warrant for such a reading in Grisez's work, but specific passages in Grisez's writings specifically exclude

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111 Grisez made this point early on as well. See, for example, id.
112 See Grisez, Boyle and Finnis, 32 Am J Juris at 115 (cited in note 72), where they formally treat the problem of the relationship between goods and persons, identifying certain respects in which basic goods "simply are persons—individually and in communion," and certain other respects in which they are distinguishable from the persons whom they fulfill. For a detailed critique of Donagan's claim that a "respect persons" approach to ethics is preferable to a "respect the goods of persons" approach, see Joseph M. Boyle, Jr., Aquinas, Kant, and Donagan on Moral Principles, 58 The New Scholasticism 391 (1984).
113 Hittinger, A Critique at 53 (cited in note 2).
this sort of individualism. For example, Grisez says that “[basic human] goods do not have anyone’s proper name attached to them.”114 And in his formal discussion of the ideal of integral human fulfillment, Grisez states that the ideal “is that of a single system in which all the goods of human persons would contribute to the fulfillment of the whole community of persons.”115 This is a point that Grisez and Finnis have repeated many times.116

I have identified a variety of respects in which Hittinger has misunderstood (or misrepresented) the Grisez-Finnis theory at the level of first practical principles. His misinterpretations lend apparent plausibility to his basic claim that the Grisez-Finnis theory cannot succeed without drawing on a speculative philosophy of nature from which knowledge of fundamental goods is derived. Once these misinterpretations are brought to light, the credibility of this claim vanishes. I shall now turn to Hittinger’s critique of the Grisez-Finnis theory of moral principles. Again, basic interpretive errors ground Hittinger’s most powerful criticisms.

C. Moral Norms and the Ideal of Integral Human Fulfillment

The reader will recall that, under the Grisez-Finnis theory, the first principle of morality refers to the ideal of integral human fulfillment. Our knowledge of this ideal comes from our understanding of the complete set of first practical principles—the self-evident determinations of the first principle of practical reason. While specific moral norms cannot be directly derived from the first principle of morality, they can be derived from intermediate moral norms—the modes of responsibility—that are themselves directly

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114 Grisez, Christian Moral Principles at 576 (cited in note 66). See also Grisez, Boyle, and Finnis, 32 Am J Juris at 114 (cited in note 72) (“As intelligible, the basic goods have no proper names attached to them. So they can be understood as goods and provide reasons for acting whether, in a particular case, the agent or another will benefit.”).


116 Grisez and Finnis are careful not to imply that integral human fulfillment is the fulfillment of communities considered as distinct from the individual persons who comprise them. The “common good,” under the Grisez-Finnis theory, “is fundamentally the good of individuals (an aspect of whose good is friendship in community).” Finnis, Natural Law and Natural Rights at 168 (cited in note 3). It is “the well-being of you and me, considered as individuals with shared opportunities and vulnerabilities, and the concrete conditions under which that well-being of particular individuals may be favoured, advanced, and preserved.” Id at 372. Nor does the ideal of integral human fulfillment imply that self-preference in choosing is never consistent with a will to integral human fulfillment. Grisez and Finnis recognize that one’s own well-being (and that of those for whom one is in some special way responsible) has a reasonable first claim on one’s interest, but they deny that the rational ground of this claim is any judgment that one’s own well-being is more valuable simply because it is one’s own. See, e.g., id at 107.
derived from the first principle of morality. These norms identify and forbid various forms of unreasonableness in human willing.

Hittinger erroneously interprets Grisez in particular as maintaining that the first principle of morality is an ideal. This misinterpretation is important for Hittinger's analysis of the adequacy of the Grisez-Finnis theory for moral theology:

In his transition from moral principles to moral theology, Grisez regards Jesus as the concrete good that annuls the ideality of the Fpm [first principle of morality]. Its ideality, therefore, makes room for (even requires) a move into moral theology.117

But the implications of this misinterpretation for the Grisez-Finnis theory when it is considered solely as philosophical ethics are profound. As I noted in the previous section, if the first principle of morality were itself merely an ideal, then it would be both too general to guide concrete human choices, and incapable of rational specification. Although our grasp of first practical principles gives us some knowledge of integral human fulfillment, it is nevertheless an ideal in the sense that it cannot be realized in human choices.118 But the first principle of morality is anything but an ideal. It is capable of specification, and the norms thereby derived direct us to do things that can be done.

The point is critical: We cannot choose to bring about integral human fulfillment, but we can choose compatibly with a will to integral human fulfillment. The standard of practical reasonableness is not how close we come to bringing about integral fulfillment in our choices (nor is it how "much" fulfillment, in some aggregative sense, we bring about); rather, it is whether our choices are compatible with a will to integral fulfillment. Hittinger seems to miss this point altogether. Indeed, in the course of his theological discussion, he accuses Grisez of "taking away with one hand what was just given with the other" because Grisez, as Hittinger understands him, holds that "[t]he achievement of the state of integral human fulfillment (the goal of the moral life for ethics and moral theology) is not a human act."119 Hittinger judges this to be "a

117 Hittinger, A Critique at 51 (cited in note 2).
118 The "ideality" of integral human fulfillment does indeed have theological implications. Although we can wish for integral fulfillment, it can only be hoped for in the light of religious faith. If it is to be realized—if its ideality is to be annulled—divine action is required. In Christian terms, grace is needed to perfect nature.
119 Hittinger, A Critique at 135 (emphasis added) (cited in note 2).
contradiction in terms, or at least a paradox of some sort," and he is correct. But the contradiction or paradox is generated not by Grisez's first principle of morality, but by Hittinger's own fundamental misunderstanding of it; Grisez never proposes integral human fulfillment as a "state" (or state of affairs); nor does he imagine that it can serve as a "goal" to be sought in human choosing.

D. The Question of a Hierarchy of Basic Goods

The centerpiece of Hittinger's case against the Grisez-Finnis theory of moral principles features the claim that unless an objective hierarchical ordering of the goods is built into ethics at the axiological level, moral problems raised by the plurality of goods and opportunities for their instantiation will render many moral problems unresolvable. His proposal is, of course, that a speculative philosophy of human nature is needed to provide the hierarchical ordering.

As discussed earlier, the Grisez-Finnis theory relies not on a principle of hierarchy to govern choice and action in respect of basic goods, but, rather, on the modes of responsibility. Hittinger does not allege that the modes are incapable of resolving any moral problems, but only that there are many important moral problems that they cannot resolve. He does not suppose, as do some critics of the Grisez-Finnis theory, that the modes cannot rule out any rational choices as practically unreasonable inasmuch as any choice, qua rational, will ultimately have its intelligibility by reference to some intelligible good(s) sought in the choice. (These critics, overlooking the force of the modes altogether, argue, for example, that, inasmuch as aesthetic appreciation is as much a fundamental good as life is, a healthy adult may reasonably (i.e., morally) stand by the side of a wading pool appreciating the beauty of the sunshine and not raise a finger to help a drowning infant easily within reach. Indeed, some might argue that nothing in the Grisez-Finnis theory forbids the adult from tossing the infant into the pool in order to appreciate the beautiful nobility of its struggling.) But Hittinger does claim that reliance on the modes to rule out immoral actions done for the sake of intelligible goods is rather odd. I shall present Hittinger's argument in his own words:

Grisez has reserved moral grounds for objecting to[, for example, Aztec religious practices involving human sacrifice]. For
instance, he might argue that these practices violate some other human good, such as life; but this moral judgment does not disqualify the rituals as the good of religion; it only indicates that this particular religious observance violates the good of morality by failing to respect other basic goods. In other words, the Aztecs, according to nature, participate in the good of religion, for they find their religious practices attractive and gratifying; yet the practices, according to natural moral norms, violate [the mode of responsibility that forbids doing evil for the sake of good]. Nature appears to speak with a forked tongue.121

My first task here is to clear away some, by now familiar, interpretive mistakes. First, religious rituals, practices, and observances are not, under the Grisez-Finnis theory, the good of religion. Hittinger's statement to the contrary reflects his failure to notice Grisez's distinction between goods and the actions by which persons may realize and participate in goods. Second, what rationally excludes the Aztec rituals, under the Grisez-Finnis theory, is not "the good of morality," but a specific moral norm forbidding direct killing (which is itself derived from the mode of responsibility Hittinger cites). Third, the fact that the Aztecs find their religious practices "attractive and gratifying" is not, for Grizez (or Finnis), a ground of the goodness of the practices. Here again Hittinger imports into Grisez's axiology a conception of the basic goods as mere subjective motives. Such a conception has no foundation in Grisez's writings.

The Grisez-Finnis theory of natural law recognizes (and gives an account of the fact) that the Aztec rituals were not unintelligible acts. To the extent that they were sincerely performed (and so far as I know there is no reason to doubt the sincerity of those who performed them), the intelligible point of the rituals was harmony with the divine, or "religion." That someone would choose ultimately for the sake of such an end is hardly baffling. Even if one's own considered judgment is that there is nothing beyond the material world—no divine realities with whom to seek harmony—one may still understand the religious acts of those who have reached different conclusions. Inasmuch as the Grisez-Finnis theory understands "good" as that which provides an ultimate reason for action, it is hardly an occasion for puzzlement that the murderous Aztec rituals can be said to have been performed for

121 Id at 111-12.
the sake of a good. This understanding in no way implies that such rituals were *morally* good—not even "a little bit." In truth, they were evil—not because they were pointless (for they were not) but because they violated moral norms (e.g., those derived from the modes forbidding the moral evils of direct killing and injustice). They were, then, objectively immoral (although this need imply no subjective guilt on the parts of those individuals who performed the murderous rituals). But notice this: Any theory of basic practical principles that excluded an understanding of the rituals as acts performed for the sake of the good of religion would undercut the possibility of judging the murderous acts by standards of morality. Lacking an intelligible point, the acts would have to be judged ir-rational and, as such, not susceptible to moral evaluation.

But let us get back to the issue of hierarchy. What if one finds oneself in a situation in which the modes of responsibility do not narrow one's morally acceptable alternatives down to one? Don't we need to know which good is the superior in order to choose correctly? It is here that the Grisez-Finnis theory is bound to disappoint absolutists. The theory seems incapable of providing norms that would generate a single, uniquely correct answer to every practical dilemma. It will not, for example, provide an answer for a gifted, morally serious undergraduate facing a choice of careers between law and medicine, who would like to know whether life and health are, in the great scheme of things, objectively more or less important than justice. Both options offer fulfillments (for the student and others), but no mode of responsibility will in principle rule out one or the other. The choice of either option, then, can be made compatibly with a will to integral human fulfillment. And the choice of neither option can bring it about (or somehow bring mankind nearer to bringing it about).

Of course, one's moral obligations can, sometimes, be affected by choices one has already made. For example, if I promise to do something, certain modes of responsibility ordinarily require me to do it, even where, but for my promise, no mode would generate such a requirement. Even aside from promises, prior commitments can give rise to moral obligations where, but for those commitments, none would exist. And the modes do forbid choosing in dil也让antish, uncommitted ways. Self-integration is itself an intelligible good. Anyone who chooses with an utter disregard for it chooses some possibilities incompatible with a will to integral human fulfillment. So a morally serious and upright person will, inter alia, take care in his choosing to integrate his choices and harmonize them with one another.
In *Natural Law and Natural Rights*, Finnis analyzed this mode under the rubric of "a coherent plan of life." Quoting John Rawls, Finnis said that

we should 'see our life as one whole, the activities of one rational subject spread out in time. Mere temporal position, or distance from the present, is not a reason for favouring one moment over another.' But since human life is in fact subject to all manner of unforeseeable contingencies, this effort to 'see' our life as one whole is a rational effort only if it remains on the level of general commitments, and the harmonizing of them. Still, generality is not emptiness . . . .

Despite Finnis's explicit warning not to "confuse the adoption of a set of basic personal or social commitments with the process, imagined by some contemporary philosophers, of 'choosing basic values,'" his references to "life-plans" (and his citation of Rawls) confirmed the worst fears of certain neo-scholastics. They perceived Finnis here as implicitly endorsing value (and therefore moral) relativism. After all, they reasoned, does not the idea that one can choose—free of the constraints of moral norms—"basic personal and social commitments," reek of the modernist conception of human liberty against which the natural law tradition has long held out?

There are, certainly, modern ideas of moral liberty that are radically inconsistent with anything that can plausibly be claimed to be within the tradition of natural law theorizing. But the Grisez-Finnis theory of natural law allows no place for any such ideas. It emphatically rejects subjectivist conceptions of value (which make the value of an end depend on someone's choosing it or, at least, desiring it). And the modes of responsibility provide abundant guidance (many critics say that they provide far too much "guidance") in choosing respectable human goods—including choices of basic personal or social commitments. Although a great many options remain, the modes rule out more than a few live options for individuals and societies. Still, Henry Veatch, in a slightly different context, has warned Grisez and Finnis about supping with the devil: In the words of the old saw, "one needs a very long spoon." But, recognizing that fundamentally important choices are often choices among morally acceptable options hardly places

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123 Quoted in Veatch, *Human Rights* at 98 (cited in note 89).
one at the dinner table with the devil—even if the devil is a moral relativist (which I doubt).

Hittinger seems to share the suspicions of some neo-scholastics. In an article published just before his book, he tries to win the point and establish the need for a hierarchical ordering of basic goods by seizing on a hypothetical case Grisez once employed to illustrate the implications of his view on the question of hierarchy:

[In *Beyond the New Morality* Grisez states that on Sunday morning one can either participate in the basic good of play (a round of golf perhaps), read the Sunday paper (the good of knowledge), or attend church. Since there is no objective hierarchy prior to choice, one can do any of these, so long as one chooses “inclusively”—that is, so long as one remains open to the goods which are not chosen.]

The lesson Hittinger invites us to draw from this is that religion and other ends cannot be judged to be good “without an antecedent justification of their rationality.” This justification, of course, must be the fruit of a speculative inquiries: “Whether God exists, or in any event, whether human desires which are identifiably ‘religious’ are good, are,” he declares, “crucial questions.”

Now, whether God exists is a very important question. (I am not quite sure what Hittinger means by identifiably “religious” human desires.) If one judges that God exists (a speculative judgment), one will base one’s understanding of the good of religion (i.e., that end by reference to which human religious acts have their intelligibility) on one’s (further speculative) judgments about God and what He reveals and commands. But nothing in these judgments need alter one’s grasp of foundational practical and moral principles, nor one’s basic understanding of how to employ these principles in one’s practical thinking. Let us suppose that one believes that God has authorized certain human authorities to establish rituals and set rules for worship. Among the rules, there is a requirement that one attend a certain ritual on Sunday. In view of these (speculative) religious judgments, one would, as far as one’s own understanding of the good of religion is concerned, be acting directly contrary to that good in failing in what one judges to be one’s obligation to attend church. The genuine goods to be

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125 Id.
126 Id.
realized by reading the paper or playing golf would not excuse one from one's responsibilities under the moral norm.

The subject in Grisez's hypothetical will not be able to reach the judgment that he is under a moral obligation to choose to go to church on Sunday over reading the paper or playing golf, without some speculative knowledge (here, religious knowledge). But the knowledge that he needs is not knowledge of the hierarchical ordering of religion in relation to the other possible goods. Rather, it is the sort of speculative knowledge (whether of religion, or health, or any other good) whose relevance to morally upright choosing the Grisez-Finnis theory never denies. Indeed, in the most recent statement of the theory, Grisez, Finnis, and Boyle explicitly acknowledge the bearing of speculative knowledge on particular moral judgments:

Just as [speculative] knowledge, true opinion, and experience enhance the initial insight into the substantive goods [e.g., life and health, knowledge, and aesthetic appreciation], so they deepen understanding of the reflexive goods [e.g., friendship, self-integration, authenticity, and religion]. For example, both sound metaphysics and experience in practicing authentic religious faith contribute to one's understanding of the good of religion. In doing so, they enhance the power of the principle underlying the religious quest. 127

Attending to Grisez's hypothetical shows that speculative knowledge can enrich one's understanding of human goods, and even affect thereby one's judgments about moral responsibilities. This is by no means uniquely true for the good of religion. Speculative knowledge of various types can also, as Grisez and Finnis observe, enrich one's understanding of the goods of health, friendship, aesthetic appreciation, and, certainly, knowledge itself. But the hypothetical does not show that a hierarchy of basic goods must be posited if the religious believer is to judge himself to be under a moral obligation to observe his sabbatarian requirements. Nor does it show that speculative knowledge is needed (or able) to ground an inference that religion, health, friendship, aesthetic appreciation, or knowledge is "a good to be done and pursued." It leaves the Grisez-Finnis claim that any such judgment must be a non-inferential practical judgment untouched.

In other words, speculative knowledge of this sort cannot be a substitute for foundational practical knowledge (e.g., knowledge of

the basic practical principle that harmony with the divine—if there is a divine—is a "good to be done and pursued," and the intermediate moral principle that one ought never to act directly against a basic human good). It can only supplement it (albeit in ways that can make critical differences for one's judgment in specific situations of choice).

Here again it is evident that the Grisez-Finnis theory erects no wall of separation between practical and speculative knowledge. But it does try to sort out the specific contributions of practical and speculative knowledge in understanding specific moral norms. And it eschews what I now hope to show is the ultimately hopeless strategy of trying to make decisions by reference to an alleged objective hierarchy of basic values.

Let us suppose, for a moment, that such a hierarchy does exist, and let us further suppose that religion ranks higher than knowledge or play. We are, to be sure, likely to conclude that Grisez's newspaper-reading golfer ought to go to church on Sunday. (As we have seen, the Grisez-Finnis theory can reach the same conclusion on the basis of different principles.) But we are likely to have trouble figuring out what he ought to do on Monday morning when he faces the option of going to a morning church service or getting to work on time. Does the supposed hierarchical priority of religion release him from the moral obligation (to be at work promptly) entailed by his prior commitment to his employer? Perhaps the principle of hierarchy does not control this particular choice; perhaps we can conclude that, despite the priority of religion, our subject ought to go to work in this case rather than to church. But what if he can manage to attend the service and still make it to work on time, thus avoiding any violations of moral norms? Does the priority of religion entail that he behaves immorally if he opts instead to spend his time before work reading the paper, or listening to some jazz recordings, or playing with his children? Suppose he does forgo all these possibilities in favor of the morning church service. Is he also morally required to forgo a pleasant walk in the park after lunch in order to attend a noon-time religious observance? Does the priority of religion over the other human goods mean that in every situation of choice in which one is under no moral obligation to do something else, one must, if possible, act specifically for the sake of religion? If not, then when must one so act? The hierarchical ordering does not seem to
indicate.\footnote{Have I merely drawn a caricature of the neo-scholastic idea of choosing by reference to an objective hierarchy of values? If so, I would welcome correction. The problem is that neither Hittinger nor the (other?) neo-scholastic critics of the Grisez-Finnis theory seem willing to present a detailed account of how choosing in accordance with a principle of hierarchy is supposed to work across a set of cases. Until they present such an account, one can only speculate.}

Under the Grisez-Finnis theory, to fail to meet what one understands to be one's religious obligations, where one could meet them, is to violate a moral norm. But it is not the case that every choice not made for the sake of religion, even where a choice for religion could uprightly be made, implicates one in such a violation. Speculative knowledge will be required in order to judge what one's religious obligations in fact are, but, as we have seen, the Grisez-Finnis theory freely admits the relevance of such knowledge to one's practical judgments. The attempt to resolve choices involving religion (or anything else) by reference to an alleged principle of objective hierarchy, by contrast, seems hopeless inasmuch as it either requires us virtually always to choose for the sake of religion, or fails to provide a principle on the basis of which to decide when choices for religion are required and when they are not.

Hittinger's argument that a principle of hierarchy is necessary for morally upright choosing is no more successful than his other arguments purporting to establish that the Grisez-Finnis theory of natural law fails. Once we dispense with his interpretive mistakes, and his misguided criticisms of the proposition that knowledge of the foundational principles of natural law is the fruit of practical insights, all that remains of Hittinger's case is the gratuitous assertion that a speculative philosophy of nature is "obviously" required to ground axiological and moral first principles. Hittinger's critique, for all its pugnacity, leaves the Grisez-Finnis natural law theory unscarred.

III. Concluding Remarks

Whether or not Aquinas himself supposed that sound practical philosophy necessarily depends upon a methodologically antecedent speculative philosophy of nature, this supposition has long prevailed among those who have understood themselves to be working within the Thomistic tradition of natural law theorizing. It is hardly surprising therefore that the Grisez-Finnis theory, inasmuch as it dispenses with this supposition, strikes many thinkers who are sympathetic to natural law theory as woefully inadequate.
It seems "obvious" to them that natural law theory must be about deriving norms of conduct from nature. To deny that moral norms can be so derived is to embrace Kantian formalism, at best, and moral relativism or even skepticism at worst.

The attacks on the Grisez-Finnis theory that Weinreb and Hittinger mount represent attempts to identify with precision the inadequacies that they and others suppose must attend any theory of natural law that appeals other than to the normativity of nature in identifying fundamental moral principles. Both authors take the Grisez-Finnis theory seriously; but, unfortunately, neither manages to understand it adequately. Each proposes a set of criticisms based on fundamental misunderstandings of important claims and arguments Grisez and Finnis make in their elaborations and defenses of the theory. Perhaps the theory is vulnerable to damning criticisms. If so, the basic flaws in the theory are unlikely to be brought to light by critics who have not first achieved an accurate grasp of what is and is not being claimed by those advancing it.

That authors as competent as Lloyd Weinreb and Russell Hittinger have misunderstood the theory in such significant respects should, I believe, give Grisez, Finnis, and their collaborators pause. Misinterpretations are not always exclusively the fault of interpreters. Some texts invite misinterpretation. Whether or not the writings of Grisez, Finnis, et al., are culpable in this regard, it is evident that special care will be needed in the presentation of "the new natural law theory" if it is to get a fair hearing even among the philosophically most sophisticated of those to whom it is proposed.