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THE PRINCIPLES OF NATURAL LAW *

RALPH MCINERNEY

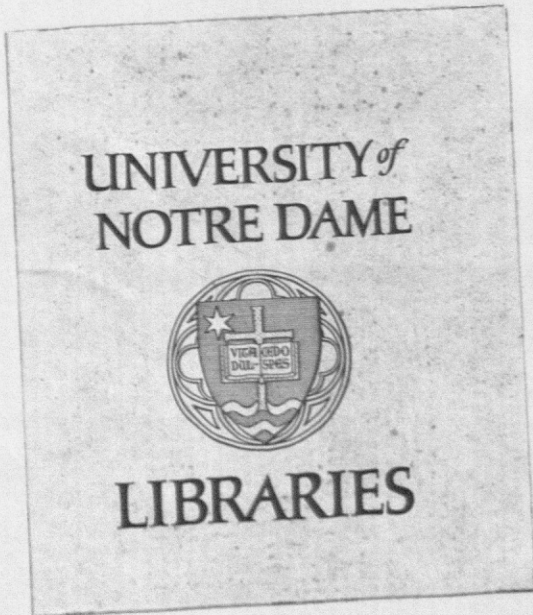
The influential interpretation of Summa Theologiae, IaIIae, q. 94, a. 2, by Germain Grisez, has provided the structure of John Finnis's recent and important book, *Natural Law and Natural Rights*. After a summary of Thomas Aquinas's article, the Grisez/Finnis view is examined with an eye to showing why it has proved attractive to so many. The insistence that the Face/Value distinction is rigorously observed in the derivation of natural law precepts, that the first principles of practical reason are pre-moral and that the basic values are equally basic is examined and some critical remarks made.

WHEN I REFLECTED ON THE assignment that had been given me for this occasion—to tell you about the direction discussion of natural law among philosophers has taken over the past quarter of a century—I very swiftly came to the conclusion that I did not want to conduct you on a barefoot trek over the very uneven terrain that assignment suggests. Such a survey would be a very difficult thing to do, and I fear it would not be an unqualified treat for the mind. Confirmation in this thought came when I hit upon a more manageable and, I think, far more interesting approach.

Fifteen years ago Professor Germain Grisez published an article entitled "The First Principle of Practical Reason." It appeared in *The Natural Law Form*, since metamorphosed into *The American Journal of Jurisprudence*. On this occasion there is something especially fitting in concentrating on this essay of Grisez's; the fact that he has developed and expanded the views of his article in a number of subsequent volumes published by the University of Notre Dame Press adds to that fittingness. Not that I am motivated by a sense of loyalty to the *genius loci* alone. Grisez's article was reprinted in the anthology edited by Anthony Kenney devoted to Aquinas in the *Modern Studies in Philosophy* series. Moreover, it has been warmly commended by Alan Donagan and provides the basis for the approach John Finnis takes in his recently published *Natural Law and Natural Rights*.¹ I think it is safe to say that Germain Grisez's interpretation of the key text in Thomas Aquinas's Treatise on Law, IaIIae, q.94, a.

* This paper was read to the annual Natural Law Institute meeting held at Notre Dame, IN on April 9, 1980.

1. John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 1980). G. Grisez, "The First Principle of Practical Reason," *The Natural Law Forum* (1965), pp. 168-96. I cite the reprint in A. Kenny (ed.), *Aquinas* (London, 1970).



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2 has become for many the definitive and authoritative one. It is certainly true that some reflections on it, even if they served only to draw yet more attention to Grisez's work, would worthily, if modestly, fulfill my assignment today.

In what follows, I shall do three main things. First, I shall recall as rapidly and as accurately as I can the views of Thomas in the article in question. Second, I shall summarize Grisez's interpretation which is meant to supplant a traditional more or less Suarezian version of natural law and return to the more satisfying and, he feels, obscured if not forgotten Thomistic teaching on natural law. Finally, I shall offer a number of criticisms of Grisez and Finnis.

I. SUMMA THEOLOGIAE, IaIIae, Q. 94, a. 2.

Although Thomas Aquinas is rightly looked to as a major proponent of natural law—the view that there are a number of true directives of human action every person can easily formulate for himself—it is oddly true that there is only one place in the vast body of his writings where he engages in an extended and formal discussion of law and its various kinds. Any student of Thomas will realize how unusual this is. Given the nature and occasion of his writings, Thomas was destined to discuss the same issues again and again, so much so that, at the foot of any article in the *Summa Theologiae*, there is a list of *loci paralleli* to which one can repair for discussions similar to the one in the *Summa*. There are references to parallel places in the *Treatise on Law* but these are due to the ingenuity of editors rather than to the fact that Thomas is here taking up anew matters he has discussed as such elsewhere. Most notably, there is no parallel discussion to the article which is the focus of this first portion of my remarks.

The article asks: *Utrum lex naturalis contineat plura praecepta vel tantum*: Is there one only precept of natural law or are there many? What does he mean by natural law? To this point we have in hand only the definition given in q. 91, a. 2: natural law is the peculiarly human way of participating in the eternal law whereby God governs creation. Every creature comes under the sway of God's governance but "Among the others the rational creature comes under Providence in a more excellent way, insofar as it shares in that Providence, providing for itself and others." The rational creature directs himself to his appropriate end and activity. Such direction is expressed in precepts² and the question thus comes down to: is one precept sufficient to express how we should achieve our appropriate end?

2. *Summa theologiae*. Thomas Aquinas. IaIIae. 92. 2c. "... sicut enuntiatio est rationis dictamen per modum enuntiandi, ita etiam lex per modum praecipendi."

Thomas begins by likening the precepts of natural law (his use of the plural indicates how the question will be answered) to the first principles which guide theoretical discourse: both are *per se nota*, known through themselves, not derived, self-evident. A proposition is per se nota when no middle term is required to explain the conjunction of predicate and subject. Rather, one who knows the meaning of its terms will immediately see that the proposition is true. In the theoretical use of our mind, there is a distinction between apprehension and judgment; we must grasp the meaning of the constitutive terms of a proposition before we can constitute a proposition from them. Being is something that no one can fail to know; *illud quod primo cadit in apprehensione, est ens, cujus intellectus includitur in omnibus, quaecumque quis apprehendit.* What is known is a being, whatever else it is. On this apprehension is grounded the first indemonstrable principle: you cannot simultaneously affirm and deny the same thing.³

Just as being is the first thing that without qualification the mind grasps, so the good is the first thing grasped by mind in its practical function of directing to some work. (An agent acts for an end which has the note of goodness.) So the first principle of practical reason is going to be grounded on the notion of goodness. What is the concept of the good? The good is that which all things seek. That is what "good" is taken to mean. Something is sought insofar as it is complete or perfective of the seeker. Thus "good" does not simply designate an object of pursuit, it suggests the formality under which the object is pursued: as complete, as perfective. The first precept, the parallel in practical thought to the first principle of reasoning without qualification, the principle of contradiction, is this: The good is to be done and pursued, and evil avoided.

not the
word but
the good

*Et super hoc fundantur omnia alia praecepta legis naturae, ut scilicet omnia illa facienda vel vitanda pertineant ad praecepta legis naturae, quae ratio practica naturaliter apprehendit esse bona humana.*⁴

3. One might ask why Thomas gives this expression to the first principle of all reasoning. He says it is grounded on the notion of being and not being, but then why not state the principle: it is impossible for a thing to be and not to be at the same time and in the same respect. The reason seems to be that the concept of natural law draws particular attention to the role of human reason in fashioning precepts directing action to man's end; given this, the mind's affirming and denying give rise to an expression of the first principle more obviously parallel to those of practical reason.

4. The "naturaliter" modifying practical reason's grasp of human goods refers to either or both (a) mind's apprehension of the goods in question, and (b) the immediacy of the judgment that such goods are to be pursued and their opposites avoided.

The precept is formed by human reason and it is meant to be directive of human action. The addressee is the human agent and the directive is: The perfection, the completion, the good in the sense of the ultimate end, is to be pursued and whatever is incompatible with that end is to be avoided.

Any other directive, any other precept which is a natural law precept, will be in effect a particularization of this one. That is, we shall expect that there will be a multiplicity of apprehensions each expressive of some constitutive of man's end or good.

Quia vero bonum habet rationem finis, malum autem rationem contrarii, inde est quod omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda.

The good as end or completion is the object of inclination or appetite. Man is a complex whole comprising a number of inclinations, each of which will have an appropriate good or end. If we enumerate these inclinations and notice their hierarchy we will be able to glimpse the natural law precepts which take them into account.

What is meant by the order of inclinations? This: there are some goods which men share with all creatures, others they share with only some other creatures, and some which are peculiar to men. If the human good is taken to mean the good which is peculiar and proportionate to man, it would be that which is perfective of him as the special kind of agent he is. But man is a rational agent. Therefore the good or perfection of rational activity is man's end. But what of such inclinations as that to self-preservation, common to all creatures and thus to man, and that to reproduce and form a family and raise offspring, common to all animals and thus to men: are the ends or goods aimed at by these inclinations to form no part of the human good? Of course they are parts of man's good, but only insofar as they are humanized, that is, are pursued not just instinctively, but as the aim or goal of conscious action. As human acts, the pursuit of these ends must be rational, deliberate, responsible. Natural law precepts relating to such goods must envisage them as human goods: the precept is a directive of reason as to how we should pursue such goods. Thus goods which are not peculiar to men come to be constituents of the human good insofar as they come under the sway of the distinctive mark of human agent, reason. Sex is a *human* good not just as such, but as engaged in consciously and purposively and responsibly. That is how it becomes a *human* evil too; there is no way in which humans

can engage in sexual activity other than consciously which is why the "animal" part of our nature is always a layer and never autonomous.⁵

Natural law is a dictate of reason. Precepts of natural law are rational directives aiming at the good for man. The human good, man's ultimate end, is complex, but the unifying thread is the distinctive mark of the human, i.e., reason; so too law is a work of reason. Man does not simply have an instinct for self-preservation. He recognizes self-preservation as a good and devises ways and means to secure it in shifting circumstances. Man does not merely have a sexual instinct. Recognizing the desirability of sexual companionship, reproduction, offspring, he consciously directs himself to those goods as goods without which he would not be complete.

One familiar with the opening discussions of this part of the *Summa Theologiae*, discussions concerned with the human good and man's ultimate end, will see that the several precepts of natural law are directives aiming at constituents of the human good or ultimate end. The precepts are first: Pursue your good, your ultimate end, and avoid what is destructive of it. And then there are articulations of this in precepts which express constituents of that end: Rationally pursue self-preservation; rationally pursue the good of sex, reproduction, offspring; rationally pursue the good of reason itself, truth, in all its modes, and particularly truth about the most important things.

The natural law precepts other than the first do not express means whereby the good of the first most common precept can be attained, as if they were instrumental to it. Rather they express means only in the sense of constituents of the ultimate end. Thus, it seems that the precepts of natural law are general directives toward the ultimate end, either stated most generally (the good is to be done and pursued and evil avoided), or aimed at constituents of the ultimate end. We will see later, with reference to the distinction between *comunissima*, *communia*, and *propria*, that there may be need to modify this claim, but for now, by taking the obvious implication of the text, that all natural law precepts are general injunctions to pursue the ultimate end or the human good, and conjoining it with the truth that man's end is given, we can see how it can be claimed that natural law precepts are valid everywhere and at all times. That claim can seem controversial whenever a way of achieving or attaining the end is expressed, no matter how general the expression.

5. The dream of Kierkegaard's aesthete is to engage in sensuality in such a way as to be at once aware and unaware: to be at once a heedless innocent animal, and a conscious self-observing participant. This impossible dream is why the aesthete lives a life of despair.

II. GRISEZ ON THIS ARTICLE

The essay of Germain Grisez mentioned at the outset is polemical in the sense that he is out to correct what he takes to be a fundamental misunderstanding, or fundamental misunderstandings, of the teaching of St. Thomas with respect to the first principle of practical reason. It is Grisez's contention that a caricature of Thomistic natural law has been accepted as good money for a long time, that this caricature owes far more to Vasquez and Suarez than it does to Thomas, and that this caricature is open to a number of devastating criticisms which are ineffective against the view of Thomas Aquinas properly understood.

From the very first paragraph of his article, we would take it that one of the roots of the misunderstanding is connected with confusing commands and gerundive statements, that is, treating "Do good and avoid evil" as equivalent to "Good is to be done and pursued and evil avoided." "Although verbally this formula is only slightly different from that of the command . . . I shall try to show that the two formulae differ considerably in meaning and that they belong in different theoretical contexts."⁶ Taking the first principle to be a command, the caricature of natural law is this:

Man discovers this imperative in his conscience; it is like an inscription written there by the hand of God. Having become aware of this basic commandment, man consults his nature to see what is good and what is evil. He examines an action in comparison with his essence to see whether the action fits human nature or does not fit it. If the action fits, it is seen to be good; if it does not fit, it is seen to be bad. Once we know that a certain kind of action—for instance, stealing—is bad, we have two premises, "Avoid evil" and "Stealing is evil," from whose conjunction is deduced: "Avoid stealing." All specific commandments of natural law are derived in this way.⁷

I am interested in this caricature and Grisez's treatment of it only insofar as what he says of it fills out his own understanding of what Thomas really means to say. That such a caricature is or was current, I shall not contest; nor will I say anything about its alleged Suarezian roots. These are simple negations. I am not at all implying that an examination of these historical questions would lead to criticisms of Grisez's characterization.

When one gets into Grisez's article and begins to get a glimpse of his positive interpretation, reasons why it has commended itself to

6. "The First Principle of Practical Reason," as reprinted in Kenny, p. 341.

7. *Ibid.*, p. 340.

many are easy to find. Although he does not stress this just as such, Grisez gives no comfort at all to those who would see in the concept of ultimate end as highest superordinating good the implication that there is some one goal or course of action that all men should pursue. Many critics of the view of ultimate end that Thomas took over from Aristotle have seen in it the absurd claim that over and above birdwatching, carpentry, and practicing law there is some specifically human task that we should all perform and which is such that to perform it well makes one a good human being. Grisez and Finnis are refreshing in their gentle insistence that the natural law view is precisely the view that there is an all but numberless variety of ways in which men can attain their completeness or perfection as men.

So, too, Grisez's interpretation puts the emphasis on the positive rather than the negative precept. To see natural law as a series of shalt nots is truly a caricature of it, for natural law precepts point to that which is fulfilling and complete of man, not simply toward things to be avoided. The latter presupposes the former and however we stand in need of moral prohibitions, any discussion of the moral life which deals almost exclusively with prohibitions can give no sense of the liberating and expansive thing the moral ideal is. Certainly such an emphasis on the negative bears little or no relation to the writings of Thomas Aquinas.

But of course I am not here simply to praise Grisez and Finnis. I have long been puzzled by the reception Grisez's article received because it seems to me to be extremely obscure at just the points where it should be clearest. There are three general headings under which I can place most of my misgivings about the Grisez interpretation: (a) the somewhat excessive distinction between fact and value (where the understanding of practical reason becomes dubious); (b) the claim that the first principle of practical reason, and perhaps the whole set of basic values, are somehow pre-moral, not-yet-ethical matters; and (c) the denial of any objective hierarchy among the basic values. I shall first of all sketch Grisez's views on these matters and, in the next section of my paper, develop my misgivings.

THE FACT/VALUE DICHOTOMY

"If one supposes that principles of natural law are formed by examining kinds of action in comparison with human nature and noting their agreement or disagreement, then one must respond to the objection that it is impossible to derive normative judgments from metaphysical speculations."⁸ Grisez is insistent on a distinction be-

8. *Ibid.*, p. 382.

tween the normative and factual, valuation and description, is and ought, and this insistence has, I think, a certain dated charm about it. The passage just quoted suggests that there is something illicit in the passage from such sentences as

Wheaties are good for you

to

You ought to eat Wheaties.

Finnis devotes a section of his second chapter to this matter. "Another of the three decisive issues formulated by Stone was this: 'Have the natural lawyers shown that they can derive ethical norms from facts?' And the answer can be brisk: They have not, nor do they need to, nor did classical exponents of the theory dream of attempting any such derivation."⁹ Finnis feels this undercuts one of the most widespread misunderstandings of natural law. It is simply not true, he says, that "any form of a natural law theory of morals entails the belief that propositions about man's duties and obligations can be inferred from propositions about his nature."¹⁰ The first principles of natural law are self-evident, underived; that is, for Finnis, the real basis for the denial that they are inferred or derived from any other propositions of whatever kind. "They are not inferred from speculative principles. They are not inferred from facts. They are not inferred from metaphysical propositions about human nature, or about the nature of good and evil, or about 'the function of a human being.'"¹¹ His denials become more and more sweeping.

Principles of right and wrong, too, are derived from these first, pre-moral principles of practical reasonableness, and not from any facts, whether metaphysical or otherwise. When discerning what is good, to be pursued (*prosequendum*), intelligence is operating in a different way, yielding a different logic, from when it is discerning what is the case . . . but there is no good reason for asserting that the latter operations of intelligence are more rational than the former.¹²

More positively, Finnis writes

One does not judge that "I have (or everybody has) an inclination to find out about things" and then infer that therefore knowledge is a good to be pursued. Rather, by a simple act of non-inferential understanding one grasps that the object of the inclination which one experiences is an instance of a general form of good . . .¹³

9. *Op. cit.*, Finnis, p. 33.

10. *Ibid.*, Finnis has in mind D.J.O. Conner, *Aquinas and Natural Law*.

11. *Ibid.*, p. 33.

12. *Ibid.*, p. 34.

13. *Ibid.*

The first underived principles of practical reasonableness, make no reference at all to human nature, but only to human good.¹⁴ In Grisez, far more than in Finnis, this insistence leads to a somewhat unusual sense of practical reason. Grisez says that in theoretical thinking the world calls the turn, in practical thinking the mind calls the turn. Often he suggests that practical reason turns upon a malleable world which it can remake pretty much at will. One recognizes in this characterization what Aristotle and Thomas say of art far more than what they say of prudence, of the specifically moral.

THE PRE-MORAL CHARACTER OF FIRST PRINCIPLES

If Grisez *et sequaces ejus* are insistent that moral principles, the first principles of practical reasoning, are not derived from factual truths grasped by mind speculative, they nonetheless argue for an ethical heteronomy in the following sense. The first underived self-evident principles, the precepts of natural law, are pre-moral, not moral. Moral principles are nonetheless derived from them. What this comes down to, in terms of the article in the *Summa* already cited, q. 94, a. 2, is the claim that the basic values, the goods pointed to or aimed at by the instincts, are not as such moral values. By this they do not mean, for example, that the instinctive desire for sexual congress is, when felt, neither good nor bad, not yet a moral act; or that the surging up of an emotion, of anger or joy, is not as such moral or immoral. What they mean is that the comprehensive good that is to be pursued is not a moral value. That comes down to saying that man's ultimate end is not a moral value. So too the basic values that Finnis lists, expanding a bit on Grisez, namely Life, Knowledge, Play, Aesthetic Experience, Sociability, Practical Reasonableness, and Religion are not moral values, singly, or cumulatively. "Neither this chapter nor the next [3 and 4, in which Finnis discusses basic values] makes or presupposes any moral judgments. Rather, these two chapters concern the evaluative substratum of all judgments. That is to say, they concern the acts of practical understanding in which we grasp the basic values of human existence and thus, too, the basic principles of all practical reasoning."¹⁵

What Finnis could mean is that the grasp of these basic values would be expressed in definitions rather than in precepts and in that sense no practical advice, moral or any other kind, is being given. Only when we judge that we should pursue the basic value or when

14. *Ibid.*, p. 36.

15. *Ibid.*, p. 59.

*pre-moral
vs
moral
in Finnis*

we judge that such-and-such would be a way of attaining or participating in the basic value, stating this in a prescriptive way, only then do we enter into the domain of the moral proper. Perhaps that is what he means,¹⁶ and then it would be like saying concept formation is not yet an activity that is true or false; truth or falsehood enter in only when judgments, employing such concepts, are made.

But if that is what Finnis means, it does not seem to be what Grisez means by speaking of these self-evident principles of natural law as pre-moral. He seems more concerned to have principles that will govern the practical activity of all men, good or bad, and which thus must split the difference between moral and immoral. If the bad man as well as the good is guided by these first principles the one will not be called good nor the other bad simply because he is guided by them.

BASIC VALUE EGALITARIANISM

A moment ago I listed the Basic Values that are taken to emerge from the grasp of the goods aimed at by man's inclinations. One of the most distinctive marks of Grisez's interpretation is his claim that no one of these values is better than the others. There is no objective hierarchy among the basic values that one would have to be guided by in the formation of a life plan. Of course, in the nature of things, this man plans his life in such a way that the quest for knowledge, say, takes precedence over the other values; this man, a surgeon, puts life at the center of his life. In thus giving preference, so to say, to one basic value over others, one must not act directly against any basic value. Here we have, I think, the reason for the claim that the basic values are equally fundamental.

More important than the precise number and description of these values is the sense in which each is basic. First, each is equally self-evidently a form of good. Secondly, none can be analytically reduced to being merely an aspect of any of the others, or to being merely instrumental in the pursuit of any of the others. Thirdly, each one, when we focus on it, can reasonably be regarded as the most important. Hence there is no objective hierarchy among them.¹⁷

Finnis at any rate is aware that this tenet separates him from the text of Aquinas, to an analysis of which Grisez devoted his article. Thomas, we recall, wrote: *Secundum igitur ordinem inclinationum naturalium, est ordo praceptorum legis naturalis.* Finnis, taking note

16. *Ibid.*, p. 84.

17. *Ibid.*, p. 92.

of this, and the way in which for Thomas the most basic inclination is one man shares with everything else, the next most basic one he shares with other animals, and so on, comments:

But is it relevant to a meditation on the *value* of the various aspects of human well-being? Are not speculative considerations intruding into a reconstruction of principles that are practical and that, being primary, indemonstrable, and self-evident, are not derivable (nor sought by Aquinas to be derived) from any speculative considerations?¹⁸

Finnis concludes that Thomas here sets a questionable example and repeats that "in ethical reflection the threefold order should be set aside as an irrelevant schematization."¹⁹ So we are back to an understanding of the speculative and practical, now so understood as to collide in important ways with Thomas's understanding.

III. REFLECTIONS ON THE GRISEZ INTERPRETATION

A view of practical reason that regards knowledge of the world to be irrelevant to it is clearly a view different from that which we encounter in Aristotle and Aquinas. The theory of practical reasoning developed by Aquinas is a good deal more complicated than either Grisez or Finnis seem to recognize. It is well known that Thomas provides not just one but three criteria for practical reasoning, suggesting that such reasoning is more practical to the degree that it satisfies more of these criteria.²⁰ One of these criteria is the nature of the object—is it something that can be made or done by us—and from this point of view a quite factual statement about a house will, since a house is precisely a product of human craft, count as a piece of practical discourse; minimally practical, it is true, but one sees that it is not going to be in terms of syntax that one is going to be able to set the practical off from the theoretical. Grisez tends to want to restrict practical discourse to gerundive precepts.

Allied with this is the insistence that no transition from *is* to *ought*, from *fact* to *value* is going on in natural law. The dichotomy involved, once thought to be sharp and distinct, has come to be seen as doing duty for a number of contrasts which cannot be reduced to absolute unity. Maritain in *Neuf Lecons sur la philosophie morale* made the point that all intellectual activity is concerned with value, truth value, for instance. Indeed this is now one of the basic values Grisez and

18. *Ibid.*, p. 94.

19. *Ibid.*, p. 95.

20. Cf. *Summa theologiae*, Ia, q. 14, a. 16.

Finnis recognize and thus comes specifically under the sway of the moral. The concern not to infer from *fact* to *value*, from *is* to *ought*, may be a symptom of over-fastidiousness.

Joe weighs two hundred and fifty pounds.
Joe ought to go on a diet.

That transition would be said to be justified by the understood premise "It is not healthy to be overweight." And that is a value-premise. It is action guiding. But is it? We may find it odd if someone says "Who wants to be healthy?" but would we want to say some fallacy has been committed? Grisez and Finnis are clearly concerned about avoiding fallacies. But one man's fallacy may be another's common sense. Does

Knowledge is good for man
entail
Men ought to pursue knowledge?

Grisez and Finnis often speak of the first proposition as a metaphysical truth having nothing to do with practical judgments. The fact is "Knowledge is good for man" is a special case of "Good is that which all men seek;" it is precisely the basic value which is the principle on which the precept "Knowledge ought to be pursued" is founded. Whatever fallacy there may be in passing from *is* to *ought*, Grisez's understanding of it threatens to undercut his own and Thomas' actual procedure.

No philosopher, no matter what he may say, wants to regard facts about human beings as morally irrelevant. The sharp dichotomy between normative and non-normative discourse maintained by the empiricist does not obtain in fact: there are many propositions, such that tuberculosis is a disease, or that a human child ought to be able to talk before reaching the age of five years, which do not fit comfortably on either side of the dichotomy.²¹

The claim that the first principles of practical reasoning, the self-evident principles of natural law, are pre-moral rather than precisely the principles of morality, is, I find, a strange one. It certainly sounds Pickwickian as a characterization of what is going on in the *Summa Theologiae*, IaIIae, q. 94, a. 2. Once more Finnis is clearer on this than Grisez, that is, clearer as to what motivates him in saying it.

21. Philip Devine, *The Ethics of Homicide*, p. 43.

The principles that express the general ends of human life do not acquire what would nowadays be called a "moral" force until they are brought to bear upon definite ranges of project, disposition, or action, or upon particular projects, dispositions or actions. How they are thus brought to bear is the problem for practical reasonableness. "Ethics" as classically conceived is simply a recollectively and/or prospectively reflective expression of this problem and of the general lines of solutions which have been thought reasonable.²²

Finnis is being guided by what he takes to be the meaning of "moral" nowadays. The first principles of practical reasoning are not yet moral because they are too general, apparently, and Finnis thinks he finds this usage in Thomas.²³

His reference is to the interesting text to be found at IaIIae, q. 100, a. 1 where Thomas asks if all the moral principles of the old law pertain to natural law. (Moral precepts are here distinguished from ceremonial and judicial precepts of the Old Law.) The text explicitly groups the first principles of natural law with moral precepts, so that there can be little doubt as to Thomas' own usage. But as a terminological matter it is of little importance. What Finnis wants to distinguish from what he calls moral or ethical are those precepts which direct us to pursue our ultimate end or the constituents of it.

I reply that moral precepts, distinguished from ceremonial and judicial precepts, bear on things which of themselves pertain to good morals. Since then human customs (*mores*) are said to be such by being ordered to reason, which is the distinctive principle of human acts, those customs are said to be good which agree with reason, those evil which are discordant with reason.

Now just as every judgment of speculative reason proceeds from a natural knowledge of first principles, so every judgment of practical reason proceeds from certain naturally known principles.²⁴

Here Thomas refers to q. 94, a. 2. These first precepts of natural law he now calls *comunissima*, most common, and since they are precisely most common *precepts*, they cannot be simply the grasp or

22. *Op. cit.*, Finnis, p. 101.

23. *Idid.* (See also p. 30. "Even when, later, Thomas Aquinas clearly distinguished a class of practical principles which he considered self-evident to anyone with enough experience and intelligence to understand the words by which they are formulated, he emphasized that moral principles such as those in the Ten Commandments are *conclusions* from the primary self-evident principles, that reasoning to such conclusions requires good judgment, and that there are many other more complex and particular moral norms to be followed and more judgments and decisions to be made")

24. IaIIae, q. 100, a. 1.

apprehension of basic values.²⁵ Nonetheless, it seems right to suggest that they are precepts which simply direct to the end, whether in general (The good is to be done and pursued, and evil avoided), or in articulating the constituents of man's good.

From which it (reason) diversely proceeds in judging of diverse things. (a) There are some things in human acts so obvious (*explicita*) that with but a little consideration they can be approved or disapproved through the common and first principle. (b) Other things indeed are such that judgment of them requires lengthy consideration of diverse circumstances, the diligent inquiry into which is not possible for everyone, but only the wise . . .²⁶

It is on the basis of these texts that I suggest that the first principles of natural law are absolute and changeless precisely because they direct to the end and do not express even at a level of high generality ways of achieving the end. The next level Thomas speaks of, a level of precepts deduced from the most common, could be thought of as directives expressing ways to achieve the end or ways to be avoided since they thwart the end. Here there could be absolutes whenever a certain mode of conduct would necessarily thwart the end, but clearly we are more likely to have precepts which are valid only for the most part. Furthermore, if "precept" in the proper sense of the word covers judgments which express means to the end and not simply end, and there is reason to think this is how Thomas understood it,²⁷ then one could say that the first precepts of natural law are less properly precepts, less properly moral precepts, than those expressive of means. And that would be a way of saying what Finnis and Grisez, perhaps for the same reason, want to say.

As for the denial of an objective hierarchy among basic values, one has to hold fast to the reasons for the denial—to wit, to guard against acting directly contrary to a basic value. Whether the acceptance of an objective hierarchy among basic values deprives one of a basis for forbidding acting directly against a basic value is not evident. Only if the hierarchy reduced a basic good to mere instrumental status would this follow. By the same token, recognition of an objective hierarchy among basic values in no way impedes that subjectively, that is from

25. *Op. cit.*, Aquinas, q. 99, a. 2, ad 2m.

26. *Ibid.*, q. 100, a. 1.

27. *Ibid.*, cf. q. 100, a. 9, ad 2m; see also q. 99, a. 1: "*praeceptum legis, cum sit obligatio, est de aliquo quod fieri debet. Quod autem aliquid debeat fieri, hoc provenit ex necessitate alicuius finis. Unde manifestum est quod de ratione praecepti est quod importet ordinem ad finem, in quantum scilicet illud praecipitur quod est necessarium vel expediens ad finem.*"

subject to subject, a more personal hierarchy would obtain. In any case, what must be said is that Thomas himself, as Aristotle had before him, insists on the inequality of the basic values and recognizes a hierarchy among them. That a good might be end-like yet not an ultimate end, but, subordinable to a further end, does not make it merely instrumental. Both Thomas and Aristotle take that perfection of rational activity which they call contemplation to be objectively the highest. Neither man thinks that anyone could devote himself exclusively to contemplation; the human good remains complex, irreducible to a single kind of activity. And in this perspective, the moral virtues are taken to be dispositive toward, conditions of, the contemplative use of the mind. x Virtue

IV. ENVOI

I hope these remarks about the interpretation of Grisez and Finnis will not seem churlish or petty or merely negative. If their interpretation did not have much to commend it, it would scarcely have become as influential as it is. I mentioned earlier some of its major merits, in my estimation, and I could add many more to those. Perhaps I will not be thought too docile a disciple of Aquinas if I say that I find Grisez and Finnis at their best when they are developing Thomas's thought along its own lines and weakest when they are consciously or unconsciously deviating from it. In any case, it seems to me that natural law has been largely a matter of footnotes to the *Treatise on Law* in the *Summa Theologiae*, and that it is likely to remain this insofar as it retains strength and persuasiveness. Quite apart from its independent merits, the view of Grisez and Finnis is seen as Thomistic. This is why I concentrated on it and I mean my humble observations to be tribute rather than carping criticism. My moral is simply that one should read Grisez and Finnis in conjunction with Aquinas. A major task before us, I think, is to draw out the relations between ultimate end and the *Treatise on Law*. When this is done the main emphasis of the work of Germain Grisez will have been brought to completion.