

Chapter 11

Is the “New Natural Law Theory” Actually a Natural Law Theory?

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11.1 The “New Natural Law Theory”

The exponents of the so-called “new theory of natural law” (John Finnis, Germain Grisez, Joseph Boyle and Robert P. George being its best known expounders) seek to restore the original (Aristotelian-Thomist) inspiration of the natural law tradition, which they now purport to update by means of conceptual instruments borrowed from modern philosophy and the selective internalization of certain contributions of legal positivism.¹ In Finnis’ view, most natural law theories between the seventeenth and the twentieth centuries drew on Gabriel Vázquez’s (sixteenth century) and Francisco Suárez’s (seventeenth century) reelaborations, rather than on the genuine Aristotelian-Thomist source.² And Suarezian natural law theory – Finnis holds³ – is ratio-voluntarist. On the one hand, reason identifies certain kinds of behaviour as being consistent with man’s rational nature (and *therefore*⁴ morally right) or as being inconsistent with it (and therefore morally wrong): this would be the *rationalist* ingredient. On the other hand, God commands man to do what is morally right

¹ “[The “New Natural Law Theory”] is a restatement which claims to incorporate and reevaluate the general insights of modern so-called legal positivism, but to transcend them, and to reinstate them within a properly elaborated theory of natural law” (MacCORMICK, Neil, “Natural Law Reconsidered”, *Natural Law*, vol. I, p. 227).

² “It is Grisez’s [and, therefore, Finnis’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 Vázquez and Suárez than it does to Thomas [Aquinas], and that this caricature is open to a number of devastating criticisms which are ineffective against the view of Thomas Aquinas properly understood” (McInerny 1980, 6).

³ Cf. Finnis (1988), 45–46.

⁴ This “therefore” is, of course, contentious, as it involves, in Finnis’ view, naturalistic fallacy.

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(that is, what promotes the full development of human nature) and to abstain from doing what is morally wrong: this would be the *voluntarist* element.

To Finnis' and Grisez's mind, Suarezian natural law doctrine is unsatisfactory for two reasons. Firstly, because it lapses into a "naturalistic fallacy"⁵: it unjustifiably transforms "is" (consistency of behaviour with "man's rational nature") into "ought" (moral rightness).⁶ Secondly, because it represents a distortion of Aquinas' genuine natural law theory⁷: according to Finnis, Aquinas' reasoning proceeds mostly in terms of intrinsically desirable "goods" or "ends", not in terms of consistency (of behaviour) with human nature.⁸

Finnis thus sought to leap over the misleading interlude represented by Suárez and most modern natural law theorists, and to "rediscover" the original source of a Thomist natural law theory which, in his view, does *not* commit a naturalistic fallacy. According to Finnis' *Natural Law and Natural Rights* (1988), it is not the case that reason explores human nature first and then asserts the moral correctness of those acts which are in conformity with such nature (or, to put it in "dynamic" terms, those which promote its full realization). Rather, practical reason directly grasps the intrinsic desirability of certain goods (Finnis propounded a list of seven: knowledge, life, friendship, play, etc.).⁹

⁵ "The scholastic natural law theory [Suárez] must be rejected [...] [because] it moves by a logically illicit step—from human nature as a given reality, to what ought and ought not to be chosen" (Grisez 1983, 105).

⁶ Finnis, thus, takes seriously Hume's and Moore's criticism of the "naturalistic fallacy" (the impossibility of deriving "ought" from "is"). In his opinion, the "materials" for building a natural law theory that does not lapse into naturalistic fallacy are to be found in Aquinas' work. However, Finnis acknowledges that Aquinas did not entirely develop this theory; Finnis purports to accomplish, then, what Aquinas left unfinished: "The reason for making the attempt [to "complete" what Aquinas left undone] is that a theory of practical reasonableness, of forms of human good, and of practical principles, such as the theory Aquinas adumbrated but left insufficiently elaborated, is untouched by the objections which Hume (and after him the whole Enlightenment and the post-Enlightenment current of ethics) was able to raise against the tradition of rationalism eked out by voluntarism. That tradition presented itself as the classical or central tradition of natural law theorizing, but in truth it was peculiar to late scholasticism [Vázquez-Suárez]" (Finnis 1988, 46–47). "The most popular image of natural law has to be abandoned. The corresponding and most popular objection to all theories of natural law [namely, that it suffers from "naturalistic fallacy"] has to be abandoned too" (Finnis 1988, 33).

⁷ "Grisez and Finnis claim to have recovered Aquinas's natural law theory in a way that avoids the standard objections which have beset such a theory since the Enlightenment" (Hittinger 1987, 5). McInerny, though, claims it is dubious if Grisez and Finnis are trying to restore the genuine Thomism or, rather, to overcome it: "On the matter of starting-points, it is not always clear whether Grisez considers what he is offering as a version of what Thomas taught, as an improvement of it, or as a replacement of it" (McInerny 2000, 54).

⁸ "Aquinas's treatment of all these issues is saturated with the interrelated notions, "end" and "good"; the terms "obligation", "superior", and "inferior" scarcely appear, and the notion of conformity to nature is virtually absent. In Suárez and Vázquez the terms "end" and "good" are almost entirely gone, replaced by "right" and "wrong" and cognate notions" (Finnis 1988, 46).

⁹ Vid. Finnis (1988), 81–97.

The first principles of natural law, therefore, “are not inferred from metaphysical propositions about human nature, [...] or about “the function of a human being”, nor are they inferred from a teleological conception of nature, or any other conception of nature. They are not inferred or derived from anything”.¹⁰

Finnis was thus vindicating the autonomy of practical reason with regard to theoretical reason¹¹: “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 (historically, scientifically, or metaphysically)”.¹² If practical reason proceeded merely by following theoretical reason (that is, by deriving moral consequences from the anthropological and metaphysical facts discovered by theoretical reason), then David Hume’s and George Edward Moore’s criticism would make sense. In Finnis’ opinion, Hume and Moore are right that reason cannot infer motives for action from the examination of certain facts: reason cannot derive prescription from description.¹³ Reasons for action can be derived only from still more fundamental reasons for action.¹⁴ Tracking that chain backwards, practical reason finally attains certain non-instrumental, ultimate goods: goods that are worthwhile for their own sakes. Their inherent desirability (their goodness) is grasped directly by the human mind, through a sort of insight.

In Finnis’ and Grisez’s understanding, the first principles of natural law are, therefore, self-evident or *per se nota*.¹⁵ It is impossible to prove them. For example, it is impossible to demonstrate that knowledge is a good worthwhile for its own sake.

¹⁰ Finnis (1988), 33–34.

¹¹ Hittinger comments (about Grisez’s and Finnis’ conception of practical reason): “[P]ractical reason is not [for Grisez and Finnis] theoretical reason caught up in what might be termed a practical moment. [...] [W]hat is under consideration is not so much the given, but the mind charting what is to be. It is foundational in its own right” (Hittinger 1987, 31).

¹² Finnis (1988, 34). “In contrast to theoretical reason’s function of pursuing knowledge in relation to prior realities, Grisez emphasises that the function of practical reason is actually to bring realities into being. It is the form of reason that we use to make choices about what we should do. These choices will range from the commitments that structure our lives, such as “What career should I pursue?”, to very daily decisions like “What should I eat for dinner?”” (Black 2000, 4). “Practical propositions are not true by conforming to anything” (Grisez et al. 1987, 116).

¹³ “The moral *ought* cannot be derived from the *is* of theoretical truth – for example, of metaphysics and/or philosophical anthropology” (Grisez et al. 1987, 102).

¹⁴ “From a set of theoretical premises, one cannot logically derive any practical truth, since sound reasoning does not include what is not in the premises. [...] The principles we are concerned with are motives of human action. As principles, they will be basic motives, irreducible to any prior motives of the same sort” (Grisez et al. 1987, 102).

¹⁵ Their being “self-evident” does not imply their being actually recognized by everybody. The objective value of a good does not depend on its “popularity”: “The good of knowledge is self-evident, obvious. It cannot be demonstrated, but equally it needs no demonstration. This is not to say that everyone actually does recognize the value of knowledge [...]” (Finnis 1988, 65). On the other hand, even if it were obvious that “all men seek knowledge”, this would not automatically prove that knowledge is a good: “No value can be deduced or otherwise inferred from a fact or set of facts. Nor can one validly infer the value of knowledge from the fact (if fact it be) that “all men desire to know”. The universality of a desire is not a sufficient basis for inferring that the object of that desire is really desirable, objectively good” (op. cit., p. 66).

The principle that declares knowledge to be an intrinsically desirable good can be *defended* (for example, by showing that whoever asserts the opposite is producing a self-defeating proposition),¹⁶ but not *demonstrated*.

11.2 The Neoscholastic Critique

The “new natural law theory” has been the target of stern criticism by numerous natural law theorists of Thomist persuasion. Russell Hittinger, for example, argued that natural law theory includes, by definition, the idea of the “normativity of nature”: the natural law credentials of Finnis’s theory would thus be in serious doubt (for, in Hittinger’s opinion, “a systematic interrelation between practical reason and the philosophy of nature” is lacking in such theory).¹⁷

Henry Veatch provided a particularly sharp criticism of the “new natural law theory”. Veatch denies the independence of practical reason with regard to theoretical reason. Basic goods certainly do exist, but their goodness is but their ability to drive human nature to its full realization. We call “good” whatever favors the complete fulfillment of human nature. Hence, practical reason is but theoretical reason itself, insofar as it grasps what human nature is like and which behaviour is adequate to that nature.

Goodness, then, is not a queer¹⁸ suprafactual dimension dwelling in some heaven of values or “kingdom of ends”, parallel to empirical reality. In Veatch’s view, the goodness of certain acts and behaviours can only be – from a truly natural law perspective – the objective fit of such behaviours with what is required by (the full development of) human nature. That is, goodness is a *fact* (identifiable, like all other facts, by theoretical reason), not a mysterious metaempirical quality that only practical reason would supposedly capture: “The very essence of any natural-law ethics is that there should be a veritable natural end, or natural perfection, or natural *telos*, of human life, discernible empirically and directly in the facts of nature. Given such a natural end, it should then be possible to determine what relevant natural laws a human being must observe, if he is ever to attain his natural end”.¹⁹

¹⁶ Whoever asserts that “knowledge is not desirable” considers his statement to be true. He is trying to convey a philosophical truth. That is, he considers truth, knowledge, to be worthwhile. Therefore, his statement is self-defeating.

¹⁷ Hittinger (1987), 8.

¹⁸ On the ontological “queerness” of entities such as “duties”, “intrinsic goods”, “values”, etc., see Mackie (1977), 38–42.

¹⁹ Veatch (1985, 56). In a similar sense: “[T]he [...] element of a *telos* or end or purpose would seem indissociable from any notion of law as a rule of action. How otherwise could one possibly make sense of the idea of a law’s being a norm or standard of the way something ought to be done, save by reference to the end to be accomplished by the action? [...] What other ground could there be for someone’s specifying a rule to be followed [...] than in terms of the end to be accomplished by the action?” (Veatch 1985, 59).

In Veatch’s view, Finnis and Grisez should thus be ranked as paradoxical philosophers who – their self-appointed allegiance to natural law tradition notwithstanding – agree with Hume that it is impossible to derive “ought” from “is”. The newness of the new natural law theory would amount, therefore, to the dissolution of the very essence of natural law theory: “One might suppose that anybody who insisted that “the norms referred to in any theory of natural law” must not be taken to be “based on judgments about nature (human and/or otherwise)” – that such a one must surely be an opponent of natural law doctrines in ethics, not their defender!”²⁰ And yet, Finnis and Grisez insist that they are natural law theorists.

In Veatch’s opinion, it is impossible to uphold the idea of natural law if one does not break free from the spell of the “naturalistic fallacy” (which is no fallacy at all, to his mind): “either figure out a way to get from facts to norms, or just give up trying to be a natural law philosopher altogether”.²¹ Veatch thinks that one can defend natural law nowadays only by boldly swimming against all fashionable philosophical currents: “one must be prepared to break not only with ancient sophistry, but with Hobbesian contractarianism, with Kantian deontology, with the so-called naturalism of modern science and [...] with everything that is up to date in Oxbridge [Oxford-Cambridge] philosophy!”²² Finnis would allegedly prize his own academic respectability too much, and would not have dared to embrace the sheer heterodoxy associated to the rejection of the idea of “naturalistic fallacy”: “Remember, Finnis is an Oxford don; and in Oxford, no doubt, if anyone who would so much as dare to say that maybe moral norms do have a basis in fact, or that perhaps an “ought” can be derived from an “is” – of such a one [...] the entire English philosophical establishment would exclaim, “Let him be anathema!””. In Veatch’s opinion, “Finnis will have to make up his mind: either he is going to be a natural law philosopher and discard his Oxbridge superstitions about the wall of separation dividing “is” from “ought”, and facts from values, etc.; or he will have to break with Oxbridge entirely”.²³

11.3 The Response of the New Natural Law Theorists

John Finnis, Germain Grisez and Robert P. George responded in an interesting way to the neoscholastic critique (that we have exemplified here in Henry Veatch’s contribution). On the one hand, they claim that Veatch’s attacks largely target a “straw man”,²⁴ as they have always held that “basic goods” are good because they

²⁰ Veatch (1990), 294.

²¹ Veatch (1990), 295.

²² Veatch (1990), 297–298.

²³ Veatch (1990), 295.

²⁴ “Henry Veatch’s “sharp questions” are directed to those who deny that morals have any basis in nature or the facts of nature; to those who believe in a wall of separation dividing “is” from “ought” and facts from values [...]. Veatch’s objections, therefore, are not properly directed to either Germain Grisez or to myself. [...] Neither of us has published anything which might reasonably be interpreted, in its context, as involving any such view” (Finnis 1981, 266).

constitute modes of “human flourishing”, that is, fulfillment of human nature.²⁵ For example, Finnis had stated in *Natural Law and Natural Rights* that “were man’s nature different, so would be his duties: the basic forms of good grasped by practical understanding are what is good for human beings *with the nature they have*”.²⁶ In another passage, he had pointed out that “someone who lives up to the requirements of practical reason is also Aristotle’s *spoudaios* (mature man), his life is *eu zen* (well-living) and, unless circumstances are quite against him, we can say that he has Aristotle’s *eudaimonia* (the inclusive all-round flourishing or well-being – not safely translated as “happiness”)”.²⁷

It may well be asked: if Finnis asserts that “basic goods are such because they entail the fulfillment of human nature”, isn’t he contradicting his claim that [moral] propositions about human goods cannot be inferred from [metaphysical] propositions about human nature? And the answer is: not necessarily, for, when we state that basic goods fulfill human nature, we are in the ontological domain (the reality of things), and when we assert that “ought” propositions about basic goods cannot be inferred from propositions about human nature, we are in the *epistemological* domain (the order in which things may come to be known).²⁸ I think this could be the key to the whole issue. Robert P. George explained it with adamant clarity: “Neo-scholastic critics of the position Finnis defends [...] seem to have assumed, gratuitously, that anyone who maintains that our knowledge of human goods is not derived from our prior knowledge of human nature must hold that human goods are not grounded in nature. This assumption, however, is unsound. There is not the slightest inconsistency in holding both that (1) our knowledge of the intrinsic value of certain ends or purposes is acquired in non-inferential acts of understanding wherein we grasp self-evident truths, and (2) those ends or purposes are intrinsically valuable [...] because they are intrinsically perfective of human beings”.²⁹

Finnis’ claim about the non-derivability of statements about basic goods from statements about human nature or any other facts would thus be a merely epistemological thesis; it entails, simply, that first we grasp “directly” the goodness of the basic goods, and only then – in a subsequent theoretical rationalization – do we (some of us) understand that the goods are such because they are perfective of human nature. In underlining the precedence of metaphysics with regard to ethics, the neoscholastic critique seemingly demands the inversion of this sequence: only those who have examined human nature in depth can, subsequently, derive moral truths from this theoretical knowledge. Which, as stated by Grisez, easily leads to a “caricature” of natural law theory: “Man consults his nature to see what is good and

²⁵ “[B]eing aspects of the fulfillment of persons, these goods correspond to the inherent complexities of human nature” (Grisez et al. 1987, 107).

²⁶ Finnis (1988), 34.

²⁷ Finnis (1988), 102–103.

²⁸ “[F]or bad philosophical reasons, we confuse a principle’s lack of derivation with a lack of justification or a lack of objectivity [...]” (Finnis 1988, 70).

²⁹ George (1992), 35.

what is evil. He examines each action in comparison with his essence to see whether the action fits human nature or does not fit it. If the action fits it, it is seen to be good; if it does not fit it, it is seen to be bad”.³⁰

This account of natural law theory is a caricature because it does not reflect the actual moral experience of most human beings.³¹ Most people need not study dense volumes of metaphysics or anthropology in order to know the basic moral truths: “even rustics can understand natural law”, Aquinas wrote. The goodness of the basic goods is directly comprehensible, and does not require any theoretical or metaphysical propedeutics.³² Only then, in a subsequent stage, will the reflection on such self-evident moral truths maybe lead to certain metaphysical conclusions (for example: if human life is intrinsically valuable, the human species must surely be something more than an accident of carbon chemics in an ultimately absurd universe).

If we interpret it in these terms – as a controversy, not about the reality of things (both Veatch and Finnis agree that ethics is based on metaphysics), but about the order in which things can be known (does ethical knowledge precede metaphysical knowledge, or the other way around?) – the dispute between neoscholastics and “new natural law theorists” probably loses much of its sting. Finnis actually wrote that it is simply a matter of “pedagogical order of priorities”.³³ The claim that the “new natural law theory” has yielded to relativism and capitulated to intellectual fashion would be baseless.

11.4 A Metaphysics Based on Ethics?

Finnis’ and Grisez’s approach – whereby ethical knowledge precedes metaphysical knowledge – presents some aspects that are philosophically very inspiring. On this approach, moral experience provides a privileged path for the knowledge of human

³⁰ Grisez (1965). “The forms of natural law theory which Grisez describes as “scholastic” are those that direct people in the manner of “Here you are – here is your nature – now be what you are”” (Black 2000, 2).

³¹ “[T]here is no process of inference. 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, for oneself (and others like one)” (Finnis 1988, 34).

³² “Those who claim that theoretical knowledge of human nature is methodologically prior to basic practical knowledge have things [...] exactly backwards” (George 1992, 39). “[T]he basic principles of natural law can all be intelligently grasped without adverting to metaphysical principles concerning the universal relationship between being and good, or about human nature in its relation to divine and cosmic natures” (Finnis 1981, 276).

³³ “[W]e [Grisez, Finnis, Boyle, George] have pressed our readers to acknowledge their own grasp of *principia naturaliter nota* which Aquinas says they have, even though they lack metaphysical or anthropological theories. Only after we have achieved that acknowledgement, and explored its moral implications, do we endeavor to explain how the goods thus acknowledged are aspects of a being which participates in the four orders of created being. This pedagogical order of priorities seems to be more faithful to the content of Aristotle’s and Aquinas’ theories of ethical knowledge” (Finnis 1981, 277).

nature, knowledge of the place of man in the cosmos. Knowledge of what man *is* can only ensue from knowledge of how man *ought* to live. Moral experience would provide keys to human identity that are inaccessible to theoretical reason: the moral dimension keeps the secret of *who we really are*. Finnis is perhaps pointing in this direction when he says that, for Aquinas, “practical reason begins not by understanding this nature from the outside, as it were, by way of psychological, anthropological, or metaphysical observations and judgments defining human nature, but by *experiencing* one’s nature so to speak *from the inside* [...]”.³⁴

In my opinion, Finnis’ and Grisez’s thesis about the precedence of ethics with regard to metaphysics might bear some resemblance to Immanuel Kant’s line of reasoning in the last chapters of his *Critique of Practical Reason* (those in which he theorizes the “postulates of practical reason”³⁵: freedom, immortality of the soul, God) and to what the Spanish philosopher José Luis López Aranguren called “openness of ethics to religion”.³⁶ In Kant’s view, practical reason is entitled to hope that something is possible, simply because it *must* be (because it is indispensable for the moral endeavor of man, that pursues that thing unflinchingly). Kant ends up extracting from the *factum rationis* of moral experience such important metaphysical claims (he insists that they are “just practical”, though)³⁷ as the freedom of the will, the immortality of the soul and the existence of God: all three are indemonstrable by theoretical reason (as Kant had previously concluded in the *Critique of Pure Reason*), but they are “rescued” (in the *Critique of Practical Reason*) as indispensable requirements of practical reason: if we were not free, moral imperatives would be meaningless³⁸; if we were not immortal, our duty to attain “sanctity” (Kant calls “sanctity” the perfect accordance of the will with the moral imperative) would be unrealizable (because sanctity is never attained in this world)³⁹; if God did not exist, the compatibilization of moral virtue and happiness (“supreme good”) would be

³⁴ Finnis (1988), 34.

³⁵ Sobre la doctrina kantiana de los postulados, cf. Schaeffler (1979, 1981, 244–258), Gómez Caffarena (1983) and Contreras Peláez (2007, 276 ff).

³⁶ “Kant does not take Revelation – not even religion – to be the starting point of his investigation. His standpoint is ethical: he purports to ground religion in morality, not the opposite. [...] [His will be] A theology based on moral conviction, not on logic or metaphysics” (Aranguren 1986, 112) [my translation]. On the “openness of ethics to religion”, see p. 122 ff.

³⁷ “These postulates are not theoretical dogmas, but presuppositions in a necessarily practical sense [*Voraussetzungen in nothwendig praktischer Rücksicht*]” (Kant 1968a, 132). But, as argued by Gómez Caffarena, we should not lapse into a “fictionalist” interpretation of the postulates of practical reason. Kant does not mean: man should act as if – the famous *als ob* – God, the free will and immortality existed (although they don’t actually exist). Rather, Kant is saying: we cannot be theoretically certain about God, the free will and immortality, but we can reach a *practical* certainty, i.e., we can *hope* that they are real (which is possible, as speculative reason neither affirms nor denies in these matters), and *act* according to this hope. It is not self-deception: the “assumption of reality” certainly “occurs in favor of hopeful moral behaviour. But it is an assumption ... of reality!” (Gómez Caffarena 1983, 130) [my translation].

³⁸ Kant (1968a), 29.

³⁹ Kant (1968a), 122.

unattainable (because the moral imperative demands that good actions be practised “only out of duty”, not because their being practised will make the person happy).⁴⁰ After having demolished metaphysics in the first *Critique*, Kant reconstructs a “metaphysics according to ethics” in the second.⁴¹

The emphatical commitment by Veatch and other neoscholastics to a teleological ethics of Aristotelian inspiration precisely *precludes* this possible openness of ethics to metaphysics (and, after all, to religion). Aristotelian ethics presupposes an exclusively immanent framework (the idea of God certainly shows up in Aristotle’s thinking, but it is a God man can nurture no friendship with). Aristotelian ethics comes to terms with human finitude: the point of ethics lies just in attempting to realize the potentialities characteristic of human nature as fully as possible during our short earthly journey. This “unambitious” (so to speak) conception of ethics poses some intractable questions: if the point of ethics is just “leading a sensible life”, how could the moral greatness of abnegation – taken to the point of self-sacrifice – be rationally justified? Wouldn’t Maximilian Kolbe appear as an idiot, to Aristotle’s eyes?

Furthermore, as noted by Finnis in the concluding chapter of *Natural Law and Natural Rights*, one cannot elude the question: is *that* (living reasonably for a few decades) all ethics is about?: the participation of each individual person “in the various forms of good is, even at best, extremely limited. Our health fails, our stock of knowledge fades from recall, [...] our friendships are ended by distance and time [...]; and death appears to end our opportunities for authenticity, integrity, practical reasonableness, if despair or decay have not already done so. [...] And the question arises whether my good [...] has any further point, i.e., whether it relates to any more comprehensive human participation in good”.⁴² As for those who try to soothe the tragedy of individual finitude by contending that even if the individual perishes, he somehow survives in the “contributions made to his community”, Finnis asks them: “In what sense are we to take it to be necessary to favour that common good, which after all will end, sooner or later, in the death of all persons and the dissolution of all communities?”⁴³

These would be the starting questions of a “metaphysics based on ethics”; a metaphysics that is workable only if we admit the self-evidence of certain moral truths and the autonomy of practical reason (as the “new theory of natural law” does). A metaphysics based on the assumption that ethics is much more than an array of prudential counsels or a leaflet of “use instructions” for the human goods. A “metaphysics according to ethics” assigns the moral “ought” no less than the capacity to shape reality (“ought” shapes “is”, not the other way around): “what reason commands ought to happen, it must be possible that it should happen”, Kant

⁴⁰ Kant (1968a), 125.

⁴¹ See Carnois (1973), 74–75.

⁴² Finnis (1988, 372).

⁴³ Finnis (1988), 406–407.

wrote.⁴⁴ A “metaphysics according to ethics” outlines the kind of world human beings deserve in virtue of their moral struggle: the kind of reality the good man is worthy of.

Admittedly, a “metaphysics according to ethics” thrives in the realm of insight and hope, rather than in that of demonstrative reasoning. Art is particularly appropriate to convey such insights. Finnis devoted an article to Shakespeare’s little known sonnet “Phoenix and turtle”.⁴⁵ In that poem, Shakespeare praised the “constant love beyond death” (Quevedo) of two English spouses (a real case): their life in common was brief; he had to flee for reasons of religious persecution, and died abroad; she continued to love him, though, remained faithful to his memory, and was finally executed (also due to religious intolerance). Finnis stresses the fact that Shakespeare uses the terms “truths” and “true” to describe this example of marital loyalty. A loyalty that might perhaps seem unsound from the reasonable (too reasonable!) Aristotelian ethics of the “fair middle” (wouldn’t it have been more sensible of the young widow to start a new life with someone else?), but which, in its “unsoundness”, is maybe revealing the truth of the human essence in a deeper way. Let philosophy undertake the task of thinking a reality big enough to accommodate the love of the English spouses:

Love hath Reason, Reason none
If what parts can so remain.

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⁴⁴ Kant (1968b), 524.

⁴⁵ Finnis and Martin (2003). Cf. Finnis, J., “Foundations of Practical Reason Revisited”, cit., pp. 127–128.

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