

The Naturalistic Fallacy and Natural Law Methodology

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It is customary to divide contemporary natural law theorists—at least those working broadly within the Thomistic tradition—into two main camps. In one camp are those such as John Finnis, Germain Grisez and Robert George, who deny that a natural law ethics need base itself on premises supplied by a methodologically prior philosophical anthropology. According to these thinkers, practical reason, when reflecting on experience and considering possible ends of action, grasps in a non-inferential act of understanding certain basic goods that ought to be pursued. Since these goods are not deduced, demonstrated, or derived from prior premises, they provide a set of self-evident or *per se nota* primary precepts from which all other precepts of the natural law may be derived. Because these primary precepts or basic goods are self-evident, natural law theorizing need not wait on the findings of anthropologists and philosophers of human nature.¹

A rival school of natural law ethicists, comprised of such thinkers as Russell Hittinger, Ralph McInerny, Henry Veatch and Anthony Lisska, rejects the claims of Finnis and his colleagues for the autonomy of natural law

1. For major statements and defenses of this position see John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980); Germain Grisez, *The Way of the Lord Jesus*, vol. 1, *Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983); Robert P. George, "Recent Criticism of Natural Law Theory," *University of Chicago Law Review* 55 (1988), pp. 1371-1429.

ethics over and against the philosophy of human nature.² According to these thinkers, to deny the dependence of natural law theory on philosophical anthropology would be to take the “natural” out of natural law.³ Such critics are highly skeptical concerning the purported self-evidence of Finnis’s basic goods, and they contend that Finnis and his colleagues are driven to such dubious claims primarily because of their acceptance of the naturalistic fallacy, which once accepted, is thought to preclude one from adopting the sounder method of deriving the natural law from conclusions drawn from the philosophy of human nature.

Although the term “naturalistic fallacy” was originally coined by G.E. Moore to refer to what he took to be the error of defining “goodness” in terms of some natural property such as “pleasure,” “happiness,” or “that which is conducive to evolutionary survival,” the term has most often been used by contemporary philosophers to refer to the different claim, at least as old as Hume, that there is a fundamental logical distinction between *is* and *ought*, *fact* and *value*, *description* and *prescription*, such that one cannot validly deduce the latter from a set of premises consisting only of the former. So understood, the naturalistic fallacy is just a case of the more general logical rule that a valid conclusion cannot introduce something not in the premises. Opponents of natural law theory have relished (while its defenders have worried over) the fact that natural law theory might be vulnerable to the naturalistic fallacy insofar as it claims to derive ethical norms from a purely theoretical or descriptive account of human nature. Indeed, in a well-known section of his landmark book, *Natural Law and Natural Rights*, Finnis recognizes the naturalistic fallacy as the most common objection to natural law theory. He considers whether natural lawyers have shown that they can derive ethical norms from facts and responds in the negative: “They have not, nor do they need to, nor did the classical exponents of the theory dream of attempting

2. See Russell Hittinger, *A Critique of the New Natural Law Theory* (Notre Dame, Indiana: University of Notre Dame Press, 1987); Ralph McInerny, “The Principles of Natural Law,” *American Journal of Jurisprudence* 25 (1980), pp. 1-15; Henry Veatch, “Natural Law and the ‘IS’ – ‘OUGHT’ Question: Queries to Finnis and Grisez,” in *Swimming Against the Current in Contemporary Philosophy* (Washington, D.C.: The Catholic University of America Press, 1990), pp. 293-311; Anthony J. Lisska, *Aquinas’s Theory of Natural Law: An Analytic Reconstruction* (Oxford: Oxford University Press, 1996).

3. Hence, Veatch asks “How can the enterprise of natural law ethics be anything other than an effort to find some sort of basis for morals and ethics in nature itself, and thus in the facts of nature?” see “Queries to Finnis and Grisez,” p. 294. And Hittinger asserts, “Natural law ... obviously entails a commitment to law as in some way ‘natural,’ and nature as in some way normative.” See *Critique of the New Natural Law Theory*, p. 8.

any such derivation.”⁴ He goes on to insist, “It is simply not true that any form of natural law theory of morals entails the belief that propositions about man’s duties and obligations can be inferred from propositions about his nature.”⁵

Finnis’s critics have taken these passages as evidence that he espouses the self-evidence of the basic goods primarily because he accepts the naturalistic fallacy and believes that it rules out deriving the natural law from a methodologically prior philosophical anthropology.⁶ In response, these critics have argued that the naturalistic fallacy itself rests on a mistake—that there is, in fact, no genuine fallacy in deducing an *ought* from an *is*, a *prescription* from a *description*. Hence, there is no need to resort to the claim that the basic goods are self-evident, since one can quite validly derive them from a true theoretical account of human nature.

The following discussion examines the naturalistic fallacy and its relevance to natural law methodology. Section One distinguishes two different kinds of *oughts* that one might attempt to derive from an *is*, and two different kinds of natural law theories, distinguished by reference to the kinds of *oughts* that make up the natural law precepts of those theories. Section Two argues that, although this point is seldom noticed, whether or not there is a genuine fallacy in deducing an *ought* from a set of exclusively descriptive premises depends on what kind of *ought* one seeks to deduce. One can quite easily deduce a *conditional ought* from a set of exclusively descriptive premises, but attempts by McInerny, Veatch and Lisska fail to show how one can deduce a *categorical ought* from such premises. Finally, Section Three draws out the implications of this conclusion for natural law methodology, arguing that, although acknowledging the naturalistic fallacy has significant consequences for natural law, it does not, as is often assumed, preclude one from inferring the content of natural law from a methodologically prior philosophical anthropology.⁷

4. Finnis, *Natural Law and Natural Rights*, p. 33.

5. *Ibid.*

6. See Veatch’s “Queries to Finnis and Grisez,” esp. pp. 294-95. See also Lisska’s *Aquinas’s Theory of Natural Law*, esp. pp. 157-63.

7. As intimated above, the chief participants in this discussion take themselves to be working in the Thomistic tradition—indeed, both camps take themselves to be the true heirs of Aquinas. Consequently, their treatments of these matters oftentimes include interpretation of Aquinas’s texts alongside analysis of the issues for their own sake. The temptation is always there to interpret Aquinas’s intentions according to one’s own views or to substitute Aquinas’s authority where one’s own arguments need further development or precision. In what follows, I resist the temptation to engage in Thomistic exegesis, and concentrate solely on the philosophical questions at hand.

Two Kinds of *Oughts*

The *locus classicus* for the naturalistic fallacy are some remarks by Hume in Book III of his *Treatise of Human Nature*:

In every system of morality, which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surprised to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, 'tis necessary that ... a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from the others, which are entirely different from it.⁸

What is this “new relation” or “affirmation” expressed by the words *ought* or *ought not*, yet absent from propositions stating what *is* or *is not* the case? Hume neglects to tell us. But I will offer the following suggestion: Most generally it seems that these words, *ought* and *ought not*, express the *necessity* that some action be undertaken by the agent or agents to whom the *ought* is addressed.

So far so good. But a moment's reflection makes us realize that there are different ways in which an action can be necessary for an agent to perform. A teenage boy announces to his father that he wishes to take his girlfriend to the prom in a limousine. The father advises his son, “Boy, you *ought* to start saving your allowance.” Clearly, the necessity of the action expressed by this *ought* is conditioned on the teenager's antecedent desire to take a limousine to the prom. Take away the desire and you take away the *ought*. Such conditional *oughts* express the necessity of a means to an end. Sometimes, as in the example above, there are a variety of means for accomplishing the same end; sometimes there is only one means of accomplishment. In the former case, no single action will be *the* one necessary means, although some action will be necessary, and if we knew all the possible means for achieving the end desired, we could express disjunctively what the agent in question ought to do. For example, the father could tell his son that he ought to save his allowance, *or* get a part-time job, *or* ask for the limousine rental as a birthday gift, etc.

8. David Hume, *Treatise of Human Nature* (Buffalo, New York: Prometheus Books, 1992), p. 469.

Our example of a conditional ought is trivial, but it need not be. In fact, it would be possible to develop a natural law theory in which all the precepts of the natural law had the *ratio* of conditional oughts. In a series of lectures in which she aims to defend the Church's ban on artificial contraception, for instance, Janet Smith gives a "three-minute course" on natural law in which she presents the natural law approach to ethics as follows: "Natural law says that if you want things to prosper, you have to use them in accordance with their nature."⁹ She then goes on to examine, in more detail, human nature and, in particular, the nature of human sexuality and marriage. She employs a variety of different techniques, ranging from an analysis of the two-fold purpose of the conjugal act and the inevitable consequences of thwarting or severing those purposes, to citing statistical data showing the relationship between pre-marital sex and subsequent divorce rates and between the use of natural family planning and marital longevity; from asking her audience to engage in a number of thought experiments, to recounting as anecdotal evidence stories from her personal experience or the experience of friends and acquaintances. In the end, she concludes that engaging in sex before or in artificial contraception within marriage is inimical to the prospering and happiness of marriage. The moral is clear. If you want a happy marriage, you *ought not* engage in premarital sex or in artificial contraception. Such activity is, according to the natural law, inimical to the flourishing of the marital enterprise.

Smith's presentation of the natural law in general and her defense of the prohibition on artificial contraception in particular construe natural law precepts as having the character of conditional oughts. One ought not use artificial contraception, if one desires a happy marriage. Take away the desire and you take away the ought. One can imagine a systematic derivation of natural law precepts that moves from the fact that all human beings by nature desire happiness, to the demonstration that, in order to be happy given the natures we have, human beings must pursue certain activities and refrain from others, to a whole list of things that human beings ought and ought not do. The precepts on such a natural law theory would have the character of conditional oughts. Notice, however, that this fact by itself would not make such precepts subjective or merely relative to personal interests. Unlike the desire of the teenager who wanted to ride in a limousine, the desire to be happy, as well as the means of achieving it, would be universal and necessary. Such precepts would, therefore, be universal and necessary—and hence they would

9. Janet E. Smith, "Contraception, Why Not" (One More Soul, 1999).

enjoy two properties that many moralists have thought essential to any maxim that could count as a genuine moral law.

The challenge for such a natural law theory, however, would be to show that it could generate precepts proscribing all those things that we know to be unjust. On an ethics comprised of strictly conditional oughts, the only reason I ought to do or refrain from doing anything is because it is a necessary means or obstacle to *my happiness*, which *I desire*. It is fairly easy to see how premarital sex and artificial contraception could be obstacles to a happy marriage, and hence, that I ought not engage in such activities given my desire to be happy.¹⁰ But there are other acts that we normally take to be wrong where it is not clear how the performance of them would be inimical to my happiness. What happens, for example, when that required for my own happiness conflicts or seems to conflict with that required for the happiness of another? Suppose that one of the activities in which we need to engage in order to be happy is the pursuit of knowledge, and suppose I am a doctor, curious about the effects of certain toxins on the human immune system. Assuming that I can get away with it (perhaps the government will even fund my research), is there any reason I ought not test the effects of such toxins on some of my patients? In order to proscribe such activities, a natural law theory comprised of conditional oughts would have to show that one of the ends I must pursue in order to attain my own happiness is the happiness of others. While not necessarily impossible, such would be a difficult task, particularly without recourse to revelation.

But apart from this difficulty, some will not be satisfied with a natural law theory comprised of conditional oughts, because they believe a genuine moral law or obligation cannot be conditioned on any prior desire of the agent, regardless of whether that desire happens to be the universal desire for happiness and irrespective of the fact that such oughts would direct one to universal and necessary means of attaining that happiness.¹¹ On the contrary, some will seek in a natural law theory to discover certain acts which ought to be done or ought to be avoided regardless of the agent's

10. My point is not that such activities are just obviously inimical to a happy marriage—that Smith's claims are uncontroversial. Rather, my point is that it is clear how such activities might have a bearing on my marriage and hence could be related negatively to my own happiness. There are other activities we take to be immoral, however, where it would appear more difficult to show how they might be obstacles to my own happiness, even if they are clearly obstacles to the happiness of another.

11. "Ought nots" on such a theory would, of course, direct one *away from* activities incompatible with the happiness one desires.

desires. Some will want to say, for example, that one ought not engage in artificial contraception, irrespective of whether one desires a happy marriage. What such a theory seeks, therefore, is a set of oughts expressing a different kind of necessity—the unconditional necessity that the agents to whom they are addressed perform or refrain from performing certain actions. We might call these *unconditioned* or *categorical oughts*, since they express a necessity to act, unconditioned by antecedent desire.

Contemporary natural law theorists have lacked sufficient clarity concerning whether they seek conditional or categorical oughts as natural law precepts. This situation is unfortunate not only because one's choice in this regard makes for a significantly different natural law theory with significantly different logics, challenges, and implications, but because the methodology for deriving natural law precepts will have to be different in each case. This point can be appreciated only when we have come to realize that whether one can deduce an *ought* from an *is* depends on which kind of ought one seeks to deduce.

Deducing *Ought* from *Is*

McInerny and Veatch have criticized Finnis and Grisez for the scrupulous care they take to avoid committing the naturalistic fallacy. According to McInerny, such scruples have “a certain dated charm” about them,¹² while Veatch chalks up this concern to their understandable, if unfortunate, “Oxbridge superstitions.”¹³ Both McInerny and Veatch attempt to deflate Finnis and Grisez's concerns about the naturalistic fallacy, McInerny by offering examples of what he takes to be a valid inference from *is* to *ought*, and Veatch by developing the account of human nature that he thinks would make such an inference possible. As we shall see, the proposals of both McInerny and Veatch remain ambiguous.

McInerny suggests that the following inference is valid:

- 1) Joe weighs two hundred and fifty pounds.
- 2) It is not healthy to be overweight.
- 3) Therefore, Joe *ought* to go on a diet.¹⁴

However, all we need do is ask whether McInerny intends the conclusion to be a conditional or categorical ought to realize that something is missing in

12. McInerny, “Principles of Natural Law,” p. 8.

13. Veatch, “Queries to Finnis and Grisez,” p. 295.

14. McInerny, “Principles of Natural Law,” p. 12.

the premises. To generate a conditional ought, McNerny needs the additional premise "Joe desires to be healthy." On the condition that Joe desires to be healthy and assuming that Joe needs to go on a diet to satisfy this desire, Joe ought to go on a diet. Take away the desire and you take away the ought. Notice that we generated this conditional ought from exclusively factual, descriptive or *is* premises: "Joe weighs two hundred and fifty pounds," "It is not healthy to be overweight" and "Joe desires to be healthy."

If McNerny intends his conclusion to be a categorical ought, however, he will need a different additional premise, such as "One ought to pursue one's health." And if we should ask whether this new premise is a conditional or categorical ought, the answer is clear. It must be a categorical ought in order to yield a categorical ought in the conclusion. For if "Joe ought to pursue his health" only on the antecedent condition that, for instance, Joe desires happiness, then that "Joe ought to go on a diet" would also be conditioned on that desire. But the whole point of a categorical ought is that it is not so conditioned. It follows that one cannot deduce a categorical ought except from a set of premises that itself contains at least one categorical ought. Is there a fallacy involved in deriving an ought from a set of exclusively factual or descriptive premises? That depends on whether you want a conditional or categorical ought as your conclusion.¹⁵

While McNerny attempts to show us by example that an *ought* can be deduced from an *is*, Veatch attacks the naturalistic fallacy by arguing that a proper, teleological understanding of nature renders unproblematic such inferences. In a more recent book, Anthony Lisska seconds Veatch's strategy. According to Veatch and Lisska, proponents of the naturalistic fallacy tend to conceive of an essence or nature geometrically, as a static collection of properties, complete in and of themselves. As a consequence, any value or ought would have to be understood as relating to such an essence extrinsically, as an addition imposed from the outside, as it were. Given this understanding of essence, it is no surprise that philosophers have thought it a fallacy to deduce oughts from a list of the properties making up human nature, for there are no oughts within the ontology itself.¹⁶

15. It might be argued that McNerny's premise (2) above, "It is not healthy to be overweight," is not simply an *is* or *factual* premise, but is already *evaluative*. It is not my concern to debate whether or not "health" should be considered an evaluative concept. The question is whether premise (2) is sufficient to generate an "ought" and if so, what kind? The fact that the question "what kind?" arises suggests that premise (2) is not sufficient of itself to generate an "ought." Rather, one needs a premise concerning the desires of the agent or a premise asserting that health ought to be pursued regardless of antecedent desire.

16. See Veatch, "Queries to Finnis and Grisez," pp. 301-02. See also Lisska, *Aquinas's Theory of Natural Law*, pp. 161-63, pp. 195-201.

Veatch and Lisska propose, by contrast, that human nature be conceived of, not statically, but dynamically, as a set of dispositional properties tending toward certain natural ends or completions. These ends are then identified as the goods proper to human nature. As Joseph Koterski explains, describing our nature in terms of dispositions towards a set range of goods “does not involve adding any value to a fact, but only of finding values already in the natural outcome of the fact that is the disposition itself.” Since human nature “already includes potentiality and development within the ontology, ... there already is an *ought* within the *is*.”¹⁷ Consequently, so Veatch and Lisska argue, there is no fallacy involved in inferring an ought from the content of human nature thus understood.¹⁸ In Veatch’s words,

With this, then, is it not clear that an “ought” has been directly introduced into our very account of man and of human nature? ... Just as it is impossible to determine what a human being, just as a human being, really is in fact, without determining what he might be or could be—i.e., without taking account of a man’s potentialities and the actualities toward which those potentialities are oriented—so also it is no less impossible to determine, or really even adequately to state, what a human being is, without making reference to what he ought to be—i.e., without making reference to that natural end or fulfillment or good which it is incumbent upon any human being (by nature) to try to become. Here, clearly, there is no dubious inference from “is” to “ought” ... the very “is” of human nature already has its “ought” contained within it.¹⁹

Veatch’s use of “incumbent” suggests that it is a categorical or unconditioned ought that he believes to be contained within the very facts of human nature. But have Veatch and Lisska shown that a teleological conception of nature enables us to circumvent the naturalistic fallacy? In my estimate, their solution turns on an ambiguous or equivocal use of the word “good.” “Good” can be defined to mean either

- 1) The “end” of a natural potency, appetite, inclination, tendency or process of development;
- or,
- 2) that which ought to be done or pursued.

17. Joseph Koterski, S.J., “A Recent Controversy in Natural Law Theory,” (paper presented at a conference entitled “Degrees of Truth: Current Controversies Concerning Aquinas,” New York University, April 30, 1999).

18. See Veatch, “Queries to Finnis and Grisez,” pp. 302-05. See also Lisska, *Aquinas’s Theory of Natural Law*, pp. 195-201.

19. Veatch, “Queries to Finnis and Grisez,” p. 303.

In developing their teleological accounts of human nature, Veatch and Lisska define "good" in terms of the first meaning. Hence, Lisska argues that "the 'good' is nothing more than the development of the process structured by the nature of the set of dispositions," and that "it is incoherent to ask about an end, as an actualized disposition, whether or not it is good. It is good analytically, because that is the definition of the concept of 'good.'"²⁰ And Veatch proclaims that "good" should be understood "as just the actuality toward which a given potentiality is ordered, as to its proper fulfillment or completion or actuality."²¹ So Veatch and Lisska, at any rate, start off explicating "good" according to the first definition, and in this sense they appear entitled to say that the "good" is contained within the very facts of human nature as they understand it.

Yet to say of something, for example, knowledge, that it is good according to the second definition of "good" clearly adds something to saying that it is good according to the first definition. Veatch and Lisska appear to want to argue that because knowledge is good in the first sense, by being an end or actualization of a natural human potency or inclination, we can validly deduce that human beings ought to pursue knowledge. But this reasoning is fallacious.²² How can we move from the recognition that

- a) knowledge is the actualization or end of a natural human potency or inclination to
- b) human beings ought to pursue knowledge?

If we want to deduce (b) from (a) we need an additional premise in the form of a categorical ought such as "Human beings ought to pursue those ends to which they are naturally inclined." Alternatively, we could move from (a) to (b) not discursively, by way of deductive inference, but through an additional, non-discursive, non-inferential act of insight or understanding that enables us to grasp knowledge, a good in the first sense, as also a good in the second sense, namely, something that ought to be pursued. This latter method, involving an act of insight or understanding rather than a deductive inference from prior premises, is the one favored by Finnis and Grisez. Neither method, however, would be guilty of the naturalistic fallacy.

20. Lisska, *Aquinas's Theory of Natural Law*, p. 199.

21. Veatch, "Queries to Finnis and Grisez," p. 309.

22. Alasdair MacIntyre, in his review of Lisska's book, offers a similar critique. See Alasdair MacIntyre, "Natural Law Reconsidered," *International Philosophical Quarterly* XXXVII, no. 145 (March 1997), pp. 95-99.

Notice, also, that our rejecting Veatch and Lisska's strategy for circumventing the naturalistic fallacy does not in any way commit us to denying Veatch's contention that one cannot adequately state what a human being is without making reference to what he (categorically) ought to be. We need only deny that one can reach this knowledge about what he ought to do or be by way of deductive inference from premises that do not include a categorical ought.

Consequences for Natural Law Methodology

The concern not to infer from *is* to *ought* is not "a symptom of over-fastidiousness," as McNerny suggests, nor is it "due to one's taking the terms 'deduction' and 'inference' in a somewhat straitened and overly technical sense," as Veatch proposes.²³ The concern to avoid the naturalistic fallacy does not *by itself* reflect an aversion to authentic metaphysics, much less to a teleological conception of nature. Rather, it reflects an interest in self-consciously articulate and careful argumentation, argumentation that makes explicit its premises and how those premises support a conclusion. Insofar as natural law theory seeks to be articulate in its argumentation, it behooves natural law theorists to consider the relevance of the naturalistic fallacy to natural law methodology.²⁴

The naturalistic fallacy pertains to logic, and as such, it is relevant primarily to the logical and epistemological question confronting any natural law theory, namely, how to justify or derive the natural law precepts. As intimated above, a crucial decision to be made at the outset is whether one's precepts will consist of conditional or categorical oughts. In neither case, however, does recognition of the naturalistic fallacy prevent one from deriving the primary precepts or basic goods from a methodologically prior philosophical anthropology, as many have supposed. The impression that it does results, I suspect, from Finnis's acknowledging the naturalistic fal-

23. See McNerny, "Principles of Natural Law," p. 12, and Veatch, "Queries to Finnis and Grisez," p. 298.

24. McNerny derides the problem of moving from *is* to *ought* as "one of the most pointless controversies of modern moral philosophy." The logic of McNerny's solution to the problem, however, is clearly based on conditioning the oughts of the natural law on every agent's antecedent desire for fulfillment. Although there is much to be said for McNerny's approach, I think he overlooks the fact that many (whether rightly or wrongly) want their "oughts" to be of the unconditioned variety, in which case concerns about the naturalistic fallacy are far from pointless. See Ralph McNerny, *Ethica Thomistica* (Washington, D.C.: The Catholic University of America Press, 1997), p. 37.

lacy in Chapter Two of *Natural Law and Natural Rights* together with his overly sweeping proscriptions against deducing “ethical norms from facts” or “man’s duties and obligations ... from propositions about his nature,” along with his subsequent choice to arrive at the basic goods through insight rather than inference.²⁵ We have seen, however, that if one seeks conditional oughts for one’s precepts, the naturalistic fallacy is completely irrelevant: one can deduce a conditional ought from a set of exclusively factual or descriptive premises. Hence, one can base these precepts on a philosophical anthropology, deriving them from propositions about necessary means to or constituents of human happiness together with the assertion that happiness is something all men desire. The most serious challenge for such a natural law theory will be to show how many of those actions which the natural law has traditionally been thought to prohibit, such as stealing, can be reduced to negative conditions on the happiness each agent antecedently desires for himself. But one need not worry about inferring an *ought* from an *is*.

The naturalistic fallacy does become relevant, however, if one seeks categorical oughts for one’s natural law precepts. We have seen that one cannot deduce a categorical ought except from a set of premises that itself contains a categorical ought. Yet even this realization does not prevent us from inferring our precepts from premises supplied by a teleological conception of human nature. The following is a valid argument, deducing a categorical ought *from* an anthropological premise *together with* a categorical ought:

- 1) Human beings ought to pursue those ends to which they are naturally inclined.
- 2) Knowledge is the actualization of a natural human potency or inclination.
- 3) Therefore, human beings ought to pursue knowledge.

Clearly, the argument never gets off the ground without the philosophy of human nature. The conclusion is based directly on the findings of a methodologically prior philosophical anthropology.

In a subsequent essay, Finnis and Grisez do a better job of clarifying (although in language somewhat different than my own) the precise consequences of acknowledging the naturalistic fallacy:

We have never said that one cannot pass from metaphysical and/or factual truths *together with principles of practical reasoning* to normative conclusions. Our point rather was that there can be no valid deduction of a normative conclusion without a

25. Finnis, *Natural Law and Natural Rights*, p. 33.

normative principle, and thus that *first* practical principles cannot be derived from metaphysical speculations.²⁶

This last point raises an important consideration for any natural law theory that seeks categorical oughts for its precepts. If one cannot inferentially justify a categorical ought except by means of deduction from a set of premises that itself contains a categorical ought, it follows that there must be at least one first categorical ought that does not receive its justification by means of deductive inference from prior premises. This ought would have the character of a first principle, and as such, it would have to be self-evident—"self-evident" meaning not that it is intuitively manifest or clear and distinct, but that given sufficient reflection, it could be understood to be true without being formally demonstrated.

Acknowledging the naturalistic fallacy has the following consequence, therefore, for the methodology of any natural law theory seeking categorical oughts as precepts: such a theory will need to propose at least one self-evident and indemonstrable first categorical ought as a first principle. As far as the naturalistic fallacy or the question of validity goes, it does not matter what that first categorical ought is. Finnis and Grisez propose a whole list of basic goods to play the role of first principles. Because these basic goods, precisely in order to play this role, must be self-evident and indemonstrable, Finnis and Grisez deny that they are inferred from premises supplied by philosophical anthropology.²⁷ But as far as the naturalistic

26. John Finnis and Germain Grisez, "The Basic Principles of Natural Law: A Reply to Ralph McInerny," *American Journal of Jurisprudence* 26 (1981), p. 24.

27. To say that the basic goods are not inferred from premises supplied by philosophical anthropology is to make an epistemological claim about how we come to know these goods, not a metaphysical claim. Indeed, that the goods are what they are may be grounded in or explained by human nature, even if we do not come to know them by way of inference from premises supplied solely by a descriptive account of human nature. On this view, what is prior in the order of being is not necessarily prior in the order of knowing. In fact, if we agree with Veatch that an adequate account of human nature includes what human beings ought to be or do, we might say that the non-inferential act of understanding by which we come to know the basic goods is part of the process by which we come to our account of human nature. That is to say, rather than deducing the basic goods from an already worked out and completed philosophical anthropology, it may be that we develop our philosophical anthropology on the basis of our non-inferential insight or understanding that certain goods ought to be pursued. For a defense of this possibility, see Robert P. George, "Natural Law and Human Nature," in *Natural Law Theory: Contemporary Essays*, ed. Robert P. George (Oxford: Oxford University Press, 1992), pp. 33-6. See also John Finnis, "Natural Law and the 'Is'—'Ought' Question: An Invitation to Professor Veatch," *Catholic Lawyer* 26 (1981), pp. 270-72.

fallacy goes, one could postulate a different first categorical ought, whereby the basic goods *were* derived from the philosophy of human nature. One might, for example, propose the above premise (1) as one's first principle: "Human beings ought to pursue those ends to which they are naturally inclined." In either case, it will be incumbent upon the natural law theorist to offer a non-inferential justification of the proposed first principle, one which will most likely follow the normal procedure of showing that rejecting the principle leads to absurd consequences.²⁸

It is not my purpose here to adjudicate between these two alternatives, nor even between the choice of a natural law theory based on conditional versus categorical oughts. I merely intend to show what the logically viable alternatives are for working out a natural law methodology. There has been less clarity than one might wish within contemporary discussion of the naturalistic fallacy and its relevance to natural law theory. This paper will have achieved its aim if it has left these matters less confused than it found them, even if it does so by more clearly exposing the errors of those, like myself, who think there is still something left to Hume's warnings about *is* and *ought*.

28. For a discussion of how this justification might proceed, see George, "Recent Criticisms of Natural Law Theory," pp. 1410-14.