A Shared Morality

A Narrative Defense of Natural Law Ethics

Craig A. Boyd
To my mother Gloria Boyd
and
the memory of my father, Harold Boyd
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Acknowledgments

The idea for this book has developed from a number of disparate themes and ideas that I have been working on over the past decade. My doctoral research focused on the relationship between the divinely revealed precepts of the Decalogue and the natural law in the work of St. Thomas Aquinas. Initially, my interests focused upon natural law morality and the challenges to it made by divine command theorists. However, as I read various narrative theologians and virtue ethicists I became convinced that natural law theory could not stand alone as a complete theory of ethics.

During the summer of 1997 I participated in a seminar at Houghton College on Postmodernism and Christian ethics directed by Arthur Holmes. Holmes’s balanced and thoughtful reflection on the challenges raised by postmodern thought provoked my own interest in natural law apologetics without simply rejecting the challenges as having no merit. This approach combined with the narrative approach advocated by Alasdair MacIntyre enabled me to see how one could incorporate insights of one’s critics into one’s own theory without either abandoning the original theory or rejecting the critics in toto.

Following my experience at Houghton College I participated in two summer seminars at Calvin College. During the course of these two seminars, the first directed by Jeffrey Schloss and Philip Clayton in 2001, and then again in another directed by Stephen Post in 2004, I explored how evolutionary biology provided an unexpected ally for a theory of natural law and specifically Christian theories of ethics.
Because very few natural lawyers had appealed significantly to biology as a resource for their understanding of nature since the time of Aquinas, I found that a serious consideration of evolutionary thought could contribute to a theory of nature that would not depend on a biology that had been discredited for more than 300 years.

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Introduction

Natural law morality boasts one of the longest genealogies in the history of ethics. From the ancient Greeks down through the Middle Ages to today, professional philosophers, Christian theologians, and many lay people subscribe to some version of natural law morality which maintains that there are some basic truths about human nature which require the prohibitions of some values and the practice of others. Natural law theorists believe that they can discern in human nature—and its various inclinations and desires—a basic orientation to the goods that all people pursue. These inclinations, when rightly understood and ordered, direct us to some activities and away from others. There is, on the natural law perspective, a basic desire to seek peaceful coexistence with others since peaceful communal life is a necessary condition for pursuing other goods. Prohibitions on murder, lying, and adultery are all seen as violations of the ideal for “human nature” since they thwart the peaceful coexistence of humans in community. Moreover, natural law theorists also contend that all human societies know these precepts to be true regardless of particular cultural contexts since they all require peace as a basic good for communal life. These specific principles which ground various prescriptions and prohibitions can be discovered by all people without regard to cultural or religious diversity.

In an increasingly global society where religious and cultural differences are often accentuated and form the basis for conflict between peoples and among nations, it would seem that natural law morality,
if it can be coherently defended, may provide a plausible common
ground for people of diverse backgrounds. The issue of moral diversity
has created problems for defenders of the natural law; if there is such
diversity with regard to moral practices throughout the world, how
can we say that there is some underlying notion of human nature
that could serve as the basis for normative ethics?

The theory has frequently been attacked and its obituary has often
been prematurely written by its critics. Yet, as Yves Simon observes,
“The theory of natural law, attacked and rejected many times, always
comes back with fresh energy.”2 The present work is an attempt to
defend natural law despite the many challenges it currently faces.

Although the arguments here appeal to the classic articulation
of natural law morality formulated by St. Thomas Aquinas (1225–
1274), the book is not merely an apologetic for eight centuries of
Thomism. Rather, I attempt to salvage what still has value in his
work while simultaneously rejecting those aspects of the theory
that are hopelessly beyond rehabilitation. For example, I find his
appeal to nature as a necessary condition for morality an important
corrective to much of analytic philosophy’s preoccupation with
linguistic analysis. His emphasis on transcultural moral norms
serves an important role in refuting various kinds of relativism;
and his articulation of virtue as a necessary development of the
precepts of natural law enables us to see the two elements in a
complementary relationship.

Although these valuable insights in Aquinas’s work offer the con-
temporary ethicist much to ponder, unfortunately there are those
elements that simply need to be abandoned or stand in need of serious
rehabilitation. Contemporary natural law moralists should resist the
temptation to follow Aquinas down the path of Aristotelian ontology
and archaic medieval patterns of human nature. A genuine theory
of the natural law must move beyond the sexism of the medieval
church as well as the confusion of identifying cultural norms with
transcendent moral principles.

1. One well-known critic of natural law in Protestant circles is Carl F. H. Henry,
who unfortunately often misrepresents the theory and sees it as inconsistent with
“biblical” Christianity. “Natural Law and a Nihilistic Culture,” First Things 49 (Janu-

A contemporary approach to natural law requires a serious consideration of human nature in light of recent developments in the sciences. Any moral theory that appeals to human nature as normative while failing to consult the important developments in psychology and biology can hardly expect to be taken seriously by an educated audience.

Even though scientific discoveries have radically altered our understanding of what it means to be human, we should do what we can to sift through the accumulated wisdom of the last twenty-five centuries. It may be possible to draw upon the rich insights of the long tradition of natural law theorists without being unnecessarily bound to the philosophical anthropology of the thirteenth century. My approach exploits the scientific tradition of sociobiology and evolutionary psychology in a similar way to how Aquinas used Aristotle. Undoubtedly Aristotle would not have welcomed Aquinas’s transformation of his own views, but that does not mean the transformation did not have value in itself. Likewise, my use of research in the fields of sociobiology and evolutionary psychology may not please scientists in either discipline. But it must be pointed out that these thinkers conduct their proper research in the sciences; the role of the philosopher and the theologian is to reflect on the significance of the sciences for questions concerning human meaning and purpose. Hopefully, this book will appeal not only to professional philosophers but also to biologists, theologians, and cultural critics who see their own work as having implications for other disciplines.

In this introductory chapter, I begin with the problems of contemporary moral discourse. I then briefly trace the history of ethics in the twentieth century and then point to how one might plausibly respond to the challenges confronting a theory of natural law.\(^3\)

1.1 The Contemporary Scene

Alasdair MacIntyre has documented the failures of the Enlightenment tradition of ethics through the end of the twentieth century. He

\(^3\) The history I offer below focuses primarily on philosophical traditions in ethics. However, I think that the contemporary scene in theological ethics is at least as, if not a good deal more, contentious than the situation in philosophy. Competing theories of theological ethics include liberation theories, feminist ethics, divine command morality, biblical ethics, narrative ethics, and neo-orthodox ethics. I consider theological issues in ethics throughout the book, especially in chapters 4 and 7.
begins his *After Virtue* with a troubling thought experiment intended to shed light on the contemporary scene in ethics. He asks his readers to

imagine that the natural sciences were to suffer the effects of a catastrophe. A series of environmental disasters are blamed by the general public on the scientists. Widespread riots occur, laboratories are burnt down, physicists are lynched, books and instruments destroyed. Finally a Know-Nothing political movement takes power and successfully abolishes science teaching in schools and universities, imprisoning and executing the remaining scientists. Later still, there is a reaction against this destructive movement and enlightened people seek to revive science, although they have largely forgotten what it was. But all they possess are fragments: a knowledge of experiments detached from any knowledge of the theoretical context which gave them significance.4

This fictional world is a world in which scientific terms have been radically severed from their original context; and although they may appear to be employed in scientific fashion, there is no coherent context that is sufficient to the task. People may think that they are engaged in the practices of the sciences, but with no guidance or coherent method to form their behaviors what they are doing is more closely akin to alchemy rather than genuine science. MacIntyre concludes by noting that “in the actual world which we inhabit the language of morality is in the same state of grave disorder as the language of natural science in the imaginary world which I described.”5 The contemporary world of moral discourse is a cacophony of competing voices with no common language or contextual framework.

MacIntyre extends the critique by examining a number of arguments employed in current discussions on the ethics of war, abortion, and economic justice.6 He demonstrates that arguments that are formally valid can generate contradictory conclusions. He observes that although each argument has its own formal validity, there must be some further problem with the current state of moral discourse. Each argument arises out of its own unique historical background and is incommensurable with the other arguments. MacIntyre contends that we must first start

5. Ibid., 5.
6. Ibid., 7–10.
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with an account of how we come to understand how moral language works within various communities and what practices contribute to that understanding. This approach to moral language distinguishes MacIntyre from most analytic philosophers who, following G. E. Moore, have simply ignored the context of moral language and the ways in which we find it embedded in communities of character.

Beginning with the publication of Moore's *Principia Ethica* in 1903, analytic philosophers have focused their attention on the meaning of moral terms, or on meta-ethical issues concerning the nature of moral language. Moore's key question is, "How do we define 'the good?'" The answer to this question determines how we think about ethics, since "the main object of Ethics, as a systematic science, is to give correct reasons for thinking that this or that is good; and unless this question be answered, such reasons cannot be given."

But the answer Moore gives to the question, "What is the good and how is it to be defined?" is quite surprising. He says that it cannot be defined, since it is a simple, non-natural property. If we are to argue that the good is the pleasurable, Moore says this will not work because we can always ask of any pleasurable activity, "Yes, but is it good?" Moreover, if we define the good with any proposed definition, we can continue to ask, "Yes, but is it good?" This procedure became known as the "open question" argument, since one could always ask of a proposed definition of the good, "Yes, but is x good?" The point of the question is to draw a conceptual distinction between any proposed definition of the good and the idea of the good. If there is a difference between the two concepts—and Moore thought that there always was—then the good cannot be defined in that particular manner.

In this way, Moore rejects any account of ethical naturalism that appears to confuse a natural property of things with a moral property. This attempt to identify the good with a natural property—such as pleasure or happiness—Moore calls the "naturalistic fallacy." He therefore concludes that terms like "the good" and "the right" are simple, non-natural properties intuited by moral agents.

Among the many difficulties for Moore is the issue of how it is possible to agree on our moral intuitions. One could easily argue that the intuitionist is having moral hallucinations, or maybe it is the

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8. Ibid., 58.
case that the objector is simply morally blind? The faculty by which we intuit good and evil seems to be one that is committed to an
unavoidable subjectivism. This problem, among others, has proven to
be intractable for the intuitionists.

A further problem concerns the naturalistic fallacy. Many have
argued that it simply isn’t a fallacy at all—a point I shall argue in
chapter 6. If the naturalist fallacy, which has been leveled against all
kinds of ethical naturalism, fails to make good on its claims, then the
intuitionist’s agenda has suffered a devastating blow.

Picking up where Moore left off, the emotivists, or non-cognitivists,
held that moral language was indeed unique. However, moral lan-
guage’s uniqueness lies in its meaninglessness: moral terms do not
refer to any object of empirical observation but instead merely ex-
press the emotions of the speaker. Being thoroughly imbued with
logical positivism, these thinkers believe that for a statement to have
meaning it must conform to the “verificationist principle”: in order
to have meaning a statement must be either analytically true or em-
pirically verifiable. Since moral judgments do not have the status
of a priori analytically true statements such as 7+5=12, they cannot
be known merely by the meaning of the terms. Yet neither can they
be understood as empirically verifiable, since appeals to empirical
methods fail to yield the results that science can. It is impossible,
they argue, to give any empirical evidence that “Lying is wrong.”
Therefore, the emotivists conclude that moral language is merely
the expression of approval or disapproval. “Lying is wrong” can be
 redescribed as “Lying, boo!” Since expressions of disapproval do not
have truth value, the emotivist concludes that these expressions have
no cognitive meaning.

An embarrassing weakness in the emotivist account is that the
verificationist principle itself is unverifiable—it is neither analytically
true nor empirically verifiable! Another significant problem is that
although moral language certainly has an emotive element to it, most
people understand their moral claims to be doing considerably more
than simply expressing their emotions; they are appealing to some
kind of moral truth beyond their own preferences.

In the wake of the failures of emotivism, a more sophisticated
and substantial meta-ethical approach was developed by R. M. Hare,

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called “prescriptivism.”

According to Hare, moral language has a descriptive task in explaining a particular state of affairs, but its more important task is to recommend behavior to others. “Lying is wrong” amounts to a description of a lie as “a verbal or written statement by an agent, A, to mislead or deceive agent B,” combined with the further recommendation that “you ought to avoid such an activity.” Thus, prescriptivism consists in a locution in the indicative mood combined with one in the imperative mood.

Hare says that his theory of moral language centers around three critical ideas, that a moral judgment is (1) prescriptive, (2) universalizable, and (3) overriding. Prescriptive language is such that an act in question can be recommended to other agents in morally relevant similar situations. Hare says that something is prescriptive “if and only if, for some act A, some situation S and some person P, if P were to assent (orally) to what we say, and not in S, do A, he must logically be assenting insincerely.”

The criterion of universalizability echoes Kant’s categorical imperative and Hare intends to salvage this remnant from the wreckage of Kant’s moral theory. In order for us to be logically, and morally, consistent, Hare believes that “if we make different moral judgments about situations which we admit are identical in their universal descriptive properties, we contradict ourselves.”

Finally, “overridingness” is the property of moral judgments wherein we let a moral principle “override other principles when they conflict with it and, in the same way, let it override all other prescriptions, including non-universalizable ones.” Moral judgments override aesthetic judgments and those moral judgments that are not universalizable.

Critics have accused Hare of developing a conceptual account of rationality that fails to preclude the judgments of moral fanatics. It may be possible for a Nazi to claim that her judgments concerning

11. Ibid., 55.
12. Ibid., 21.
13. Ibid., 21.
14. Ibid., 56.
the extermination of the Jews are universalizable, prescriptive, and overriding. If so, then Hare’s theory has little more to recommend it than Kant’s earlier failed attempts at employing the “universalizability” criterion. Although Hare attempted to respond to the problem of the fanatic, a greater danger loomed for prescriptivism.

Hare’s creative synthesis of Kantian and utilitarian morality relies upon rules developed by the agent that in some cases will override the aesthetic preferences of the agent. In other cases, the agent uses the rules to justify one moral preference over another. But in any case, the agent always employs the rule to justify a preference. If we ask what justifies the initial preference we simply come to the end of our justification sequence. MacIntyre points out that “each individual implicitly or explicitly has to adopt his or her own first principles on the basis of such a choice. The utterance of any universal principle is in the end an expression of the preferences of an individual will and for that will its principles have and can have only such authority as it chooses to confer upon them by adopting them. Thus emotivism has not been left very far behind.” What had started out as an attempt at universal justification in the end turns out to be nothing more than personal preferences dressed up as absolute moral norms.

As an alternative to the emphasis upon clarity and precision in moral language, John Rawls argues that morality is simply a private matter of individual interests and tastes. However, the idea of justice—as a political concept—could be rehabilitated as the “first virtue of institutions.” On Rawls’ view, the analytic tradition in ethics was a failure because it focused upon the meaning of moral terms, to the exclusion of the practical problems of political life—primarily the problems of moral agreement and political fairness.

Rawls argues that we can only get moral agreement by getting members of political communities to set aside the circumstances of their particularity and adopt an objective point of view—the view of any rational agent. The means by which he attempts to generate this view is by asking his readers to imagine that they must choose moral principles from behind a “veil of ignorance,” where no one knows his position or place in society. Rawls contends that this procedure guarantees what he calls “pure procedural justice” by ensuring that no one

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will be able to “stack the deck” in her own favor. He says that rational agents will agree to two principles of justice. These are: “Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all. . . . Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with the joint savings principle and (b) attached to offices and positions open to all under condition of fair equality of opportunity.”

Rawls’s approach, like Hare’s, is an attempt to combine the important insights of Kantian and utilitarian ethics. However, he expresses no concern for specifying the particular goods or duties incumbent upon individuals qua moral agents. On the contrary, he intends to establish the parameters of morality (in terms of political justice) and then let individuals discern for themselves what constitutes “the good.”

Unfortunately, Rawls begs the question of what it means to be a rational agent. His theory of justice and the description of the rationality of its agents is plausible only when we already have a prior commitment to his characterization of reason. And once we have subscribed to his economic notion of rationality we will undoubtedly choose his principles of justice. Again Rawls, like Hare, has attempted to justify universal norms on the basis of personal preferences. But how we come to those preferences is never justified. We have an elaboration and limitation of our preferences but no coherent account of how we came to possess them in the first place. What seems to be lacking in all of these analytic theories is a sustained theory of human nature that gives rise to moral norms.

In a radical departure from the prior six decades of analytic philosophy, Elizabeth Anscombe made the startling proposal that “the concepts of obligation, and duty—moral obligation and moral duty, that is to say . . . ought to be jettisoned.” The justification for this claim is that the context for terms like “moral duty” and “moral obligation” is one that assumes a divine lawgiver. Since there is no longer a generally held

17. Ibid., 302.
19. Anscombe says, “To have a law conception of ethics is to hold that what is needed for conformity with the virtues failure in which is the mark of being bad qua man (and not merely, say, qua craftsman or logician)—that what is needed for this, is required by divine law.” Ibid., 6.
belief in a divine legislator; these terms have ceased to function. They are an example of “the survival of a concept outside the framework of thought that made it a really intelligible one.”20 Since modern moral philosophy for over two hundred years had made no use of such a concept, the ideas of duty and obligation have no meaning. In light of these realities, Anscombe argues that what is needed is a theory of virtue.

The virtues Anscombe advocates takes us to an Aristotelian model, one that predates the Christian notion of the divine lawgiver. “Moral obligation” and “moral duty” are terms that must be replaced by terms like “human flourishing” and “excellence.” But in order to develop a coherent account of the virtues we need to attend to other ideas first; namely, “action,” “intention,” “pleasure,” “wanting.”21 These are descriptions, not of the nature of moral language, but descriptions of moral activities.

Thus, Anscombe calls for a developed moral psychology and “an account of human nature, human action, the type of characteristic a virtue is, and above all of human ‘flourishing.’”22 Anscombe’s insistence on engaging moral psychology served as the catalyst for the rediscovery of “virtue” ethics. This renewed approach to ethics that sees virtue as a central element in human flourishing provides a helpful corrective to the blind alleys of analytic ethics.

However, Anscombe’s analysis falls short on at least two counts. Although she argues that one cannot have a coherent understanding of moral obligation apart from the concept of “law” and “lawgiver,” it seems that she gives up too easily. She assumes that the Enlightenment project doomed all analysis of moral obligation when it departed from a theocentric understanding of morality as divinely ordained. It may be possible to reconstruct the idea of “law” in ways that Anscombe did not imagine. If nature itself provides an understanding of law (as natural law contends), then it may be possible to argue that there are demands upon us that nature prescribes.

Second, an understanding of “human flourishing” still requires a philosophical anthropology and any attempt at this without consulting the sciences is at best naïve. What Anscombe needs is an account of human nature that can account not only for what terms such as “wants” and “desires” mean, but also for what it means to be

20. Ibid., 6.
21. Ibid., 15.
22. Ibid., 18.
human. Not only do we need what is classically known as a “moral psychology”; we also need a “moral biology.” In what ways can the sciences of biology and psychology illuminate what it means to be human and act in moral ways? Anscombe’s work, while furthering the conversation, fails to account for these important factors.

1.2 Natural Law and Its Rivals

Twenty years after the publication of After Virtue, the scene may be even worse than MacIntyre’s thought experiment illustrates. Although he considers the challenges to intelligible moral discourse from the perspectives of analytic and continental philosophy, these are merely two of the voices clamoring for attention. In addition to these we find scientific naturalism and divine command theories demanding their place at the table. The advocates of scientific naturalism contrast the failures of philosophical ethics with the great progress and successes of the natural sciences. They then make the further claim that ethics should be reassigned to a discipline that seems to be much more competent. The divine command theorists likewise see the poverty of philosophy and hope to rehabilitate the idea of the divine legislator as providing a coherent account of moral discourse.

My own view is one of yet another competitor; which sees human nature as a necessary condition for morality. An ethical theory, if it is not doomed from the start, must consider human nature as playing a significant part in a normative theory. Our analysis of competing theories starts with the scientific challenge to natural law and how sociobiology and evolutionary psychology contribute to an intelligible understanding of human nature and the ongoing narrative of the natural law. From the approach of sociobiology and evolutionary psychology, human nature is seen evolving in specific ways with the consequence that human persons must behave in specific ways.

1.3 The Scientific Challenge: Sociobiology

Since the time of Newton, practitioners in the natural sciences have gained academic and cultural dominance and have seen no reason to subject themselves to any authority other than the empirical method.
Although Galileo and Newton’s views have been revised repeatedly, natural scientists generally see their own methods as self-correcting and making progress in the discovery of truth that is simply out of reach for scholars in the humanities. Empiricism is an approach, in Kant’s language, that attempts to “save the appearances” of natural phenomena; and the consensual results of empirical data serve the purpose of falsifying theories and corroborating other theories. As a result, dominant paradigms play the role of judge and jury in what counts as genuine research. This approach to research creates a chasm between how scientists conduct scholarship and how scholars in the humanities proceed.

Some, like E. O. Wilson and Richard Dawkins, believe that the humanities can ultimately be explained by our evolutionary heritage. Wilson has made the bold claim that “scientists and humanists should consider the possibility that the time has come for ethics to be removed . . . from the hands of the philosophers and biologicized.” That is, biology (especially sociobiology), as the newly crowned queen of the sciences, should play the role of sovereign judge in all matters academic. Dawkins has attempted to show that sociobiology provides a grand meta-narrative that can, in principle, explain—or will be able to explain—all human values and practices.

The primary challenge sociobiology presents is a modified version of traditional materialist metaphysics. The sociobiologist contends that all human behavior can be explained by reference to how our genes have evolved for the purpose of adaptation. Conventional morality, therefore, can be explained entirely by evolutionary theory. On Wilson’s view, “Ethics is an illusion fobbed off on us by our genes.” The illusion is not that we don’t need ethics in order to cooperate—we do. Indeed, we have evolved principles of cooperation. However, the illusion Wilson refers to is that there is a “transcendent moral order” that exists independently of our social constructions and conventions.

Sociobiology, therefore, contends that morality is simply an evolved adaptation that needs no further explanation than natural causes.

There is no need to invoke a creator since materialism does not, and cannot, appeal to transcendent principles. The universal nature of morality has been salvaged by these thinkers, but its transcendent source has been jettisoned.

But using human nature as somehow foundational, this raises a critical question. That question is: in what sense can human nature be normative? It is either too corrupt, too much of a myth, or philosophically too naïve to play such an important role.

1.4 The Religious Challenge: Divine Command Theory

Divine Command Theory contends that human nature, among other things, is entirely too corrupt to function in a normative role. Humans are thoroughly sinful and their attempts at constructing a moral theory based upon the quicksand of a corrupt and perverse human nature is an exercise in futility. Humans are noetically corrupted by sin and, as a result, morally incapable of knowing the good—to say nothing of doing the good. Only a divine command can play this important role; any other attempts are sheer hubris. Furthermore, natural law morality, by starting with human nature and its normativity, seems to be committed to a position that must preclude the importance of God in moral theory. Surely this cannot be an acceptable position for the serious Christian.

In contrast to sociobiology and evolutionary psychology, divine command theory holds that the sole source of obligation can only be found in the will of God. Janine Marie Idziak writes, “Generally speaking, a ‘divine command moralist’ is one who maintains that the content of morality (i.e., what is right and wrong, good and evil, just and unjust, and the like) is directly and solely dependent upon the commands and prohibitions of God.”

Defenders of divine command theory have a variety of reasons for preferring their own moral theory to others. These reasons invariably appeal to specific religious and theological claims. William Ockham


28. Idziak catalogues these nicely in the introduction to her *Divine Command Morality*, 9–10. She lists seven reasons why the religious believer would think the DCM is plausible: “Divine Command Morality is a correlate of the Divine Omnipotence . . . Divine Command Ethics is Involved in the Divine Liberty . . . Divine Command Ethics