

## NATURAL LAW THEORY

Ethics: Course Notes | Brendan Shea, PhD ([Brendan.Shea@rctc.edu](mailto:Brendan.Shea@rctc.edu))

**Natural Law Theory** is a theory of ethics closely associated with the work of the Christian philosopher and theologian **Thomas Aquinas (1225-1274)**. Aquinas's presentation of the theory has roots in the work of the ancient Greek philosopher **Aristotle**, as well as medieval philosophers like **Maimonides** (perhaps the most important Jewish theologian ever to live) and **Avicenna** (one of the most important Muslim philosophers). While the phrase "natural law theory" is closely associated with contemporary Catholic thought, many religious thinkers (and a significant number of secular thinkers) have adopted key ideas from Aquinas, though they've often changed them in various ways. Even experts disagree on which theories count as "natural law" theories, but a rough rule is as follows: the more similar they are to Aquinas, the better the case is for counting them as natural law theories.

The key ideas of natural law theory are that (1) humans have a natural *purpose* or *design* and (2) because of this, certain things are **natural goods** (or have **natural value**) for humans, since they help humans fulfill these functions. Finally, natural law theorists hold that (3) humans can use their reason to figure out what these functions and natural goods are, and hence what **natural laws** we ought to follow. For Aquinas, this last point is crucial, since he wanted to argue that God had created a fundamentally good and fair universe, and that anyone who wanted to live a good/ethical life could do so (even if they had no idea about the "revealed" religion of the Torah or New Testament, etc.). For secular natural law theorists, of course, this point is even more important, since there is no God or religious text which might provide a list of the natural laws.

Natural law theory combines insights from a number of other ethical theories. Like consequentialists, natural law theorists believe that the "**good is prior to the right**"—that is, they think that the *reason* certain actions are right or wrong is because they promote/destroy certain *good* or *bad* things. However, like deontologists, natural law theorists tend to think that there are multiple things that matter, and that there are certain rules/laws that everyone *must* follow. Finally, like virtue ethicists, natural law theorists place a great deal of emphasis on the development of *good character*, and on the close relationship between leading an "ethically good" life and a "fulfilling life." (Basically, the idea is that individuals who live according to natural law theory will generally find that their *own* lives will become better).

A simple application of the natural law theory might be as follows:

1. Human life is naturally good/valuable, either because God made it (Aquinas), or because the continuation of life is what evolution "designed" our bodies to do.
2. Since human life is naturally valuable, it is intrinsically immoral to kill an **innocent** person (one who is not attacking you or someone else).
3. According to the **principle of forfeiture**, we CAN kill people if they attack or endanger us in certain ways. This explains why many natural law theorists think that killing in self-defense (or going to war) can *sometimes* be morally OK, though they usually argue that this should be done as a last resort.

### WHAT ARE THE NATURAL GOODS?

The work of Aquinas, Maimonides, and Avicenna was all based on the (much older) work of **Aristotle**. Aristotle held that we could discover what was good/bad for humans by considering what sorts of beings we were, what we needed to flourish, and what sorts of "natural inclinations" we had. Following Aristotle, Aquinas saw humans as a mix between the "merely" biological (characteristics we share with plants and animals) and the fully human (the rational, social, and/or spiritual things that distinguish humans from the rest of nature). Based on this, one might arrive at a list of "natural goods" something like the following:

1. **Life, health, and procreation are valuable**—all life (from plants to fungi to animals) is "designed" to stay alive, and to reproduce. For natural law theorists, this means that one needs to have a *good reason* to kill something. For Aquinas and Aristotle, this explained *why* it was morally OK to eat plants and animals (who were "designed" to be eaten, though not to be tortured), but not other humans. It might also explain why we have a duty to be charitable.
2. **Reason is valuable; so is society**—In contrast to animals, humans live in large groups and use reason (and language) to help arrange their lives in these groups. So, for humans, being rational and social is a natural value. For natural law theorists, this explains many of our obligations to be honest, to follow the law, to educate children, and so on.
3. **A correct relationship to God is valuable**—Aquinas (unlike Aristotle) argued that humans also needed a correct relationship to God to flourish. Importantly, he argued that humans could get at least a significant part of the way there *simply by using their reason* (e.g., if they simply thought hard about the world, they would know that God existed). While other natural law theorists disagree on this particular idea, they do share Aquinas's starting point: **if something really is a natural value, then it must be the sort of thing that we can discover through the use of our reason.**

- a. While natural law theory is sometimes confused with **divine command theory** (“something is good because merely because God said so”), the two are importantly different. For Aquinas, morality is somehow built into the very fabric of the universe, as opposed to something that is “added in” by God after the fact. While it’s a bit complex, the idea seems to be that even God couldn’t change the “moral laws” of our universe to make things like murder OK (though God could destroy this universe and create a new one with different creatures, and thus, different natural laws).

Different natural law theorists arrive at somewhat different lists (and secular natural law theorists leave out God), but they arrive at them by a similar process: they ask “What sorts of beings are humans?”, “What do they need to live/flourish?” and conclude that “The things they need to live/flourish really are objectively good, and ought to be pursued.” It’s this last idea—that **there ARE natural values, and we OUGHT to promote them**—that forms the basis of any natural law theory.

## THE DOCTRINE OF DOUBLE EFFECT

Natural law theory occupies a sort of “middle ground” between deontology and consequentialists. Like deontologists, natural law theorists think that things like the *intention* for which an act is done matter greatly. However, like consequentialists, they think it would be immoral to simply ignore the consequences of our actions, especially when it comes to other people. The **Doctrine of Double Effect** is natural law theory’s attempt to meet these two goals. The doctrine is historically important, and has had major effects in areas as diverse as military ethics, biomedical ethics, “just war theory”, and even the law.

**The Doctrine of Double Effect (DDE)** holds that when an act will lead to both good and bad effects, it is permissible to perform that action *only* if *all four* of the following conditions are satisfied

1. **Moral principle condition:** the act cannot itself be of a kind that violates a moral principle
2. **Means–end condition:** The bad effect cannot itself be the means to achieve the good effect
  - a. Sometimes act has two **independent effects** (e.g., a theft of bread leads both to thief having food, and owner losing money). DDE doesn’t rule these out (so, perhaps you could steal bread to eat, if you were starving to death).
  - b. At other times, two relationships for **dependent effects**—one depending on other. In some cases, the good effect depends on bad effect (e.g., terrorists kill civilians IN ORDER TO make a government capitulate to an otherwise good cause). DDE PROHIBITS THIS.
  - c. Other times, the bad effect depends on good effect (e.g., you keep someone off a full lifeboat IN ORDER TO make sure the boat doesn’t sink, and drown everyone.) DDE can be OK with.
3. **Right intention condition:** one must intend *only* the good effect, not the bad effect. Even if the bad effect is foreseen and expected, it must not be intended
4. **The proportionality condition:** the good effect must be *at least* as great as the bad effect.

When using DDE, it is important to clearly distinguish between the *act* (what you do), the *good effect* (which you must intend), and the *bad effect* (which you CANNOT intend, but can merely foresee).

**Example:** DDE often comes up at Catholic hospitals, in the context of life-saving abortions. So, for example, DDE seems to be OK with the removal of a cancerous uterus (even if this kills a developing fetus). By contrast, DDE does NOT seem to countenance a woman with a cardiac problem (and whose continued pregnancy risks causing a heart attack) getting an abortion. The difference is that, in the first case, the intention is merely “to remove the uterus in order to save the mother’s life, which will foreseeably kill the fetus.” By contrast, in the second case, the intention seems to be “to kill the fetus to save the mother’s life.” While the math is the same (kill one in order to prevent the death of two), DDE says these are morally different actions.

## CAN NATURAL LAW THEORY SURVIVE DARWIN?

Aquinas’s version of natural law theory was arguably the dominant approach to “academic ethics” in Europe for a very long time, and it still remains influential (especially within Catholic universities). However, it has proved difficult to reconcile the theory with certain aspects of Darwin’s theory of evolution, which holds that humans are the process of natural selection, and NOT of any deliberate design. We can formulate at least a few objections to natural law theory based on this.

- **Objection 1: There is no such thing as a “natural function” or “natural value.”** For Aquinas, the *reason* that humans were rational, social, animals is because God made them that way: God *wanted* there to be beings that could live in communities, go to worship God, etc. On Darwin’s theory, though, the fact that humans are rational and social beings is due to our evolutionary heritage as primates that underwent certain sorts of evolutionary pressures. If this is the case, then it seems like we DON’T have

any reason to think that things like reason, socialness, or even life/health are intrinsically valuable. And if this is true, then natural law theory doesn't work.

- **Objection 2: Natural doesn't mean good.** Natural law theory depends on the fact that (1) our natural inclinations are "good" and (2) we can use reason to figure out what these natural inclinations are. However, it's pretty obvious that not all of humanity's biological impulses are good ones: i.e., like other primates, humans in all known societies have been prone to violence against "outgroup members," and regularly engage in coercion, deceit, etc. (especially when it comes to things like sex or power). On Darwin's theory, this is to be expected, since there is no guarantee that we will have especially good/moral natures. On natural law theory, though, it presents a big problem, since we need to have some way of figuring out WHICH parts of human nature we are supposed to pay attention to, and which we shouldn't.
- **Objection 3: No difference between "Intend" and "Foresee."** The Doctrine of Double Effect (DDE) posits a very strong distinction between what we *intend* by an act ("I want to beat the Nazis!") and what I can foresee ("some civilians will die"). Before modern science, people tended to think this reflected some deep fact about the way souls/minds worked. However, given what we now know about our brains (from psychology, neuroscience, etc.), it doesn't seem like this distinction is as clearcut as it might seem. Among other things, it seems that we often intend *lots* of things by our actions, and that we aren't always the best judges of ourselves (e.g., we are pretty good at making "excuses" when we behave selfishly, and *we really believe our own excuses!*).

Most prominent defenders of natural law theory (including Catholic ones) *accept* Darwin's theory of evolution, and try to meet these objections in various ways. Common responses include: (1) evolution still allows for there to be "natural functions", (2) we can reliably distinguish between the bad/unhealthy desires and the good/healthy ones, and (3) intentions can be found by looking more closely at the *act* (as opposed to inside of our heads).

## REVIEW QUESTIONS: GEM ANSCOMBE

The British philosopher **Elizabeth ("GEM") Anscombe (1909-2001)** was one of the most important philosophers of the twentieth century. Along with working on theoretical issues (such as the precise meaning of *intention*), she also applied natural law theory to a number of applied ethical debates (she was a convert to Catholicism, and studied Aquinas). She was also active in political movements regarding many of her causes (she famously protested President Truman when he came to Oxford, because she opposed his use of the nuclear weapon). She and her Oxford classmates **Philippa Foot**, **Iris Murdoch**, and **Mary Midgley** were among the first women to achieve high levels of philosophical recognition, and Anscombe has sometimes been described as the most influential woman philosopher ever. (The other three were *not* natural law theorists, and often disagreed with Anscombe, and with each other, about moral issues).

While we don't have time to survey her arguments in depth, she held a number of positions worth thinking about. When reviewing these, I'd like you to answer two questions: **(1) Why do you think Anscombe believed natural law theory supported these positions (try really spelling out the argument from natural law theory in detail, as if you are explaining it to a child)? And (2) How might a critic object?**

1. **Abortion.** Like many philosophers, Anscombe thought determining the exact point at which a fetus or infant becomes a "person" might be difficult. However, she argued that abortion at any point in pregnancy was highly immoral, regardless of how this debate turned out. Specifically, she argued it was closely analogous to murder, since it involved the destruction of something naturally good (human life).
2. **Masturbation, contraception, and all sex outside of (heterosexual) marriage.** Anscombe rejected the idea that these sorts of things were the "same" as abortion. However, she nevertheless argued that they were immoral, and for similar reasons. In particular, she thought that one of the natural functions of sex was to create new life, and to help care for the life that resulted. On this basis, she argued that any sex act that *didn't* allow for the possibility of procreation (or which was outside of marriage) was immoral.
3. **Nuclear weapons.** Just War Theory requires that any acts of war be intended to kill combatants and that they are NOT "terroristic" (e.g., no killing civilians intentionally as a way of making other civilians scared, and more likely to do whatever you want them to do). Anscombe argued that the U.S. use of nuclear weapons in World War 2 against large population centers (Hiroshima and Nagasaki) violated this, since the whole point of the war was to kill civilians, and to inspire fear in other civilians.