

# 9

## Natural Law Reasoning in Applied Ethics

### *Four Paradigms*

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The natural law is one of the most enduring of philosophical traditions. By insisting that normativity is based on how things are in fact, the natural law tradition avoids the relativistic implications of the idea that morality is wholly based in features of man's making, whether consensus, feeling, emotion, social construction, convention, performative utterances or human methodology. It promises the possibility of arriving at moral truths by reference to truths of ontology and a metaphysics that is comprehensible to human reason. In this, the natural law tradition arguably offers a secure foundation for an understanding of right and wrong, good and evil, virtue and vice, and the common good. Although there are bound to be grey areas and borderline cases in the moral domain, the strength of the natural law approach is most evident where paradigms are concerned.

In this paper we consider four ethical paradigms: genocide, disproportionate punishment (e.g. capital punishment for misdemeanours), mass live-birth human cloning, and pathologies like bestiality, incest and consensual cannibalism. Ethical dialogue often repairs to clear cases like these when wholesale doubt threatens dominion. Such examples are typically used to sharpen moral concepts, locate ethical limits and explore moral reasoning.

### **Dealing with Clear Cases: Four Ethical Paradigms**

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Consider four paradigms of wrongdoing. I say these are paradigms of wrongdoing not because I want to presuppose the truth of what I am claiming but because these kinds of examples are typically the sort that might be raised in any meta-ethical dialogue. The examples explore the possibility of objectivity in moral reasoning, the rational limits on human freedom, the proper teleological understanding of humans and their place in the world, and a catalogue of other conceptual apparatus traditionally

regarded as part of the natural law tradition. Of course, we could multiply our examples of wrongdoing: rape, slavery, punishment for disability and so on. It should be pointed out, to those unfamiliar with the technique, that the use of paradigms is not intended as affirmation of the moral permissibility of genocide, mass human cloning, excessive punishment (e.g. capital punishment for thought crimes), bestiality or incest. On the contrary, the use of paradigms is intended to test the principles of practical ethics. Of course, there could be much discussion about ethical dilemmas, their identity and limits. But the man who stepped forward to announce his dedication to genocide, mass human cloning, disproportionate punishment, bestiality or incest would probably be treated with suspicion even by the most ardent moral relativist. Indeed, in moral argument, when clear cases like these arise, the relativist typically retreats, charging his interlocutor with the use of 'extreme' cases. But the examples are neither extreme nor unbalanced. On the contrary, they are straightforward. Identifying clear cases where there is widespread agreement can be a useful device for establishing the limits of conceptual discussion, after which moral reasoning becomes strained or impossible. Elizabeth Anscombe hinted at these limits when she said, 'But if someone really thinks, *in advance*, that it is open to question whether such an action as procuring the judicial execution of the innocent should be quite excluded from consideration - I do not want to argue with him; he shows a corrupt mind.'<sup>1</sup>

## Paradigm 1: Genocide

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Genocide is not merely a philosophical thought experiment but historical fact. As such it gives rise to understandable concern. It involves the systematic and deliberate elimination of all or most of a racial, ethnic, religious, cultural or national group of people. The twentieth century is littered with examples of genocide: the Armenian Genocide, the Holocaust, 1971 Bangladesh Genocide and the Rwandan Genocide, for example. Whether an historical instance of proposed genocide is an example of systematic elimination may be the subject of controversy. What is not generally contentious is the very wrongness of genocide itself.

<sup>1</sup> Anscombe 1958: 17.

The utilitarian may speculate that genocide may be necessary to prevent worse or more or greater harm but the inclusion of *ceteris paribus* clauses merely emphasizes the intrinsic wrongness of genocide. All things considered, genocide is a good example of wrongdoing. The idea that we can debate whether it would be right to commit genocide where failure to do so would bring about more death immediately takes us into the conceptual realm of the thought experiment and the ethical dilemma. Such speculations need not commit us to the permissibility of genocide but to the possibility that there is a conceptual space where the paradigm may be brought into doubt. Act utilitarians might suggest that more, worse or greater death justifies genocide while rule utilitarians might add the requirement that any proposed act of genocide take place in secret to be fully justified. The condition of secrecy, after all, circumvents any rule utilitarian concerns that genocide necessarily generates alarm, undermines respect for the rule and necessarily has long-term bad consequences. Opponents of both ethical theories might insist that genocide, qua intentional and deliberate activity, could never be sanctioned, the only licit killing being that which is unintended as a preventative. These are conceptual speculations with distinctive outcomes. What cannot be in doubt in either case is the idea that, all things considered, genocide is a good example of ethical wrongdoing. In this, it could be contrasted with ethically neutral or even ethically worthwhile activity, such as music composition, for example.

What, then, is wrong with genocide? And how would we answer this question?

## **Paradigm 2: Grossly Disproportionate Punishment**

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Disproportionate punishment is a clear and definitional case of wrongdoing because justice consists not merely in identifying and convicting wrongdoing, it involves imposing just and proportionate penalties. Suppose a society imposed the death penalty for entertaining certain kinds of thoughts. At first glance, this possibility sounds implausible. Take as an example, killing a man for his thoughts and ideas. Human history is replete with such examples. Death, even now, is still regarded an appropriate penalty for apostasy in many parts of the world. To avoid confusion and to help make the example clearer consider the paradigm of

a child killed for stealing an orange. This is a clear case of disproportionate punishment. A state that sought to impose these kinds of penalties generally (say in the name of deterrence), however successful the strategy, would be a system that had veered into the realm of the oppressive. Augustine's maxim, 'An unjust law is no law at all'<sup>2</sup> could truly be said to apply to so excessive a penalty and a state that generally imposed so rash a price for mere misdemeanours might properly be thought to be nothing other than totalitarian. What is systematic excessive punishment but hideous oppression writ large?

What, then, is wrong with grossly disproportionate punishment? And how would we answer this question?

### **Paradigm 3: Mass Human Cloning for Live Birth**

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Mass human cloning for live birth naturally elicits moral apprehension. The prospect of industrial production of human beings, entirely cloned for their characteristics and replicated thousands of times over conjures up a dystopian nightmare. The idea that treating human beings as if they were mere commodities to be produced and reproduced without concern for their identity, uniqueness, dignity and biological relationships, and indifferent to the illicit dominion exercised over these putative 'human commodities' rightly elicits outrage. But why? Of course, the act utilitarian might supply circumstances, hard to imagine but extreme in kind, to suggest that in certain circumstances mass human cloning might be necessary. The rule utilitarian might affirm that if this is to take place, it should do so with real data protection and secrecy safeguards so that it could not be undertaken by those who would undermine confidence in the system, creating alarm and undermining belief in the rules governing the moral order in question. Opponents of both ethical theories, act and rule utilitarianism, might insist that mass human cloning, qua intentional and deliberate activity could never be sanctioned because it creates humans in ways that exercise illicit dominion over future generations while, at the same time, undermining their dignity as individuals, identity, uniqueness, biological relationships, kinship and welfare. These are conceptual

<sup>2</sup> Augustine 1993: 8. See Aquinas on Augustine in *Summa Theologica*, I-II Q. 96, art. 4.

speculations involving different ethical theories with distinctive outcomes. What would be unusual would be to find any proponent of mass human cloning who did not also acknowledge that, all things being equal, mass human cloning is a good example of ethical wrongdoing. Their examples would involve alleged hard cases, special circumstances, the proposed justification of necessity, or culpability limitations like duress or involuntariness. It would be assumed that, all things considered, mass human cloning involved ethical wrongdoing.

What, then, is wrong with mass human cloning for live birth? And how would we answer this question?

#### **Paradigm 4: Bestiality, Incest and Consensual Cannibalism**

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It is often thought that criminal justice consists in punishing harm done and cannot apply to activities of consenting adults. Indeed, it might be thought that Paradigm 3 highlights injustices suggestive of high oppression. Punishment for victimless crimes, it is standardly argued, where there is no immediate harm or all parties are consenting, is no crime at all. On this view, punishment should not attend victimless crimes where all parties are consenting. This idea is central to modern liberalism. It invites philosophical discussion of offences like bestiality and incest and such cases as Armin Meiwes, who met his consenting partner online to engage in sadomasochistic activity followed by consensual homicide and cannibalism. Since consent is the touchstone of liberalism, this kind of example tests its limits. Of course, there are grey areas. Barring certain liberal states, the prohibition on incest remains a recognized protection against abuse of power in the family. It is also a sensible encouragement to biodiversity and a natural preventative against disability arising from incestuous procreation. If we wish to hold on to the idea that bestiality, incest, or consensual cannibalism is contrary to animal welfare, the dignity of the family as a wholesome environment in which to rear children and allow them to flourish or simply a non-homicidal online environment, then there should be some principles upon which to recognize these cases as challenging the liberal ideal of moral value as given by principles of autonomy and self-expression.

What, then, is wrong with bestiality, incest and consensual cannibalism? And how would we answer this question?

## The Question

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These four examples supply some ad hoc paradigms of wrongdoing, injustice and vice. There are many others – rape, slavery, torture and child abuse, to name a few. The paradigms presented help us test the limits of relativism, liberalism and the consequentialist and instrumentalist dimensions of utilitarianism. If we wish to retain these as examples of wrongdoing at all, we are logically obliged to place limits on theories commonly regarded as presenting challenges to natural law ethical reasoning. But what is natural law thinking in applied ethics? In what follows, some of the essential characteristics of natural law thinking in applied ethics are analysed. We consider not only the implications of moral relativism, liberalism and utilitarianism but also the need for some version of objectivism, teleology, Socratic means-end reasoning and principles of limited autonomy, to support clear cases of wrongdoing. Hard and soft competing alternative theories are analysed and found to either incorporate some or other version of natural law reasoning or to be forced to absurd or implausible conclusions.

## Natural Law Reasoning in Applied Ethics

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Among the ideas that are a direct challenge to natural law reasoning in applied ethics is moral relativism whether personal or cultural, utilitarianism which insists that the best consequences justify any means used to achieve them, and hard liberalism – what I shall call autonomism to distinguish it from political liberalism.

### 1. Anti-Relativistic

Moral relativism in meta-ethics insists that disagreement about moral issues is fatal to the very idea of moral objectivity. Instead, morality, good and evil, right and wrong are relative to personal or subjective feelings, attitudes or convictions of individuals or cultures. These are

often called personal and cultural relativism. David Hume's emotivism<sup>3</sup> is often classified as a form of moral relativism just because it regards attitudes and feelings as the foundation of ethics. A.J. Ayer too is classified as a proponent of some version of moral relativism and, more particularly, personal relativism. Both thinkers in different ways agree that since there is no higher moral standard other than personal, subjective feeling or cultural practice, there can be no universal and atemporal judgement about the rightness or wrongness of acts and judgements.

Relativism, whether personal or cultural, insists that fundamental disagreement about what one should do is fatal to adjudication using some independent standard of evaluation. The standard is either personal or it is cultural and consensus based. There can be no other criteria for adjudicating between moral judgements or practices. These two versions of relativism, (personal and cultural) contrast with moral objectivism and universalism respectively. These hold in contrast that, even if there is moral disagreement, this is by no means fatal to moral realism. Some moral disputants may even be intransigent in their disagreement. There is, on this account, nonetheless, a real sense in which one act may be better than another. A life dedicated to composing music, for example is preferable to the life dedicated to genocide. Not only might moral disputants believe there *are* objective standards of evaluation independent of moral consensus. Moral consensus might *help* us to arrive at conclusions but it is not the arbiter of moral judgement. Subjective feeling can be misguided and consensus, misplaced.

Natural law theories of ethics are generally grounded in the nature of things rather than in the preferences of individuals or the customs and mores of societies. There are, of course, parts of the natural law that are

<sup>3</sup> David Hume 1751: Hume considered morality to be related to fact but 'determined by sentiment': 'In moral deliberations we must be acquainted beforehand with all the objects, and all their relations to each other; and from a comparison of the whole, fix our choice or approbation. . . . While we are ignorant whether a man were aggressor or not, how can we determine whether the person who killed him be criminal or innocent? But after every circumstance, every relation is known, the understanding has no further room to operate, nor any object on which it could employ itself. The approbation or blame which then ensues, cannot be the work of the judgement, but of the heart; and is not a speculative proposition or affirmation, but an active feeling or sentiment.' Cf Ayer 1952: 107. 'If now I generalize my previous statement and say, "Stealing money is wrong," I produce a sentence that has no factual meaning – that is, expresses no proposition that can be either true or false. . . . I am merely expressing certain moral sentiments.'

entirely built on human convention. No plausible meta ethic can fail to account for the fundamental reality of human convention in human activity, whether individual, social, national, regional or global. Indeed, most of human morality consists of matters of convention. Language, signs and symbols are largely a matter of convention. The coordination of human action is governed in part by human convention. But convention does not exhaust the foundations of political activity because existence (or the cosmos) precedes human reason and human activity.

Our paradigms of wrongdoing challenge the idea that personal feeling or cultural consensus could ever settle the matter of whether genocide, mass human cloning, disproportionate punishment and bestiality are wrong. Indeed, however overwhelming the personal feeling or consensus in favour of each of these programmes, we are obliged to ask more fundamental questions about the rightness or wrongness of these courses of action. The kind of arguments we would count as rational would be those that avoided appeals to consensus or strong feeling. Even if there were a 90 per cent consensus among proponents of genocide, agreement among peoples or strongly held beliefs are a poor form of reasoning. Indeed, the same would apply in respect of mass human cloning, disproportionate punishment, bestiality, incest and consensual human cannibalism. Consensus, strong feeling, and subjective belief remain precisely that: facts about human feeling and belief. They might constitute sociological or psychological evidence of beliefs and feelings, they might be a way avoiding conflict in arriving at political decisions. But they would not and could not amount to sound reason on the rightness or wrongness of these human endeavours.

Relativism fails to account for the competing reasons that explain changes of mind and alterations in consensus. Given that humans do experience changes of attitude, and given that both feeling and consensus alter, these cannot amount to persuasive reason for moral judgement or action. Consensus among Nazis or sadomasochistic cannibals or paedophiles is no persuasive reason for either genocide, sadomasochistic cannibalism or paedophilia.

One fundamental tenet of natural law reasoning in applied ethics is its objectivism and universalism. Accordingly, the fact that Nazis prefer genocide, or consenting cannibals prefer human flesh, is no reason either way to favour or reject these activities.



## 2. Teleological

The Aristotelian understanding of natural law is famous for its teleology. Of course, whether or not Aristotle is rightly classified a natural law theorist is controversial. This dispute aside, his teleological theory sees the universe as governed by laws, regularities and purposes. The universe is, at least in part, structured in such a way that things have within them both potentialities and capacities to achieve their ends. Not only that, creatures according to their kind may have distinctive ways in which they can be understood to achieve their inbuilt ends.

In its simplest form, for example, teleological explanation demonstrates how it is that when conditions are right, an acorn will develop into an oak tree; a tadpole into a frog. In its growth and change, the acorn and the tadpole are following 'the law of nature' each according to its own kind. It achieves its inbuilt ends to greater or lesser degrees. Humans have a corporeal nature, just as tadpoles do. In their own growth and development, they too follow a law of corporeal nature. Because humans have the capacity to reason and potentialities are only properly understood by reference to this capacity, the full development of human potentialities, the fulfilment of human potentiality or ends, requires that we follow the direction of the law of reason, as well as being subject to the laws of material human nature. Not only is reason a part of our potentiality, reason allows us to understand our ends and how to achieve them. In particular, reason directs us towards good in our actions, in our activities and in our very nature. It is impossible therefore to understand the world without investigating these laws, regularities and purposes.

The distinctively human capacity for reason allows us to understand the human good and this good structures human nature in the way that the acorn is structured to the oak and the tadpole to the frog. On this view, there are natural inclinations that are directed towards distinctively human goods. Thus, the good is that to which we are directed by our natural inclinations as both physical and rational creatures. Reason helps us every step of the way to understanding, not merely the techniques and strategies available to achieve our ends but also in determining what our goals are and showing us how we can achieve them. Reason helps us to understand that our good qua human being can be discovered by understanding our own human nature. In this sense, morality is anthropology, politics and personal development – with the proviso that

these are properly understood. Personal development strategies to achieve one's preferred end as a genocidal killer, unjust judge, mass human cloner, bestialist or sadomasochistic cannibal, is personal development gone awry.

Human ends are inherent in human nature in roughly the same way as an acorn's ends are built into the oak. In order to know how properly to treat it and how best to allow it to flourish, one needs to know the nature of the oak tree and how it best develops and matures. In this way inclination is not antithetical to human morality but an explication of it. We need to understand not merely the functions of our human abilities and very bodies, we need to know how best we can achieve our true ends. In this way, human nature, complete with inclinations, innate capacity for development and maturity, admits of ends not enjoyed by the acorn or the tadpole. These are ends specific to the human being precisely in virtue of being human. Humans as a kind (though not necessarily as individuals) are capable of understanding these ends, for it is in the nature of human beings to know and try to understand both others around them and themselves in that context.

How does teleology assist in any understanding of morality? Without presupposing the answer to our question, it might be suggested on the face of it that teleology is itself an insufficient brake on human potentiality. Not only does potentiality face Humean objections<sup>4</sup> of wrongly deriving an 'ought' from an 'is' or moral from factual statements, it is challenged by the evolving nature of reality, the very real possibility of transhumanism and human enhancement. After all, just because humans do in fact engage in murder or genocide, offer human sacrifice, engage in slavery, cannibalism, torture or mass human cloning, these facts alone do not justify any of those

<sup>4</sup> See Hume (1975): '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 ways of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when all 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 it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention would subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceived by reason.'

activities. So, how could teleology assist in deciding whether these activities are right or wrong? It merely begs the question, surely, of whether the inbuilt goals in human beings should be overridden by human artifice. After all, if genocide, unjust punishments, mass human cloning and bestiality are in the nature of man, why not engage in genocide, unjust punishments, mass human cloning, etc.? Why refrain from any activity on moral grounds at all? Not only are the ends of man mutable, there is (so the argument goes) no conceivable reason to prefer one activity over another. Likewise, if the functions and purposes of man's activity are entirely unlimited, teleology supplies no reason either way to prefer one activity over any other. On this view, our four paradigms of wrongdoing cannot be explained by reference to principles of human thriving or human potentiality.

Even this open teleology possibility contains oblique limits. Whether or not human nature is malleable by way of gene manipulation and improved use of bio- and information technology, the supposition that anything goes, morally speaking, is far from obvious. For if we accept that our four paradigms raise ethical limits outside the realm of human enhancement, there may well be ethical limits in other circumstances as well. In other words, the manipulation of nature, human or any other, does not raise the spectre of unmitigated relativism whether subjective or cultural. On the contrary, it suggests that even in the realm of human and other realms of artificial enhancement, there are ethical limits. The alternative to this outcome is the implausible conclusion that we cannot know how human beings flourish and achieve their potential at all.

The argument that teleological reasoning wrongly derives 'oughts' from 'is' statements is a significant question that enjoys much philosophical attention. Ours is not here to solve the question but merely to point out that if there are any right moral answers to questions raised by our four paradigms, then consensus, subjective feeling or cultural preference will be an inadequate response to the question. Part of the reason for the appeal of the Humean argument is precisely that it highlights the fact that personal feeling and cultural consensus alone cannot constitute any guarantee of the rightness or wrongness of the activities proposed by our four paradigms. If genocide is wrong, the fact that there is a consensus in favour of it would go no further to justifying the activity. Preferences in favour of genocide identify facts about feeling

and consensus about the activity. But these facts about feeling and consensus cannot supply any answer to the question of whether or not one ought to commit genocide. Facts about feeling and consensus cannot tell us what is right or wrong.

Secondly, with respect to the is–ought debate, any resort to personal and cultural preferences ipso facto involves one in the derivation of ‘ought’ statements from crude ‘is’ statements of the form ‘Culture X believes genocide is permissible’. Even the limited appeal to cultural practice or subjective feeling involves us in the derivation of normative statements from facts about cultural practice or personal feeling. The appeal to these facts both breaches Hume’s dichotomy itself *and* proposes an undeveloped and implausible answer to the question of how our paradigms are to be explained.

Teleology assists in the understanding of how it is human beings flourish both individually and collectively. It offers a way of understanding the goods necessary to the achievement of ends according to species. It allows enquiry into the functional needs of creatures and the biological features that explain well-being. As such, it logically ought to make an appearance in any developed applied ethic. If genocide undermines the lives and well-being of individuals living in societies, then a teleological ethical picture would be necessary to understanding what is wrong with genocide. It might also inform a proper understanding of the kinds of reasons why mass human (and other) cloning might well undermine the well-being of creatures manufactured. By understanding the functions, needs, potentialities and purposes of humans (and indeed other creatures) wrongful and exploitative attitudes may be identified and the limits of wrongdoing established. If a tree cannot discern the fact that it has been multiply cloned, to that extent ethical objections to the cloning of trees must be limited although perhaps subject to broader questions of sustainability. If a human can rationally discern his or her status as multiply cloned, human capacity for rationality must figure in the analysis of how mass human cloning wrongs individuals so created. Finally, the functions and purposes of the eye, for example, might explain how a human is to flourish (i.e. by not being deliberately blinded). Likewise, the elevation of the incestuous or cannibalistic sado-masochistic relationship for misplaced reasons of autonomism might well undermine the sexual well-being of its participants fostering addictions, pathologies, fixations and vices.

A developed teleology would allow this analysis avoiding the pitfalls of relativism and wholesale scepticism.<sup>5</sup>

### 3. The Socratic Ideal

Natural law reasoning in applied ethics not only rejects moral relativism, whether personal or cultural, or efforts to found morality on any social construction, it also recognizes the Socratic Principle. On this account 'It is better to suffer than to do evil'.<sup>6</sup> In Plato, this principle leads back to a sophisticated discussion of the permanence of the forms and the soul and the transience of matter and the body. In practical terms, however, it rejects the common view that the end justifies the means. When Socrates is asked to collaborate in the execution of the innocent Leon of Salamis, he outlines his philosophical opposition to the proposal:

When the oligarchy was established, the Thirty summoned me to the Hall, along with four others, and ordered us to bring Leon from Salamis, that he might be executed. They gave many other orders to many people, in order to implicate as many as possible in their [i.e. the Thirty's] guilt. Then I showed again, not in words but in action, that, if it's not crude of me to say so, death is something I couldn't care less about, but that my whole concern is not to do anything unjust or impious. That government, as powerful as it was, did not frighten me into any wrongdoing. When we left the Hall, the other four went to Salamis and brought in Leon, but I went home. I might have been put to death for this, had not the government fallen shortly afterwards. (*Apology* 32 c-d)<sup>7</sup>

Socrates's very life and death at the hands of the unjust oligarchs, his execution for his pursuit of truth on trumped up charges of treason, blasphemy and corrupting the youth, is testimony to his rejection of hedonistic, sophisticated and Thrasymachean (or social Darwinian) thinking. Modern utilitarianism generally denies any moral significance to the Socratic idea that the end does not justify the means. In essence, the

<sup>5</sup> Still one of the best available is that of Aristotle in the *Nicomachean Ethics*. Here he outlines a vision of the virtues as understood as the mean between two extremes – one the excess, the other the defect. Courage, for example, is seen as the mean between bravado and cowardice. A sensible understanding of virtue and vice might well be complemented by modern psychology, psychiatry and anthropology (properly, as distinct from falsely, understood) so that vices might be identified and willingly controlled.

<sup>6</sup> *Gorgias* (469a-479e)    <sup>7</sup> *Apology* (32c-d)

Socratic ideal is anti-instrumentalist, anti-consequentialist, agent-centred and virtue-based.

Natural law reasoning is to be contrasted with the hard utilitarianism of such thinkers as Jeremy Bentham, which urges the maximization of good consequences. In his *Introduction to the Principles of Morals and Legislation*, Bentham holds that 'Nature has placed mankind under the governance of two sovereign masters, *pain*, and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do'.<sup>8</sup> Among those who have put the case for utilitarianism are Henry Sidgwick,<sup>9</sup> Richard Hare,<sup>10</sup> Jack Smart<sup>11</sup> and Peter Singer. Central to the analysis is the idea that consequences determine moral permissibility. Theorists disagree as to what it is that should be maximized, whether pleasure or social utility or long term beneficial rules or short term beneficial acts. A veritable philosophical industry has arisen examining how the happiness calculus is to be undertaken given doubt about its actual content, terms and parameters, and whether or not utilitarianism can be sustained given the manifest disagreements about the nature of the maximand and the minimand. The competing positions entail radical differences of moral outcome so these matters are not without conceptual significance.

It was Elizabeth Anscombe who, in 'Modern Moral Philosophy', classified utilitarianism's fascination with ends or consequences without reference to the morality of the act producing it, as 'consequentialist'. Her analysis highlighted the difficulty of arriving at answers to questions about the justice or injustice of acts on the basis of calculations of consequences. Questions about the standard to be applied to arrive at the right utilitarian answer to any particular practical question are now familiar. Arguments from incommensurability suggest that the very business of comparing and attaching values to goods like beauty, or culinary pleasure, or horticultural design, or swimming skill, or motoring speed and arriving at numerical values with which to arrive at conclusions about how and what to maximize suggests the calculus involves incommensurables and cannot be performed without profound presuppositions about the parameters one is to use. Arguments from arbitrariness are also familiar. Are we to maximize pleasure, happiness, utility, or moral goodness? And over what period of time and what conceptual grouping are we to apply? Why prefer

<sup>8</sup> Bentham 1789: I.1.    <sup>9</sup> Sidgwick 1907.    <sup>10</sup> Hare 1952.    <sup>11</sup> Smart 1973.

the pleasure of the people in Group X over the pleasure of people in Group Y? Should we maximize the pleasure over the next ten minutes or the next ten years or the next hundred years? And if one of these possibilities, why? The results would achieve quite different outcomes and spatio-temporal arbitrariness bedevils the whole calculus. Given the fixation on consequences, there are serious arguments from contingency such as those of A.N. Prior. These suggest that the very business of calculation presupposes a freedom that must be logically impossible if the future is fully determinate. This is admittedly a general problem in philosophy but one that is particularly acute for those who want to base their ethics on consequences, insisting that there are determinable and calculable answers to moral questions based on a determinate future.<sup>12</sup>

These broader questions about arbitrariness, incommensurability and contingency aside, perhaps the most serious problem with utilitarianism is its instrumentalism. This argument is as old as the story of Socrates refusing to become complicit with the corrupt oligarchs in the execution of the innocent Leon. It is visible in Sophocles's *Antigone* where Antigone refuses to recognize as binding the unjust laws that denied her the right to bury her dead brother:

Yea, for these laws were not ordained of Zeus, and she who sits enthroned with gods below, Justice, enacted not these human laws. Nor did I deem that thou, a mortal man, could'st by a breath annul and override the immutable unwritten laws of Heaven. They were not born today nor yesterday; they die not; and none knoweth whence they sprang. (Sophocles, 1912 p. 61)<sup>13</sup>

Bernard Williams's famous 'Jungle Jim' example, in which the bloodthirsty Pedro demands that Jim kill an innocent man in order to save the ten Indians he himself is threatening to kill, is an example designed to challenge the idea that it would be justifiable (still less, necessary) for a person to kill an innocent man to pacify the terrorist.<sup>14</sup> The end of saving the group by adopting the killer's homicidal intention would neither justify nor necessitate the means used. Furthermore, any refusal to adopt the homicidal design of the killer, could not amount to homicide of the group by omission. That act would remain the choice of the intentional killer. Only a false understanding of human responsibility and human

<sup>12</sup> On the argument from contingency, see Prior 1968: 47–48. <sup>13</sup> Sophocles 1912.

<sup>14</sup> Williams 1973. 'A Critique of Utilitarianism' in J.J.C. Smart and Bernard Williams, *Utilitarianism: For and Against*. Cambridge University Press.

integrity would ascribe to the refuser the homicide by omission of the group. Again, Anscombe's resistance to the award of Mr Truman's honorary degree<sup>15</sup> was framed in terms of her opposition to his ordering of the dropping of atomic bombs on cities of innocents at Hiroshima and Nagasaki. Her opposition is precisely to the instrumentalism which would entail killing the innocent to maximize the happiness of numerous others, in short, 'doing evil that good may come'.

To put the problem more starkly, the theory appears to imply that it would be necessary to kill one innocent homeless man to supply organs for ten others who needed them in order to survive. Ten, after all, trumps one. Indeed, two trumps one. And the socially desirable must, on any utilitarian analysis trump those widely classified as 'less desirable'. The best utilitarian answers to questions about why it would be wrong to kill the homeless man to distribute his organs to those who needed them to survive, propose such 'rule utilitarian' ideas as that it would erode trust and respect for the law, undermine attitudes of care for the weak and have long term bad consequences. These are among the answers given by rule utilitarians, Richard Brandt<sup>16</sup> and Brad Hooker.<sup>17</sup> Although the response appears plausible at first glance, it also raises the counter-objection that were the deed to be performed entirely in secret so that there was no threat to the rule, to public trust, and no public scandal, the act would somehow become morally acceptable! This answer is far from satisfactory. Killing the homeless man remains an injustice whether or not it is performed in secret. It is depraved whether or not it undermines public trust or undermines the rule of law. The confidentiality of the arrangement affects questions surrounding public scandal to be sure. However, it simply does not account for the fact that killing the homeless man is an evil in its own right independently of any associated issue of public scandal, social attitudes or public confidence. It is a grave injustice done to the homeless man both in his humanity and in his innocence.

In the final analysis, utilitarianism, both act- and rule-, is forced to admit that anything can be done if the outcome is for the better. And it is this

<sup>15</sup> Anscombe 1981 'Mr Truman's Degree: 62-71.

<sup>16</sup> See e.g. Brandt 1959. Prentice Hall. Brandt outlines a theory in which moral rules are considered in sets called 'moral codes'. He then goes on to propose a Kantian-style imperative so that a moral code is justified when it is the optimal code that would maximize *the public good* more than any alternative code would.

<sup>17</sup> See also Hooker 2000.



openness to injustice that is the central problem with utilitarianism. It is driven to affirm the justice of injustice, the good of evil, and the rectitude of what is obviously wrong. By insisting that failures to prevent evil amount to causing evil while glossing over the question of how this is to be achieved (e.g. by complicity with the oligarchs in the case of Socrates or with Pedro the terror militant in the case of Jungle Jim or with the organ harvesters in my case of the homeless man), the utilitarian is forced to morally implausible conclusions that cannot be accounted for without adopting a more Socratic approach to injustice, wrongdoing and vice. In short, it is necessary to resort to the agent-centred ethic favoured by Socrates and developed in the natural law tradition.

Among the moral principles and doctrines advancing the Socratic ideal of not doing evil that good may come are such doctrines that have application in certain classes of case of moral conflict. Moral conflicts arise when the performance of an action will produce both good and bad effects. On the basis of the good effect, our duty appears to require performance of the action; but on the basis of the bad effect, it seems our duty not to perform it. The principle of double effect (PDE) is a set of ethical criteria for evaluating the permissibility of acting when one's otherwise legitimate act – for example, relieving a terminally ill patient's pain – will also cause an effect one would normally be obliged to avoid – for example, the patient's death. Double-effect reasoning is to be found in the thought of Thomas Aquinas (in his discussion of self-defence in his *Summa Theologica*).<sup>18</sup> By outlining four requirements, the principle supplies a tool that allows the differentiation of moral cases in such realms as palliative care, self-defence, defence of third parties, and the just conduct of war. The four requirements, briefly and without labouring the matter, are that: the nature of the act is *itself* good, or at least morally neutral; the agent intends the good effect and not the bad (the evil effect must be a foreseen side effect not intended); the agent does not use the evil as a means to the good or as an end itself; the good effect outweighs the bad effect in circumstances sufficiently grave to justify causing the bad effect and the agent exercises due care to minimize the harm (or proportionality requirement). These very principles are among those necessary to distinguish between the acts of a terrorist and those of an

<sup>18</sup> *Summa Theologica*, II-II Q. 64, art. 7.

agent aiming at legitimate activity foreseeably involving death but legitimately undertaken.

On this view, while grossly disproportionate punishment could not be legitimately imposed even on a guilty party, proportionate punishment could be so imposed even if it had bad consequences, say, on the family of the accused person. This latter would be seen as a legitimate side effect of a licit and justifiable act of punishment. An act of imposing a grossly disproportionate act of punishment, by contrast would mean using an unjust means to achieve a putative good end (e.g. deterrence). This brief foray into the means–end, agent-centred Socratic thinking of the natural law tradition, of course, goes only some small way to explaining the armoury of conceptual machinery available in the natural law tradition. It does not profess to solve all its borderline cases and grey areas.<sup>19</sup>

#### 4. Rational Autonomy

Autonomism (or hard ethical liberalism) insists that the autonomous decisions of adults, in particular, are their own business. Where no harm is done, they ought to be respected. Autonomy – or consent, provided that no harm is done, is regarded the touchstone of moral value both individual and social. On the strength of this doctrine, a raft of activities, from psychiatrically dangerous drug use to prostitution, are recommended as ‘morally neutral’ and sensibly left open to financial exploitation by those canny enough to create the industry. John Stuart Mill’s Harm Principle is embedded in much legal and moral thinking in contemporary Western philosophy and favoured by many, if not, most, professional philosophers.<sup>20</sup> Autonomism (or hard liberalism) is to be contrasted with the *rational autonomy* recognized by theorists in the natural law tradition.

<sup>19</sup> There are, of course, sensible questions about whether the proportionality requirement in the PDE involves the presupposition that consequences are indeed commensurable after all, supplying a way out for the utilitarian. One possible reply is that if the proportionality requirement comes *after* an agent-centred, virtue-based and Socratic ethic, the all-out and parameter-free problems of incommensurability are partially mitigated.

<sup>20</sup> Mill 1861. See also Nozick, 1974: 58: ‘My nonpaternalistic position holds that someone may choose (or permit another) to do to himself anything, unless he has acquired an obligation to some third party not to do or allow it.’ Nozick’s view would of course permit the very case of consensual cannibalism described, as would Mill’s Harm Principle.

Rational autonomy is autonomy informed by practical reason and responsive to intelligible human goods and the human capacity for practical rationality. This rational limit on autonomy is one of the fundamental differences between autonomism – or hard liberalism – and the reasoning characteristic of the natural law tradition. Autonomism regards the autonomous decisions of adults, as essentially morally neutral. Famous for its harm-to-others principle, where no harm is done, expressions of individual autonomy must be respected.

In ‘Heavy Petting’, an article readily available online, Peter Singer<sup>21</sup> argues that we are animals and, in particular, not unlike great apes. This, he claims, implies that sex across the species barrier i.e. bestiality, is not an ‘offence to our status and dignity as human beings’. He argues that sexual activities between humans and animals that result in harm to the animal should remain illegal, but that ‘sex with animals does not always involve cruelty’ so that ‘mutually satisfying activities’ might be enjoyed between humans and animals. These implausible conclusions are the direct result of Singer’s adumbrated and conceptually limited brand of moral theory. In particular, they derive from his utilitarianism combined with a misguided understanding of human autonomy. It might be thought that the article is intended in jest and the ideas touted for their shock value, the mainstay of many an academic’s scholarly renown. A careful reading will reveal, however, that he is perfectly serious. That he means what he says emerges, at least in part, by his careful elaboration of his own conceptual machinery to come to his provocative conclusion. It also emerges in virtue of his failure to consider the possibility of human addictions and pathologies in a fully developed account of morality, virtue and vice. But it becomes perfectly plain that he means what he says when we hear Marvin Olasky report that Singer believes necrophilia too is perfectly unproblematic and morally permissible.<sup>22</sup>

Since ‘mutually satisfying’ sexual activity can be conducted without pain to the animal and autonomously by both animal and human, Singer is logically driven to agree that the activity is therefore morally permissible and no offence to human dignity. After a discussion of the great apes, he

<sup>21</sup> Singer 2001.

<sup>22</sup> Says Olasky: ‘For example, when I asked him . . . about necrophilia (what if two people make an agreement that whoever lives longest can have sexual relations with the corpse of the person who dies first?), he said, “There’s no moral problem with that.” By Olasky, M. *Worldmag* Nov. 27, 2004. [www.worldmag.com/2004/11/blue\\_state\\_philosopher](http://www.worldmag.com/2004/11/blue_state_philosopher)

concludes by saying that '[t]his does not make sex across the species barrier normal, or natural, whatever those much-misused words may mean, but it does imply that it ceases to be an offence to our status and dignity as human beings'.<sup>23</sup> Because his theory is bereft of any sound teleology, Socratic means-end reasoning and principles of rational autonomy (incorporating principles of practical reason, and an understanding of the virtues and the common good), he is driven to these bizarre conclusions.

Singer avers that bestiality, is not 'an offence to our status and dignity as human beings'. The same could be said of sex with 'willing' children and infants, as Tom Regan<sup>24</sup> has rightly noted (pp. 63–4, 89). It could also be said of incest even in standard abuse of power contexts. Mass human cloning might also be thought to do no immediate harm and indeed only maximize happiness (where non-existence is the alternative). Necrophilia, as we have seen, is no problem for Singer. Consensual cannibalism too could be justified on utilitarian and autonomist grounds, and there are those only too ready to defend it in academic journals on autonomist grounds.<sup>25</sup> Given the available conceptual principle, there is no reason to regard it as morally problematic. Certainly, nothing in Singer's theory supplies the conceptual gap. Any insistence that bestiality might involve human vice or mental illness appears to him naturalistic fiat unsubstantiated by utilitarian and autonomist findings. In fact, the failure is indeed conceptual. But the deficiency derives not so much from his audience's tolerance-deficit as his own consequentialist and autonomist worldview.

Singer's moral legalism drives him to the view that bestiality is morally neutral and, possibly too, dignity-affirming because, on his analysis, there is no harm done. But what kind of harm was he looking for? Many kinds of fraud, tax offences, parking offences, employment rules, town planning

<sup>23</sup> Singer 2001. <sup>24</sup> Regan 2003: 63–4, 89.

<sup>25</sup> One paper that attempts to justify Armin Meiwes' cannibalism is by Wisniewski 2007: 11–21. Abstract: 'Recently, a man in Germany was put on trial for killing and consuming another German man. Disgust at this incident was exacerbated when the accused explained that he had placed an advertisement on the internet for someone to be slaughtered and eaten – and that his "victim" had answered this advertisement. In this paper, I will argue that this disturbing case should not be seen as morally problematic. I will defend this view by arguing that (1) the so-called "victim" of this cannibalization is not in fact a victim of murder, and that (2) there is nothing wrong with cannibalism.' I am grateful to Paul Bogdanor for referring me to this article and that of Olasky 2004.

regulations, drugs and deception offences might invite the question, 'Well, where's the harm in that?' There would indeed be no immediate harm and certainly no pain (qua 'brain firing'). Yet most would recognize these matters as raising ethical questions affecting life lived in society. Singer's autonomism, in virtue of its failure to regard these as worthy of moral accounting, is, to that extent, faulty. Never mind the implausibility of his 'personism' (Laing 1997, etc.),<sup>26</sup> his account seriously lacks the very conceptual apparatus that would allow a proper identification of vices, mental and physical ill health, anti-social behaviour, inter-generational loss, and failures of coordination of action for the common good.

If we are not free to park our cars in prohibited zones even though there is no immediate harm to others, how much more obvious should it be that internet predator cannibals should not be free to prey on the vulnerable, the mentally ill, the depressed, intoxicated, addicted and young. Furthermore, there is a public interest in ensuring that there be no burgeoning industry in homicide and violence, whether for reasons of sexual excess or for financial gain. While bestiality might appear unproblematic to utilitarians like Singer, it is not clear that it does not put both animals and other vulnerable victims in jeopardy. By normalizing excess, licensing distorted sexual activity (like necrophilia and bestiality) and praising it publically as 'morally unproblematic', the autonomist vision obfuscates reality. There are indeed rational limits to individual autonomy even when there is no immediate harm. This is especially obvious in other areas of social life.

In addition, any coherent moral theory must be able to discern pathologies and vices.<sup>27</sup> Singer's autonomism obliges us to occupy a space where we are capable of doing neither – largely for want of theoretical apparatus. There is no public interest in elevating pathologies and placing them on the same footing as the rational and worthwhile. So to do, particularly in the realm of ethics, involves misunderstanding and invites social disorder, endangering the vulnerable and undermining perfectly licit industry and political life. Many of the greatest tyrants in history have been men with pathological tendencies. To normalize bestiality, consenting cannibalism,

<sup>26</sup> This is to say nothing of the defects of Singer's 'personism': his theory that permits infanticide on the grounds that the very young lack rationality, autonomy and self-consciousness: Laing 2004: 184–216; Laing 2013: 336–340; and Laing 1997: 196–224.

<sup>27</sup> *Republic* 1998 (396a).

necrophilia and the like, is as much to bring the bestial into mainstream political life as to marginalize objectors. Pathologies then, must be seen for what they are. There is no public interest in regarding them as equal in kind to other human activities, in which society has an interest.

Bereft of the very conceptual framework offered by the natural law tradition – with its recognition of principles of practical rationality (a natural curb on irrational expressions of human autonomy), its contemplation of the virtues and vices,<sup>28</sup> its sensitivity to mental and physical pathologies, and its developed understanding of public interest and the common good – we are driven, on his analysis, to implausible practical conclusions. Instead of extolling vices, addictions and pathologies as ‘dignified’, and currying favour with bestialists, online cannibals and kleptomaniacs, we should, as Singer himself is fond of saying, ‘rethink’ this metaethic to avoid the philosophical dead ends into which he leads his unsuspecting disciples. Addictions and pathologies, whether bulimia, kleptomania, bestiality, necrophilia or consensual cannibalism, while in some cases failing to trigger the famous harm-to-others principle, need to be seen for what they are, namely, vices or ill health or both. These in turn may be antisocial or, in certain cases, dangerous. That they are a feature of our humanity is still no reason to think that they therefore fall into the hazy domain of the ‘morally neutral’. Still less is it any moral justification.

Understanding our own habits, pathologies, addictions and weaknesses (a matter given detailed attention by Aristotle in his *Nicomachean Ethics*)<sup>29</sup> may lead to a proper sympathy for one another. Fellow feeling is especially necessary in a world that so easily views destructive addictions as a welcome opportunity for financial exploitation. For the families and friends of those addicted, the philosophical trap set by the autonomist is far from entertaining. Without access to that fuller understanding, we are not in any position to render serious moral analysis. A full and rational moral theory must operate with sufficient theoretical apparatus, a sound theory of human virtue and vice, a coherent model of mental and physical ill health, and a comprehensive model of the demands of social coordination and the common good. It must also be responsive to intelligible human goods and the capacity for practical reason. Unless it does so, it inevitably invites financial empires

<sup>28</sup> See e.g. MacIntyre 1984. <sup>29</sup> Aristotle, *Nicomachean Ethics*.

exploiting the hapless, poverty stricken, mentally ill and vulnerable. It also undermines the common good.

However intrepid and entertaining the autonomist ethic, a theory that cannot account for the rational limits of autonomy must be rejected. Autonomism, in the final analysis, is conceptually flawed, whether in the realm of human sexuality or in more mundane matters, like parking regulations and town planning. These defects, however, can readily be supplied by the wealth of principle proffered by the natural law tradition, steeped as it is in virtue theory, political theory and, when all is said and done, a more comprehensive metaphysics, one which is responsive to intelligible human goods and the capacity for 'practical rationality'.

### **Four Paradigms – Their Meaning and Explanation**

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Teleological reasoning, anti-relativism, Socratic means–end reasoning and the rational exercise of autonomy (complete with a true understanding of both the virtues and the common good) are fundamental to natural law reasoning in applied ethics. This essay has not sought to supply any exhaustive account of this ethical reasoning. Still less has it set out to solve hard cases and grey areas. Nor has it attempted to arbitrate between schools of thought in the natural law tradition (old versus new natural law theories).<sup>30</sup> What has been undertaken is an exploration of the *clear* cases of wrongdoing in any dialogue about practical ethics. What are the assumptions about ethical reasoning that would allow us to regard these kinds of case as examples of injustice, wrongdoing or human vice?

Martha Nussbaum<sup>31</sup> and Amartya Sen<sup>32</sup> have proposed a teleological or 'capabilities' approach to ethics. Without attempting to adjudicate between competing positions in the maelstrom of applied ethics, this is the kind of conceptual account that allows a move away from unacceptable and finally self-defeating forms of moral relativism, both personal and cultural. The analysis allows a discussion of the needs and potentialities of creatures in virtue of the kind to which they belong. In this way, we are able to begin

<sup>30</sup> See e.g. Hittinger 1989. Cf George 1999. <sup>31</sup> Nussbaum 2000.

<sup>32</sup> Sen 1985 and 2004 at 77–80.

to see why it is that genocide undermines not only natural human ends such as human life but also human life lived in a community. Mass human cloning erodes human uniqueness, individuality, often too, transparency, and honesty. It fundamentally destroys the environment of parental love, openness and trust that allows human flourishing. By involving technicians at the very inception of the child, the activity undermines the created person's understanding of himself as generated by the love of their biological parents as distinct from systems of manufacture with all their associated concepts of ownership, sale and destruction. In virtue of being products of human design, subject to contractual conditions and quality control requirements, it, like slavery, suggests illicit dominion over the very nature and qualities of the human being. To even begin to understand why mass human cloning is an unjust means of bringing children into the world, it is necessary to engage in modes of reasoning standardly prohibited by relativism, liberalism and utilitarianism.

Likewise, efforts to analyse the injustice of killing the innocent (or imposing grossly disproportionate punishments), invariably refer back to the question of the legitimacy of the means used to achieve the ends. In Aquinas, as in the natural law tradition, in the context of principles of proportionality, it matters what one is intending to do and what means one is using to achieve one's ends. In our homeless man example, no amount of act utilitarianism or rule utilitarianism can tell us why the organ redistribution is unjust and wrong. If we incorporate the requirement that we perform our misdeeds secretly, literally, anything goes. It is precisely this openness to injustice that is the central problem with utilitarianism. As, we have seen, it is logically obliged to affirm the justice of injustice, the good of evil, and the rectitude of that which is wrong, not merely in grey areas and borderline cases, but in clear cases as well. In short, it cannot be relied on to do any useful work.

Liberalism offers a seductive alternative to oppression and slavery. By emphasizing individual autonomy, it appears to allow a way out of the excesses of illicit dominion and unjustifiable control in other areas of practical ethics. But by failing to understand the rational limits of human autonomy, hard versions of the theory, what I have labelled 'autonomism', are driven implausibly to affirm the permissibility of bestiality, incest, necrophilia and consensual cannibalism. 'If it makes autonomous agents happy', goes the familiar, cheerful refrain, 'why ever not?' Natural law



reasoning allows an escape from the theory's improbable conclusions. In the case of bestiality, not only is the benighted animal's capacity for sexual well-being wholly misunderstood, the sexual functions of the human and beast's bodies are improperly perceived, thereby undermining the sexual and psychological wellbeing of human and accompanying animal. By understanding facets of human development, potentiality and maturity, by understanding human addictions and pathologies, virtues and vices, social coordination in the public interest and the common good, a more comprehensive theory is able to arrive at a sound understanding of human sexuality – and many other matters besides.

## Conclusion

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This paper has proceeded by way of an exploration of clear cases of wrongdoing, injustice and vice. Four ethical paradigms were considered: genocide, disproportionate punishment, mass live-birth human cloning and sexual vices like bestiality, incest and sado-masochistic cannibalism. Clear cases are useful when relativism, consequentialism, instrumentalism and unconstrained liberalism appear to drive us to irrational conclusions. The examples help to identify the forms of reasoning that allow us to see these precisely as examples of injustice, wrongdoing and vice. Without resort to a sensible teleology (or 'capabilities approach' if that language is preferred) we are compelled to assent to an unacceptable relativism, where individual feeling, consensus among Nazis and agreement among paedophiles is regarded as good as any other test of right and wrong, good and evil, virtue and vice. Without access to a sound understanding of teleology, Socratic means–end reasoning, the virtues and vices, public interest and the common good, we are obliged to deny that there could be anything at all wrong with one or all of our paradigms.

Modern moral philosophy often suffers from a dearth of conceptual apparatus. Grand but limited distinctions are set out at the foundation of the theory, and then predictably fail to perform the most basic functions demanded of a plausible applied ethic. It is precisely here that access to natural law reasoning is needed. Of course, it is always open to one's interlocutor to announce his ethical commitment to genocide, grossly disproportionate punishment, mass human cloning or bestiality, incest and consensual cannibalism. In the absence of the natural law principles

of the kind broadly outlined here, it is difficult to respond except perhaps by observing, with Anscombe, that if someone thinks, *in advance*, that these questions really are open, we do not want to argue with him; he shows a corrupt mind.<sup>33</sup>

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<sup>33</sup> Anscombe 1958: 17.

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