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LOYOLA UNIVERSITY CHICAGO

KANT, THE NATURAL LAW, AND THE QUESTION
OF NORMATIVITY IN CATHOLIC ETHICS

A DISSERTATION SUBMITTED TO
THE FACULTY OF THE GRADUATE SCHOOL
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

PROGRAM IN THEOLOGY

BY

JOHN R. CROWLEY-BUCK

CHICAGO, ILLINOIS

AUGUST 2016

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ACKNOWLEDGMENTS

While the writing of a dissertation can be a deeply isolated endeavor, the completion of both a dissertation project and doctoral degree program are not. A great many colleagues, family, and friends came together to support me throughout my studies at Loyola University Chicago, and I would like to take a moment to extend my deep and sincere thanks to them for their friendship, love, and support.

The Department of Theology at Loyola University Chicago has been an invaluable resource for my intellectual development over the past seven years. Many in the department have both supported and challenged me personally and intellectually over the years, but I would like to say a special thank you to Susan Ross, John McCarthy, Jon Nilson, and Colby Dickinson. Your leadership, scholarship, and friendship have made my time in the Department both intellectually stimulating and personally rewarding. I would also like to thank Catherine Wolf, Marianne Wolfe, and Randy Newman for all their support—technical, moral, and otherwise—throughout the course of my studies.

In addition to the Department, my time at Loyola University Chicago has been deeply formed and shaped by the work I have done with and for The Joan and Bill Hank Center for the Catholic Intellectual Heritage. Working at The Hank Center since 2010 has been a great privilege for me. I have had the opportunity to engage with faculty, staff, and students from across Loyola's different campuses, with guest speakers from around the world, and with a cultural and intellectual milieu that has both challenged and enriched

me. In particular, I would like to thank Joan and Bill Hank for endowing The Hank Center. Without their generous support, I would not have been able to complete my doctoral studies. I am very grateful to them for the opportunities their support has provided me. I would also like to thank the Center Director, Mark Bosco, S.J., the Director of the Catholic Studies Minor Program, Michael Murphy, and the Center's Program Coordinator, Gabija Steponenaite, for being wonderful colleagues and for fostering a work environment that was certainly high energy, but—more importantly—a great joy to come to, and be a part of, every day.

I would also like to thank my friends for their continued support over the past few years, whether or not they were always aware of exactly what I was doing. I want to thank my friends from Boston: Ryan O'Regan, Anna Schleelein Richardson, Clarence Richardson, Mike Sangalang, Anna Sangalang, Doug Murphy, Chelsea Murphy, Katie McKinley, Dominique Burke, and Chris Burke. You have always been such a source of joy for me, I really don't know what I would do without you. I would also like to thank my friends from the Department of Theology—Lauren O'Connell, Teresa Calpino, Jesse Perillo, Jeanine Viau, Dan Cosacchi, Wendy Crosby, Joseph Gulhaugen, Andrea Hollingsworth—and from the Hank Center—Dan Wood, Lucia Wylie-Kellermann, Elisabeth Loren, Zac Davis, Angelo Canta, Guy Valponi—for their friendship, support, and encouragement.

I would like to say a special thank you to my colleague Wesley Dingman in the Department of Theology, who helped me edit, review, and format my dissertation.

Formatting would have been a very difficult process indeed, if it had not been for Wes's knowledge, guidance, and assistance.

When I began at Loyola in 2009, I was one of four in my cohort—two theologians and two ethicists. Without the encouragement, challenges, and friendship of the other three members of my cohort, I would not have developed into the scholar and person I am today. I want to thank, here, Silas, Morgan, Tara Flanagan Tracy, and Dan Dion for being such good friends and colleagues with me over the years. It has been a joy to come to know you and to know your work.

When I started working on my dissertation, I became part of a group of doctoral candidates who met monthly to discuss ideas, read each other's work, and offer critical feedback on drafts of proposals, chapters, articles, and anything else we brought to the table. This dissertation group has been an incredibly fruitful endeavor, not only in terms of academic development, but also in terms of personal friendships. I want to thank them all for the many gifts they have given to me throughout the course of writing my dissertation: Silas Morgan, Tara Flanagan Tracy, Michael McCarthy, Grant Gholson, Christian Cintron, Sara Wilhelm Garbers, and Erica Saccucci. You have all been so involved in the process and development of my dissertation, and I really want to thank you for all the readings, comments, challenges, and commendations you have given me.

While many have contributed to the development of my dissertation project, none have done so more directly than my committee. I would like to thank Cristina Traina for the invaluable insights she offered on the argument of my dissertation, its overall structure, and the areas in my thought and my writing that could be further developed as

I move forward with this project. I would like to thank Mike Schuck for not only being a great committee member, but for being a great mentor and friend over the years we have worked together. I have learned so much from you both personally and professionally—it is a great joy to call you a colleague and a friend. Finally, I want to thank my dissertation director, Hille Haker. It is hard to identify another living figure in my intellectual history who has so fundamentally changed the way I look at the world. When I began my doctoral studies, I never dreamed I would write the dissertation I have written, but with your support, your challenges, and your unceasing encouragement, I have done something I never thought I could do. I only hope that I can become half the scholar, mentor, and friend you have been for me. Thank you.

Finally, I want to thank my family. From the highs to the lows, they have supported me and encouraged me throughout my many years as a graduate student. To my Mother and Dad, my brother David, my sister Melissa, my partner Fede, and my Grandmother Helen—I say, from the bottom of my heart, thank you for everything! I would not be who I am today—as a scholar, as a teacher, or as a person—without you.

I dedicate this dissertation to the loving memory of the two members of my family who did not see it to completion: my cousin Lisa A. Crowley and my Grandfather, John R. Crowley.

In loving memory of my grandfather,
John R. Crowley (1923–2014),

and my cousin,
Lisa A. Crowley (1988–2009)

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LIST OF ABBREVIATIONS

AA	<i>Akademie-Ausgabe</i> of Immanuel Kant, <i>Kants gesammelte Schriften</i> , edited by the Deutschen Akademie der Wissenschaften zu Berlin (formerly the Königlichen Preussischen Akademie der Wissenschaften), 29 vols. (Berlin: de Gruyter, 1900–).
CI	Categorical Imperative
FoH	Formula of Humanity
FoUL	Formula of Universal Law
KoE	Kingdom of Ends
<i>STh</i>	<i>Summa Theologiæ</i>

CHAPTER I
CATHOLIC ETHICS AND THE NATURAL LAW:
A SURVEY OF THE TERRITORY

Introduction

If there were any question as to the traditional starting point of Catholic ethics in the 21st century, one need look no further than the opening line of the 2010 Concilium volume titled *Human Nature and Natural Law*: “The primary traditional basis of Roman Catholic ethics and politics is the ‘natural law.’”¹ The natural law has been, and continues to be, the *modus operandi* for ethical reflection and action in both the Catholic Church and in the Catholic community at large. The argument grounding this position is that the human person, understood as the *imago Dei*, the ‘image of God,’ can only act ethically—can only reflect on their lives and actions ethically—and can only be recognized as a person with dignity, when she acts in accordance with her ‘nature.’ That is to say, in accordance with

1. Lisa Sowle Cahill and Hille Haker, “Editorial: Human Nature and Natural Law: A Critical Discussion,” in *Human Nature and Natural Law*, ed. Lisa Sowle Cahill, Hille Haker, and Eloi Messi Metogo, Concilium 2010/3 (London: SCM Press, 2010), 7. It should be noted, here, that the natural law is a wide and encompassing discourse. Given the longevity of the tradition, there are many natural *laws* operative within the global discourse of Catholic ethics today. Within the parameters of this project, however, I will focus on a particular 20th century Anglo-American reception of the natural law tradition. This strand of the tradition is selected not arbitrarily, but because it represents the operative standpoint from which the practice of Catholic ethics in the Anglo-American world is done today. While there are certainly other strands of natural law thinking operative in different contexts, my focus will be on the particular strand of the tradition operative within 20th and 21st century Anglo-American Catholic ethics.

the image of God imprinted on her heart. The ethical life, which Catholics, as well as non-Catholics, aim to live, can only be achieved, on this reading, insofar as that life accords with the nature of the human person understood in accordance with the natural law, operating out of the *imago Dei*.

What happens, however, when we ask the question: Is the natural law really the most appropriate, and the most compelling, foundation for Catholic ethics in the 21st century? From one point of view, the answer might be a more or less unqualified *yes*. Insofar as an individual or group identifies itself as Catholic, the natural law might well remain the most appropriate and compelling foundation for ethical reflection and action because we understand ourselves, theologically, as created beings in the divine image. Scripture and tradition both tell us that “God created humankind in his image” (Gen 1:27 NRSV) and, after the addition of this *imago Dei* to the Garden of Eden, God saw that creation was “very good” (Gen 1:31). The concept of the *imago Dei*—as it is identified in the natural law tradition—emphasizes those attributes of God that are approximated in the human person: intelligence, freedom, virtue, creativity, and rationality. While it remains to be seen how these characteristics of the *imago Dei* come to be understood in the natural law tradition, insofar as the natural law tradition does ground its anthropology therein—an anthropology that, while acknowledging developments in how we *understand* the human person, admits of little alteration or change in the human person *as such* since the time of creation—one can support the position that the natural law remains the most appropriate and compelling foundation for Catholic ethics.

If, however, the answer to the above question is *no*—if, for example, the natural law appears unable or unwilling to responsibly, effectively, and compellingly attend to pressing questions of moral and ethical action in the world—then a further question must be asked: If not the natural law, then what resources ought we draw upon to develop an appropriate and compelling foundation for Catholic ethics in the 21st century? How do we come to understand the human person as dignified in an ethical framework not grounded in the logic of natural law thinking? How do we maintain normativity in ethical reflection without identifying a metaphysical superstructure such as that which the natural law provides? What does this mean, particularly in a theological sense, about how the human person is identified within the Catholic imagination *as* a human person?

Within the matrices of these questions is the space in which I locate this project. My goal, here, is to embark upon an exploration of the possibilities and potentialities of alternative resources for ethical reflection which are available to the Catholic-Christian tradition today. Specifically, I will turn to a very particular line of argumentation and thought in the history of western ethical reflection: the moral and ethical works of Immanuel Kant. What I will argue, in the constructive portion of my project, is that Catholic ethics finds in the practical philosophy of Immanuel Kant a critical interlocutor for developing an ethical theory which is both appropriate to, and compelling for, a responsible, yet critical, ethics for the 21st century. Through the interpretive lens of the philosopher Christine Korsgaard, Kantian ethics offers us a philosophically sound, intersubjectively shareable, and morally normative ethical theory that, when properly reflected on, offers its interlocutors a standpoint from which to engage in ethics as an *activity*—as a *form of life*.

The specific place in Kant's works I will turn to in order to make this argument is Kant's *Groundwork for the Metaphysics of Morals* (*Groundwork*) and, within this work, Kant's second formulation of the Categorical Imperative (CI): the Formula of Humanity. With Korsgaard as our guide, we will explore the contours of a Kantian ethics that foregrounds questions of humanity, dignity, ethics, and agency—all constitutive features of a normative ethics for the 21st century.

However, before exploring this point—and in order to engage in a survey of the territory of the natural law today—I will begin this chapter by laying out *the* preeminent foundation for natural law thinking in the Catholic tradition: the natural law theory of St. Thomas Aquinas, as articulated—principally—in his *Summa Theologica*. Through a close reading of Aquinas's treatises on the law and the natural law, we will have before us some of the key themes and theories that will be taken up, and interpreted, by the contemporary natural law thinkers this chapter will later engage. In articulating Aquinas's understanding of the natural law, we will see how both Aquinas and, consequently, the tradition of Catholic ethics that followed from him understands the human person theologically, as participating in the natural, divine order of creation. Having articulated Aquinas's understanding of both law, in general, and the natural law, in particular, this chapter will then turn to our three interlocutors and their respective interpretations of both Aquinas and the natural law. The goal in each of these sections will be to both articulate the ways in which the natural law is being employed in contemporary, Catholic-Christian ethical discourse, as well as the understanding of the human person that is narrated therein. At the end of this chapter, we will have before us an exemplary

picture of the major trends in the natural law as it is understood and practiced in Catholic-Christian ethics today, as well as an understanding of the human person as she is understood within said framework. In order to do this, and after discussing the work of Aquinas, this chapter will analyze the natural law as it is manifested in the works of John Finnis, Jean Porter, and Cristina Traina. First, however, we turn to Aquinas and the *Summa Theologica* in order to articulate the understanding of the natural law invoked by both the aforementioned tradition and figures.

St. Thomas Aquinas and the Natural Law

According to theologian and ethicist Stephen Pope, “Natural Law is the primary traditional basis of Catholic ethics and politics, and Thomas Aquinas was its first and most influential architect.”² Echoing Cahill and Haker,³ Pope, I believe, is correct in his assessment of the centrality of the natural law to Catholic ethics and theology today. The question that remains to be explored, however, is what precisely *is* the natural law according to Aquinas and how does it relate to broader questions of ethics and the human person within the current framework of Catholic ethics? In other words, what is the source of the normativity of the natural law that permits it to serve as the foundation for Catholic ethics and as constitutive for identifying the agency and dignity of the human person? In order to explore Aquinas’s thought on the natural law—how he makes use of the natural law in his theology and ethics—we must begin with his analysis of what Law is

2. Stephen J. Pope, “Tradition and Innovation in Natural Law: A Thomistic Interpretation,” in *Human Nature and Natural Law*, ed. Lisa Sowle Cahill, Hille Haker, and Eloi Messi Metogo, Concilium 2010/3 (London: SCM Press, 2010), 17.

3. See note 1 of this chapter.

in general. Following from this, we will evaluate Aquinas's Treatise on the natural law and, finally, explain how this treatise on natural law provides a framework for Catholic ethics and grounding for an understanding of the human person.

It is important to note, at the outset of this analysis, that Aquinas's work in the *Summa* extends well beyond his Treatises on Law and the Natural Law. The construction and content of the *Summa* reflect the cosmic mosaic that Aquinas believed the universe to be—with each facet of the system both discoverable and intelligible by human persons. While it has become a truism that one cannot—and ought not—understand Aquinas and his theological endeavor without considering the whole scope of his work, the practice of separating the Treatises on the Law and the Natural Law from the rest of Aquinas's framework remains a challenge. Therefore, I simply want to note here that the limiting of the present discussion of Aquinas's *Summa* to only two treatises reflects, not a prescription for how one ought to engage Aquinas, but rather a recognition of a methodological limitation reflected in Catholic ethical discourse on this theme. With this qualification in mind, we now turn to Aquinas's Treatises on the Law and the Natural Law.

I-II, Q. 90: Of the Essence of the Law

For Aquinas, law—all law—relates to the “extrinsic principles of acts.”⁴ That is, all law relates, first and foremost, to the external (i.e. objective) acts which human persons

4. Thomas Aquinas, *Summa Theologiæ* I-II, q. 90, pr. For consistency's sake, I will be using the translation of the *Summa* done by the Fathers of the English Dominican Province (*Summa Theologica* [New York: Benziger Bros., 1947–1948]). When quoting the *Summa* from the works of Finnis, Porter, and Traina, I will use the translations of the work that they provide,

undertake and undergo. Internal (i.e. subjective) acts—those activities of the human person within her or himself—relate, not to law in the first instance, but to grace—the grace of God.⁵ With regard to law, however, the principal orientation of the inquiry in Aquinas is to external acts. The first inquiry Aquinas makes into the nature of law is to ask the question: Does law pertain to reason? This question is important because the subject and role of reason will be one that follows us throughout the course of this project. Aquinas’s answer to this question is *yes*, law pertains to reason because “the rule and measure of human acts is ... reason,” and, consequently, “[the] law is a rule and measure of acts, whereby man is induced to act or is restrained from acting.”⁶ Aquinas’s argument, here, depends on an earlier argument he put forth in the *Summa* about the nature of commands and their relationship to law.⁷ The point here is that the law is

regardless of whether or not the translation ‘matches’ the translation provided by the Fathers of the English Dominican Province edition.

5. Grace, for Aquinas, is not simply the internal force that animates human being—though it is that as well. Grace is the condition for the possibility of creation. For Aquinas, grace ‘perfects’ nature and operates on both the individual and cosmic scale. It takes something that is good and makes it even better. Specifically in relation to his treatise on the law, grace is that internally motivating force that—when integrated properly into human being and acting—allows us to choose and to act in accordance with God’s choosing and acting. For Aquinas’s own analysis of grace, see *STh* I-II qq. 109–14. For commentary on this treatise, see Timothy McDermott, ed., *Summa Theologiae: A Concise Translation*, by Thomas Aquinas (Allen, TX: Christian Classics, 1991), 307–24. Also, for a contextualization of the notion of grace within Aquinas’s overall life and work—in fact, for an excellent introduction to Aquinas, his life, and his work—see Thomas F. O’Meara, *Thomas Aquinas: Theologian* (Notre Dame, IN: University of Notre Dame Press, 1997).

6. Aquinas, *STh*, I-II, q. 90, a. 1, co.

7. The argument is made in I-II, q. 17, a. 1. This article addresses the question of whether a command, and in the article in question Aquinas is equating ‘command’ and ‘law,’ comes from the reason or the will. Citing both Nemesius (*De Natura Hominis*, xvi [mistakenly attributed to Gregory of Nyssa]) and Aristotle (*Ethics* i.13), Aquinas argues that ‘commands’ come from the reason, not the will. Therefore, when it comes to the question of law, Aquinas has already shown

something pertaining to reason because the law is like a command, and a command is, and must be, an act of the reason. Therefore, the law must, in Aquinas's framework, pertain to reason as well.

The next question Aquinas addresses is the question of whether the law is something that is always directed to the common good—that is, the good of all in the moral community. This teleological inquiry is important for our discussion because it discloses the 'goal oriented/directed' nature of Aquinas's argumentation, and ultimately locates his discussion of law—including the natural law—in a fundamentally social context. Thus, in response to the question of whether the law is something that is always directed to the common good, Aquinas again says *yes*. Insofar as law is the 'rule and measure' of human acts—based, as it is, on the role of reason for commanding action—law, like reason, must have “something which is the principle in respect of all the rest: wherefore, to this principle chiefly and mainly law must needs be referred.”⁸ What is this principle, according to Aquinas, to which law and reason need to be referred? Following Aristotle, Aquinas suggests that the law must be principally concerned with its “relationship to happiness [because] ... the first principle in practical matters ... is the last end: and the last end of human life is bliss or happiness.”⁹ This happiness is not simply the happiness of the individual, but is the happiness of all the individuals to whom the law

that, insofar as commands come out of reason, then so too the law—which commands—comes out of reason.

8. Aquinas, *STh*, I-II, q. 90, a. 2, co.

9. Aquinas, *STh*, I-II, q. 90, a. 2, co. This is also where Aquinas makes reference to the internal support for his argument (see *STh* I-II, q. 2, a. 7 and q. 3, a. 1.).

applies. Therefore, the ‘universal happiness’ of all those under the law is identified as the common good. For this reason, the common good must necessarily be that to which the law is always directed. Thus, in regard to both the human person and her/his social context, Aquinas recognizes that the law must be directed to the common good, insofar as the common good is the goal of both persons and societies. As such, Aquinas is faced with a pressing question: Who makes these laws? In order to contextualize his response to this question, Aquinas embarks on an important discussion of the different dimensions of lawmaking.

The first question he addresses, in this regard, is whether or not the reason of any individual person is competent to make laws. His answer is a qualified *no*: the reason of any individual person, insofar as it is the reason of that person alone, is insufficient for the making of laws. Since laws are based on reason and aimed at the common good, they must be made by an “ordinance of the people.”¹⁰ Aquinas says: “A law, properly speaking, regards first and foremost the order to the common good. Now to order anything to the common good, belongs either to the whole people or to someone who is the viceregent of the whole people.”¹¹ Aquinas’s point here is that laws can only be made by ‘the people’ who are subject to them, and this in two ways: first, the people as a whole *as such* or, second, via a representative of the people, who is able to make laws on their behalf, but only if such a person is invested with this power, by the people, and pursues the explicit aim of the common good.

10. Aquinas, *STh*, I-II, q. 90, a. 3, s.c. (quoting Isidore).

11. Aquinas, *STh*, I-II, q. 90, a. 3, co.

Two elements of law, articulated at this point in Aquinas's argument, are worth noting. First, responding to the claim that any person can make a law for her/himself, Aquinas argues that "a law is in a person not only as in one that rules, but also by participation as in one that is ruled. In the latter way each one is a law to himself, in so far as he shares the direction that he receives from one who rules him."¹² We must keep this question of being a law to oneself—of being an *auto-nomos*—in mind, as it will return in later chapters when we explore Kant's three formulations of the categorical imperative. Suffice it to say, at this point, that while Aquinas and Kant are circumambulating the same question, they will ultimately articulate this question in markedly different ways. Second, responding to a question about the ability of one's reasoning to lead another to virtue, Aquinas says that a private individual has "no coercive power, such as the law should have, in order to prove an efficacious inducement to virtue." Coercion, for Aquinas, is constitutive of law, and this claim raises a series of questions around both the nature of law and how we engage it. This question, too, will have to wait, but it is worth noting how Aquinas approaches it. Thus, when it comes to law—all law—we must keep in mind the questions of who can make laws, to whom laws apply, and how we (if at all) enforce laws.

The final question Aquinas addresses in his general statements about law is the following: Whether promulgation is essential to a law? For Aquinas, the answer is a clear yes. Insofar as a law is imposed on others by rule and measure—necessary elements of Aquinas's argument—then "in order that a law obtain the binding force which is proper

12. Aquinas, *STh*, I-II, q. 90, a. 3, ad 1.

to a law, it must needs be applied to the men who have to be ruled by it.”¹³ Promulgation of a law, for Aquinas, means that said law is not only decreed, but it is also enacted. Without promulgation, law remains abstract and ineffectual. In fact, a law that is not promulgated ceases to be a law at all. If law is to genuinely be law, then it must be put into practice.¹⁴ Having thus established this fourth and final element of law, Aquinas offers his overall definition of law, which will be important for us to consider, not simply in the following analysis of Aquinas’s articulation of the natural law, but also when we turn to Kant and the question of human dignity in later chapters. For Aquinas, law is “an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”¹⁵ This definition applies to all instantiations of law, from the eternal (where God and ‘the law’ are equivalent entities) to the law of sin (which is, for all intents and purposes, simply the absence of any law).

It is interesting to note, for the purposes of this project, the first objection Aquinas takes up in this final analysis of law. The first objection reads: “It would seem that

13. Aquinas, *STh*, I-II, q. 90, a. 4, co. At this point, I want to identify the use of gendered language in quoting Aquinas. For the sake of brevity and readability, I have left the translations of the Fathers of the English Dominican Province as they are in the 1947 text. This invariably gives rise to highly gendered language—such as using the term ‘men’ to refer to all of humanity—and needs to be identified. This same approach will be taken when/if the interpreters of Aquinas, whom I engage later in this chapter, offer their own translations of Aquinas. In my own analysis, any use of gendered language will, I hope, be more balanced and adequately reflective of contemporary forms of gender discourse. Thus, I use the terms ‘she,’ ‘he,’ and ‘they’ fairly interchangeably, unless otherwise noted.

14. This is a point that will be taken up by both Kant and Korsgaard in later chapters. The putting into practice of a law—legal, moral, or otherwise—is essential to what it means to engage in practical reasoning. More will be said about this in chapter 3.

15. Aquinas, *STh*, I-II, q. 90, a. 4, co.

promulgation is not essential to a law. For the natural law above all has the character of law. But the natural law needs no promulgation.” Aquinas raises the issue of the natural law and responds to this objection by arguing that “[the] natural law is promulgated by the very fact that God instilled it into man’s mind so as to be known by him naturally.”¹⁶ The natural law, above all other forms of law, possesses the character of law, according to Aquinas. Therefore, it is to the natural law that we will now turn, in an effort to articulate not only what the natural law is for Aquinas, but also how it relates to the questions of ethical normativity and human dignity.

I-II, Q. 94: Of the Natural Law

Understanding Aquinas’s articulation of the natural law is absolutely essential for understanding how the natural law has been received and employed in the tradition of Catholic ethics and theology. According to Pope, who sees the natural law as *the* framework for contemporary moral and ethical reflection in the Catholic-Christian tradition, Aquinas defines the natural law as “the rational creature’s participation in the eternal law, the intelligent order that pervades all of creation.”¹⁷ In order to more clearly and explicitly articulate Aquinas’s argument, we will look at the treatise on natural law in greater detail, surfacing those elements of his argument that go into both constructing a framework for Catholic ethics and grounding the dignity of the human person.

The first question that Aquinas addresses in this analysis is the question of what, precisely, the natural law is. The specificity of this first question centers on whether or not

16. Aquinas, *STh*, I-II, q. 90, a. 4, arg. 1 and ad 1.

17. Pope, “Tradition and Innovation in Natural Law,” 17.

the natural law is a habit.¹⁸ Aquinas says both yes and no. If we consider ‘habit’ in its ‘proper and essential’ sense, then the answer is *no*. Aquinas argues that “that which a man does is not the same as that whereby he does it ... Since then a habit is that by which we act, a law cannot be a habit properly and essentially.” However, if we consider natural law in an alternative sense of ‘habit,’ as “that which we hold by a habit ... [then] it is in this way that the natural law may be called a habit.”¹⁹ Aquinas wants to draw a distinction here between habit-*qua*-possession and habit-*qua*-relation. If the natural law is understood as a habit in the former sense—that is, as a possession, or trait, of the human person (one’s eye color, for example)—then this understanding is incorrect. The natural law is not a possession, or trait, of the human person. If, however, the natural law is understood as a habit in the latter sense—that is, as a relation, either to itself or to something else (as a principle for one’s action, for example)—then this understanding is correct. The natural law can be understood as a habit in this—but only this—latter sense. The natural law is not a trait of the human person—a fixed, static attribute—but rather a form of relation with the human person, which—to a certain extent—permits of an implicit dynamism within the concept of the natural law, though this claim requires contextualization and qualification.

Aquinas next addresses the question of whether the natural law contains several precepts, or only one. His conclusion: the natural law contains several precepts, and these

18. For Aquinas’s discussion on habit/*habitus*, see *STh* I-II, qq. 49–50. For a discussion of habits in relation to virtue and virtue ethics, see Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids, MI: Eerdmans, 2005), 163–77.

19. Aquinas, *STh*, I-II, q. 94, a. 1, co.

precepts are self-evident with regard to practical reason. “Any proposition is said to be self-evident in itself, if its predicate is contained in the notion of the subject,” and while not all self-evident precepts are actually so—since you might encounter someone who does not understand the subject at hand, and, therefore, cannot know if the predicate is contained therein—there are “certain axioms or propositions [that] are universally self-evident to all.”²⁰ When speaking about speculative reason, Aquinas names the concept of *being* as that which is universally self-evident. When speaking about practical reason—which pertains more immediately to the natural law than does speculative reason—the concept that is universally self-evident to all is the concept of *good*. The first principle of practical reason, says Aquinas, “is one founded on the notion of good, viz. that ‘good is that which all things seek after.’ Hence this is the first precept of the law, that “good is to be done and pursued, and evil is to be avoided.”²¹ Given that *good* is the universally self-evident aim of practical reason, Aquinas suggests that all those instantiations of practical reason that aim at this *good* can be considered precepts of the natural law. This is why, for Aquinas, there can be several precepts of the natural law, rather than just one: “all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently ... [are] objects of pursuit.” To make his point, Aquinas identifies three precepts of the natural law:

In man there is first of all an inclination to good in accordance with nature which he has in common with all substances ... Secondly, there is in man an inclination to things that pertain to him more specifically, according to that nature which he

20. Aquinas, *STh*, I-II, q. 94, a. 2, co.

21. Aquinas, *STh*, I-II, q. 94, a. 2, co.

has in common with other animals ... Thirdly, there is in man an inclination to good, according to the nature of his reason ... whatever pertains to this inclination belongs to the natural law.²²

What is important to keep in mind here is that, for Aquinas, the good is the first precept of practical reason, and therefore the natural law, but the term ‘first’ does not mean ‘only.’ There can be other precepts of the natural law. What these other precepts—however they may be formulated—share in common is their participation in, and orientation toward, the good through practical reason. As shown in the quote above, Aquinas takes it that there are precepts of the natural law that pertain to the nature of the human person *qua* substance, animal, and rational being. While the precise number of precepts may vary, what they all maintain is a constitution by, and orientation toward, the good.

The third question Aquinas asks is whether all acts of virtue²³ are prescribed by the natural law. This question holds particular importance for this project, as it speaks to the tensions present in the relationship between the natural law and the phenomena of situatedness, plurality, and the dialectic between the universal and the particular. Aquinas delineates two ways of thinking about this question and, consequently, two ways of thinking about the acts of virtue. First, Aquinas argues that if we take the acts of virtue “considered as virtuous,” then “all virtuous acts belong to the natural law.”²⁴ This is fairly self-evident, as the argument is a tautology, but, nevertheless, how does Aquinas support

22. Aquinas, *STh*, I-II, q. 94, a. 2, co.

23. For Aquinas’s discussion of virtue, see *STh* I-II, qq. 55–70. Here, Aquinas offers the following definition of virtue, which he takes from Augustine: “Virtue is a good quality of the mind, by which we live righteously, of which no one can make bad use, which God works in us, without us.” (*STh* I-II, q. 55, a. 4).

24. Aquinas, *STh*, I-II, q. 94, a. 3, co.

this claim? “Since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue.”²⁵ In this sense, then, Aquinas is arguing that all acts of virtue are prescribed by the natural law because virtue—that is, acting in accordance with reason—is the form of the soul. On the other hand, however, Aquinas considers those acts of virtue “acts considered in their proper species”²⁶—i.e. as acts. In this latter case—of virtuous acts *qua* acts—not all acts of virtue are prescribed by the natural law. To illustrate this point, Aquinas presents the argument in Objection 3 that “those things which are according to nature are common to all. But acts of virtue are not common to all: since a thing is virtuous in one, and vicious in another.”²⁷ In his reply to this objection, Aquinas argues that “it is owing to the various conditions of men ... that certain acts are considered virtuous for some, as being proportionate and becoming to them, while they are vicious to others, being out of proportion to them.” Here, Aquinas is identifying the need for balance, and discernment, between the universal and the particular considered within the situatedness of individuals’ particular contexts. Some situations may call for certain virtuous actions that may, perhaps, not be considered virtuous in a different set of circumstances. Considered as acts, virtues may be appropriate and applicable in some situations, but not in others. While more will be said on this further on in this chapter—particularly in discussing the work of Cristina Traina—we can, at this point, say that on Aquinas’s read, all acts of

25. Aquinas, *STh*, I-II, q. 94, a. 3, co.

26. Aquinas, *STh*, I-II, q. 94, a. 3, co.

27. Aquinas, *STh*, I-II, q. 94, a. 3, arg. 3.

virtue, insofar as they are *virtuous*, are prescribed by the natural law, but acts of virtue, insofar as they are *acts*, are not necessarily prescribed by the natural law.

Implied in the question about acts of virtue is the question of the natural law in relation to the human person, and so Aquinas asks: Is the natural law the same in all men? Once again, Aquinas turns to the human capacity of reason, and the delineation of reason into the speculative and the practical. In speculative reason, which concerns itself with ‘necessary things,’ “truth is the same in all men, both as to principles and to conclusions.” In practical reason, which concerns itself with ‘contingent matters,’ “truth or practical rectitude is not the same in all, as to matters of detail, but only as to the general principles.” Thus, and importantly, concludes Aquinas, “as regards the general principles whether of speculative or of practical reason, truth or rectitude is the same for all, and is equally known by all.”²⁸ The dialectic between speculative and practical reason, particularly with regards to the human person, provides Aquinas—and the tradition that follows from him—with some maneuvering space when it comes to the framework of the natural law. There are cases, this argument suggests, where a general principle is recognized and acknowledged, but where, in the particular application of this general principle, the specificity of the act demands the suspension or rejection of the principle in question. Let us take, for example, the general principle that all human creatures require nutritional sustenance in order to sustain life. The need for nutritional sustenance in order to sustain life is the general, practical principle that is the same in all human creatures—as the natural law dictates. However, if we consider the example of fasting—

28. Aquinas, *STh*, I-II, q. 94, a. 4, co.

for reasons ranging from personal health to religious observance—then we encounter a particular instance in which the general principle—that human creatures require nutritional sustenance in order to sustain life—does not apply to a particular action, or set of actions, which are, or can be, considered virtuous, from a religious perspective, and/or beneficial, from the perspective of personal health considerations. As this particular example attempts to illustrate, Aquinas is suggesting—through the question of whether or not the natural law is the same in all human persons—that there is some flexibility within the natural law. While there are elements of the natural law which are immutable—the rectitude and knowledge of general principles, for example—there are, nevertheless, elements of the natural law which seem to be more mutable and more dependent on acts of reason and virtue and, therefore, on the human person herself. Aquinas even notes “that the natural law, as to general principles, is the same for all ... But as to certain matters of detail, which are conclusions, as it were, of those general principles, it is the same for all in the majority of cases ... and yet in some few cases it may fail.”²⁹ While, as a general principle, human persons need food to survive, there, nevertheless, remain important instances where the suspension of this rule is, given a particular context and setting, required and, in fact, good. The strength, and reach, of Aquinas’s argument on this point will be discussed further on in this chapter; nevertheless, it should not go unnoticed that Aquinas is suggesting an interesting approach to the natural law—namely, an approach that balances and negotiates the roles of the speculative and the practical in context-specific instances, without abandoning either, or irrevocably subsuming one to

29. Aquinas, *STh*, I-II, q. 94, a. 4, co.

the other. This approach to the natural law is picked up on by many in the Catholic ethical tradition.

The reference to mutability in the previous question gives rise to yet a more explicit question: Can the natural law be changed? For Aquinas, this question must be considered in two ways. First, the question must be considered by way of addition; second, the question must be considered by way of subtraction. When we consider the changeability of the natural law with regard to addition, then, Aquinas says, “nothing hinders the natural law from being changed.” The natural law, as Aquinas understands it, is entirely compatible with additions such that further progress can be made on the journey toward the good in and for this life. Both Divine and human law, in their own ways, are examples of such addition. When we consider the changeability of the natural law with regard to subtraction, however, then “the natural law is altogether unchangeable in its first principles.”³⁰ While subtractions of the secondary principles—which are drawn from these first principles—can be made, no subtraction of the first principles themselves can be undertaken. This places the first principles of the natural law in a unique place. They can be added to—and these additions can, subsequently, be subtracted—but the first principles themselves remain untouched. Thus, the natural law, from this point of view, functions as a negative concept—it is that which constitutes the minimum standards upon which we can add, but from which we cannot subtract. Aquinas is trying to hold two important pieces of natural law thought in constructive tension here, and how

30. Aquinas, *STh*, I-II, q. 94, a. 5, co.

successful he is in this balancing act will become important for the overall thesis of this project.

The final question Aquinas asks in his treatise on natural law is the question of whether or not the natural law can be abolished from the hearts of men. Not surprisingly, Aquinas's response to this question is an unqualified *no*, but only with regard to the first principles of natural law. Aquinas says:

there belong to the natural law, first, certain most general precepts, that are known to all; and secondly, certain secondary and more detailed precepts, which are, as it were, conclusions following closely from the first principles. As to those general principles, the natural law, in the abstract, can nowise be blotted out from men's hearts ... [but] as to the other, i.e. the secondary precepts, the natural law can be blotted out from the human heart.³¹

The distinction that Aquinas makes here between first and secondary principles is, once again, important. Insofar as the natural law pertains to first principles, it is immutable, it is unchangeable, and it is incapable of being blotted out. Insofar as the natural law pertains to secondary principles drawn from first principles, it is mutable, it is changeable, and it can be blotted out. We must recall, here, what Aquinas understands the first principle of the natural law to be: "good is to be done and pursued, and evil is to be avoided."³² This is at the heart of the natural law for Aquinas, and while the discussions of the secondary precepts of the natural law are important, they are forever tethered to this first principle. In the sections that follow, we will explore how this first principle is 'played out' in the works of contemporary natural law theorists—for example,

31. Aquinas, *STh*, I-II, q. 94, a. 6, co.

32. Aquinas, *STh*, I-II, q. 94, a. 2, co.

the constitution of ‘the good’ in the first principle of the natural law will be particularly important for developing a contemporary natural law ethic. I simply want to make note this at this point, as it will be discussed in further details in the sections to come.

Now, by way of summarizing, let me briefly revisit Aquinas’s articulation of both the concept of law and the concept of natural law. For Aquinas, law “is an ordering of acts by reason.”³³ This ‘ordering’ is always aimed at the common good, because laws pertain, not exclusively to individuals, but to communities of individuals more broadly. As a result of this broad application of law to communities of persons, laws must be both created and enforced by those who have care of the community—either as a whole, or via those individuals endowed with this responsibility by the whole. Finally, for a law to have an effect, it must be promulgated—that is, put into action. Thus we return, once again, to Aquinas’s definition of law: “an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”³⁴ This definition pertains to the natural law as well, though in its own way. The natural law is an act of reason, not habit, which means that it is not, *as such*, case specific—there is a sense of ‘timelessness’ in the natural law. The natural law also contains several precepts, via its secondary principles, so long as these precepts aim at that first principle of the natural law and practical reason: that good is to be done and pursued, and evil is to be avoided. The natural law also prescribes all acts of virtue, insofar as the emphasis lies on the ‘virtue’ and not the acts in themselves. When it comes to the natural law and the human person, Aquinas

33. Pope, “Tradition and Innovation in Natural Law,” 17.

34. Aquinas, *STh*, I-II, q. 90, a. 4, co.

acknowledges that the Natural law is the same in all persons in principle, but the precepts of the natural law can change depending on situation and circumstance. Similarly, the natural law is neither changeable nor abolishable in its first principle, but it is changeable and abolishable in its secondary principles. The distinction between first and secondary principles in Aquinas's account of natural law is important, and, as indicated, remains so when we come to discussions of the precepts—or rather, norms—of the natural law.

What remains to be seen in this introductory analysis of the natural law are the ways in which various theories of the natural law have developed in contemporary ethical discourse. In order to balance both a comprehensive exploration of contemporary natural law theories and the need for concise analysis in such an undertaking, I have chosen to explore the thoughts of three prominent natural law thinkers: John Finnis, Jean Porter, and Cristina Traina. Each of these figures, as I will argue, represents a prominent, contemporary trend within the form of natural law thinking that has emerged from the arguments and analyses Aquinas put forth in his *Summa*. This exploration is intended to be the articulation of those elements of the natural law that make it a retrievable and compelling framework for Catholic ethics today, particularly insofar as it pertains to the two questions this project is seeking to analyze: the question of normativity in ethics and the question of dignity in relation to humanity. We will begin with the work and thought of John Finnis.

John Finnis and the New Natural Law:

Basic Goods, Natural Law, and Human Rights

Aquinas emphasizes the importance of understanding what we mean when we use the term ‘law’ in talking about the natural law. It will come as no surprise, then, that the first contemporary interpreter of Aquinas and the natural law tradition I will turn to is the legal theorist and political philosopher John Finnis, whose interpretation of Aquinas and the natural law has had a profound impact upon the trajectory of the natural law tradition, especially within the United States. While not uncontroversial, this approach must be given serious consideration when engaging with the natural law tradition.

Along with, and emerging out of, his collaborators Germain Grisez and Joseph Boyle,³⁵ Finnis offers a decidedly philosophical and legal approach to understanding Aquinas and the natural law. His analysis is one that takes seriously the philosophical project at stake in Aquinas’s work, yet, he brackets Aquinas’s theological content and context—at least at first blush. Insofar as Finnis offers an approach which identifies some of the philosophical and legal issues that emerge out of Aquinas’s theory of the natural law, such an analysis remains relevant to our contemporary reception of the natural law tradition.

35. Finnis, Grisez, and Boyle identify themselves, and are identified by others, as three contributors to one overarching legal/philosophical approach to the natural law. This approach—the ‘new natural law’—will be addressed in this argument through the writings of Finnis in particular, but insofar as Grisez and Boyle identify themselves—and their respective projects—with Finnis, they, too, will be part and parcel of the approach to Aquinas and the natural law articulated here. See, for example, Germain Grisez, Joseph Boyle, and John Finnis, “Practical Principles, Moral Truth, and Ultimate Ends,” *The American Journal of Jurisprudence* 32 (1987): 99–151.

Finnis's understanding of the natural law is dependent upon Aquinas, yet it develops along its own distinct trajectory. According to Finnis, Aquinas offers the following articulation of the natural law in the *Summa Theologica*: “[the natural law is] the participation of the Eternal Law in rational creatures.”³⁶ In light of this, the principal concern of a theory of natural law is “to explore the requirements of practical reasonableness in relation to the good of human beings who, because they live in community with one another, are confronted with problems of justice and rights, of authority, law, and obligation.”³⁷ Thus, the natural law functions as the nexus of the encounter between the specificity and particularity of a given set of laws and the wider principles of practical reasonableness by which such laws are judged, evaluated, and supported (or not). Therefore, in order to explore the ethical normativity of the natural law in the work of Finnis, this section will look to three important dimensions of Finnis's approach to, and understanding of, the natural law: good(s), law(s), and right(s).

A theory of the natural law, according to Finnis, “claims to be able to identify conditions and principles of practical right-mindedness, of good and proper order among men [*sic*] and in individual conduct.” Additionally, such a theory is undertaken “to assist the practical reflections of those concerned to act.”³⁸ Still, questions remain: What grounds this claim for Finnis? What is the relationship between natural law, basic human

36. John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1979), 398.

37. Finnis, *Natural Law*, 351.

38. Finnis, *Natural Law*, 18.

goods, and human rights? In order to explore these questions more fully, Finnis (re)directs us to Thomas Aquinas. For Finnis, Aquinas, while not uncritically appropriated, represents the pinnacle of medieval thought. Whether in theology, philosophy, law, or any of the myriad disciplines Aquinas undertook to investigate throughout the course of his life and work, he represents the height of both the process(es) and result(s) of medieval thought.³⁹ With his indebtedness to Aquinas in mind, we will begin our exploration of Finnis's theory of the natural law, and our starting point will be Finnis's understanding of the good.

The Good(s) of the Natural Law

Why, it might be asked, ought we to begin our exploration of John Finnis's theory of the natural law with an analysis of the good? In short, this move is important because it is within a specific conception of the good that Finnis locates his analysis of the natural law, and, then, articulates his concept of the 'basic human goods' which constitute the core of his analysis. Therefore, this section will look, first, at how Finnis understands Aquinas on the question of the good. Second, we will look at the specific articulation of the good that Finnis himself offers in his constructive project in *Natural Law and Natural Rights*. Finally, we will look at how this analysis of the good ultimately contributes to Finnis's understanding of the activity of practical reason and the constitution of practical

39. This orienting of oneself toward Aquinas, undertaken by Finnis and his collaborators, has not gone unnoticed or uncriticized by medievalists and historians alike. Brian Tierney, for example, has remarked—only somewhat tongue in cheek—that for philosophers and jurists like Finnis, “if an idea is not to be found in Aquinas it is not really a medieval idea at all” (Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625* [Atlanta, GA: Scholars Press, 1997], 45). This problematic side of such a commitment to Aquinas will be addressed later, in chapter 4.

reasonableness. A clearer understanding of practical reasonableness—grounded in a concept and practice of the good—will guide us as we turn to the other two elements of Finnis’s analysis addressed in this chapter: law and right.

The concept of the good in Aquinas operates according to the logic of the *exitus-reditus* architectonic that characterizes, on the one hand, Aquinas’s theological vision and, on the other hand, the structure of the *Summa Theologica*.⁴⁰ Insofar as all of creation emerges from, and returns to, its Creator, the concept of the good, too, emerges from God and, in the end, is directed toward a return to God. Finnis parses this analysis out in specifically philosophical language, yet the centrality of this theological architectonic to Aquinas’s analysis remains evident. Aquinas, according to Finnis, starts his analysis of the good—from a practical standpoint—from ‘the first principle of practical reason’—*good is to be done and pursued, and bad is to be avoided*.⁴¹ This first principle is, according to Finnis, both “‘indemonstrable’ and ‘self-evident.’”⁴² It is—as are all first principles—*per se notum*: known through itself.⁴³ To say that a first principle is known through itself is not, Finnis reminds us, to say that it is without ‘data,’ or that it is an unjustifiable or unreasonable claim. To say that a first principle is known through itself is simply to say just this—that a principle is known through itself and not through some mediate or

40. O’Meara, *Thomas Aquinas*, 53–68.

41. John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998), 86.

42. Finnis, *Aquinas*, 87.

43. Finnis, *Aquinas*, 88.

mediating ‘middle’ term or derived from some prior principle. Practically speaking, we need only look to our own experiences and memories to substantiate the claim that good is to be done and pursued, and evil avoided. Thus, on Finnis’s read, Aquinas identifies the most basic notion of good as ‘desirable fulfillment.’⁴⁴ Finnis takes this from the *Summa*, and it is worth considering it for a moment.

In support of his claim that Aquinas’s most basic definition of good is ‘desirable fulfillment,’ Finnis turns to the first part of the *Summa*. Here, in question five, article one—where he is discussing the relationship between goodness and being—Aquinas says that goodness and being are, in the end, “the same really,” but that “goodness presents the aspect of desirableness, which being does not present.”⁴⁵ Thus, ‘desirableness’ is a constitutive element of goodness—that which is good is that which is desirable. This desirableness, however, is not without limits. Human creatures are finite and, therefore, imperfect. We cannot always trust what it is we desire to lead us to what is really good. Our desires can be mistaken, they can be coerced, they can be misguided. What, then, serves to limit the forms of desirability, from which we choose and act, to only those that genuinely present us with a pathway to the good? For Aquinas, it is the common good that, in the end, serves as the limiting concept in this process. According to Finnis, “the fulfillment ... to which all one’s reasonable deliberation, choice, and action are directed, is the common good.”⁴⁶ While I desire my highest good, and aim at it, the conditions of my

44. Finnis, *Aquinas*, 108.

45. Aquinas, *STh* I, q. 5, a. 1, co.

46. Finnis, *Aquinas*, 112 (footnote omitted).

finitude require me to keep an eye not only to my highest good, but, at the same time, to my more proximate good, which is conditioned and limited by the common good. Thus, for Aquinas, ‘desirable fulfillment’—as the most basic definition of the good—is that which entices us, which draws us, toward a self-evident understanding of the good, articulated within, and limited by, the parameters of the common good.

Finnis frames this question in terms of objectivity—the objectivity of human good(s). How we come to an understanding of the objectivity of the good in Aquinas is a function of how we answer the question of rational causality. If we propose that something is ‘good,’ we will need to be able to substantiate a response to the inevitable question, ‘Why?’ The regressive line of questioning that follows ends only at a place where continuing to ask the question ‘Why?’ is no longer necessary or no longer makes sense. For Finnis, in order to bring this regressive line of questioning to an end is to posit “one or more states of affairs, of which we may have no experience, but the positing of which is fruitful of further questions, the answers to which can more adequately answer the substantive question on hand.”⁴⁷ This approach—to posit states of affairs of which we have no experience—may be a rationally satisfying approach, though, admittedly, not necessarily a logically satisfying one—a point I will return to in chapters two and three. In the end, what Aquinas must postulate—and what Finnis, too, postulates in his own, philosophical vocabulary⁴⁸—is “that there is some state of affairs causing that whole

47. Finnis, *Natural Law*, 385.

48. In the following discussion of the good in the work of Finnis, we will more directly analyze the philosophical approach Finnis takes to this same question, where—in the end—he

causing set of prerequisites or conditions of the first-mentioned state of affairs, but which itself is not included in that causing set of conditions precisely because ... its existence does not require some prerequisite condition (not included in itself) to be satisfied.”⁴⁹ In light of his reading of Aquinas, Finnis calls this state of affairs “an uncaused causing.”⁵⁰ For Aquinas, of course, the concept of an uncaused cause emerges out of his second proof for the existence of God. Aquinas says that all things in nature have an efficient cause, and this is true enough. Nevertheless, in order to avoid searching for efficient causes *ad infinitum*, we must posit a first efficient cause—a cause whose cause is contained within itself, an uncaused cause—and this first efficient cause, says Aquinas, is that to which “everyone gives the name God.”⁵¹ Thus, for Aquinas, the objective nature of the good is found in the objective reality of God. In God, the good exists perfectly, and it is this perfect good that is the initial cause of all the good, and goods, that exist in our imperfect world. According to Finnis, God is the ground and source of the good(s) that human activity undertakes and embodies in Aquinas. Unlike God, our participation in the good is limited and partial, but within the community of other human persons constituted by the common good, we can approximate the desirable fulfillment of the good in and

posits an uncaused cause that might be rationally identified with the Christian God, but need not be logically tied to this concept.

49. Finnis, *Natural Law*, 386.

50. Finnis, *Natural Law*, 386.

51. Aquinas, *STh* I, q. 2, a. 3, co.

through the first principle of practical reason: good is to be done and pursued, and evil is to be avoided.

Taking his cue from Aquinas, Finnis develops his own understanding of the good along similar, though distinct, lines. At the heart of his investigation into the source of the good stands a common-sense ethical approach that, at least descriptively, configures the question of the good in terms of what ‘makes sense’ for human persons to do. Taking the basic good of knowledge⁵² as his example, he begins with the premise that it is better to have knowledge than it is to remain in ignorance. To know something is better than not knowing it. When one considers knowledge as a basic human good, one “finds oneself reflecting that ignorance and muddle are to be avoided, simply as such.... One begins to consider the well-informed and clear-headed person as, to that extent, well off.”⁵³ A similar line of reasoning holds true, according to Finnis, for all the basic human goods; yet, we are still compelled to investigate this assertion further. *How* do we know that ignorance and muddle are to be avoided (specifically as contrary to the good of knowledge)?

The concept of good, here, operates as a theoretical possibility, as opposed to a practical principle. As Finnis notes, “the principles of *theoretical* rationality are self-

52. Finnis, at this point in his analysis, has not demonstrated how knowledge is a basic human good, or even what the basic human goods are. This discussion will come later, but in order to articulate Finnis’s analysis as he presents it, I will follow his train of thought here and assume, for the present, that knowledge is, in fact, a basic human good and the concept of basic human goods are in some way compatible with the exploration I am undertaking into the source of the good in Finnis’s writing.

53. Finnis, *Natural Law*, 61.

evident. And it is in [this respect] that we are asserting that the basic *practical* principle that knowledge is a good to be pursued is self-evident.”⁵⁴ Such self-evidence is not merely “validated by feelings,” but, rather, it is “the criteria whereby we discriminate between feelings.”⁵⁵ For the good to be self-evident means that it is not derived, or at least that any derivation of the good is not what gives it its normative force. The normative value of the good is contained within its very concept, and the effects of the good in the physical, observable world are justifications of, and supporting arguments for, this point. Finnis is clear that “one may think he [*sic*] is affirming something objective” through an argument for the self-evidence of the ‘goodness’ of the good, but, in fact, this articulation of the ‘goodness’ of the good only affirms one’s “subjective concern” for the ‘goodness’ of the good in question. So, in reflecting on the concept of the good, Finnis is not offering a demonstration of its to-be-pursued-ness. He is not offering an argument from an objective standpoint. Rather, Finnis is arguing that the good is to be found—and substantiated—subjectively, through the effects of the good in the observable world. Yet, the near universal experience, say, of the belief that knowledge is better than ignorance is what, in the end, gives this subjective claim its objective force. Thus, Finnis argues:

We do not thereby directly demonstrate that knowledge is a good to be pursued; that principle remains indemonstrable, self-evident. What we demonstrate is simply that it is presupposed in all demonstrations, indeed in all serious assertions, whatsoever, and has as much title to be called ‘objective’ as any other proposition whose contradictory is inevitably falsified by the act of asserting it.⁵⁶

54. Finnis, *Natural Law*, 69.

55. Finnis, *Natural Law*, 69.

56. Finnis, *Natural Law*, 75.

So the good, for Finnis, is an indemonstrable, self-evident theoretical possibility, or principle, that, while not derivable or provable, serves to ground action and judgement. As previously noted, this articulation of the self-evident good is a theoretical speculation, so Finnis's next move—in this analysis of the good—is to make the theoretically speculative concept practically, or applicationally, relevant. In order to do this, Finnis winnows the broader concept of the good to more specific forms of the good which are enacted in the observable world. As he says, we must move from “the descriptive and ‘speculative’ findings” of a reflection on the theoretical principle of the good to “the critical and essentially practical discipline in which each reader must ask himself [*sic*]: What *are* the basic aspects of my well-being?”⁵⁷ The answer to this question is what Finnis calls the ‘basic human goods’—goods “whose proper form of discourse is: ‘...is a good, in itself, don’t you think?’”⁵⁸ There are, according to Finnis, seven such goods: life, knowledge, play, aesthetic experience, sociability/friendship, practical reasonableness, and religion. While he acknowledges that there may well be other forms of the good, Finnis believes that—when properly reflected on and understood—all the forms of the good human persons can imagine will, in the final analysis, be winnowed down into one (or a combination of) these basic human goods. These basic human goods share certain characteristics: “each is equally self-evidently a form of good;” “none can be analytically reduced to being merely an aspect of any of the others, or to being merely instrumental in the pursuit of any others;” and, finally, “each one, when we focus on it,

57. Finnis, *Natural Law*, 85.

58. Finnis, *Natural Law*, 86.

can reasonably be regarded as the most important. Hence there is no objective hierarchy among them.”⁵⁹ What this means is that in order to approximate the good, we must practically appropriate and enact the basic human goods in a way that recognizes all of them, without diminishing any of them, and that respects their self-evident irreducibility not only in ourselves, but in others as well. Here, Finnis turns to a very specific—and very Thomistic—concept of coordination and community that both advances the basic human goods and realizes them within our finite, human limits: the common good.

The concept of the common good, for Finnis, addresses the “proper relationship between one’s own well-being and the well-being of others.”⁶⁰ One of the most notable precursors to the concept of the common good, for Finnis, is the Aristotelian notion of friendship. Friendship is certainly not the only form of coordinated relationship human persons engage in. There are relationships of utility, which Finnis characterizes as relationships with “some common interests, some common good, and some common (co-ordinated) action—but all in the service of each attaining his own objective.”⁶¹ There are also relationships of pleasure. Finnis suggests that “we engage in these relationships ‘for fun.’ ... The common good in play relationships is, thus, that there be a ‘good play of the game.’”⁶² However, there remains this third type of coordinated, community relationship in Finnis’s account, constituted by the “action and interest that exists

59. Finnis, *Natural Law*, 92.

60. Finnis, *Natural Law*, 134.

61. Finnis, *Natural Law*, 140.

62. Finnis, *Natural Law*, 140.

between *friends*.”⁶³ What distinguishes this form of coordinated relationship from the others is that in friendship, “the collaboration of each is for the sake (as least in part) of *the other*, and there is community between them ... [insofar as] what A wants for himself [*sic*] he wants (at least in part) under the description ‘that-which-B-wants-for himself,’ and vice versa.”⁶⁴ This is neither a relationship of utility (where two or more parties coordinate their actions, but aim at their own ends) nor a relationship of play (where two or more parties coordinate their actions for the good of the action itself), but rather, friendship is a form of relationship that is coordinated for “the common good of mutual self-constitution, self-fulfillment, self-realization.”⁶⁵ Thus, friendship is the model relationship for the common good because it attends to the proper coordination of one’s own well-being and the well-being of others. The concept of the common good envisioned by Finnis pertains to a community, or group, who undertake “over an appreciable span of time, a co-ordination of activity by a number of persons, in the form of interactions, and with a view to a shared objective.”⁶⁶ This shared objective, this “shared conception of the point of continuing co-operation,”⁶⁷ is the mutual well-being of the common good. As a result, says Finnis:

[The common good is] a set of conditions which enables the members of a community to attain for themselves reasonable objectives, or to realize reasonably

63. Finnis, *Natural Law*, 141.

64. Finnis, *Natural Law*, 141.

65. Finnis, *Natural Law*, 141.

66. Finnis, *Natural Law*, 153.

67. Finnis, *Natural Law*, 153.

for themselves the value(s) ... for the sake of which they have reason to collaborate with each other ... in a community.⁶⁸

Nevertheless, we must still consider how this shared objective of mutual well-being is actually attained within a coordinated community. For this task, Finnis turns to one of the seven basic human goods: practical reasonableness. Focusing on practical reasonableness for the sake of the common good, Finnis reminds us, does not place it in a hierarchically superior position to the other basic human goods, but foregrounds this good on a stage where the other goods remain present and prominent.

The common good, argues Finnis, “is fundamentally the good of individuals.”⁶⁹ As such, we must consider the constitution of those individuals who participate in the common good. Since “the fundamental task of practical reasonableness is self-constitution and self-possession,”⁷⁰ it is to practical reasonableness that we must turn. As a basic human good, practical reasonableness is “the basic good of being able to bring one’s own intelligence to bear effectively (in practical reasoning that issues in action) on the problems of choosing one’s actions and lifestyle and shaping one’s own character.”⁷¹ It is within this basic human good, suggests Finnis, that our freedom and responsibility arise. Insofar as practical reasonableness pertains to choice, it also pertains to the freedom necessary to make a choice. The choice constitutive of the basic human good of practical reasonableness is “the primary respect in which we can call ourselves both free and

68. Finnis, *Natural Law*, 155.

69. Finnis, *Natural Law*, 168.

70. Finnis, *Natural Law*, 168.

71. Finnis, *Natural Law*, 88.

responsible.”⁷² What we need to articulate, argues Finnis, are the requirements of practical reasonableness that, in turn, give rise to the freedom that emerges out of it. Thus, he offers nine requirements of practical reasonableness, each of which “can be thought of as a mode of moral obligation or responsibility”⁷³ since each contributes equally to the process of choosing freely under the auspice of practical reasonableness.

The first requirement of practical reasonableness is that one maintain a coherent life-plan. Without this requirement, the rest would not be possible, or, if they were possible, they would not make much sense. A coherent life plan is not to be confused with the “‘blue-prints’ of a pipe dream,” but, rather, is understood as the “effective commitments”⁷⁴ which lead to a unified life. The second requirement of practical reasonableness is that there be no arbitrary preference among the basic human goods. Finnis sees this requirement (unlike the first) to be in direct conflict with something like Rawls’s ‘thin theory’ of the good, where he (i.e. Rawls) reduces the primary goods to four (liberty, opportunity, wealth, and self-respect). The third requirement of practical reasonableness is that there be no arbitrary preference among persons. Like the second requirement that speaks to the equality among the basic human goods, this requirement speaks to the basic equality among persons participating in the common good. Insofar as the common good speaks to the shared objective of my well-being and the well-being of others, we cannot preference one’s well-being (even my own) over the well-being of

72. Finnis, *Natural Law*, 100.

73. Finnis, *Natural Law*, 126.

74. Finnis, *Natural Law*, 103–4.

another (though Finnis nuances this position when it comes to close, personal relations). We must hold the well-being of each individual equally to the well-being of all others. To do this, we must set “the bounds of reasonable self-preference.”⁷⁵ These bounds are set from the viewpoint of “the ‘ideal observer’ ... an impartially benevolent ‘spectator’ [who] would condemn some but not all forms of self-preference.”⁷⁶ The fourth requirement is the requirement of detachment. In order to be “sufficiently open to all the basic forms of good in all the changing circumstances of a lifetime,”⁷⁷ we must exercise a certain level of detachment from each of them. Detachment does not imply a lack of care or concern, but rather a ‘holding lightly’ and a balancing of each. The fifth requirement is the requirement of fidelity. If the fourth requirement stipulates that we must hold all the goods lightly, the fifth reminds us that, nevertheless, we should not abandon our goods too easily. Fidelity is a middle position between fanaticism (which holds goods too tightly) and apathy (which doesn’t hold onto any goods at all). Thus, the fourth and fifth requirements can be understood as two sides of the same coin. The sixth requirement is the requirement that “one bring about good in the world ... by actions that are efficient for their (reasonable) purpose(s).”⁷⁸ Practical reasonableness does not operate within the utilitarian or consequentialist frameworks (at least not in the ways that utilitarians and consequentialists would like) because practical reasonableness requires all the other basic

75. Finnis, *Natural Law*, 108.

76. Finnis, *Natural Law*, 108.

77. Finnis, *Natural Law*, 110.

78. Finnis, *Natural Law*, 111.

human goods to be simultaneously present and operative. One cannot bring about good in the world by maximizing pleasure, or weighing and calculating means and ends; good can only be brought about in the world through the interplay of the basic human goods. The seventh requirement is the requirement to respect every basic good in every act. The heart of this requirement says that in every act a human person undertakes, she or he cannot act, or choose, against any of the basic human goods. One can, to be sure, shift one (or more) basic human good(s) to the foreground in order to act or choose in a given situation, but foregrounding certain basic human goods does not mean one can act against any of the others. Interestingly, it is in this dimension of practical reasonableness that Finnis locates the inviolability of human rights—a discussion which we will take up in a later chapter. The eighth requirement is the requirement of “favoring and fostering the common good of one’s communities.”⁷⁹ This requirement may appear, at first blush, to conflict with some of the previously stated requirements (of detachment, for example, or the requirement that there be no arbitrary preference among goods or persons). Nevertheless, Finnis argues that, properly understood, this requirement works with (not against) these other requirements in the discerning process of practical reasonableness. Finally, the ninth requirement of practical reasonableness is the requirement that one “should not do what one judges or thinks or ‘feels’-all-in-all should not be done. That is to say one must act ‘in accordance with one’s conscience.’”⁸⁰ In a very real sense, for Finnis, the entirety of his reflections on practical reasonableness is really an extended reflection

79. Finnis, *Natural Law*, 125.

80. Finnis, *Natural Law*, 125.

on the workings of conscience. When reflecting on the good, when engaging in practical reasonableness, one must (ultimately) follow the dictates of one's conscience. This is not, for Finnis, a form of do-whatever-you-want-ism, but rather the recognition that if one follows all the step Finnis has laid out, and one engages in the ways that Finnis suggests, following one's conscience—even a mistaken conscience—is a deeply dignified endeavor.

Thus, at the end of this discussion, we need to consider the picture of the good that Finnis is proposing. As we have already said, Finnis—in line with, though distinct from, Aquinas—grounds his reflections on practical reasonableness, the common good, conscience, freedom, responsibility, and the basic human goods in a concept of the good (in a more general sense). How all of this is grounded in the good is self-evident; that is to say, the self-evidence of the good is not something that can be argued for or derived from principles. The self-evidence of the good is seen in the effects this good has through the enactment of the basic human goods. Each of these goods—equal to all the others—is the material that human persons work with, and from, when ordering and living out their existence. While we may foreground some goods over others, there cannot be a scenario in which any of the goods are acted against or ignored in favor of others. That we are actually acting from the good, and in accordance with the basic human goods, will be evidenced by the fruits of our actions. If they are genuinely good, they will be so recognized and designated; if not, not. A prominent feature of the good—and the one of the basic human goods foregrounded here—is the basic human good of practical reasonableness. In reflecting on the questions proposed in this analysis, it is practical reasonableness that guides our way. What is interesting is that Finnis identifies practical

reasonableness as a form of play. Practical reasonableness, he says, “need not be regarded as ultimately a form of self-perfection.... Nor, on the other hand, are its requirements sheer categorical imperatives ... they are what is needed to participate in the game of God.”⁸¹ We will address the theological turn in Finnis’s work in a later chapter, but first, we must consider another facet of Finnis’s theory of the natural law. Practical reasonableness leads us to critical reflection on the basic human goods and their relationship to the good. It also contextualizes us within the framework of the common good. Yet, how are we so contextualized and constrained? In order to articulate this dimension of Finnis’s thought, the following section will look at the concept of law—and, more specifically, natural law—within Finnis’s work.

The Concept of the (Natural) Law

As we observed in the previous section, the self-evident nature of the good requires enactment in the world. Finnis achieves this through the exercise of the basic human goods—in accordance with the requirements of practical reasonableness—for the common good. Yet, the question remains as to how the common good operates. What are its limits and boundaries—two essential elements of any coordination of community in the physical, observable world? In order to address this question, Finnis turns to the concept of law. Therefore, in this section, we will first look at how Finnis understands and characterizes the law, and then turn to the ‘secondary precept’ of the law—the natural law—in order to draw out of his analysis the theory of natural law operating within his

81. Finnis, *Natural Law*, 409–10.

work. First, however, we turn to the question of law—What is it? How does it operate? What is its justification?

In the very first line of his book *Natural Law and Natural Rights*, Finnis states the following: “There are human goods that can be secured only through the institutions of human law, and requirements of practical reasonableness that only those institutions can satisfy.”⁸² The concept of law, therefore, is central to the project Finnis undertakes in this seminal text of his natural law theory. This will come as no surprise. Still, in order to understand what the concept of law ‘looks like’ in practice—a constitutive dimension of law for Finnis—we need to explore both the foundation and internal logic of its operation. These explorations may appear to take us off course, but they are essential for understanding both the relevance and applicability of the law, along with the consequent impact of these reflection on the natural law.

As noted above, Finnis’s philosophy of law is practical (i.e. applicational).

Following H. L. A. Hart, Finnis argues that the law

is to be described in terms of rules *for* the guidance of officials and citizens alike, not merely as a set of predictions of what officials will do. A legal system is a system in which ‘secondary’ rules have emerged *in order to* remedy the *defects* of a pre-legal regime comprising only ‘primary rules.’ Law must [footnote omitted] have a minimum content of primary rules and sanctions *in order to* ensure the survival of the society or its members and to give them *practical reason for* compliance with it.⁸³

82. Finnis, *Natural Law*, 3.

83. Finnis, *Natural Law*, 7. Here, Finnis is drawing on the work of H. L. A. Hart, particularly his seminal text, *The Concept of Law* (Oxford: Clarendon Press, 1961), and his article, “Positivism and the Separation of Law and Morals,” *Harvard Law Review* 71, no. 4 (1958): 593–629.

Additionally, Finnis incorporates the work of Joseph Raz into his conceptualization of law to further nuance Hart's position:

the law is not any set of norms; it is a system of norms which provides a method ... of settling disputes authoritatively, by means of norms which both (a) provide binding guidance for 'primary institutions' ... and (b) also ... guide the individuals whose behavior may fail to be evaluated and judged by those institutions.⁸⁴

From these descriptions of law, we can draw out some consistent threads that characterize Finnis's own approach. One such thread is the role institutions play in relation to the law. For the law, or for any specific laws, to make sense and have an impact (i.e. to be practical) they must exist, and operate, within an institutional setting. Another such thread is the practical (i.e. applicational) dimension of law. Law must, Finnis says, operate 'with a view to decision and action.' "Practical thought is thinking about what (one ought) to do. Practical reasonableness is reasonableness in deciding, in adopting commitments, in choosing and executing projects, and in general in acting."⁸⁵ Still another thread can be articulated in terms of rules, norms, and method. This particular thread embodies the need for coordination in the law. Without the coordination of rules embodied in a particular method, law and legal systems lose their normative relevance and force. Finally, the role of the individual in these reflections is central. The individual is the one who reasons practically, but also reasons in conjunction with the rules, method, and norms of the cooperative community within which she encounters the practical

84. Finnis, *Natural Law*, 7. Here, Finnis is drawing on Joseph Raz, *Practical Reason and Norms* (London: Hutchison, 1975).

85. Finnis, *Natural Law*, 12.

reasoning of others via the institutions her community has established for this purpose. Still, the question remains: How *are* these threads brought together in a coordinated reflection on law?

For Finnis, in order to reflect on the law, we must do so from a particular viewpoint. He describes the viewpoint we ought to adopt in relation to a ‘central case’ of law or legal system. A ‘central case’ (Finnis also speaks of this concept in terms of ‘focal meaning’) is that of “a complete community, purporting to have authority to provide comprehensive and supreme direction for human behavior in that community, and to grant legal validity to all other normative arrangements affecting the members of that community.”⁸⁶ Thus, this ‘central case’ of law grounds the viewpoint *from which* we reflect on law and the legal order—a viewpoint of the individual embedded within the aforementioned coordinated, complete community. Next, we must consider the question of how we coordinate law and the legal order—how we make sense of and enact them—from such a viewpoint. Finnis identifies five principal features of the law which, together, undertake this process of coordination. First, he suggests, “law brings definition, specificity, clarity, and thus predictability into human interactions, by way of a system of rules and institutions so interrelated that rules define, constitute, and regulate the institutions, while institutions create and administer the rules.” Second, “whatever legal rule or institution ... has been once validly created remains valid ... until [the law] determines according to its own terms or to some valid act or rule of repeal.” Third, “rules of law regulate not only the creation, administration, and adjudication of such rules, and

86. Finnis, *Natural Law*, 260.

the constitution, character, and termination of institutions, but also the conditions under which a private individual can modify the incidence or application of the rules.” Fourth, “we can say that [the law] brings what precision and predictability it can into the order of human interactions by a single technique: the treating of ... past acts ... as giving, *now*, sufficient and exclusionary reason for acting in a way *then* ‘provided for.’” Fifth, and finally, “this technique is reinforced by the working postulate ... that every present practical question or coordination problem has, in every respect, been so ‘provided for’ by some such past juridical act or acts.”⁸⁷ Granted that there will always be an inextricably coercive dimension to law and legal systems, when these five features are followed, then we have a practically coordinated social and legal arrangement “which would have a completely adequate rational in a world of saints.”⁸⁸ When this social and legal arrangement is functioning properly, then, according to Finnis, we have the Rule of Law.

The Rule of Law is distinct from the rule of law. In its non-capitalized form, this phrase emphasizes the noun-like quality—the thing-ness—of the rule(s) of law. In its capitalized form—the form in which Finnis employs it—this phrase indicates “the state of affairs in which a legal system is legally in good shape.”⁸⁹ For Finnis, the “five formal features of law ... are the more instantiated the more the eight desiderata [of the Rule of Law] are fulfilled.”⁹⁰ Finnis identifies the eight desiderata of the Rule of Law as:

87. Finnis, *Natural Law*, 268–69.

88. Finnis, *Natural Law*, 269.

89. Finnis, *Natural Law*, 270.

90. Finnis, *Natural Law*, 273.

(i) its rules are prospective, not retroactive and (ii) are not in any other way impossible to comply with; that (iii) its rules are promulgated, (iv) clear, and (v) coherent one with another; that (vi) its rules are sufficiently stable to allow people to be guided by their knowledge of the content of the rules; that (vii) the making of decrees and orders applicable to relatively limited situations is guided by rules that are promulgated, clear, stable, and relatively general; and that (viii) those people who have authority to make, administer, and apply the rules in an official capacity (a) are accountable for their compliance with rules applicable to their performance and (b) do actually administer the law consistently and in accordance with its tenor.⁹¹

The hope, here, is that we begin to see why the eight desiderata of the Rule of Law, the five features of the law, and all the other requisite facets of Finnis's analysis matter to both the individuals and communities these requirements affect. As Finnis himself says—in a gesture toward the broad impact he hopes his work can offer—when we consider individuals (who remain constitutive elements within any concept of law) we must consider that they “can only be selves—i.e. have the ‘dignity’ of being ‘responsible agents’—if they are not made to live their lives for the convenience of others but are allowed and assisted to create a subsisting identity across a ‘lifetime.’”⁹² Finnis's scholarly trek through some of the finer details of legal and political philosophy has not been in vain. We are now able to articulate a clearer understanding of the law, which will become invaluable when we turn to the natural law.

In section X.6 of *Natural Law and Natural Rights*, Finnis offers his clearest definition of law in light of what has been said thus far:

Throughout this chapter, the term ‘law’ has been used with a focal meaning so as to refer primarily to rules made, in accordance with regulative legal rules, by a determinate and effective authority ... for a ‘complete’ community, and buttressed

91. Finnis, *Natural Law*, 270.

92. Finnis, *Natural Law*, 272.

by sanctions in accordance with the rule-guided stipulations of adjudicative institutions, this ensemble of rules and institutions being directed to reasonably resolving any of the community's co-ordination problems ... for the common good of that community, according to a manner and form itself adapted to that common good by features of specificity, minimization of arbitrariness, and maintenance of a quality of reciprocity between the subjects of the law both amongst themselves and in their relations with the lawful authorities.⁹³

This definition of law, however, is not where our exploration ends. We must now turn to that 'secondary precept' of the law—the natural law—to find out how these two concepts—law and natural law—are connected, and what the definition of one contributes to our understanding of the other.

Finnis certainly recognizes that his discussion of law, up to this point, has deliberately sidestepped the question of natural law. In light of his attention to the focal meaning, or central case, of law, Finnis acknowledges that the natural law—"the set of principles of practical reasonableness in ordering human life and human community"—is "only analogically law."⁹⁴ It is, as previously mentioned, a 'secondary precept' of the law, and one that circumscribes the task of reflection on human well-being from the viewpoint of the Aristotelian *phronimos*, or rational judge. The natural law is concerned with "the relationship(s) between the particular laws of particular societies and the permanently relevant principles of practical reasonableness"⁹⁵ and, as such, the natural law occupies a mediating position between the specificity of particular law and the principles of law that

93. Finnis, *Natural Law*, 276.

94. Finnis, *Natural Law*, 280.

95. Finnis, *Natural Law*, 281.

must be at work in any and all contexts to which the term ‘law’ can be legitimately applied.

Additionally, “a sound theory of the natural law is one that explicitly ... undertakes a critique of practical viewpoints, in order to distinguish the practically unreasonable from the practically reasonable.”⁹⁶ This approach identifies the natural law as a specifically critical discourse—a framework in which options are debated, weighed, and ultimately decided by those in the community who can ‘judge well’ for, and on behalf of, it. Therefore, according to Finnis, the natural law can have no history: “[it] could not rise, decline, be revived, or stage ‘eternal returns.’ It could not have historical achievements to its credit. It could not be held responsible for the disasters of the human spirit or atrocities of human practice.”⁹⁷ Yet, there is a history of the *enactments* of the natural law. Therefore, an investigation into the natural law, for Finnis, is an investigation into its principles of enactment, rather than its grounding principles. Turning to Aquinas on this point, Finnis argues that the first principles of the natural law, “which specify the basic forms of good and evil and which can be adequately grasped by anyone of the age of reason ... are *per se nota* (self-evident) and indemonstrable [footnote omitted].”⁹⁸ Thus, in considering the natural law in terms of its principles of enactment—which *can* be defended—Finnis proposes a tripartite approach to natural law thinking. First, the natural law is “a set of basic practical principles which indicate the basic forms of human

96. Finnis, *Natural Law*, 18.

97. Finnis, *Natural Law*, 24.

98. Finnis, *Natural Law*, 33.

flourishing as goods to be pursued and realized, and which are ... used by everyone who considers what to do.” Second, the natural law is “a set of basic methodological requirement of practical reasonableness ... which distinguish sound from unsound practical thinking.” Finally, the natural law is “a set of general moral standards.”⁹⁹ For Finnis, it is important to keep in mind the purpose, or goal, for which this tripartite approach to natural law thinking is articulated. These principles, he argues, “justify the existence of authority in community”—a goal we find both here in the natural law and in the ‘central case’ of law discussed earlier. Additionally, these principles require “that authority be exercised, in most circumstances, according to the manner conveniently labeled the Rule of Law, and with due respect for the human rights which embody the requirements of justice, and for the purpose of promoting a common good in which such a respect for rights is a component.”¹⁰⁰ The natural law, on Finnis’s read, is a very practical discourse. It frames conversations about the goods of individuals and their cooperative communities, and serves as the critical, reflective space for determining the goods—of value, of action, of coordination, etc.—of a given cooperative community.

What, then, is to be said about the normativity of the natural law? The normative force of the natural law is, according to Finnis, self-evident and indemonstrable. It is simply known to us, as a good-to-be-pursued, in virtue of what it is. However—as the previous discussion of law demonstrated—we can see *that* the natural law has normative force because of the effects of its principles in the observable world—particularly the

99. Finnis, *Natural Law*, 23.

100. Finnis, *Natural Law*, 23.

effects of its principles on the good, both common and individual. The natural law guides human action toward the good as action's only rational goal. In that we can see the effects of the coordination of the basic human goods both in ourselves and in our communities, we can see the effects of the natural law in practice. What are these effects—particularly insofar as they serve to justify our commitment to the natural law individually and communally? As we have said, they are human well-being and flourishing, both individually and in community. “The basic aspects of human well-being are really and unquestionably good,” Finnis argues, “but after all, they are not abstract forms, they are analytically distinguishable aspects of the well-being, actual or possible, of you and me.”¹⁰¹ Further, this is “equally true of the common good; it is the well-being of you and me, considered as individuals with shared opportunities and vulnerabilities.”¹⁰² What remains in this section is a turn to those ‘basic aspects’ of human well-being that constitute the goodness, not only of these concepts, but of the concepts of law and natural law as well: rights.

The Question of Rights and the Common Good

“Almost everything in [*Natural Law and Natural Rights*] is about human rights (‘human rights’ being a contemporary idiom for ‘natural rights’...).”¹⁰³ Like the natural law, natural/human rights are at the very core of Finnis’s analysis and, therefore, merit close attention in this analysis. What are these natural/human rights? What is their source?

101. Finnis, *Natural Law*, 371.

102. Finnis, *Natural Law*, 372.

103. Finnis, *Natural Law*, 198.

Why do they matter? To begin this discussion, Finnis identifies, and evaluates, three different kinds of rights. First, there are rights-as-benefits: “rights of all forms are said to be *benefits* secured for persons by rules regulating the relationships between those persons and other persons subject to those rules.”¹⁰⁴ While there is an inexplicable dimension of this approach in all rights discourse, Finnis notes the distinct problems with this form of rights discourse, particularly when we consider the roles of power and authority in the giving, and securing, of these rights. Rights ought not depend simply on being conceived of as benefits, since such benefits can easily be lost or taken away.

Second—and as an attempt to correct for the first kind—there are rights-as-choices: “the point and unifying characteristic of rules which entail or create rights is that such rules specifically recognize and respect a person’s *choice*, either negatively by not impeding or obstructing it ... or affirmatively by giving legal or moral effect to it.”¹⁰⁵ The difficulty here, as Finnis sees it, is that this rights-as-choice approach does not sufficiently explain how the discourse of rights comes down from the rafters, so to speak. It lacks a clear and compelling connection to the actual situations in which rights-claimants find themselves. In light of these two conceptualizations of rights—neither of which is outright rejected by Finnis, but neither of which is adopted by him either—Finnis offers a third: rights-as-needs/flourishing. Quoting H. L. A. Hart, Finnis argues that in this kind of rights discourse “the core of the notion of rights is neither individual choice nor individual

104. Finnis, *Natural Law*, 203–4.

105. Finnis, *Natural Law*, 204.

benefit but basic or fundamental individual needs.’”¹⁰⁶ This is the form of rights discourse that Finnis wants to affirm. It is a form of rights discourse that makes a right into something an individual has in a legal sense. Yet, we still need to explore precisely *how* one actually has rights in this sense.

Finnis’s discussion of rights is the clear result of his discussions on the good. As Finnis says, “one needs some conception of human good, of individual flourishing ... [and] of communal life that fosters rather than hinders such flourishing.”¹⁰⁷ The good—while indemonstrable and self-evident—is achieved, for Finnis, through the exercise of the basic human goods, all of which can be better understood, within the present context, as basic reasons for action. The basic human goods are, at heart, basic human needs. If there are basic human goods, which Finnis has argued that there are, then there must be corresponding basic human needs. The satisfaction of these needs—or, put another way, the coordinated arrangement of these needs so that all are equally met—is achieved through the concept of human flourishing. This is why we have rights on a general level. Yet, this concept of human flourishing remains rather ambiguous. What constitutes this flourishing—what is its scope, what are its conditions and limits? Finnis’s response to such inquiries into the concept of flourishing is to identify a form of rights discourse that cannot be acted against, that—like his concept of basic human goods—cannot be violated. Here, he turns to the concept of absolute and inviolable rights, and, more specifically, the

106. Finnis, *Natural Law*, 205.

107. Finnis, *Natural Law*, 219–20.

concept of absolute, inviolable human rights. As this articulation of absolute human rights conditions his concept of rights more generally, it merits further exploration.

For Finnis, the notion of flourishing embodied in the concept of absolute human rights takes its bearing from the unified concept of the human person. What he means, here, is that the unity of individual personhood brings together both the more speculative and the more practical dimensions of human being, and expresses them in a particular concept. For Aristotle, this unity is expressed through the term *psyche*; for Aquinas, through the term *anima*. For Finnis, this concept of the unity of individual personhood is expressed through the term *soul*. The concept of the soul is that which brings together the speculative and the practical; it is that which gives unity and continuity to the concept of personhood; it is that which grounds the concept of dignity in the concept of the person; finally, it is that dimension of human being that stands as the source of absolute human rights. The dignity inherent in each human person through their soul is not only the source of one's absolute human rights, it is also what makes all human persons equal and free. It is what makes each of us a subject of rights. Thus, for Finnis, there are absolute human rights, valid in all times and places, and this claim relies upon his conceptualization of the good. We "need not hesitate to say that ... there are absolute human rights"¹⁰⁸ because "it is always unreasonable to choose directly against any basic value [i.e. human good], whether in oneself or in one's fellow human beings."¹⁰⁹ In returning to his analysis of the good through the lens of the soul, Finnis provides

108. Finnis, *Natural Law*, 225.

109. Finnis, *Natural Law*, 225.

parameters for the emergent concept of human rights. While the concept of human flourishing can be debated as to its specific content, what cannot be debated—because it is a precondition of the conversation itself—is that there is a shared baseline of rights that are absolute and inviolable because we have a concept of the soul. Without a recognition of this fact, we cannot conceive of what it means to flourish. In practical terms, the flourishing that emerges from this concept of the soul is articulated in terms of dignity. Basic human goods, he says, are not ‘mere abstractions,’ but rather, they are “aspects of the real well-being of flesh-and-blood individuals.”¹¹⁰ What keeps these goods, and their consequent rights, from becoming mere abstractions is this concept of dignity, which Finnis takes from Aquinas. While he argues that “every member of our species is entitled to ... human rights,” those rights cannot simply be based on that fact that we are members of a particular species. We have human rights not because we are *homo sapien sapien*, but because “every individual member of the species has the dignity of being a person [footnote omitted].”¹¹¹ Finnis expands on this point in a footnote where, citing Aquinas, he argues that the “word and concept *persona* entails *dignitas*, and so is applicable to every individual of a rational nature.”¹¹² The grounds for this claim rest on the “‘first-order,’ ‘speculative’ sciences ... that are given to us prior to our deliberation and choosing,” though they remain available to us through “the very experience of

110. Finnis, *Natural Law*, 225.

111. Finnis, *Aquinas*, 176.

112. Finnis, *Aquinas*, 176n206.

practical reasoning, deliberation, choice, and action.”¹¹³ Here, Finnis emphasizes the integral role in his analysis granted to the concept of a coherent life-plan (another requirement of practical reasonableness), or the unity of personhood (i.e. of the soul). Human persons experience themselves as unified, as being “one and the same I ... who am understanding and choosing and carrying out my choice and sensing ... [and who] is a reality I already truly understand, albeit not yet fully.”¹¹⁴

Yet there remains another important dimension of this discussion on human rights that we have not addressed. Namely, how do we make sense of human rights when we introduce the individual subject of rights to other individual subjects of rights? We do not live isolated lives, but rather, we live in social contexts and communities. We must, therefore, return to a previous discussion in order to properly understand the concept of rights. Given that we are social creatures who exist in community, we must think of rights, not just in terms of individual goods, but also in terms of the common good.

It is important to keep in mind the model upon which Finnis builds his conception of the common good. While the common good is inextricable from notions of the just, and from the legal and institutional orders that constitute it, Finnis’s fundamental model for the common good is the model of friendship. The essence of this model, argues Finnis, “is that *A* is interested in *B*’s well-being for *B*’s sake; and *B* is interested in *A*’s well-being for *A*’s sake; and *A* is interested in *A*’s own well-being not

113. Finnis, *Aquinas*, 176.

114. Finnis, *Aquinas*, 178.

only for its own sake but also for *B*'s sake; and *B* likewise.”¹¹⁵ This is how friendship works for Finnis. There is a mutuality between *A* and *B*, along with a sharing of interests and goals. There is a concern, not only for one's own good, but the good of the other. Importantly, it is not simply a recognition that others have their own goods which need to be respected; rather, it is the imperative that to take seriously the good of others, their goods must be seen as equal to one's own goods, and adopted as one's own good. *A*'s goods must become *B*'s goods, within reason. This leads to another important point about friendship in Finnis's work. Friendship—for Finnis, as for Aquinas and Aristotle before him—“is between equals ... to say that everyone can rightly have a kind of friendship with every other human person is to affirm a fundamental equality of human persons.”¹¹⁶ Building a concept of the common good from a model of friendship requires us to take seriously the relationship between rights and the common good.

If human persons take each other's ends as their own, if they share in the goods of the community, if they are all equal, then we must consider what role the common good plays when it comes to rights that might appear to be in conflict. Here, the concept of justice—as the framework and process that give rise to the common good—becomes central to cooperative, communal living. The common good is the goal of justice and, therefore, the common good must provide the parameters for just living. That is to say, the common good must set the limits necessary for the encounter between the goods and rights of the individual members of the community. The form of the common good “that

115. Finnis, *Aquinas*, 116.

116. Finnis, *Aquinas*, 117.

is better than an individual's good is a good consistent with all the moral principles implicit ... in allowing the first practical principles their combined directiveness."¹¹⁷

Finnis turns to some of the landmark human rights documents of the 20th century to illustrate his point here. Documents like the Universal Declaration of Human Rights, for example, have two common features: first, they employ two formulae for articulating rights ('Everyone has the right to...' and 'No one shall be...'); second—and here is Finnis's point—these documents recognize that "the 'exercise of rights and freedoms' proclaimed [in these documents] is said to be 'subject to limitation.'"¹¹⁸ It is important to keep in mind that not all rights are subject to limitation on Finnis's reading of these documents. Given that these documents affirm both rights-to-be-promoted and rights-not-to-be-acted-against, Finnis wants to argue that the former may be subject to limitation, while the latter may not. Before discussing this point further—particularly in regard to the existence of absolute human rights—we need to consider the grounds for Finnis's claim to the limitation of rights. He identifies a fourfold grounding¹¹⁹ for such limitation. First, rights may be limited "to secure due recognition for the rights and freedoms of others." Second, they may be limited "to meet the just requirements of morality in a democratic society." Third, they may be limited "to meet the just requirements of public order in a democratic society." Finally, rights may be limited "to meet the just requirements of the general welfare in a democratic society." Here, it is

117. Finnis, *Aquinas*, 120.

118. Finnis, *Natural Law*, 211.

119. The following four quotes will come from Finnis, *Natural Law*, 213.

important to keep in mind that Finnis is specifically talking about the rights that we are granted in and for the common good, not the principle of rights as such. He is concerned here with specifically enacted rules, not underlying principles. Nevertheless, when we consider the common good, we need to consider the limitations on rights insofar as they are subject to one of the abovementioned grounds.

Yet, we cannot avoid the question asked just a moment ago: What about absolute human rights? Finnis has clearly stated that such rights exist, yet how do they fit into his overall schema when seen in light of his discussion on the limitation of rights? It comes back, in the end, to his conception of the good. As one of the basic human goods, practical reasonableness constitutes that dimension of rights which gives them their absolute character. Insofar as one of the requirements of practical reasonableness states that it is always unreasonable to choose directly against any basic human good, there must be basic human goods, or basic human needs, that are absolute. Thus, the corresponding right to this good/need, too, must be absolute. For Finnis, the rights that are absolute human rights are 'negative rights,' or rights-not-to-be-acted-against. Those rights describable as 'positive rights,' or rights-to-be-promoted, are that category of rights subject to limitation by the common good. These rights vary, in their details, from time to time, place to place, and context to context. What remains constant is that they embody the concepts of friendship, mutuality, equality, and justice articulated above, while always aiming at the common good. If these criteria are met, then the limited rights that develop as a result of this coordinated, communal process can, and ought to, be understood as

legitimate rights, and both sets of rights—the absolute and the limited—contribute to the notion of human rights Finnis wants to offer.

Thus, as we have seen, the relationship between rights and the common good is complex, but, nevertheless, central to Finnis’s understanding of both. Of this relationship, Finnis reminds us that, on the one hand, “we should not say human rights, or their exercise, are subject to the common good; for the maintenance of human rights is a fundamental component of the common good. On the other hand, we can appropriately say that most human rights are subject to or limited by each other and by other *aspects* of the common good.”¹²⁰ With this, we are brought back to the beginning of our analysis of Finnis. It is in the interplay of good, law, and right that we find Finnis’s theory of the natural law. The indemonstrable, self-evident good—embodied and enacted in and through the basic human goods—circumscribes our reflections on law and rights. Insofar as the enacted good must be the common good, the natural law serves as the mediating space where the individual good meets the common good, where specific and conditional law meets the invariant principle(s) of law, and where human rights—both absolute and limited—find both the topography of their foundation as well as the tools for their actualization in the world. What I have tried to accomplish in this section is a clear restatement—in an overview fashion—of how, along the lines of Finnis, the theological natural law tradition can be further developed as a practical philosophy—as a normative and foundational ethics that eschews a complete reliance upon a particular belief system for the foundation and normativity of its claims. In correlating the tradition of the natural

120. Finnis, *Natural Law*, 218.

law with the tradition of human rights, Finnis achieves a necessary transformation of the medieval framework for ethics into the modern. This is an important achievement, and a welcome move for the purposes of this dissertation. Nevertheless, it begs the question of whether Aquinas and his natural law thinking can be so easily separated from their theological roots. We will return to Finnis in chapter four, where we will explore, once again, the geography of his analysis in light of the discussions provided in chapters two and three. There, we will once again visit the question of normativity as it pertains to both ethics and human rights, in order to determine how the position defended by Finnis meets the standards, questions, and challenges of a 21st century approach. Before we embark on this exploration, however, two further analyses into contemporary articulations of natural law thinking remain to be explored. The first of these will be the scholastic, virtue theory approach of Jean Porter. The second will be the critical, feminist approach of Cristina Traina.

Jean Porter: Scholasticism, Virtue, and the Natural Law

Having looked into, and analyzed, the conception of the natural law offered by John Finnis (i.e. the ‘new natural law’), I now want to turn to an alternative, yet no less impactful, analysis of the natural law, as it is embodied in both Aquinas and in the Medieval movement known as Scholasticism. For this, we will turn to the work and guidance of Jean Porter and, specifically, her three works on Aquinas and the natural

law—*Recovery of Virtue*,¹²¹ *Natural and Divine Law*,¹²² and *Nature as Reason*.¹²³ Through these three texts, Porter articulates her own analysis of Aquinas and the natural law which is, in its method and analysis, very different from Finnis. Porter is, in fact, rather critical of Finnis's approach. According to Nicholas Wolterstorff, Finnis and his collaborators "offer natural law theory as a mode of ethical inquiry which is independent both of all comprehensive religious and philosophical perspectives ... of all concrete moral communities ... [and] they present it as independent of theology."¹²⁴ According to Porter herself, the 'new natural law' offered by Finnis and his collaborators is "very much a natural law theory in the modern mode, since it claims to derive a comprehensive system of moral precepts from an indubitable first principle, namely, the first principle of practical reason as specified through the apprehension of the basic goods."¹²⁵ These two exemplary critiques of Finnis's project speak to some of the important themes that emerge out of Porter's analysis of Aquinas, the Scholastics, and the natural law. For Porter, we cannot separate the natural law from its religious, philosophical and, most importantly, theological roots in the intellectual methodology and historical context of Medieval scholasticism. While she is not anti-modern, she is very skeptical of approaches

121. Jean Porter, *The Recovery of Virtue: The Relevance of Aquinas for Christian Ethics* (Louisville, KY: Westminster John Knox, 1990).

122. Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Grand Rapids, MI: Eerdmans, 1999).

123. Porter, *Nature as Reason*.

124. Nicholas Wolterstorff, foreword to *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics*, by Jean Porter (Grand Rapids, MI: Eerdmans, 1999), 11.

125. Porter, *Natural and Divine Law*, 39.

to Aquinas and the natural law (i.e. Finnis) that appear to sever them from their scholastic roots. Thus, Porter offers us a reading and interpretation of the natural law for our contemporary context that ‘returns to the sources’—so to speak—of the natural law.

Therefore, in order to explicate Porter’s argument for the purposes of my overall project, this section will proceed as follows. First, I want to turn to Porter’s retrieval of Scholasticism in order to articulate the context for natural law thinking (within a religious, and specifically Catholic-Christian, paradigm) that Porter defends. Second, I want to turn specifically to Porter’s reading of Aquinas, in light of her reading of Scholasticism, in order to draw out of it the method and place of the natural law in Christian ethical reflection. Third, I want to articulate Porter’s own constructive re-articulation of natural law theory from the Scholastic context, through the lens of Aquinas, and for our contemporary context. I will pay particular attention, at this point, to the question of normativity in Porter’s natural law analysis. My goal here is to engage Porter on her own terms, and to offer both a comprehensive summary and critical evaluation of her position. We will begin with Porter’s analysis of the relationship between Scholasticism and natural law thinking.

The Scholastics and the Natural Law

One of the principal arguments Jean Porter puts forth in her corpus of work on the natural law is that the natural law, as we know it today, comes to us from out of a particular time and place. Specifically, Porter wants us to recognize contemporary natural law’s indebtedness to the movement known as Scholasticism,¹²⁶ especially as it came to be

126. The term ‘scholasticism’ is very broad. Nevertheless, Porter—while aware of this broadness—chooses not to specify it any further than to say that the terms ‘scholastic’ and

in the 12th and 13th centuries of Medieval Europe. In order to understand the natural law today, she argues, we need to understand the natural law as it was developed and articulated by the Scholastics. While Porter's own constructive natural law theory relies heavily on one particular Scholastic—Thomas Aquinas—she makes a deliberate and concerted effort both to locate and contextualize Aquinas's thoughts amidst and among his contemporaries. Before developing a constructive theory of the natural law in line with Aquinas—and, eventually, in line with Porter—we must have a grasp of what the natural law was for Scholastics themselves. In her book *Natural and Divine Law*, Porter argues that “the scholastic concept of the natural law shows us that it is possible to bring together aspects of moral reflection that we have long considered to be essentially disparate, and to do so in an integrally united way.”¹²⁷ How we come to this conclusion, however, needs to be teased out.

The idea of a unified moral theory is important to both the Scholastics and to Porter, but what are the ‘disparate’ elements that go into a natural law moral theory that is ‘integrally unified’? According to Porter, there are three elements that constitute the morality, and normative force, of a Scholastic natural law theory: “The scholastic concept of the natural law brings together three traditional loci for moral reflection: nature,

‘scholasticism,’ as far as her analysis is concerned, pertains to the intellectual movement, of which Aquinas is the paradigmatic figure, prominent in continental Europe in the 12th and 13th centuries. See Porter, *Natural and Divine Law*, 16, 41–48, and *Nature as Reason*, ix–x, 5–24.

127. Porter, *Natural and Divine Law*, 303.

reason, and Scripture.”¹²⁸ To understand what the Scholastic notion of the natural law looks like, we need to understand what the Scholastics meant by these terms.

First, nature. There are three fundamentally important characteristics of nature, according to the Scholastics: nature is good, nature is intelligible, and nature is teleological. Each of these characteristics needs further development. The belief—held by the Scholastics and maintained by Porter—that nature is fundamentally good stems from the specifically theological grounding of nature in the natural law paradigm. The Scholastics were committed to an understanding of creation and the natural world that saw fundamental continuity between God and God’s creation. According to Porter, “what the scholastics presuppose in developing their concept of the natural law is the fundamental unity of God and of God’s actions”¹²⁹—i.e. creation. Thus, in presupposing a good God—as the Scholastics did—they were also compelled, by the logic of their own argument, to presuppose that God’s action—God’s creation—was also good. This is what allows the Scholastics—and Porter after them—to put forth the claim that morality—understood here as the inclination toward, and consequent system of, the good—is, at least in a natural law theory, natural to human persons and, consequently, grounded in our created, biological being. Now, morality is not natural, as such, to all of nature in the same way it is natural to human persons. As Porter herself notes, nature must be understood in two ways: “[first] nature seen as the ordered totality of all creatures, and

128. Porter, *Natural and Divine Law*, 51.

129. Porter, *Nature as Reason*, 66.

[second] nature seen as the intrinsic characteristics of a given kind of creature.”¹³⁰ Since the human person is created in the *imago Dei*,¹³¹ the human person fulfills her natural capacity in a different way from the rest of creation. She is the very ‘image of God’ in creation and, as such, participates in a unique way in the moral order.¹³² The ground for this uniqueness—what distinguishes human nature *qua imago Dei* from the rest of creation—is rooted in our biology. Thus, Porter is able to argue, in line with the Scholastics, for a naturalistic grounding of morality in our biological constitution which manifests itself, at a second level of reflection, in “culturally and theoretically specific formulations.”¹³³ Thus, “[the] scholastic concept of the natural law offers a naturalistic view of morality as a human phenomenon, which is not a locus for transcendence but

130. Porter, *Natural and Divine Law*, 77.

131. The concept of the *imago Dei*, as I have already indicated, is a very important one for both the grounding and the development of natural law theories from the Scholastics through Aquinas and up to today. What I would like to note here is that on Porter’s reading of the Scholastics, the *imago Dei*—the image of God—is a fundamental claim of Christianity that finds its roots in the Scriptures (though, it must be noted, this claim remains dubious, as the concept of the *imago Dei* predates the Jewish and Christian narratives) and indicates that human persons are “capable of rational knowledge and self-direction.” Further, these capacities are connected with “conscience, considered (together with *synderesis*) as the source or even the core meaning of the natural law.” (Porter, *Nature as Reason*, 230) Thus, the *imago Dei*, according to Porter and the Scholastics, is a concept with deep, intimate ties to the natural law and, consequently, when one considers the natural law, particularly in relation to the human person, one cannot escape the framework of the *imago Dei*.

132. This ‘unique way’ of participating in the moral order—this performance of the *imago Dei*—is manifest through the human person’s capacity for reason, which I will come to in a moment.

133. Porter, *Nature as Reason*, 133.

which does share in the goodness of human nature as an expression of God's creative wisdom and love."¹³⁴

From the goodness of nature, grounded in the continuity between God and God's creation, we arrive at both the normativity, and the consequent intelligibility, of nature. Porter says that for the scholastics, "nature is normative to the extent that it is good, and it is good to the extent that it manifests intelligibility and purpose and its operations."¹³⁵ Nature is intelligible, which is to say that the structures of nature are both understandable to, and comprehensible for, human creatures. This claim informs Porter's belief that the natural law is "a capacity or power, rather than ... a universally accessible set of moral rules."¹³⁶ Further, the claim that nature is intelligible as a capacity or power relies on the Scholastic belief in a robust metaphysics underlying, and informing, creation and the natural law. For the Scholastics, metaphysical speculation was "essential to their overall theological project, because it provided the necessary context within which to discern God's wisdom and will through reflection on God's creation."¹³⁷ This metaphysics sets parameters around the capacities and powers of created existence, and, insofar as the limits of existence are demarcated, permits the Scholastics to speak about intelligibility of nature. This intelligibility is, itself, reflected in the Scholastics' view that human creatures,

134. Porter, *Natural and Divine Law*, 64.

135. Porter, *Nature as Reason*, 88.

136. Porter, *Nature as Reason*, 5.

137. Porter, *Nature as Reason*, 67.

therefore, “reflect an intelligibility and goodness in virtue of their essential form.”¹³⁸

Human creatures, as the *imago Dei* in creation, reflect the intelligibility and the social nature of their creator because the creator has undertaken the act of creation in an intelligible and social way. The social, relational nature of the creator is reflected—via the concept of the *imago Dei*—in the social, relational nature of human creatures. Therefore, as social creatures, human persons engage in a process of shared reflection upon the natural law, which, in turn, is what grants the Scholastics permission to see the natural law as “adapted to the task of explaining and evaluating practices in a rapidly evolving society.”¹³⁹ Nature is both good and intelligible for the Scholastics, and this comes to the fore in Scholastic conceptualizations of the natural law because they “presuppose that the human person is a substance with an intelligible, specific nature, in terms of which human behavior can be understood and evaluated.”¹⁴⁰ Much of this analysis, as well, relies on the orientation of this good, intelligible nature to its ultimate end. This is, of course, a fundamentally teleological argument.

As Porter notes, the natural law tradition has been particularly well received, since the time of the Scholastics, in Roman Catholic thought. She writes, “the natural law tradition ... [was] preserved and developed by Roman Catholic moral theologians, with the result that it came to be associated specifically with Catholic thought.”¹⁴¹ The reason

138. Porter, *Nature as Reason*, 137.

139. Porter, *Natural and Divine Law*, 50.

140. Porter, *Natural and Divine Law*, 79.

141. Porter, *Nature as Reason*, 32.

for this close affiliation between the natural law and Roman Catholic thought was a particular shared belief: nature, and, consequently, the human person within nature, is ordered to an end. That is to say, there is a fundamentally teleological character to both the nature of the human person and to the created order around her: both human creatures and created nature are fundamentally and necessarily ordered to, and by, God. This belief allows them to offer a unique methodological contribution to addressing questions about nature and the natural law. Scholastic natural law argumentation, it suggests, does not argue from effects, structures or functions to conclusions. Rather, it argues from judgments to conclusions about purpose and proper functioning. The methodological principle underlying this argument is teleological. It “presupposes some account of what human life considered as a whole should look like and what purposes the different inclinations and functions of human life serve within that context.”¹⁴²

Porter makes her point more explicitly when she says, in light of her analysis of Scholastic thought, that the “scholastic concept of the natural law presupposes a teleological conception of human nature.”¹⁴³ The Scholastic commitment to a teleological understanding of nature brings both the goodness and intelligibility of nature into its fold. Nature is good because we can know its aim and end (in the goodness of God). Nature is intelligible because we can know its order and underlying structure, since that is the very essence of its teleology. As such, suggests Porter, “the natural law tradition is fundamentally committed to the goodness, and therefore the moral significance, of

142. Porter, *Nature as Reason*, 77.

143. Porter, *Nature as Reason*, 82.

nature.”¹⁴⁴ With this, we will now leave the concept of nature, and turn to the next of the three elements that constitute the morality, and normative force, of a Scholastic natural law theory: reason.

We have already touched on some of the key features of reason in the Scholastic natural law theory (i.e. the *imago Dei*, the question of intelligibility, the teleological structure of nature, etc.). Before developing the notion of reason articulated in the Scholastic tradition, however, there is an important note to keep in mind: While the description of reason that follows will be deliberately problematized later on in this project, at this point we must be clear about what the term ‘reason’ connotes for the Scholastics, as distinct from what the term ‘reason’ often enough means for us, as 21st century readers. Reason, at this point, cannot be understood on what Porter calls ‘Kantian’ terms. That is to say, “reason as the scholastics understood it is not equivalent to the autonomous, self-legislating practical reason of Kant, or to the purely rational grasp of self-evident basic goods proposed by the ‘new natural law’ [i.e. Finnis].”¹⁴⁵ Reason, for the Scholastics, is a legitimate source of moral knowledge. This knowledge, however, does not stand alone. It is related to another—and for the Scholastics, more normative—source of knowledge: revelation. While we will attend to the Scholastic’s notion of Scripture shortly, I want to point out, in a preliminary fashion, that reason is, and remains, a legitimate source of knowledge for the Scholastics, even though this source does not stand

144. Porter, *Nature as Reason*, 136.

145. Porter, *Natural and Divine Law*, 66.

on its own. Reason, for the Scholastics, is a presupposed characteristic of the human person and the natural world.¹⁴⁶

As Porter notes, “reflection on the natural law always presupposes that human reason is one expression of a more general theory of intelligibility proper to the natural world.”¹⁴⁷ Further, “reason is a natural capacity, and in its functioning it is informed or mirrored by the intelligible order manifested in our own humanity, and in the world within which our lives are embedded.”¹⁴⁸ There are two distinct notions of reason at work here, but they are clearly linked in the Scholastic imagination. On the one hand, we have the concept of the ‘reasonable’ ordering of nature; on the other hand, we have the concept of ‘reason’ as the knowledge or understanding of this order. While reason exists in the natural world in the former sense—as it must, if we adopt the Scholastic’s teleological worldview—it exists in humanity in a unique way in the latter sense. The reason for this, as I have already noted, is that the human person, unlike the rest of creation, manifests a particular modality of the created order. A modality constituted by our creation in the *imago Dei*. For the scholastics, it belongs to the essence of what it means to be a human

146. Reason is the source from which knowledge is drawn, in the same way that a well is the source from which water is drawn. Reason, like the well, is an already established entity from which knowledge is drawn. It is not a deliberative, reflective process, nor is it a principle of reflection. The process of reasoning—the act of drawing in this metaphor—is also hard to reconcile with notions of deliberation and reflection. Reasoning, on this model, is more akin to simply taking than it is to deliberating. The distinction I am after, here, will become more apparent as we develop our notion of reason in line with Kant and Korsgaard later on in this project.

147. Porter, *Nature as Reason*, 49.

148. Porter, *Nature as Reason*, 71.

person to possess the capacity for reason. The notion of the *imago Dei* marks the human person as necessarily capable of both rational knowledge and self-determination. These characteristics are not so much argued for in the Scholastic model, but, rather, presupposed. To be a human person is to have these two capacities. Further, these capacities are confirmed to us in the process of shared reflection which human persons embody and enact as part of the very nature of who we are. The Scholastics even go so far as to “identify the natural law in its most fundamental sense with the Image of God.”¹⁴⁹ The Scholastic concept of reason “identifies rationality as the distinctive aspect of human nature, and emphasizes the importance of rational discernment in drawing moral conclusions from reflection on human nature.”¹⁵⁰ This does not, however, mean that the Scholastic notion of reason draws an indissoluble line of distinction between rational and pre-rational nature. There remains a continuity between these two articulations of what is ultimately a single nature.

Nature and reason are not seen as contrasts on the Scholastic model, but rather, “they always presuppose an essential continuity between what is natural and what is rational, since on their view nature is itself an intelligible expression of divine reason.”¹⁵¹ Nature and reason are not contrasts. Rather, the Scholastic understanding of creation requires that “while all of creation acts *in accordance with* rational principles, only

149. Porter, *Nature as Reason*, 393.

150. Porter, *Natural and Divine Law*, 63.

151. Porter, *Natural and Divine Law*, 93.

rational creatures ... are capable of consciously *following* rational principles.”¹⁵² This is how the Scholastics maintain a link between pre-rational and rational nature. Yet, this should not downplay the importance of reason and rationality in the human person in Scholastic natural law theory. According to Porter, “the scholastics identify reason with the most God-like aspect of human nature, in virtue of which we are said to be created in the divine image.”¹⁵³ Reason, as a fundamental human capacity, is precisely that constitutive element of our being that grounds and performs our being created in the *imago Dei*. It is, therefore, this understanding of reason, as constitutive of our being, that grounds the natural law claim that “we are all equal in virtue of our shared humanity,”¹⁵⁴ and, further, grounds the claim that this interpretation of nature “therefore [applies] to all persons.”¹⁵⁵ Thus, reason is, on the Scholastic account, a central component of any natural law theory. As I mentioned a while back, however, reason is not a stand-alone feature of human being, nor of the natural law. Reason is one important source of knowledge for the Scholastics, but alongside it stands another—even more important—source of knowledge: revelation. With this in mind, we will turn to the final characteristic of the Scholastic natural law theory: Scripture.

152. Porter, *Natural and Divine Law*, 88 (*italics in the original*). This is also the position of Aquinas, as we will see later on in this section.

153. Porter, *Natural and Divine Law*, 157.

154. Porter, *Natural and Divine Law*, 267.

155. Porter, *Natural and Divine Law*, 145.

While it may appear surprising to 21st century eyes that Scripture is one of the fundamental characteristics of natural law thinking, for the Scholastics—and for Porter—this ought not to be the case. Scripture is a source of moral knowledge in natural law thought. It is, in fact—and, here, I borrow a phrase from Paul Ricoeur—the ‘sieve of the norm’¹⁵⁶ of moral knowledge. As I mentioned when investigating the notion of reason in Scholastic accounts of the natural law, both reason and revelation (i.e. Scripture) are independent, yet related, sources of moral knowledge. However, it remains the case that revelation—not reason—constitutes the more normative side of this relationship, and serves to confirm and/or correct the other. The Scholastics, according to Porter, were primarily text-driven thinkers when it came to the natural law: “The tradition of the natural law as the scholastics received it was mediated through a wide variety of texts, all of them considered to be authoritative, although only one of them, namely, Scripture, was taken to be supremely authoritative.”¹⁵⁷ The reason for this was that the Scholastics took what was revealed through Scripture to be part and parcel of the unified moral theory created by God. For them—as for Aquinas and Porter—“morality comprises a law, which is paradigmatically expressed through God’s divine law as revealed in Scripture.”¹⁵⁸ The natural law, for the Scholastics, “is a temporal expression of the eternal law, as are all just ... human laws.”¹⁵⁹ The argument, here, is deeply dependent on how the Scholastics

156. Paul Ricoeur, *Oneself as Another* (Chicago: University of Chicago Press, 1992), 170.

157. Porter, *Nature as Reason*, 8.

158. Porter, *Nature as Reason*, 50.

159. Porter, *Natural and Divine Law*, 126.

understood the relation between the natural and eternal order. For the Scholastics, “the basic norms of Scripture reflect deliverances of reason ... [consequently] reason and the moral norms of Scripture are fundamentally in harmony.”¹⁶⁰ Porter’s point here once again confirms that, for the Scholastics, there was no discontinuity between reason and nature, between God and God’s creation. Put another way, there was simply no discontinuity between nature, reason, and revelation within the Scholastic paradigm. Everything was understood to be part and parcel of a unified moral order, so it only makes sense that moral order revealed in Scripture and the moral order revealed in reason are harmonious—“there can be no fundamental contradiction between natural law and Scripture.”¹⁶¹ Revelation and reason both reveal the natural law, but “revelation does not just confirm our independently established theories about natural law; rather, it reveals the existence of a natural law in and through indicating its significance within a more comprehensive theological framework.”¹⁶² The Scholastic notion of the natural law—in its fullness, revealed through Scripture and reason—is a theological, and specifically Christian, project.¹⁶³ According to Porter, the Scholastic connection between natural and divine law, thus articulated, is possible because “Scripture and nature ... provide two complementary modes of access to God’s wisdom and God’s providential

160. Porter, *Nature as Reason*, 247.

161. Porter, *Natural and Divine Law*, 133.

162. Porter, *Nature as Reason*, 328.

163. Porter, *Natural and Divine Law*, 123. This problematics of this claim will be raised at the end of this chapter, and then further addressed in chapter 4.

will for humanity.”¹⁶⁴ Both are necessary to fully understand the unified moral theory the natural law aims to articulate. Reason, too, plays an integral role here, but only if we keep in mind a caveat noted earlier in this analysis: reason as understood by the scholastics is very different from reason as understood by ‘modern’ subjects. Reason operates alongside nature and Scripture, providing a source for knowledge not explicitly identified in the other two sources. Reason is not simply the form of engagement with nature and Scripture, but, itself, provides insights that are unique, even if—in the end—they are subject to the ‘sieve’ of the other two sources. With that, we now have a clearer understanding of the three mutually interpreting sources of moral norms in natural law thinking. Yet, what does this mean for our understanding of the natural law going forward?

For the Scholastics, “the natural law is fundamentally a capacity or power to distinguish between good and evil; it is intrinsic to the character of the human soul as made in the Image of God, ... and it is expressed or developed through moral precepts which are confirmed, as well as being completed and transcended, through the operation of grace.”¹⁶⁵ In the next section, we will turn to Aquinas as a specific embodiment—and Porter’s example *par excellence*—of the natural law. While much of what we have been discussing thus far will appear in Aquinas as well—given that the Scholasticism of the 12th and 13th centuries was also his context—Porter designates Aquinas’s as a particularly

164. Porter, *Natural and Divine Law*, 132.

165. Porter, *Nature as Reason*, 13–14.

important articulation of Scholastic natural law thinking. Thus, in line with Porter, we will now turn to Aquinas's thought on the natural law.

Aquinas and the Natural Law

In order to further support her analysis of the perduring efficacy and practicality of the natural law, Porter locates the roots of this analysis within Scholasticism, to be sure, but more specifically, within the thought, framework, and texts of Thomas Aquinas. For Porter, Aquinas is the Christian ethicist *par excellence* not because it has been so decreed in the Catholic Church,¹⁶⁶ but because Aquinas's thought offers us something of permanent significance for Christian ethics. As Porter puts it, this permanent significance "lies precisely in the fact that his thought contains the seeds of its own transcendence."¹⁶⁷ She supports this claim by noting two distinct elements of Aquinas's thought: "[first] his thought can be shown to address the tensions and problematics of [the Christian ethical] tradition ... more successfully than other attempts to do so ... [and second] it can be shown to be capable of addressing the tensions and problematics of the Christian tradition in our own time in a satisfactory way."¹⁶⁸ Therefore, I want to tease out some of the key themes from Porter's reading of Aquinas that pertain to her analysis of the natural law and its perduring legacy today. I will do this by looking, first, at what Aquinas incorporates into his own work from the Scholastic model we have just been analyzing. Second, I will look at Porter's articulation of the virtues as Aquinas's way of organizing

166. See Leo XIII, *Aeterni Patris* (August 4, 1879), sec. 19–31.

167. Porter, *Recovery of Virtue*, 172.

168. Porter, *Recovery of Virtue*, 173.

the moral life. Finally, I will look at Aquinas's understanding of practical reason and the will, as they pertain to both the human person, specifically, and his overall natural law theory more generally.

Aquinas incorporates—albeit, critically—much of Scholastic thought and method into his own work. Consequently, one can fairly identify Aquinas as a robustly Scholastic thinker. As Porter notes, Aquinas himself affirms many of the fundamental elements of Scholastic natural law thought, including “a metaphysical theory of goodness for moral theory, the existence of a hierarchy of being, and the claim that some kinds of actions are never morally permissible.”¹⁶⁹ Goodness, intelligibility, and a teleological orientation in creation are all elements of natural law thinking that Aquinas and the Scholastics share, as is their commitment to God. For Aquinas, “true happiness consists in God, perceived in his essence through the beatific vision which can alone satisfy the rational creature's longing for intelligibility.”¹⁷⁰ This raises another point of agreement between Aquinas and the Scholastics. Both agree that the human person's true happiness in God is not, as such, achievable in a terrestrial setting. Thus, the human person is directed toward one end, but in two ways: the natural and the supernatural. It is to the natural end of happiness that the human person is oriented in this life, even though it is ultimately to the supernatural end of God that the human person is truly oriented. Because Aquinas and the Scholastics do not see a break between God and God's creation, the natural and supernatural ends are not two separate ends, but—finally—one end. If nature is intelligible and good, as

169. Porter, *Recovery of Virtue*, 13.

170. Porter, *Recovery of Virtue*, 63.

Aquinas believes it is, then there must be “something with understanding, from which all natural things are ordained toward an end, and this we call God.”¹⁷¹ Yet, the reliance on God for intelligibility and goodness in nature is not the only point of connection between Aquinas and the Scholastics. Aquinas also agrees with the Scholastics that the natural law *stems* from this intelligibility, and brings “coherence to the intelligible order of the human creature itself”¹⁷² in the process. What allows Aquinas to make these claims? Like the Scholastics, Aquinas believes that “the natural law cannot rightly be understood apart from Scripture, which itself establishes a central place for the natural law in Christian ethical reflection.”¹⁷³

One of the most interesting characteristics of the natural law found in the work of Aquinas—and one of the key elements of Aquinas’s thought drawn out by Porter—is the theory of virtue Aquinas articulates in light of his presuppositions and commitments to the goodness, intelligibility, and teleological structure of nature. For Aquinas, “the natural perfection of the human person consists in acting in accordance with virtue ... in being in accordance with the norms of reason, which is of course the precondition of virtuous action.”¹⁷⁴ What, however, does this mean? As we have already seen, genuine human happiness is found in God alone. Yet, as Aquinas acknowledges, “the supernatural end of

171. Aquinas, *STh* I, q. 2, a. 3 (quoted in Porter, *Nature as Reason*, 87).

172. Porter, *Nature as Reason*, 262.

173. Porter, *Nature as Reason*, 332.

174. Porter, *Recovery of Virtue*, 70.

human life as such cannot be the subject of direct knowledge.”¹⁷⁵ While happiness is the perfection proper to rational creatures, the *natural* end of happiness—that which we can achieve in this terrestrial life—is identified with the practice of the virtues, while the *supernatural* end of happiness is identified with the Beatific Vision. According to Porter, “all persons are equally capable of moral virtue, because they possess those capacities of knowledge and will that are proper to humanity.”¹⁷⁶ As such, all human beings are equally capable of the specifically human—that is to say, natural—good, which, according to Aquinas, “serves as the proximate norm of morality.”¹⁷⁷ The specifically human good is a natural good, achieved through the exercise of the virtues. The imperfect approximation of happiness in this life must be properly located in this discussion. Aquinas argues that “the end of action which informs and gives structure to the precepts of the natural law is the overall perfection ... the happiness of the acting person.”¹⁷⁸ Yet, as Porter points out, “it is not the enjoyment of the good as such which counts as happiness, but the exercise of one’s virtuous dispositions in and through this enjoyment”¹⁷⁹ that counts as happiness. That is to say, it is not in the possession of any ‘good’ that happiness lies in this life. Since the only true source of happiness is God, the claim that we could possess God would be unthinkable for both Aquinas and the Scholastics. This being the case, Aquinas locates

175. Porter, *Recovery of Virtue*, 66.

176. Porter, *Recovery of Virtue*, 140.

177. Porter, *Recovery of Virtue*, 156.

178. Porter, *Nature as Reason*, 50.

179. Porter, *Nature as Reason*, 172.

“terrestrial forms of happiness with the practice of the virtues.”¹⁸⁰ In this way, the virtues must become habituated. They must become “stable dispositions of a human capacity for knowledge or desire, through which the capacity is given sufficient determination to be exercised through some action.”¹⁸¹ In becoming habituated, the virtues work to perfect the human person in her dispositions and actions. The virtues are not means to an end, since it is not in ‘an end,’ as such, that terrestrial happiness consists. The virtues are *both* the means *and* the end of terrestrial happiness. They are the means—the process—by which one comes to terrestrial happiness, and they are what one comes to as terrestrial happiness. Terrestrial happiness consists in the practice of the virtues. As Porter points out, “there is a case to be made that Aquinas ... identifies virtuous behavior with rational behavior, understood in terms of ‘something that we have reason to do.’”¹⁸² For him, “the life of virtue provides the goal which informs and gives structure to the various precepts of the natural law.”¹⁸³ With this in mind, we will turn now to the questions of practical reason and the will in Aquinas.

As we have already seen, there are particular characteristics underlying the Scholastic, and consequently, Thomistic, understandings of the natural law. These characteristics are the goodness of created nature, its intelligibility, and the overall orientation of nature to a specific goal and end. When we speak about the goodness of

180. Porter, *Nature as Reason*, 162.

181. Aquinas, *STh* I-II, q. 49, aa. 3, 4 (quoted in Porter, *Nature as Reason*, 163).

182. Porter, *Nature as Reason*, 187.

183. Porter, *Nature as Reason*, 50.

nature in particular, we are reminded by Porter that on her view—and on the view of Aquinas—goodness is a transcendental concept. That is to say, goodness is “a concept of such ubiquity and generality that it can be applied to anything whatever, in any category of real existence.”¹⁸⁴ It is the ubiquity and generality of goodness that constitute it as a transcendental for Porter,¹⁸⁵ as opposed to more particularized concepts which do not qualify as transcendental (e.g. color, which can only be applied to visible objects). Thus, when considering the question of the natural law and the human person’s relationship to it, we are brought to the question of how this goodness is enacted in the natural, terrestrial world. On Aquinas’s account, this goodness is enacted either naturally or morally through the action of the human person *qua* moral agent. Drawing on Ralph McInerny, Porter remarks, “the key to Aquinas’ theory of morality is the concept of action.”¹⁸⁶ The question for us is: What is this action, and how are we to understand it in line with Aquinas’s thought? Two of the constitutive capacities that mold Aquinas’s notion of action, according to Porter, are practical reason and the will. These two concepts, however, must be understood on Aquinas’s own terms. For him, “the practical function of the intellect proper to natural happiness will necessarily result in good

184. Porter, *Recovery of Virtue*, 36.

185. Porter’s analysis of the concept of the transcendental relies upon Etienne Gilson, *The Christian Philosophy of St. Thomas Aquinas* (London: V. Gollancz, 1957), 103, 357–58, and *Elements of Christian Philosophy* (Garden City, NY: Doubleday, 1960), 149–78. This notion of ‘transcendental’ as coterminous with the notions of ubiquity, generality, and/or universality is problematic, particularly from a Kantian and post-Kantian perspective. Nevertheless, I will bracket this line of questioning for the time being and return to it in chapter 4.

186. Porter, *Recovery of Virtue*, 69; see Ralph McInerny, *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas* (Washington, DC: Catholic University of America Press, 1982), 1.

actions, as well as good thinking.”¹⁸⁷ Therefore, the first principle of practical reason, for Aquinas, is that “all persons naturally seek happiness, that is, the fullest possible enjoyment of the good(s) that each believes will perfect and fulfill him or her as a human being.”¹⁸⁸ Reason, as we have already seen, is natural to the human person as such.

According to Porter, Aquinas and the Scholastics presuppose that reason is an expression of the intelligibility of the natural, terrestrial world. Yet we must keep in mind that if reason operates by itself, it does not lead to action. For Aquinas, “the operations of practical reason are to be analyzed and evaluated in terms of the desires they serve.”¹⁸⁹

This means that practical reason, for Aquinas, is calculative: “it takes the form of identifying a particular course of action representing a sound or appropriate way to attain, safeguard, or enjoy some further end.”¹⁹⁰ Practical reason, on this account, is a means for attaining one’s end(s). Since one’s proper end is happiness, and since we cannot attain our final happiness (i.e. the Beatific Vision) in this life, we must say, along with Porter, that for Aquinas, “the proper synthesizing category for the judgments of practical reason is provided by happiness, understood as the practice of the virtues.”¹⁹¹

What gives rise to the practice of practical reason articulated here is, for Aquinas, the will understood as desire. According to Porter, “the will [for Aquinas] is a kind of

187. Porter, *Recovery of Virtue*, 84.

188. Porter, *Recovery of Virtue*, 86.

189. Porter, *Nature as Reason*, 249.

190. Porter, *Nature as Reason*, 250, echoing Candace A. Vogler, *Reasonably Vicious* (Cambridge, MA: Harvard University Press, 2002), 134.

191. Porter, *Nature as Reason*, 315.

desire ... a kind of appetite.”¹⁹² Both the will and the passions (another desire-based characteristic of the human person) are types of appetites for Aquinas—each directed toward the good, but apprehending it in different terms. The will apprehends the good through reason; the passions apprehend the good through the senses and imagination.¹⁹³ Returning to the will, however, Porter notes that it—as an appetite or desire—“is naturally and spontaneously oriented toward ... [the] components of well-being, including life itself, health, reproduction, and the like.”¹⁹⁴ Thus, the object of the will (the good-to-be-pursued) “is always mediated to it through rational judgment.”¹⁹⁵ While the will gives rise to the practice of practical reason in order to achieve its end, what gives rise to the will is the will itself.¹⁹⁶ This also means that, since the will gives rise to itself as both spontaneously and naturally within us, we are, therefore, accountable for our actions undertaken as a result of our will. The entirety of this discussion in Porter relies upon an understanding of nature and the natural law as we have been discussing them. As she reminds us, “the natural law as Aquinas understands it stems from and respects the intelligible order of nature ... by respecting and bringing coherence to the intelligible order of the human creature itself.”¹⁹⁷ The concept of a unified moral theory—as good, as

192. Porter, *Nature as Reason*, 253.

193. Porter, *Nature as Reason*, 254.

194. Porter, *Nature as Reason*, 257.

195. Porter, *Nature as Reason*, 258.

196. Porter, *Nature as Reason*, 259.

197. Porter, *Nature as Reason*, 262.

intelligible, as created—is at work on all levels of Aquinas’s analysis. With this in mind, we can say—with Porter and for Aquinas—that the account of practical reason operative in the natural law correlates “with a distinctive account of desires [i.e. the will and the passions], according to which the desires of the human person stem from and reflect the proper form of humanity.”¹⁹⁸

As we have seen, the Scholastics’ understanding of the natural law brings together three distinct, yet mutually interpreting, elements: nature, reason, and Scripture. Nature, according to Porter, is constituted by goodness, intelligibility, and teleology. In light of this, the ‘natural’ dimension of the natural law is understood to be ‘pre-conventional’—that is, ‘nature’ is not something we, as human persons, construct or create. It is, in its most fundamental sense, given to us by the God in whose eternal law we participate, since God and God’s creation are continuous in the Scholastic model. It is upon this same belief in a creator-God that we base our understanding of rationality as that unique characteristic of human creatures—at least in our terrestrial context—that locates us within the *imago Dei*. Nature and reason, however, do not constitute the fullness of the natural law. We must also look to revelation—specifically, as Scripture—in order to find the natural law that is revealed to us. This does not ‘trump’ the process of reasoning constitutive of the *imago Dei*, but rather exposes us to genuine, complementary insight into the nature, and unified moral theory, of natural law. As noted earlier, the Scholastic concept of the natural law “represents a theologically informed construal of the moral

198. Porter, *Nature as Reason*, 265.

significance of human nature, as opposed to the simple discovery of a pre-existing moral order.”¹⁹⁹

In turning to Thomas Aquinas, Porter gives greater depth and specificity to her analysis by articulating the natural law in light of its most prominent exponent. Aquinas, himself a Scholastic, adopts much from the already articulated Scholastic theory. One of his perduring contributions to natural law theory—as Porter understands him—is the importance of the virtues to the unified moral theory represented in and by the natural law. The practice of the virtues is what brings well-being—understood as “the condition indicated by the general normative ideal of human flourishing”²⁰⁰—and happiness—understood as “the distinctively moral ideal specifying and qualifying [well-being]”²⁰¹—together. Thus, in a natural, terrestrial sense, happiness and well-being exist together in the practice of the virtues which gives rise to the moral behavior characteristic, and constitutive, of the natural law, as well as its consequent rational behavior. As has been noted, the virtues are not means to an end, but rather are dispositions that orient the human person toward both her natural and supernatural ends. Finally, Aquinas develops a specific form of practical reason, with a specific notion of the will, from out of the Scholastic milieu. Practical reason, for Aquinas, is calculative: its purpose is to seek out, and establish, the means for achieving, protecting, or enjoying a particular end or ends. The will, understood by Aquinas to be an appetite or desire, moves us—and itself—to

199. Porter, *Natural and Divine Law*, 170.

200. Porter, *Nature as Reason*, 142.

201. Porter, *Nature as Reason*, 142.

apprehend the good through the calculative maneuvers of practical reason. This allows us, in Aquinas's view, to be accountable and to voluntarily undertake our own actions. The question, at this point, remains: What does the natural law—as articulated by the Scholastics and Aquinas, via Porter—provide for Christian ethics today?

According to Porter, one of the contemporary misunderstandings of natural law theory is that it provides us with a stable and unchangeable set of rules. Against this, Porter reminds us that the natural law “does not offer a comprehensive and substantive set of moral rules which are universally valid and can be recognized as such.”²⁰² Rather, the natural law “is meant first of all as a theologically informed interpretation of human morality considered as a natural phenomenon and therefore as an expression of the distinctively human form of created goodness, and secondly as a theology of the moral life that locates and contextualizes it in relation to other central scriptural and doctrinal concerns.”²⁰³ This point is an important one for Porter to make, as this particular confusion, on her reading, is fairly endemic to natural law thinking today. For Porter, the balance to strike in this case is between the unity and the plurality of the natural law. As she argues, “Aquinas wants to show that although there are indeed many precepts of the natural law, nonetheless, there is a sense in which they may be said to be one, because they reflect an internal principle of order.”²⁰⁴ The important thing here, for Porter, is that we not move too quickly to the latter part of this statement without going through, or at

202. Porter, *Nature as Reason*, 325.

203. Porter, *Nature as Reason*, 326.

204. Porter, *Recovery of Virtue*, 84.

least taking into consideration, the former. There is plurality within the natural law, according to Porter, but it operates within an overall unity given its ‘internal principle of order.’ The move by many theorists and ethicists today to understand the natural law as a ‘set of moral rules which are universally valid’ belies this problem. For Porter, the tension between its internal plurality and overarching unity is one of the key elements of the natural law that makes it such a valuable resource for Christian ethics today.

Another important dimension of the natural law that emerges from Porter’s analysis is that the natural law, understood in line with Aquinas in particular, “is not just a source of private morality, but the basis of a rational public order.”²⁰⁵ Given that the natural law, as Porter has argued for understanding it, pertains to all human persons as creatures made in the *imago Dei*, it only makes sense that the natural law ought to be a public, shareable framework for ethical reflection. While the question of the contemporary viability of this perspective can—and will—be questioned later on in this project, from Porter’s perspective, the Scholastic and Thomistic theories of the natural law require this dimension of the natural law be maintained.

Finally, Porter believes that natural law theory remains relevant to Christian ethics today specifically because it is a moral theory with a robustly theological grounding. As she notes, “for Aquinas the natural law represents the rational creature’s mode of participating in God’s provenance.”²⁰⁶ God’s provenance, according to Porter, is the rational creature’s—the human person’s—orientation toward their final end. As has been

205. Porter, *Recovery of Virtue*, 147.

206. Porter, *Nature as Reason*, 175.

previously noted, Porter argues that “the natural law cannot rightly be understood apart from Scripture.”²⁰⁷ Scripture provides a source of moral knowledge—as revelation—that is central to natural law theory and, as such, cannot be achieved by any means other than revelation itself. Revelation’s contribution to the natural law is unique: “revelation does not just confirm our independently established theories about natural law; rather, it reveals the existence of a natural law in and through indicating its significance within a more comprehensive theological framework.”²⁰⁸ The natural law, according to Porter, is fundamentally a theologically grounded enterprise and this, among other characteristics, makes it eminently desirable as a framework for Christian ethics today.

I have attempted, in these pages, to offer an articulation of Jean Porter’s natural law theory on her own terms—as she, too, attempted to do with respect to the Scholastics and Aquinas. In comparison with Finnis, Porter’s analysis offers Catholic/Christian ethics a specific approach to the questions of nature, reason, and scripture that remains faithful to both the requirements of intelligibility (as moral norms and virtues) and the continuity of the tradition of Catholic/Christian theology. As we will see in chapter four, however, she does not sufficiently address a root problem that separates medieval and modern/contemporary philosophies—namely, the metaphysical concept of teleology. Before embarking on this critical exploration of Porter, however, I want to turn to the final figure in the present exploration of contemporary natural law theories: Cristina Traina. In order to articulate the natural law theory she develops from works and thought

207. Porter, *Nature as Reason*, 332.

208. Porter, *Nature as Reason*, 328.

of Aquinas—through figures like Finnis and Porter—I will turn to her discussion of the relationship between the natural law and contemporary feminist ethical discourse.

Cristina Traina: The Natural Law and Feminist Ethics

The final natural law theorist we will look at in this exploration of contemporary interpretations of the natural law is Cristina Traina. While both Finnis and Porter have offered different interpretations of Aquinas and the natural law tradition in the respective lights of legal-philosophical discourse and scholastic/virtue ethics methodology, Traina offers her interpretation of Aquinas and the natural law tradition in the key of feminist ethics. This articulation of natural law may not be the most intuitive, concedes Traina; yet, she suggests, there is much in the natural law tradition coming out of Aquinas that correlates with the methods, grounds, and goals of feminist ethics. Traina acknowledges that “Thomas is plainly not a feminist. His systematic translation of all differences into hierarchies is an enormous obstacle to feminist appropriation of his thought, as is the cumulative effect of his myriad apparently biologically deterministic judgments.”²⁰⁹ And, further, she suggests that the critical correspondence between feminist ethics and the natural law “holds the greatest promise for culturally sensitive, flexible, yet tough and prophetic contemporary moral reflection.”²¹⁰ Feminist ethics and the natural law need each other in order to be both mutually constructive and critically corrective. Specifically,

209. Cristina L. H. Traina, *Feminist Ethics and Natural Law: The End of the Anathemas* (Washington, DC: Georgetown University Press, 1999), 85.

210. Traina, *Feminist Ethics*, 12.

it is the balance between the universal and the particular, between law and virtue, which Traina identifies as the *modus operandi* of both the natural law and feminist ethics. In order to tease out the nuances of this argument, and to investigate its place within the analysis of this project, this section will proceed as follows. First, I will briefly reconstruct Traina's articulation of both feminist ethics and the natural law. I will then turn to the areas of correspondence Traina sees between these two traditions in an effort to articulate Traina's constructive project of retrieving Aquinas's natural law in the key of feminist ethics. Finally, I will reflect on a few questions that Traina's project surfaces, particularly in view of the wider trajectory of this project. The most immediate concern, however, is to understand the two traditions Traina is working with: feminist ethics and the natural law.

What is Feminism, and what is Feminist Ethics?

Traina begins her analysis of the relationship between feminist ethics and the natural law, in *Feminist Ethics and the natural law: The End of the Anathemas*, by articulating an approach to these two traditions which brings them into much closer proximity than they are often thought to be. Traina says that the "systematic connection between these ethical traditions [i.e. feminist ethics and the natural law] are so strong that responsible development of either requires careful attention to the other."²¹¹ In light of this, Traina begins her analysis with an evaluation of the condition and state of feminism and feminist ethics in the late 20th century. One of the defining characteristics of this time period, for Traina, is the tension between the 'modern' and the 'post-modern' schools of thought. While feminism and feminist ethics had a solid footing within the discourse of

211. Traina, *Feminist Ethics*, 1.

modernity, they lose this footing in a post-modern setting. The traditional rallying points of modern feminist discourse are the very scenes that become problematized, critiqued, and questioned by post-modern feminisms. Traina articulates the tension in the following way:

feminist ethics, and a successful feminist politics, depend upon the possibility of making some authentically common claims, rooted in commonly held visions of women's flourishing. The post-modern claim that universal or "totalizing" ethics tend in fact to be biased, deterministic, and quite prematurely particular ... must be accepted.... But an unconditional, hands-off respect for otherness is politically paralyzing, and an undifferentiated elevation of resistance is an invitation to anarchy and chaos.²¹²

Traina points out the need for a 'third way' in feminist ethics and feminist discourse to balance the questions of the universal and the particular, of freedom and determinism. Traina suggests that the natural law provides such a 'third way' for feminist ethics. She does this by arguing "that central natural law claims, critically corrected by feminism, meet the requirements of contemporary moral reflection by balancing novelty, variety, and creativity with claims about continuity and universality."²¹³ Before elaborating on this point, however, I want to articulate the forms of feminism Traina believes constitute the contemporary feminist landscape.

"Broadly speaking," says Traina, "*feminism* is a practical and intellectual dedication to the discovery and uprooting of ideologies, relationships, and institutions that thwart women's flourishing and to the creation of new ideologies, relationships, and

212. Traina, *Feminist Ethics*, 6–7.

213. Traina, *Feminist Ethics*, 17.

institutions that promote it.”²¹⁴ However, notes Traina, in the contemporary landscape of feminist discourse, we can no longer speak about *feminism*, but rather about *feminisms*. Thus, the first task of articulating a feminist ethic is to investigate the overlapping spaces of the dominant feminist discourses. The first discourse Traina identifies is ‘liberal feminism.’ Embodied in figures like Susan Parsons, Judith Webb Kay, and Beverly Harrison, the liberal feminist position argues that “independent of their position in society, individuals are inherently autonomous, worthy of respect, and possessed of rights. Although nature for liberal feminists may be a bit more orderly and understandable than the raw, wild, disorganized physical matter their Enlightenment predecessors discerned, they still draw a sharp distinction between it and reason: the abstract, universal, scientific ordering principle of truly human culture.”²¹⁵ Thus, the liberal feminist voice takes, as one of its principal and defining foci, the Enlightenment discourse on reason and abstract rational thought as uniquely human capacities and, thus, characteristic of both men and women. The inherent, embedded nature of reason within all human persons, therefore, becomes one of the principal grounds from which feminist discourse can be both articulated and shared.

The next discourse Traina identifies is ‘naturalist feminism.’ The embodiment of this feminist discourse can be best articulated, not in terms of figures, but in terms of trajectories of thought. Within naturalist feminism, two such trajectories dominate: biological naturalism and telic naturalism. Biological naturalism, says Traina, “maps the

214. Traina, *Feminist Ethics*, 25.

215. Traina, *Feminist Ethics*, 26.

functioning of bodies and societies ... onto moral norms, extrapolating moral commands from physical and social givens.”²¹⁶ Telic naturalism, on the other hand, promotes the position that “the future is normative. Norms are drawn from a picture of human being or society not in its current imperfection but as it is intended to be.”²¹⁷ Whereas liberal feminism emphasizes the underlying unity of human being and experience—for example, the underlying rationality, and consequent reason, of both men and women—naturalist feminism, of both the biological and telic orientations, emphasizes difference. Differences are real, natural, and normative, but not hierarchical. This is, according to Traina, both the great strength and the great weakness of naturalist feminism.

Finally, Traina turns to the third feminist discourse in the contemporary landscape: social constructionism. Whereas both liberal and naturalist feminisms sought foundations for making ethical claims in the key of their respective feminisms, social constructionism objects “that men, women, humanity, nature, and anything else that liberalism or naturalism counts as basic are not independently existing essences but categories that human beings have created.”²¹⁸ Further, for social constructionism, “it is not just that any description is an interpretation, a ‘take’ on a real object; rather, the speaker constructs the object in the act of naming it.”²¹⁹ For Traina, the most prominent representative of this position is Judith Butler. For Butler, and the social constructionist

216. Traina, *Feminist Ethics*, 29.

217. Traina, *Feminist Ethics*, 29.

218. Traina, *Feminist Ethics*, 32.

219. Traina, *Feminist Ethics*, 32.

feminist position, “there can be no transcendental sacred cows ... because authority is culturally and collectively bestowed, not inherent.”²²⁰ Rigorous critique of all that is said to be normative, universal, etc., is characteristic of this position, but, as Traina suggests, critique is also this position’s greatest shortfall. As she says, the difficulty for doing ethics in the social constructionist key is that “social constructionism harbors a debilitating skepticism.”²²¹ It deconstructs everything in sight, including the foundations of feminist discourse that liberalism and naturalism what to preserve. Looking specifically at the example of women through the social constructionist lens, Traina laments that women, “on the verge of tasting the good life, ... suddenly discover that the definition of that life has changed, that their precise share in it depends upon unmanageably various factors ... that the category ‘woman’ no longer exists.”²²² This leads Traina to conclude that while social constructionism offers an important ethical critique, “it cannot by itself produce an ethic.”²²³

In the end, we are still left with the questions of feminism and feminist ethics. Traina offers three trajectories of contemporary feminist discourse—liberal, naturalist, and social constructionist—that highlight some of the differences inherent in contemporary feminism. One could interpret these discourses as mutually exclusive—and they certainly contain incommensurable characteristics—yet Traina suggests that while

220. Traina, *Feminist Ethics*, 33.

221. Traina, *Feminist Ethics*, 33.

222. Traina, *Feminist Ethics*, 34.

223. Traina, *Feminist Ethics*, 35.

each discourse follows its own trajectory, they all remain, in one way or another, *feminist* discourses. It is this shared element that brings them closer together than they may perhaps appear. As Traina suggests:

The feminism within these feminisms, though still formal, has more shape than when we began [this analysis]. It is committed to women's flourishing; to a critical realism that operates within the limitations and goals of human historical existence; to an historical, social, and mutually critical view of nature and reason; to the rights and dignities of individuals; to confident, prophetic transformation of and survival in an imperfect world; to inclusiveness, self-criticism, and humility.²²⁴

This, then, identifies the core of all feminisms and feminist ethics. Her suggestion, in the end, is that one's sex "counts as a social justice claim when it generates needs that you must meet in order for ... [one] to cross the threshold of human flourishing."²²⁵ This is the core of Traina's feminist analysis, and it is in light of this that we turn to the natural law tradition in order to determine if natural law ethics and feminist ethics, despite some of their obvious differences, are, perhaps, compatible discourses.

What Is the Natural Law, and What Is Natural Law Ethics?

For Traina, the natural law provides a normative foundation for ethical discourse²²⁶ via a telic human anthropology and a casuistical, methodological deployment of natural law ethics. Natural law, so understood, offers us a firm foundation for ethical reflection, while also maintaining flexibility and adaptability to the myriad contexts and conventions

224. Traina, *Feminist Ethics*, 38–39.

225. Traina, *Feminist Ethics*, 47.

226. Traina cites Christine Korsgaard to support this claim, but it remains to be seen if Korsgaard is the figure best suited to support the particular claim Traina is trying to make. For a further analysis of Korsgaard, see chapters 3 and 4.

human persons find themselves embodied within. All of this requires further explanation and support.²²⁷

One prominent feature of the Aquinas's natural law theory, suggests Traina, is that the essence of the natural law "is not static ... it contains a dynamism that carries it in specific directions."²²⁸ This is important as both an explanation of, and corrective to, the possibilities of natural law thinking today. There is a strong tendency in both Aquinas himself, and in the tradition(s) that follow from him, to suggest that the natural law is static, that it is immobile, incapable of change, and pre-determined in all times and places. For Traina, this is not an accurate portrayal of Aquinas's natural law thinking because—and, here, Traina correctly emphasizes the Aristotelian flavor of Aquinas's thought—the "universe is a complex of divinely created potentialities and ends."²²⁹ The identification of potentialities is key here. While a particular essence can and must fit into a metaphysics of divine order, each particular essence is at the same time a potentiality. This means that while each essence must fit into God's divine plan in a specific way, these same essences contain within themselves latent potentialities that are unpredictable (to a certain extent) and will develop—as part of the cosmic order—in their own unique ways. This distinction is subtle, but it is essential for understanding the argument Traina puts forward here. The human person, by virtue of their creation in the *imago Dei*, is enabled

227. As with all the analyses in this chapter, the critical task of evaluating and judging the viability and effectiveness of these arguments will be undertaken in chapter 4, after we have gone through the chapters on Kant and Korsgaard.

228. Traina, *Feminist Ethics*, 58.

229. Traina, *Feminist Ethics*, 59.

“to participate intellectually in God’s plan ... to recognize and adopt the ‘divine style.’”²³⁰

Thus, the human person can, and must, be creative in the way that God is creative. We cannot simply be determined, for that would violate our being created in the *imago Dei*. Here we have an initial insight into Traina’s anthropology—the human person as potentiality, as teleologically oriented, as *imago Dei*. “From this anthropological point of view,” she argues, “natural law is thus neither a deterministic power, nor an arbitrarily imposed requirement ... [it] is a rich, thick description of human being with a view to its ultimate end in God.”²³¹

What guides us in, and through, our understanding of the natural law, suggests Traina, is a Thomistic form of practical moral reason. This form of practical moral reason, as Traina articulates it, is understood as “the ultimate human end in God together with the human capacity to act consciously for proximate ends that are consistent with that ultimate end.”²³² If this form of reasoning is to be practical, then it must be a form of reasoning that is characterized, and constituted, by “the knowledge of a ‘how-to’ manual, directed toward accomplishing something concrete.”²³³ If this form of reasoning is to be moral, then it must fall under the virtue of prudence, “modeled on Aristotle’s *phronesis*: ‘right reason about things to be done.’”²³⁴ So, practical moral reason in Aquinas and

230. Traina, *Feminist Ethics*, 59; see *STh* I-II, q. 93 and q. 91, a. 1.

231. Traina, *Feminist Ethics*, 59–60.

232. Traina, *Feminist Ethics*, 60.

233. Traina, *Feminist Ethics*, 64.

234. Traina, *Feminist Ethics*, 65.

Traina is a 'how-to' manual, in accordance with right reason, for accomplishing concrete ends. Without meeting these criteria, then whatever form of reasoning one adopts or undertakes cannot be practical and/or moral. In a vague reference to Kant, Traina suggests that "[if] moral reasoning does not display all these characteristics of prudence—if for example it styles itself as deduction from principles—it ceases to be properly practical."²³⁵ Ethics "deals in contingency rather than necessity ... [and therefore] must account for sensible, human, embodied experience."²³⁶ The natural law, along with its internal mechanism, practical moral reason, is neither rigid nor inadaptably to circumstance. As Traina once again notes, "the first principles of practical reason are heuristic rather than speculative: 'not axioms but things aimed at.'"²³⁷ So natural law balances between the universal and the particular by recognizing the universal while allowing for adaptation and adjustment to it in the particular, and it achieves this by focusing on 'aim,' rather than 'axiom.' It also makes use of the prudence of practical moral reason to determine, and pursue, the goods/ends toward which it strives. We must come to know these goods/ends practically, not speculatively—the latter articulated through introspection, and the former articulated through reflection.²³⁸ Thus, according to Traina, the natural law maintains an internal flexibility that allows it to adapt to the

235. Traina, *Feminist Ethics*, 67.

236. Traina, *Feminist Ethics*, 68.

237. Traina, *Feminist Ethics*, 69.

238. Traina identifies the importance of this distinction in an analysis of the Finnis/Gierz model of natural law's practical reasoning (which is more speculative than practical account, on Traina's analysis). See Traina, *Feminist Ethics*, 73–74.

contours of different circumstances (identified with inclinations), without abandoning the more fundamental ('first') principles that guide its flexibility (identified as goods/ends). This is all possible, again, because "Thomas grounds natural law—as well as practical reason, virtue theory, and social ethics—in human nature."²³⁹

Finally, I want to identify some of the various 'reception histories' of natural law ethics that Traina considers in her analysis. Specifically, I want to identify the 'reception histories' of natural law ethics as casuistry, as personalism, and as a specifically Roman Catholic theological ethic. Thomas, Traina notes, believed that "the cosmos [was] an intrinsically harmonious, divinely created system to which we must conform."²⁴⁰ The centrality of this belief to Aquinas's thought underscores the fact that, for Thomas, the cosmos—all of physical reality—is ordered and organized to a particular end (i.e. the good as God). Whenever we are confronted with a question, or a problem, we need only evaluate the 'data' around us in order to tease out of it the 'correct' or, more appropriately, prudent response to any given situation or set of competing claims. This is the form of ethical thinking that gave rise to the tradition of casuistry in natural law ethics. Casuistry—at its best²⁴¹—"permits us to raise the question whether in a particular case a moral norm reflects or compromises the life of virtue a Thomistic metaphysics

239. Traina, *Feminist Ethics*, 85.

240. Traina, *Feminist Ethics*, 103.

241. Traina points out that casuistry has not always, or even often, been used to the proper end of natural law ethics. Nevertheless, this problem speaks to the mis-application of the ethic, not an inherent flaw in the ethic itself. We will take up this argument in chapter 4. See Traina, *Feminist Ethics*, 102–6.

requires.”²⁴² It aims “to discern what is good, both existentially and concretely, in a given situation and for particular actors.”²⁴³ While this concern for particularity may not always be reflected in the content of Aquinas’s arguments, it is reflected, argues Traina, in Aquinas’s methodology throughout the *Summa*. This is what gives casuistry in natural law ethics its grounding and legitimacy.

Now, “[if] casuistry asks the question ‘what or whose good is at stake in this moral norm?’, personalism evaluates the answer: a legitimate norm advances the integral good of particular persons.”²⁴⁴ This trajectory of natural law thought and ethics focuses on the human person as “integral moral actor and as holistic source of moral norms.”²⁴⁵ It differs from casuistry in that personalism shifts “from private worry about ‘acting rightly’ [i.e. casuistry] to public concern about living a full and human life ... [which] reveals persons and their ends as the true criteria of moral norms.”²⁴⁶ While Traina notes that there are problems with this approach, since it lacks a “crisp, comprehensive assessment of its [own] implications for Thomistic ontology and ethical method,”²⁴⁷ the trajectory of personalist thought within natural law ethics aligns well with the ‘modern’ doctrine of rights, insofar as “human dignity grounds the right to appropriate self-development and

242. Traina, *Feminist Ethics*, 104.

243. Traina, *Feminist Ethics*, 105.

244. Traina, *Feminist Ethics*, 106.

245. Traina, *Feminist Ethics*, 108.

246. Traina, *Feminist Ethics*, 108.

247. Traina, *Feminist Ethics*, 109.

flourishing.”²⁴⁸ The line of personalist thought in natural law ethics brings the tradition into closer connection with more modern forms of normative ethical discourse. Yet, like casuistry, personalism “lacks a critical theory of experience.”²⁴⁹ Traina critiques both these trajectories within natural law ethics on this front, but also offers a corrective that, she suggests, is more closely aligned with Aquinas’s own view of the natural law and is, at the same time, critical. She suggests, in reference to personalism, that it “steadfastly directs ethics toward supporting the integral goods of individuals, comprehensively considered. Yet ... [it] lacks even the critical capacity of Thomas’s version of natural law.”²⁵⁰ In order to correct for these concerns, Traina turns to an alternative, critical understanding of the natural law as a specifically Roman Catholic form of theological ethics.

Recent deployments of the natural law tradition within Roman Catholicism, suggests Traina, have focused on the Roman Catholic hierarchy’s belief that both the ‘modern’ and the ‘post-modern’ conditions attack the fundamental viability and value of the natural law.²⁵¹ They fear that “the deconstruction of moral positions can easily destroy

248. Traina, *Feminist Ethics*, 110.

249. Traina, *Feminist Ethics*, 111.

250. This critical capacity includes: the virtue of prudence as the condition of concrete choices, the body as the mediator of theoretical knowledge for determining moral norms, and the needs of the poor and powerless as mitigating social/political relationships. See Traina, *Feminist Ethics*, 114.

251. See, for example, John Paul II’s encyclicals, *Veritatis Splendor* (August 6, 1993); *Evangelicum Vitae* (March 25, 1995); *Mulieris Dignitatem* (August 15, 1988); and *Centissimus Annus* (May 1, 1991).

natural law's anthropology, its epistemology, and even its capacity to engage in a pluralistic conversation."²⁵² For Traina, however, the challenges posed by the 'modern' and 'post-modern' contexts provide valuable assistance in buttressing the validity and viability of the natural law. First, the critiques of natural law by the '(post) modern' actually serves to support a Christian hermeneutic of the world. By emphasizing that that "ethical and theological [ideas of natural law] are not self-generative but evolve from the history and practice of living communities," we can more clearly see how it is that natural law is a specifically Christian, and even more specifically Roman Catholic, "religious interpretation of human reality."²⁵³ Those who suggest that the natural law is a specifically religious discourse are, in fact, correct to do so. Second, and in light of this, the deconstructive move of the (post) modern to reveal "natural law ethics as religious ethics" also reveals "the impracticability of the Enlightenment ideal of ideological neutrality."²⁵⁴ True, natural law ethics is a specifically religious form of ethical reflection; but this does not disqualify it from the discourse of the 'public square.' The process of 'unmasking' natural law ethics as religious ethics also applies to the 'ideologically neutral' position of the Enlightenment—it is simply not true. Thus the critiques of (post) modernism, in spite of the fears of the Roman Catholic hierarchy, actually turn out to release natural law ethics from obscurity about its methods, objectives, and contexts. While Traina's analysis, here, does raise questions about the continued value of the natural law tradition, so

252. Traina, *Feminist Ethics*, 122–23.

253. Traina, *Feminist Ethics*, 123–24.

254. Traina, *Feminist Ethics*, 124.

understood, in our contemporary, multicultural, and pluralistic context, she, nevertheless, reclaims the natural law on its own terms. We must seize, she suggests, “the medieval and postmodern claim that natural law is a theological ethic. That is, it involves an anthropology with a divinely devised end that, even if we do not always grasp it firmly, inspires us to seek the good and often enables us to recognize it.”²⁵⁵ This is how the natural law functions as a specifically Roman Catholic theological ethic, and it is from here that Traina turns to her analysis of the viability of holding together, in a more complete, critical theological ethics, the natural law on the one hand, and feminist ethics on the other.

Feminist Ethics and Natural Law Ethics:

Compatible or Incompatible Discourses?

Having looked at the different articulations Traina offers of both the discourses of feminist ethics and natural law ethics, we now turn to the possible compatibility, or, perhaps, the incompatibility, of these two discourses. For Traina, these two discourses are not only compatible, they are, in fact, interdependent: “The goals of feminist ethics and revisionist natural law theology coincide: to express adequately the tension between the limitations of being-as-given and the transformative possibilities of the transcending visions that paradoxically are grounded in that finitude.”²⁵⁶ The three principal areas in which feminism and natural law coincide with—and critique—each other are “method (the theoretical structure of ethical argument), procedure (the practical structure of

255. Traina, *Feminist Ethics*, 128.

256. Traina, *Feminist Ethics*, 151.

ethical conversation), and content (the norms or guides that method develops).”²⁵⁷ With regard to method,²⁵⁸ Traina identifies three criteria necessary for bringing together the discourses of feminist and natural law ethics: a unified approach, the recognition of alternative modes of reasoning not typically adopted within the academy, and the flourishing of all human persons, particularly women. Regarding each of these characteristics, Traina suggests that the methods of both feminist and natural law ethics complement and mutually inform each other. With regard to content,²⁵⁹ Traina identifies two characteristics of the coincidence of feminist and natural law ethics: the articulation of norms rooted in a ‘thick, vague’ anthropology (which includes “not just the theoretical freedom to do as we [i.e. women] please but the prerequisites for truly free choices”²⁶⁰) and the identification of principles that serve ends—specifically, the identification of guidelines that serve the end of the full flourishing of human persons, especially women. With regard to procedure,²⁶¹ which Traina identifies as the specifically feminist contribution (which finds resonance within natural law ethics) to the coincidence between these two ethical discourses, we find three characteristics: open and participatory discourse, the advancing of women’s moral agency, and solidarity. These three scenes of encounter between feminist and natural law ethics, along with their characteristic

257. Traina, *Feminist Ethics*, 140.

258. Traina, *Feminist Ethics*, 141–44.

259. Traina, *Feminist Ethics*, 147–50.

260. Traina, *Feminist Ethics*, 147.

261. Traina, *Feminist Ethics*, 144–47.

elements, provide Traina with an argument in favor of the compatibility and interdependence of these two discourses. She goes on to identify a variety of links made possible by the encounter between feminist and natural law ethics: a focus on legitimate forms of self-interest; a robustly telic anthropology; the recognition of embodiment as a morally and ethically relevant reality; theories of virtue, reason and the common good that guide individuals in their processes of moral and ethical discernment; and the practice of ethical reflection as a fundamentally communal activity.²⁶² What these links disclose—and what is at the core of Traina’s analysis—is that feminist ethics provides the necessary, and otherwise inarticulate, “internal critique” of the discourse of natural law ethics. Feminist thought, she says,

draws upon and reinforces the historicity, holism, and pluralism ... of contemporary life. It also depends upon ‘thick’ and telic descriptions of women’s good of the sort upon which natural law method and norms also rely. But feminism challenges theology and ethics to accept the more radical implications of pluralism and thick descriptions.²⁶³

Traina’s point, here, is that while feminist and natural law ethics are intimately linked, this does not preclude the need for, or the possibility of, internal critique of one by the other. While the critique goes both ways, Traina highlights, in the criteria noted above, what feminist discourse offers by way of internal critique of the natural law. The question of what critical function natural law discourse provides for an internal critique of feminism remains, at this point, to be seen.

262. Traina, *Feminist Ethics*, 150–58.

263. Traina, *Feminist Ethics*, 159.

For Traina, “in the case of the natural law tradition, preservation of its central impulses entails serious engagement with feminism rather than resistance to it.”²⁶⁴ Feminist ethics and natural law ethics must each engage the other in order that both may maintain their integrity and viability in the modern world. Therefore, some guidelines must be surmised in order to sustain the viability of this encounter: the goal of human flourishing in both discourses is articulated in and through the telic nature of the human person; embodiment becomes a central theme that has actual consequences for moral and ethical deliberation; the equality and dignity of both men and women is recognized and interpreted through their shared humanity; and the texture of moral and ethical deliberation becomes more apparent, moving from the dilemma ethics of the moral manualist tradition to a more nuanced approach to the conundrums of life. In light of all this, Traina suggests that in the discursive encounter between the ethical frameworks of feminism and the natural law, there is an internal, critical function that feminism offers which, while latent within the logic of natural law reasoning, must nevertheless be made explicit. Feminism, she says,

has a double message for natural law thought: a liberationist moral hermeneutic that intends to root out sinful victimization and an affirmation that human beings are fundamentally, inexorably different, that there is one sort of pluralism that cannot be erased.²⁶⁵

Thus, feminism calls the natural law to account, not via external standards of moral logic, but via the internal logic of its own moral constitution. As we have seen in the works of

264. Traina, *Feminist Ethics*, 288.

265. Traina, *Feminist Ethics*, 311.

Aquinas, Finnis, and Porter, the fundamental principle of the natural law is to do good and avoid evil. Additionally, each of these figures has argued that the forum in which this fundamental principle operates is that of human flourishing. Traina, too, takes up these lines of thought, but challenges the logic of the natural law position through her feminist ethic. If the fundamental principle of the natural law is played out in the forum of human flourishing, then *all* human persons need to be welcomed into, and affirmed by, that space. If we find, in the forum of human flourishing, practices that do not affirm, for example, the full flourishing of women, then we find in this forum, not practices of good, but practices of evil (i.e. sinful practices). Herein lies the feminist critique: according to the fundamental principle of the natural law, any practices that impair the full flourishing of women are evil and, consequently, sinful. This, for Traina, is how a critical, natural law feminism works—it understands human nature to be something capable of discovery—as a result of its telic anthropology—but it forces natural law thinking to face up to its own historicity and its own contingency. Natural law theories have developed over time and have reflected, in different times and places, the more contingent elements of their historical locations. In its encounter with feminist ethics, the natural law is able to recognize and peel away the more contingent of its many features, especially those features that impair the full flourishing of women, since such an impairment is, in the end, a violation of the first principle of the natural law itself.

Together, both the discourses of feminist ethics and the natural law work together to aid in the move from a critique to an actual ethic. Both elements—the critical and the ethical—are necessary, and each of the traditions in question is best served by buttressing

the other, not standing in isolation or, worse, irreducible conflict. Both feminism and the natural law are concerned with the telos of the human person. Natural law ethics demands that “a comprehensive, existentially compelling ethic demands an all-encompassing telos,” while the existence and effectiveness of a specifically Christian feminist ethic “depends on creating a credible connection among Christianity’s formal encompassing telos, salvation ... concrete flourishing ... and the moral life.”²⁶⁶ Both feminist and natural law ethics require principles, criteria, procedures, and a method. If, as Traina says, “feminist ethics needs principles, it also needs methods for managing them. Natural law provides not only a tradition of principles and norms but a method of criticizing and altering them: casuistry.”²⁶⁷ In addition to the casuistical approach to principles and method, there is also an emphasis—explicit in natural law ethics and implicit in feminist ethics—on virtue theory: “Not only does virtue theory knit together good and rightness with temporal flourishing, but it reminds us the point of the moral life is not only to act rightly but to act well; this ... entails becoming a good moral reasoner, [which is] also one of the chief goals of feminist ethics.”²⁶⁸ Both feminist and natural law ethics are concerned with social justice and, ultimately, the common good. “The Roman Catholic social justice tradition’s detailed analysis of social problems,” suggests Traina, “equips it to be a strong partner in the likewise critically analytical project of feminist

266. Traina, *Feminist Ethics*, 315–16.

267. Traina, *Feminist Ethics*, 317.

268. Traina, *Feminist Ethics*, 318.

ethics.”²⁶⁹ The doctrine of the common good, found in the Roman Catholic social justice tradition that emerges out of natural law thinking, is another discourse that “confirms the feminist tenant that all flourishing is integral and independent, so that a focus on the well-being of the oppressed necessarily entails a concern for the genuine well-being of all.”²⁷⁰ This is all to say that both natural law and feminist discourses share critical elements of a robust theological ethic. They contain:

above all, an overarching telos, as well as an inductive method of matching cases and principles; an eschatology and a developmental virtue theory that connect individual and communal ends at both the immediate and ultimate levels; a tradition of social analysis; an argument for self-preservation; and an integral rather than an ambivalent reading of human embodiment.²⁷¹

Thus, for Traina, such a theological ethic must be able to make universal claims, grounded in the natural law, but linked to, and critiqued by, the particularity of feminist method, content, and procedure. In this key, all universal claims—essential for any ethic—“must be made with earnest humility ... they are hypotheses (though strong ones), must be susceptible to criticism from both inside and outside one’s own tradition, and must be made from a position of self-conscious particularity rather than claimed neutrality.”²⁷² What, in light of these claims and considerations, does Traina’s feminist natural law ethic look like? Traina suggests that what distinguishes, what characterizes, “natural law feminism ... is its distinctive combination of feminist convictions with a

269. Traina, *Feminist Ethics*, 318.

270. Traina, *Feminist Ethics*, 318.

271. Traina, *Feminist Ethics*, 319.

272. Traina, *Feminist Ethics*, 320.

clear, telic anthropology, a method of practical moral reason, and theories of integrity and social justice that connect all dimensions of social and individual flourishing eschatologically.”²⁷³

Conclusion: Where Are We with Regard to Catholic Ethics and the Natural Law?

Having explored some of the major trajectories of thought in contemporary natural law theory, it is important, at this point, to take stock of where we stand in relation to the natural law, particularly when we consider the questions of normativity and dignity. Building off of the arguments and analysis presented in Aquinas’ *Summa* pertaining to both the Law and the natural law, Finnis, Porter, and Traina offer us three distinct, yet complementary, models for understanding and enacting the natural law in our ethics and in our lives. In what follows, I will briefly summarize the heart of each argument, and draw out the defining characteristics of each position that make them constructive re-articulations of Aquinas natural law theory in the 21st century.

According to John Finnis, the natural law is a critical discourse for bringing together the practical dimension of law with its principled dimension. Without law, or without legal systems, we cannot hope to achieve—in our finite, imperfect, observable world—a common good for the benefit of all human persons. The first practical principle of the natural law—itsself, indemonstrable and self-evident—is that good is to be done and pursued, and evil avoided. The good is known to us through its effects and through the coordination of the basic human goods. The good of the individual must be coordinated

273. Traina, *Feminist Ethics*, 323.

with the common good of all individuals, based, as Finnis's concept of the common good is, on the Aristotelian model of friendship. The achievement of this friendship-based model of the common good finds its practical articulation through the concept of the law. A constructive concept of law permits us to authoritatively coordinate our needs and actions toward the goal of human flourishing—a situation in which the good is pursued and evil avoided. While law speaks to one dimension of this, the natural law speaks more specifically to the practical, deliberate coordination of the law toward the common good. It is imperative, in this coordinating effort, to keep the needs and goods of individuals in mind, and Finnis does this through his attention to rights. Human persons—by virtue of the inherent dignity they possess as persons—have rights, some of which are absolute and others of which are limited. In order for the common good to be achieved—the goal of justice and the natural law—these three dimensions of Finnis's thought—good, law, and right—must to be coordinated into a mutually informed, critically correlated theory of the natural law.

According to Jean Porter, in order to understand natural law theory within Catholic theology today we must understand both its exemplar—Thomas Aquinas—and the social, cultural, and theological milieu from which it emerged—Scholasticism. In emphasizing a return to the scholastic paradigm of natural law thinking, Porter argues for an understanding of the natural law constituted by three principal characteristics: nature, reason, and Scripture. Only by attending to all three of these characteristics, suggests Porter, can we develop a form of natural law thinking that attends to the specific dynamics of Catholic/Christian ethics today. Thomistic natural law theory is a

distinctively theological discourse and, as such, ought to remain a model, or framework, for ethical discourse in a Catholic/Christian key. Thus, the form this distinctively theological model for Catholic/Christian ethics takes, according to Porter, is the form of virtue. It is through the practice of the virtues, and the concordance of reason and Scripture, that the first principle of the natural law—that good is to be done and evil avoided—becomes our temporal end. Whereas the Beatific Vision is our supernatural end, the practice of the virtues is our natural end. Therefore, an ethics that takes as its foundation a theory of natural law—especially the one that is articulated in Aquinas and the Scholastics—is an ethics constituted by the practice of the virtues for the proximate end of doing good and avoiding evil in our everyday, temporal lives. Porter’s approach to natural law ethics through a hermeneutics of virtue gives its adherents a solid framework within which to live and act ethically, in a specifically theological key, and without acceding to some of the more controversial developments in late 20th century and early 21st century ethics.

Yet, these very same ethical conundrums articulated by philosophers, psychologists, and others in the 20th and 21st centuries are taken up quite deliberately in the natural law theory developed by Cristina Traina. Traina argues for compatibility between natural law ethics and feminist ethics—two discourses, she recognizes, that have not always seen eye to eye. For her, each tradition stands in mutually critical correlation to the other. The natural law provides a robust framework and methodology for ethical reflection, accounting for the natural, the normative, and the theological. Feminist ethics—especially in light of its developments in the 20th and 21st centuries—offers an

approach to ethical reflection that recognizes the importance of particularity (in relation to universality), of ‘thick’ descriptions (as opposed to ‘thin,’ abstract descriptions), and the status of women as moral agents. Additionally, but no less centrally, Traina emphasizes the importance of potentiality and creativity in moral reflection—linking, through the natural law, the question of ethical normativity and the impact history and historicity have on it. By bringing these two discourses together, Traina offers an ethics that aims to navigate a compromised space between the usual binaries of universal and particular, abstract and concrete through a form of practical moral reasoning that is not afraid to take a stand, yet recognizes the need for continual, internal self-critique. Feminist ethics needs a foundation and framework from which to make its arguments; natural law ethics need to recognize the contingency and particularity of the agents it seeks to inform. Natural law and feminist ethics stand or fall together in the realm of Christian ethics, according to Traina, and this is why developing each discourse in light of the other remains a critical task for any contemporary articulation of a feminist natural law ethics.

Here, at the end of our exploration of the natural law, we have before us three robust approaches to Catholic/Christian ethical reflection and action today. Questions of normativity, dignity, humanity, and agency have all found a home, of one sort or another, within the theories of natural law offered herein. In the chapters that follow, however, we will continue to turn the prism of ethical reflection in order to see what happens to our investigation when our field of view, and all the constitutive elements of that field, change. What happens when we take seriously the transformation from medieval

philosophy to modern philosophy? Does this paradigm shift surface questions or concerns about the form of Catholic/Christian ethics rooted in the natural law, or can we simply assume that the foundation of Catholic/Christian ethics remains intact in the shift from the medieval to the modern? What happens to the question of human dignity when we can no longer rely on an implicit telic anthropology? The following chapters will explore these questions by turning to the major figure in the history and field of ethical reflection primarily associated with the break from medieval/pre-modern metaphysics: Immanuel Kant. If we are to look at ethics as Kant did, then where does this place us in relation to the natural law theories just articulated? Does Kant offer resources for ethical reflection which the natural law has left unaddressed? Can we address the questions of normativity and dignity in helpful ways through a Kantian ethics? These are just some of the questions that will guide our encounter with Kant and, following him, Christine Korsgaard. I will leave it to the final chapter of this project to offer an interpretation of how these discourses interact with each other—where they find similarities and differences. Yet, at this point, it ought to be noted that one of the challenges I want to bring to the natural law tradition is its reliance on an unbroken continuity between medieval ethical reflection and (post-)modern ethical reflection. Still, I am not looking to throw out the major achievements of the natural law tradition—e.g. a normative foundation for moral reasoning, a ‘thick’ description of human dignity and flourishing, a moral theory that is a moral theology—a Catholic/Christian ethics that maintains its connection to the tradition. I want to explore the bridges—and gaps—between the natural law tradition and the modern ethical tradition (via Kant and Korsgaard) in order

to move closer to a shared, normative discourse for ethical reflection, moral theology, and human rights. This will be the course of action I pursue in the following chapters, to which we now turn.

CHAPTER II

KANT'S MORAL PHILOSOPHY

Introduction

In the previous chapter, I undertook an exploration of the framework and foundation for contemporary Catholic ethical reflection. This exploration identified the natural law thinking of Thomas Aquinas, articulated in and through three of his contemporary interpreters, as *the* contemporary framework and foundation for Catholic ethical reflection today. While there is much to take from Aquinas's natural law theory, as my dialogue partners have indicated, the notion of the natural law as a foundation and/or framework for ethical reflection continues to be plagued by some inherent problems. As I noted in the previous chapter, the natural law remains too insular to have widespread application in our contemporary situation, and too reliant on an operative metaphysics that remains inaccessible to dialogue partners outside of the Catholic faith tradition. Since the discourses of ethics and human dignity must be such that they are, at heart, open to all people of good will,¹ Catholic ethicists must scrutinize their frameworks for engaging in ethical discussions. To move Catholic ethics outside of the natural law tradition is, by

1. Here I have in mind, e.g., John XXIII, *Pacem in Terris* (April 11, 1963); Second Vatican Council, *Gaudium et spes* (December 7, 1965); John Paul II, *Centissimus Annus* (May 1, 1991); and other such documents; all the way up to Francis, *Misericordiae Vultus* (April 11, 2015). All of these documents address themselves not only to the Roman Catholic Church, but to all "people of good will."

no means, an attempt to move it outside of the margins and considerations of the Catholic tradition. Catholic ethicists must engage in ethical dialogue, but we must do so on terms that are, in principle at least, shareable amongst all ethicists and not simply those within our own faith tradition. The question remains, then, as to what a system of ethics looks like which can successfully navigate between an openness to the Catholic theological tradition and a simultaneous openness to the broader discipline of ethical reflection. In this chapter, it will be my contention that the ethical framework, and the moral philosophy, of Immanuel Kant can provide the necessary framework for contemporary ethical reflection that is, on the one hand, open to a dialogue with—though not exclusively limited to—the Catholic tradition while, on the other hand, attentive to the demands of contemporary ethical reflection as a shared enterprise grounded in the dignity of humanity.

In order to substantiate this claim, the present chapter will offer an interpretation of Kant's moral philosophy, as articulated in Kant's three major 'ethical' works: *The Groundwork of the Metaphysics of Morals* (*Groundwork*), *The Critique of Practical Reason* (*Practical Reason*), and *The Metaphysics of Morals* (*Metaphysics*). While this section will engage with other works by Kant as well, the primary focus will be on these three texts, the system of ethical reflection they offer, and the foundation they provide for the dignity of humanity as the ground for ethics. It should also be noted that of these three texts, it will be the *Groundwork* that will receive the most direct attention and analysis. The *Practical Reason* and *Metaphysics* will come into play in supporting and supplementary roles, in order to clarify or address shortcoming in the argument of the *Groundwork*. For

Kant, ethics and moral philosophy are grounded, materially, in the dignity of humanity, as embodied in the human person and as articulated in the second formulation of the Categorical Imperative (CI)—the Formula of Humanity (FoH). This formulation of the CI says: *So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.*² The human person, and more specifically the *humanity* in the human person, is constituted by an inherent dignity because of its critical, self-reflexive, and autonomous giving of the law—understood as the moral law, i.e. the CI—to itself. As such, it is only within a Kingdom of Ends—articulated in the third formulation of the CI—that the dignity of humanity can be justified and articulated: the dignity of humanity is manifest in the ability of the human person to give the law both to herself and to others in the Kingdom of Ends. Therefore, Kant is not simply presenting an alternative –one among many, so to speak—that can be adopted (or not) by ethicists as they see fit. Kant is presenting a form of ethical reflection that cannot be ignored. It makes an uncompromising claim to universal subscription and, as such, makes Kant’s project unavoidable. The case for this unavoidability is made even

2. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1998), 38 (= AE 4:429). All my citations from Kant’s texts will refer, first, to English language translations of Kant’s works. For the *Groundwork*, *Practical Reason*, and *Metaphysics*, I will use the translations of Kant’s work found in the Cambridge Texts in the History of Philosophy series. For the *Critique of Pure Reason*, however, I will use the translation found in The Cambridge Edition of the Works of Immanuel Kant series, edited by Paul Guyer and Alan Wood. Following these citations, the volume and page numbers of the German *Akademie-Ausgabe* (Academic Edition) of Kant’s work will be given in parentheses. My noting of the first (A) and second (B) editions of the *Critique of Pure Reason*, as well as their pagination in the *Akademie-Ausgabe*, is intended to refer the reader to the original German text, though my work has been taken from the English-language translations provided by the two Cambridge series.

stronger when ethicists are engaging in a form of ethical reflection that seeks to make a connection between the contemporary/modern and the medieval/pre-modern. As Kant is received as the seminal figure in the break between these two historical and intellectual epochs, his work is inseparable from the topography of ethical discourse today.

Yet we must not make the mistake of imagining Kant's ethical project to be fundamentally at odds with *all* aspects of the pre-modern tradition(s). Kant designates a break, to be sure, but a break that nevertheless retains the possibility—the hope—of a constructive encounter between the pre-modern and the modern sensibilities. The break that Kant initiates in Western philosophy is one that re-interprets the best of the pre-modern tradition, while acknowledging and setting aside its deeply problematic features. Kant shares with the medieval/pre-modern traditions a commitment to the exploration of foundational questions, to a (critical) preservation of 'the good,' to the preservation of human dignity, and the need for rational defense of moral prescriptions. We must take seriously, in reflecting on such interests, our own intellect as rational creatures—a claim shared by the natural law tradition. However, in order to be true to our own intellect—and here, Kant and the natural law tradition part ways—we must 'bracket' the ontological metaphysics that is so deeply embedded in the natural law tradition. An appeal to creation, suggests Kant, is a lazy move of reason—seeking to circumvent that hard work of rational reflection. Again, this is not a complete rejection, but a 'bracketing,' and the difference here is important. As I argued in chapter one, the natural law tradition in Catholic/Christian ethics wants to maintain its specifically Thomistic character. If this is the case, as I have argued it is, then Catholic/Christian ethics must show—is required to

show—either that Kant is wrong in his analysis or that there is a sufficient and compelling reason not to engage with Kant on the question of ethical normativity in the (post)modern age. Part of my discomfort with the natural law tradition has been its inability to sufficiently answer either of the aforementioned challenges. Thus, to my mind, Catholic/Christian ethics cannot simply avoid Kant, or relegate him to one among many options, when it comes to ethical reflection. There are certain features of natural law thinking that simply no longer hold water in the 21st century. Kant not only provides us with a method for ethical reflection that incorporates a feature—‘bracketing’—for maintaining, without relying upon or implicitly presuming, certain metaphysical positions, but he also offers us a constructive, *critical* approach to philosophical reflection through his three critiques. While this project will take up Kant’s *practical* philosophy most directly, there remain other important features of Kant’s philosophical system that I cannot engage. However, I would like to identify one particular dimension of Kant’s theoretical philosophy that is of central importance for understanding his practical work. To this end, therefore, the argument in this chapter will begin with a brief summary and analysis of Kant’s critique of metaphysics, found principally in the *Critique of Pure Reason*. The reason for pursuing this line of argumentation is to establish the *limits* of reason—a concept integral to Kant’s moral philosophy—and to properly frame what Kant is, and is not, doing in his moral philosophy. The noumenal/phenomenal divide is essential for understanding what Kant is trying to do in the *Groundwork*, for example, and what he is trying to do in the *Metaphysics*. Recognizing what Kant means when he speaks about pure practical reason, for example, and to what instantiations of ethical

discourse this concept applies, can oftentimes be the deciding factor between understanding and misunderstanding Kant. Thus, a foray into his critique of metaphysics and the limits of reason is necessary. After these preliminary remarks, we will begin our analysis of Kant's moral philosophy with the *Groundwork*. In order to understand the task Kant set for himself in *Practical Reason* and the *Metaphysics*, we will engage in a detailed analysis of the *Groundwork*, paying close attention to how Kant builds his argument in support of the FoH, the dignity of humanity, and the Kingdom of Ends. Following from this analysis, we will turn to *Practical Reason* in order to highlight those elements of this critique which contribute to Kant's argument in the *Groundwork*. For example, Kant pursues a different course of action in *Practical Reason* regarding the justification of our belief in the possibility of our freedom, being unsatisfied with said discussion in the *Groundwork*.³ Following the analysis presented in this chapter, chapter three will engage the work of Christine Korsgaard to buttress, flesh out, and critique Kant's project insofar as it pertains to the overall objectives of the broader project at hand. This discussion will have to wait for the time being. First, we must begin with Kant, and we must begin, therein, with the question of metaphysics.

Kant's Critique of Metaphysics and the

Noumenal/Phenomenal Divide

It is important, at the outset of this chapter, to make a few remarks about what Kant means by the term 'metaphysics' and how it plays into his moral philosophy. This is

3. While this discussion is important to note, it remains to be seen which trajectory of thought is more convincing for the argument at hand (at least at this point): freedom grounded in our transcendental freedom or freedom grounded in the 'fact of reason.'

especially important to keep in mind when we consider Kant's project in relation to the more dominant tradition of moral and ethical reflection in Catholic ethics today, dependent as it is on the process and structure of the natural law. First and foremost, when considering Kant's understanding of metaphysics, we must be clear about what he understands this term to mean. Metaphysics is a term that defines a system of a priori cognitions from concepts alone. As a priori cognitions, they are a form of knowledge that is prior to experience. Thus, metaphysics deals with cognitions that are known to us prior to all experience. A priori cognition, or knowledge, can be taken in one of two ways: pure or mixed. Pure a priori knowledge deals with the formal manipulation of symbols according to the requirements of reason alone; mixed a priori knowledge deals not only with the form given by reason, but with the matter as well. This distinction will be important later on, when we discuss the different formulations of the CI.

Before we come to that discussion, however, something more must be said about how Kant views the relationship between knowledge and metaphysics. Michelle Grier argues that "in the *Transcendental Analytic* Kant argues against any attempt to acquire knowledge of 'objects in general' through the formal concepts and principles of the understanding, taken by themselves alone."⁴ This, however, is not where Kant locates the heart of his critique of metaphysics. For him, in order to answer the question of the possibility of synthetic a priori propositions (central to his project in the *Critique of Pure Reason* (C1) and to his understanding of metaphysical knowledge), we cannot look to the

4. Michelle Grier, "Kant's Critique of Metaphysics," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, summer 2012 ed. (Stanford University, 1997–), article published April 10, 2012, <http://plato.stanford.edu/archives/sum2012/entries/kant-metaphysics/>.

formal concepts and principles of the understanding alone—we must also consider the role that sensibility plays in this as well. This is why “the ‘transcendental’ use of the understanding ... is considered by Kant to be dialectical.”⁵ The reason it must be dialectical is that we do not have complete access to the metaphysical realm—what Kant calls the *noumenal* realm or world. When we take ourselves to have access to the metaphysical realm, we conflate thing as they are in themselves (in the *noumenal* realm) with things as they appear to us (in what Kant calls the *phenomenal* realm or world). The *phenomenal* realm only gives us access to the appearances of things, not access to things in themselves. When we conflate these two realms—when we presume that we have access to the *noumenal* realm, to things as they are in themselves—and transgress the critical distinction we ought to maintain between the two, we are moved down the dangerous path that leads to what Kant calls, ‘transcendental realism.’ Kant’s remedy for this? *Transcendental idealism*.

One of Kant’s projects in C1 is to “[illuminate] the basis in reason for our efforts to draw erroneous metaphysical conclusions ... despite the fact that such use has already been shown to be illicit [in the Transcendental Analytic].” This, Kant suggests, is because at the very heart of reasoning is the desire to find conditions for every condition. Thus, reason desires to know that which is unconditioned, and this is where the problem lies. Without sufficient recognition of the distinction between appearances and things in themselves, we (mis)take metaphysics as that which can provide us with access to the *noumenal* realm—to things in themselves—the way it provides us access to appearances.

5. Grier, “Kant’s Critique of Metaphysics.”

This, for Kant, is impossible. Reason, of itself, seeks the unconditioned—reason wants systematic unity and completeness of knowledge—and it is precisely here that the problem of metaphysics—and the limits of reason—come into play. When reason takes metaphysics to provide access to things in themselves the way we have access to appearances, reason oversteps its bounds. Reason’s demand for the unconditioned—its demand for access to things in themselves—cannot be met, and this is the limit of reason highlighted in C1. Despite this limitation, however, metaphysics should not be thrown out, but should be critically re-interpreted. “This critical reinterpretation involves the claim that the ideas and principles of reason are to be used ‘regulatively,’ [rather than constitutively] as devices for guiding and grounding our empirical investigations and the project of knowledge acquisition.”⁶

Thus the question of this analysis remains: why is Kant’s critique of metaphysics important for the discussion at hand? In order to clarify what Kant is, and is not, doing in the *Groundwork* and *Practical Reason* in particular, we must bear in mind how Kant establishes and frames his discussion and critique of metaphysics, particularly regarding the distinction he insists upon between the *noumenal* and the *phenomenal* realms—between things as they are in themselves and things as they appear to the senses—and the danger that we encounter when we uncritically pursue reason’s desire for the unconditioned. As noted above, it is also important to keep in mind that for Kant, the principle of practical reason ought to be understood as a ‘regulative’ principle that guides action, rather than a ‘constitutive’ principle that determines the content or ‘result’ of

6. Grier, “Kant’s Critique of Metaphysics.”

action. If we rethink metaphysics—and our relationship to it—along the lines of Kant’s critique, we find ourselves in a renewed space for ethical reflection.

One of the issues this critique presents to natural law thinking is the following: natural law thinking does not draw the necessary line of demarcation between appearances and the things in themselves. Reason, it is believed, can get us to the transcendental realm, to the *noumenal*, to God, etc., through the concept of the *imago Dei*—that is, through our participation in the intelligibility of God. For Kant, however, this is impossible. Contemporary Catholic ethics would be well served if it attended, more openly and more honestly, to Kant’s distinction between the *noumenal* and the *phenomenal* when it engages in ethical reflection. To claim access to the divine through the logic of faith and/or experience (forms of thinking that do not depend on reason) is one matter; access to God within the logic of reason itself is another. While we may (in certain schools of thought) be able to do the former, we cannot do the latter. Thus, Catholic ethics needs to more seriously attend to alternative frameworks for processes of ethical reflection. What we get in natural law thinking—what we analyzed in the previous chapter—is, for contemporary Catholic ethics, at best problematic. It is my contention, then, to argue that Kant’s moral philosophy can serve as a framework for ethical reflection that is both robustly philosophical, yet highly compatible with the concerns and commitments of contemporary Catholic ethical reflection, without falling into the ‘metaphysical trap’ of conflating the appearances of things and things in themselves. Therefore, I will now turn to an articulation of Kant’s moral philosophy, as offered in the *Groundwork* and *Practical Reason*.

Kant's Groundwork of the Metaphysics of Morals

Kant's moral philosophy is based on the Categorical Imperative. Kant, according to Robert Johnson, argues that "[the] foundational principle of morality—the CI—is none other than the law of an autonomous will ... [and] it is the presence of this self-governing reason in each person [i.e. their 'autonomous will'] that Kant thought offered decisive grounds for viewing each as possessed of equal worth and deserving of equal respect."⁷ The CI, therefore, is how Kant articulates the universalization of one's will or, rather, the universalization of one's autonomy and dignity. Put another way, it is through the universalized, autonomous lawgiving of the will that humanity is understood to inextricably possess dignity. Kant thus places the concept of autonomy at the crux of his moral philosophy.

This analysis of Kant's moral philosophy will begin, therefore, with Kant's first foray into this area of critical reflection—the *Groundwork*. For the sake of simplicity, this analysis will follow the movements of the *Groundwork* itself, addressing the three sections of the *Groundwork* in turn, and drawing out, from these interconnected discussion, those elements pertinent to an articulation of Kant's moral philosophy in the light of the Formula of Humanity in the context of the Kingdom of Ends. To be sure, Kant's argument in the *Groundwork* is far from clear. In many ways, the arguments he offers shift from section to section, reflecting Kant's own shifts in thoughts and analyses. This being said, it is still instructive for us to follow Kant in the *Groundwork* in order to collect

7. Robert Johnson, "Kant's Moral Philosophy," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, summer 2012 ed. (Stanford University, 1997–), article published April 6, 2008, <http://plato.stanford.edu/archives/sum2012/entries/kant-moral/>.

and evaluate the sometimes disparate elements of this important, but oftentimes confusing, text. With this caveat in mind, we nevertheless begin by looking at Kant's argument in the preface to the *Groundwork*.

Preface and the First Section of the *Groundwork*

Without seeking to violate the methodology of Kant's analysis in the *Groundwork*, I want to begin at the end of the preface:

The present groundwork is ... nothing more than the search for and establishment of the *supreme principle of morality*, which constitutes by itself a business that in its purpose is complete and to be kept apart from every other moral investigation.⁸

In Christine Korsgaard's introduction to Kant's *Groundwork*, she notes that this text is, and should be read as, a groundwork. Kant will later develop a metaphysics of morals in his 1797 text of the same name. At this point, however, Kant only seeks to illuminate the groundwork necessary for such an endeavor, and in so doing, aims only to surface those elements of the discussion which would qualify as integral elements of a groundwork. According to Korsgaard, Kant's aim is to establish "that there is a domain of laws applying to our conduct, that there is such a thing as morality."⁹ Kant's investigation into the 'domain of laws applying to our conduct' begins with a justification of this endeavor through an appeal to the history of philosophy. Philosophy has been divided, Kant says,

8. Kant, *Groundwork*, 5 (= AA 4:392).

9. Christine M. Korsgaard, introduction to *Groundwork of the Metaphysics of Morals*, by Immanuel Kant, trans. and ed. Mary J. Gregor (Cambridge; New York: Cambridge University Press, 1998), x.

into three sciences: physics, logic, and ethics.¹⁰ While Kant's concern in this text is to narrate the move toward a 'science' of morality, he begins by justifying the pursuit of this goal by recognizing that this same task is undertaken in the other two branches of philosophy—physics and logic. Physics, as that form of philosophy which deals with the world as it is, pursues the supreme principle of nature (i.e. the laws governing nature); logic, as that form of philosophy which deals with thought, pursues the supreme principle of thought (i.e. the laws governing thought). Ethics, as that form of philosophy which deals with the question of what we ought to do, is that which pursues the supreme principle of morality because it is that form of philosophy which deals with the laws of freedom (i.e. the laws governing the conduct of free beings—that is, the moral law). Thus, for Kant, each of these avenues of inquiry parallels the others insofar as the need for the pursuit of a 'supreme principle' in any one field illustrates the need for the pursuit of a 'supreme principle' in the others. While this point is principally illustrative, Kant takes it as the starting point of the *Groundwork*: if there is a supreme principle of morality (and Kant certainly thinks there is), then the establishment of this principle is the task of a groundwork such as the one Kant undertakes.

What Kant presumes his readers will acknowledge, and allow him, is the appropriateness of the parallel between these three forms of philosophical thinking. As in the realms of physics and logic, the world as we experience it functions in a lawlike

10. Kant does not intend to equate physics, logic, and morality here, but rather to suggest that as there are grounds upon which we can reflect on, and make judgments about, physics and logic, so too ought there to be grounds upon which we can reflect on, and make judgments about, morality.

fashion: every physical (i.e. phenomenal) event is ruled by the law of causality, every thought is ruled by the laws of logic. What this tells us, however, is not how things *ought* to be (essential to the task of ethics for Kant), but rather, how things actually are. If we want to discover the way things ought to be—how we ought to be in the world—then we need a body of knowledge that is not dependent on things as they are, and this puts us in a bit of a conundrum. Kant, however, offers a solution: “if we do know ... that the world in general behaves in a lawlike way, we must have synthetic *a priori* knowledge [of it].”¹¹ As previously noted, the name for such a body of knowledge is metaphysics, and if there are such things as moral judgments (and Kant thinks that there are) then there must be something called a metaphysics of morals—the body of synthetic *a priori* judgements that pertain to what we ought to do.

Korsgaard helpfully clarifies what Kant means by the ‘synthetic *a priori*’ and why a groundwork to a metaphysics of morals need be concerned with this realm of knowledge.¹² In response to his inquiry into the contribution of pure reason to our knowledge of the world and the government of our actions, Kant offers two sets of distinctions, applied to judgments, that respond, each in their own way, to the two dominant schools of thought with which Kant had to contend intellectually: empiricism and rationalism. The first distinction Kant offers is the analytic/synthetic distinction, which concerns what makes a judgment true or false. According to Korsgaard, “a

11. Korsgaard, introduction to *Groundwork*, xii.

12. For Kant’s own reflections on this, see Kant, *Critique of Pure Reason*, trans. and ed. Paul Guyer and Allen W. Wood (Cambridge: Cambridge University Press, 1998), 140–49.

judgment is analytic if the predicate is contained in the concept of the subject; otherwise, the predicate adds something new to our conception of the subject and the judgment is synthetic.”¹³ Analytic propositions, for Kant, are true in themselves, while synthetic propositions ‘add something new’ to the proposition in question. The second distinction Kant makes is the *a priori/a posteriori* distinction, which attends to the way in which we know a particular judgment to be true. Again, Korsgaard: “A judgment is known *a posteriori* if it is known from experience, while it is *a priori* if our knowledge of it is independent of any particular experience.”¹⁴ The combination of these two sets of distinctions yields four types of judgments (though only three are possible). The analytic *a priori*—which pertains to logic—says that if we know a judgment to be analytic (that is, the predicate is already contained in the concept of the subject), then this, of necessity, must be known *a priori*. For this very reason, Kant rules out the possibility of an analytic *a posteriori*—we cannot know from experience that something is analytically true. The synthetic *a posteriori* is most easily correlated with the natural, or empirical, sciences (i.e. physics)—the predicate adds something new to the subject, and this from experience. Finally, the synthetic *a priori* is where Kant lands in the discussion on ethics. A judgment that qualifies as synthetic *a priori* is a judgment that “would be one which tells us something new about its subject, and yet which is known independently of experience—on the basis of reasoning alone.”¹⁵ Thus, when Kant asks the question about the

13. Korsgaard, introduction to *Groundwork*, viii.

14. Korsgaard, introduction to *Groundwork*, ix.

15. Korsgaard, introduction to *Groundwork*, ix.

contribution of pure reason to knowledge of the world and the government of our actions, it “amounts to the question whether and how we can establish any synthetic *a priori* judgments.”¹⁶ Thus, at the outset of the *Groundwork*, Kant makes the case for not only the synthetic *a priori* (necessary if the moral ‘ought’ can even be thought), but also for the consequent ethical groundwork for a metaphysics of morals he lays out in the remaining pages. Keeping these clarifications and explanations in mind, we will now turn to the first section of Kant’s *Groundwork* in order, as Kant puts it, “to proceed analytically from common cognition to the determination of its supreme principle, and in turn synthetically from the examination of this principle and its source back to the common cognition in which we find it used.”¹⁷

Kant begins the first section of the *Groundwork* with the following pronouncement: “[it] is impossible to think of anything in the world ... that could be considered good without limitation except a good will.”¹⁸ In light of the preface, in which he identifies ethics as the philosophical discourse pertaining to the possibility of action and morality (i.e. freedom), Kant identifies this premise, and will then proceed to work it out in this first part of the *Groundwork*. What he assumes, at this point, is that ‘a good will’—the source of all moral action—has a special kind of value for human beings—not just as a preferential option, but as a constitutive feature of both action and agency as we understand them. Whereas physics and logic take as their points of focus nature and

16. Korsgaard, introduction to *Groundwork*, ix.

17. Kant, *Groundwork*, 5 (= AA 4:392).

18. Kant, *Groundwork*, 7 (= AA 4:393).

thinking respectively, ethics takes the concept of a good will as its point of focus—as the one thing to which we attribute absolute, unconditional worth, without reference to any external inclinations or pathologies. Kant explains further:

A good will is not good because of what it effects or accomplishes, because of its fitness to attain some proposed end, but only because of its volition, that is, it is good in itself, and, regarded for itself, is to be valued incomparably higher than all that could merely be brought about by it in favor of some inclination.¹⁹

Neither ‘usefulness’ nor ‘fruitlessness’ impact the goodness of a good will—it shines like a jewel because its worth is not given to it from outside, but rather emerges from the good will itself. Therefore, it is important to note here, with regard to the question of volition and the ‘goodness’ of a good will, that Kant is suggesting the following: a good will is good in itself insofar as it is constituted by the power of choosing, though not necessarily by its being chosen itself. In other words, a good will is not so determined because of the effects it brings about, as is often the case in utilitarian and consequentialist ethics. A good will is good because it contains, in itself, the conditions for its own goodness. We do not choose to have a good will, but rather, insofar as we exercise the freedom of choice at all, and insofar as we choose morally, we are constituted by the supreme principle of morality, which can only be found in a good will. Kant’s question, therefore, is: What is this principle of a good will that motives us to moral action?

In response to this question, Kant first turns his attention to one of the most popular answers in philosophical discourse: happiness. According to him, “[in] the natural constitution of an organized being ... we assume as a principle that there will be

19. Kant, *Groundwork*, 8 (= AA 4:394).

found in it no instrument for some end other than what is also most appropriate to that end and best adapted to it.”²⁰ Thus, the human person faces a bit of a conundrum if they propose that happiness is the end of human being. If happiness is the principal motivating factor behind the constitution of a good will, then nature—not to put too fine a point on it—has really screwed up. If happiness is the end to which all human beings and actions aim, then reason, it seems clear to Kant, is not the most appropriate way to get there. It would make more sense if something more akin to instinct were the driving force behind human action, because instinct is far more likely to foster happiness than reason. In this line of thought, human beings are instinctual creatures who, though they possess the capacity to reason, do not use it in pursuit of their end—i.e. happiness—because it will never get them there. Rather, they rely on their instinctual, inclinational capacities to attain the end of happiness. This paradigm, of course, violates one of Kant’s fundamental beliefs—that we are rational creatures—and, therefore, is rejected by him as a possible way of being in the world. For him, there remains “another and far worthier purpose for one’s existence” which goes beyond happiness and “to which therefore ... reason is properly destined.”²¹ This ‘far worthier purpose’ is, for Kant, articulated in and through the concept of duty.

The concept of duty, as Kant articulates it at this point in his discussion, “contains [the concept] of a good will though under certain subjective limitations and hindrances, which, however, far from concealing it and making it unrecognizable, rather bring it out

20. Kant, *Groundwork*, 8 (= AA 4:395).

21. Kant, *Groundwork*, 9 (= AA 4:396).

by contrast and make it shine forth all the more brightly.”²² Duty allows reason—understood by Kant as *the* activity of the rational creature—to pursue its true vocation, that is, “to produce a will that is ... *good in itself*.”²³ We can see, here, that through the lens of duty the concept of reason looks very different from when it is viewed through the concept of happiness. Happiness, as Kant’s analysis suggests, is interpreted as a totality—one which is achieved through a teleological orientation toward one’s final—natural, good—end. Duty, on the other hand, recognizes the inherently limited and partial nature of rationality. The recognition of this limitation reflects, for Kant, a more accurate portrayal of human being and action than does the totality of happiness. When we think of ourselves in relation to a good will, we are better served, as rational creatures, by the concept of duty than the concept of happiness. The good will to which this gives rise, says Kant, need not “be the sole and complete good,” as it might be if we consider the concept of happiness as our end, “but it must still be the highest good and the condition of every other.” This language of ‘conditionality’ becomes important for understanding the concept of duty, because via its role as ‘the condition of every other,’ the will “limits in many ways—at least in this life—the attainment of ... happiness.”²⁴ Duty, once again, surfaces as that concept which is most appropriately constitutive of reason and a good will:

[Reason], which cognizes the highest practical vocation in the establishment of a good will, in attaining this purpose is capable only of its own kind of satisfaction,

22. Kant, *Groundwork*, 10 (= AA 4:397).

23. Kant, *Groundwork*, 10 (= AA 4:396).

24. Kant, *Groundwork*, 10 (= AA 4:396).

namely from fulfilling an end which in turn only reason determines, even if this should be combined with many infringements upon the ends of inclination.²⁵

This form of reason—simultaneously self-fulfilling and self-constraining—gives rise to the conceptualization of a good will which acts freely and from duty. Thus, those free actions done by a good will from the concept of duty alone can be articulated as moral actions. Other actions—like those done from inclination, or a combination of inclination and duty—are not, as such, ‘bad’ actions, or actions we ought not to undertake, but they are, on Kant’s analysis, not moral actions. What does this mean for action in general, and moral action in particular? Kant names three propositions which seek to clarify this point and identify how one’s actions can be considered moral.

The first proposition regarding moral action argues, as we have already noted, that actions can only be considered to have moral worth when they are done from duty alone, not from any inclination. This line of thought has led Kant into some difficult terrain, particularly when he argues that a sympathetic person, whose actions at least appear to be moral, cannot be considered moral insofar as said person acts, not from the concept of duty, but, at least partially, from the pleasure she takes in the act. This is heteronomy for Kant, since the motivation behind the action cannot be exclusively attributed to duty. While this seems a harsh evaluation of what appears to be ‘good’ actions, Kant’s point here should not be missed. What qualifies an action as moral is its being done from duty. If we are to take up Kant’s argument—for praise or critique—we must take it up on his terms. Kant is not passing evaluative judgment on the person in question; he is only arguing that if we are to be analytically clear on the point under discussion, we cannot call

25. Kant, *Groundwork*, 10 (= AA 4:396).

an action moral that is done from outside the concept of duty. The sympathetic person, says Kant, “deserves praise and encouragement, but not esteem.”²⁶ To illustrate his point further, Kant ventures an interpretation of the Christian principle of loving one’s neighbor—even to the point of loving one’s enemy. Such a command to love cannot be based, believes Kant, on beneficence—on an inclination or a feeling. Rather, such a command to love can only make sense when it is understood as a duty—a “*practical* and not *pathological* love, which lies in the will and ... in principles of action.”²⁷ We cannot reasonably command one to love her enemies if love is an mere feeling, but we can command one to love her enemies if love is practical—if this love gives rise to the will and action. I raise this point not to draw Kant into a debate over the interpretation of Scripture, but to illustrate the kind of distinction he is articulating in this first proposition regarding moral action.

The second proposition regarding moral action that Kant identifies is the principle of volition:

an action from duty has its moral worth not in the purpose to be attained by it but in the maxim in accordance with which it is decided upon, and therefore ... [depends] upon the principle of volition in accordance with which the action is done without regard for any object of the faculty of desire.²⁸

Two important elements of Kant’s project are noted in this definition. First, Kant notes that the moral worth of an action done from duty does not depend on the purpose or end

26. Kant, *Groundwork*, 11 (= AA 4:398).

27. Kant, *Groundwork*, 13 (= AA 4:400).

28. Kant, *Groundwork*, 13 (= AA 4:400).

to be attained, but rather the moral worth of an action depends upon the maxim in accordance with which the action is done. Though only mentioned in a later footnote, the centrality of this point about actions being done in accordance with one's maxims cannot be overstated. A maxim, according to Kant, is "the subjective principle of volition [of an action]; the objective principle ... is the practical law."²⁹ The moral worth of an action depends on the subjective principle of the will in accordance with which one acts. Second, Kant notes that the morality of an action depends, not on the 'realization of the object of the action' but upon the 'principle of volition.' Kant is here suggesting that it is not the choice that we make, as such, which determines the moral worth of our actions, but it is the capacity to choose itself—grounded in freedom, as Kant has already identified—which determines the morality of our actions. Thus, once again, Kant emphasizes that it is not something 'out there' (be it an inclination or an object of desire) that determines the moral worth of an action. It is one's ability to exercise a free choice, in accordance with one's maxims, that will ultimately determine the moral worth of an action.

The third proposition regarding moral action Kant identifies, and which comes out of the two aforementioned propositions, states that "*duty is the necessity of an action from respect for law.*"³⁰ As such, I can be inclined toward the object of a proposed action, but I can never have respect for that object because the object is merely an *effect* of the will, and not an *activity* of it. An action done from duty, according to Kant, "[puts] aside entirely the influence of inclination and with it every object of the will; hence there is left

29. Kant, *Groundwork*, 14 (= AA 4:401n).

30. Kant, *Groundwork*, 13 (= AA 4:400).

for the will nothing that could determine it except objectively the *law* and subjectively *pure respect* for this practical law.”³¹ Kant’s articulation of the concept of duty is complex, and has often gotten him into trouble with contemporary ethicists. Therefore, it is helpful to pause for a moment, and reflect on what Kant is getting at here. “Kant thinks that performing an action because you regard the action or its end as one that is required of you is equivalent to being moved by the thought of the maxim of the action as a kind of law.”³² A maxim, of course, is different from a practical law: the former is the subjective principle of action, while the latter is the objective principle. While we cannot be motivated by the latter—since that would be motivation from the outside, and this would be heteronomy—we can only be motivated by the former as a constitutive feature of what it means to be a rational being. In other words, one who acts from duty acts from their (subjective) maxim of action as a (objective) law. This, in turn, is what makes the objective practical law moral—not that it determines the actions, decisions, and judgements of the agent, but that it is freely chosen from the agent’s subjective principle of action—from her maxim.

Therefore, the question remains as to what kind of law fulfills such criteria—what kind of law “the representation of which must determine the will ... [since] I [Kant] have deprived the will of every impulse that could arise for it from obeying some law.” All that remains, in Kant’s view, is the principle that “*I ought never to act except in such a way that*

31. Kant, *Groundwork*, 13–14 (= AA 4:401).

32. Korsgaard, introduction to *Groundwork*, xiv.

I could also will that my maxim should become a universal law." ³³ This is the universal principle which constitutes actions as moral, and therefore as worthy of respect. While Kant acknowledges that, at this point in his argument, the law remains a primarily formal concept—that is, this articulation attends to the proper arrangement of the principle—he, nevertheless, attempts an explanation of what in this formal principle commands respect, and in what this concept of respect rests. Kant argues that the term respect should not be understood as some "obscure feeling" motivated by inclination or fear. Respect, he says, "is not *received* by means of influence; it is, instead, a feeling *self-wrought* by means of a rational concept and therefore specifically different from all feelings of the first kind." Respect emerges from the agent, rather than being something imposed on her. The external law, for which I have respect, does not impose itself on me from the outside, but rather my respect for the external (moral) law consists in my own consciousness of "the *subordination* of my will to a law without the mediation of other influences on my sense." Thus, for Kant, "[immediate] determination of the will by means of the law and consciousness of this is called *respect*, so that this is regarded as the *effect* of the law on the subject, and not as the *cause* of the law." While the object of our respect remains the (moral) law, the respect itself emerges from the subject: "as imposed upon us by ourselves it [i.e. the (moral) law] is nevertheless a result of our will."³⁴ So the concept of respect, for Kant, is not a feeling induced by inclination or fear, but an activity of the will. This is what gives the concept of respect its motivational force—it is the recognition of the law we give

33. Kant, *Groundwork*, 14 (= AA 4:402).

34. Kant, *Groundwork*, 14 (= AA 4:401n).

to ourselves. Therefore, we recognize—even if we cannot prove, at this point—that the respect owed to the moral law “is an estimation of a worth that far outweighs any worth of what is recommended by inclination, and that the necessity of my action from *pure* respect for the practical law is what constitutes duty, to which every other motive must give way because it is the condition of a will good *in itself*.”³⁵ Thus the good person, in Kant’s view, is motivated to moral action, not by some passing inclination, but by the very thought that her subjective principle of action—her maxim—has the form of law for her.

At the end of this section of the *Groundwork*, Kant explains—in light of his analysis in this section—the necessity of the move from what he calls common rational cognition to philosophic moral cognition. Kant has argued that in the concept of respect for the moral law we find the “moral cognition of common human reason.”³⁶ Common human reason, in itself, does not think as abstractly as philosophic moral cognition does. In fact, while recognizing the importance of philosophic moral cognition, common human reason—so long as it keeps respect for the moral law as its guiding principle—can recognize what to do “in order to be honest and good, and even wise and virtuous.”³⁷ Therefore, it is within practical philosophy, rather than theoretical/speculative philosophy, that Kant locates the remaining task(s) of his ethical analysis in the *Groundwork*. Since common human reason is susceptible to the coercive powers of external—and therefore heteronomous—forces, it still requires the assistance of

35. Kant, *Groundwork*, 16 (= AA 4:403).

36. Kant, *Groundwork*, 16 (= AA 4:403).

37. Kant, *Groundwork*, 16 (= AA 4:404).

philosophy. “The human being,” says Kant, “feels within himself a powerful counterweight to all the commands of duty, which reason represents to him as so deserving of the highest respect—the counterweight of his needs and inclinations, the entire satisfaction of which he sums up under the name happiness.”³⁸ Thus, for Kant, there is a necessary dialectic between the exercise of practical reason and the “propensity to rationalize against those strict laws of duty and to cast doubt upon their validity ... and, where possible, to make them better suited to our wishes and inclinations.”³⁹ This dialectic requires common human reason—in order to avoid succumbing to the wishes and inclinations of our desires—“to go out of its sphere and take a step into the field of practical philosophy, in order to obtain there information and distinct instruction regarding the source of its principle and the correct determination of this principle in comparison with maxims based on need and inclination.”⁴⁰ This is why, for Kant, we must transition from common rational cognition to philosophic moral cognition.

The Second Section of the *Groundwork*

In Section II of the *Groundwork*, Kant argues for his theory of practical reason, whereby the moral law, as Korsgaard notes, “appears as one of the principles of practical reason.”⁴¹ Before he gets to this point in his discussion, however, Kant spends some time articulating *why* it is that the moral law must appear as a principle of practical reason. A

38. Kant, *Groundwork*, 17 (= AA 4:405).

39. Kant, *Groundwork*, 17–18 (= AA 4:405).

40. Kant, *Groundwork*, 18 (= AA 4:405).

41. Korsgaard, introduction to *Groundwork*, xvi.

brief overview of this discussion will be helpful for clarifying Kant's goals in this section. Having argued in Section I that moral action, and the moral law, must come out of a concept of duty—rather than inclination—Kant nevertheless acknowledges that knowledge of a genuine motivation to action—that is, action from duty—is opaque at best. If we are attentive to the actual actions of people in their embodied experience, Kant admits that “no certain example can be cited of the disposition to act from pure duty; ... though much may be done *in conformity with* what *duty* commands, still it is always doubtful whether it is really done *from duty* and therefore has moral worth.”⁴² Kant makes his point even more forcefully:

In fact, it is absolutely impossible by means of experience to make out with complete certainty a single case in which the maxim of an action otherwise in conformity with duty rested simply on moral grounds and on the representation of one's duty.⁴³

We can never definitively know, says Kant, if one's actions are done from duty—from the representation of one's duty to oneself. The possibility—or more to the point, the likelihood—that one's actions are motivated by inclinations to self-love, or to the fulfillment of some material desires, hold such sway that it is near impossible to say with certainty that any action is done from duty. As Kant rightly notes, human beings have a fairly pronounced and radical penchant “to flatter ourselves by falsely attributing to ourselves a nobler motive”⁴⁴ than we may actually possess. Actions done from duty—that

42. Kant, *Groundwork*, 19 (= AA 4:406).

43. Kant, *Groundwork*, 19 (= AA 4:407).

44. Kant, *Groundwork*, 19 (= AA 4:407).

is, moral actions—cannot be done from a motive or inclination, *even* a motive or inclination to duty. Moral actions can only be done from the concept of duty—from the representation of one’s duty to oneself as a duty. Moral action values principles over experiences because “reason by itself and independently of all appearances commands what ought to happen,” and because “duty—as duty in general—lies prior to all experience, in the idea of a reason determining the will by means of a priori grounds.”⁴⁵ Kant does not deny that the move to a more ‘popular philosophy,’ which attends to experience, is valuable, but Kant insists that this can only be a secondary move—one taken after the groundwork has been laid for establishing the possibility of morality and the moral law in the first place. Morality must be *grounded* in reason and *a priori* principles, and not in actions or inclinations. For Kant, “if these principles [of morality] are to be found altogether a priori, free from anything empirical, solely in pure rational concepts and nowhere else even to the slightest extent” then we will be on the right path for an investigation of pure practical philosophy or, in other words, a metaphysics of morals. This, however, remains a secondary step, dependent upon the groundwork established in the first—present—step. Kant offers a helpful footnote at this point in the discussion where he notes, in a clarifying way, that moral principles cannot be based “on what is peculiar to human nature but must be fixed a priori by themselves, while from such principles it must be possible to derive practical rules for every rational nature, and accordingly for human nature as well.”⁴⁶

45. Kant, *Groundwork*, 20 (= AA 4:408).

46. Kant, *Groundwork*, 22 (= AA 4:401n).

Now, Kant has argued that moral concepts must have their grounding in *a priori* reasoning alone, and cannot be extracted from, or dependent upon, empirical or contingent conditions. Therefore, according to Kant, moral concepts must be located in the practical faculty of reason if we are to move from common moral cognition to a metaphysics of morals in a responsible way. This analysis gives rise to the concept of duty, which leads Kant into two related discussions on the concept of law and the role of reason. According to him, while everything in nature “works in accordance with laws ... [only] a rational being has the capacity to act *in accordance with the representation* of laws ... or has a *will*. Since *reason* is required for the derivation of actions from laws, the will is nothing other than practical reason.”⁴⁷ If such reason operates in us in an unfailing way, then human actions will be cognized as both objectively and subjectively necessary—“that is, the will is a capacity to choose *only that* which reason independently of inclination cognizes as practically necessary, that is, as good.”⁴⁸ If such reason, however, does not operate in us in an unfailing way—“if the will is exposed also to subjective conditions ... that are not always in accord with the objective ones ... [then] ... actions that are cognized as objectively necessary are subjectively contingent.”⁴⁹ This leads Kant to a further point: if we have such a will, one in which reason does not operate unfailingly (and for Kant, of course, this is precisely the kind of will we have), then the determination of our will, in conformity with the objective law, is possible only through *necessitation*.

47. Kant, *Groundwork*, 24 (= AA 4:412).

48. Kant, *Groundwork*, 24 (= AA 4:412).

49. Kant, *Groundwork*, 24 (= AA 4:413).

While *necessitation* still implies that the will operates from the grounds of reason, it nevertheless operates from grounds “to which this will is not by its nature necessarily obedient.”⁵⁰ For Kant, “[the] representation of an objective principle, insofar as it is necessitating for a will, is called a command (of reason), and the formula of the command is called an imperative.”⁵¹ An imperative implies an *ought*—something that should be done—and while a perfectly good will would not need the ought implied in necessitation (Kant gives the example of the divine will, which has no need of necessitation because it is perfectly good and cognizes objective and subjective necessity as the same), imperatives are, nevertheless, “formulae expressing the relation of objective laws of volition in general to the subjective imperfection of the will of this or that rational being, for example, of the human will.”⁵² The human will, within the practical faculty of reason, operates under necessitation because it is simply not perfectly good.

This conclusion might appear to conflict with Kant’s project thus far—that is, the grounding of moral action and the moral law in the concept of duty, separate from any empirical or motivational incentives. Kant, however, preempts this objection in a footnote. Regardless of how convincing one finds Kant’s argument here, the distinction he proposes—between *need* and *interest*—deserves our attention. In this discussion, Kant maintains his distinction between the faculty of desire and the principles of reason:

50. Kant, *Groundwork*, 24 (= AA 4:413).

51. Kant, *Groundwork*, 24 (= AA 4:413).

52. Kant, *Groundwork*, 25 (= AA 4:414).

The dependence of the faculty of desire upon feeling is called inclination, and this accordingly always indicates a *need*. The dependence of a contingently determinable will on principles of reason, however, is called an *interest*.⁵³

The human will—the dependent will which “is not of itself always in conformity with reason”⁵⁴—can “*take an interest* in something without therefore *acting from interest*.”⁵⁵

The distinction here is important for Kant, because the former (‘taking an interest in something’) does not necessarily require motivation from inclination (hence heteronomy), while the latter (‘acting from interest’) does require motivation from inclination. *Interest*, argues Kant, “indicates only dependence of the will upon principles of reason in themselves,” while *need* indicates “dependence upon principles of reason for the sake of inclination ... [in] the first case the action interests me; in the second, the object of the action (insofar as it is agreeable to me).”⁵⁶ Kant argued in the first section of the *Groundwork* that action from duty must look to “action itself and its principle in reason,”⁵⁷ rather than its object. To look to the object—as in the case of *need*—is to be motivated to action by an external force. To look to the principle of action in reason and law—as in the case of *interest*—is to be motivated by the concept of duty alone. Thus, even in the case of necessitation, we are not moved to action by a *need*, by an object

53. Kant, *Groundwork*, 25 (= AA 4:413n).

54. Kant, *Groundwork*, 25 (= AA 4:413n).

55. Kant, *Groundwork*, 25 (= AA 4:413n).

56. Kant, *Groundwork*, 25 (= AA 4:413n).

57. Kant, *Groundwork*, 25 (= AA 4:413n).

outside of our reason and autonomy; rather, we are moved to action by an *interest*, that is to say, by the principles of reason and the moral law within.

Let us turn, at this point, to another important relationship identified in Kant's *Groundwork*—the relationship between the hypothetical and the categorical imperatives. In the following chapter, I will argue—in line with Korsgaard—that the dialectical relationship between these two imperatives constitutes the heart of the specifically *formal* dimension of the normativity of ethics. Before expounding upon this point, however, it is important to recall what, in Kantian terms, an imperative is in the first place. Coming out of the *ought* of duty, imperatives are “formulae expressing the relation of objective laws of volition in general to the subjective imperfection of the will of this or that rational being.”⁵⁸ They are the formulae “for the determination of action that is necessary in accordance with the principle of a will which is good in some way.”⁵⁹ Thus imperatives, according to Kant, can command us (the *ought* of duty) in two ways: hypothetically or categorically. A hypothetical imperative is understood to be “the practical necessity of a possible action as a means to achieving something else that one wills.”⁶⁰ Hypothetical imperatives are contingent. They depend upon some desired end or object that is external to the principle motivating the will. The action undertaken as the result of a hypothetical imperative is good only insofar as it is a means to something else—to an end that is external to the will of the subject commanded by the imperative. An action commanded

58. Kant, *Groundwork*, 25 (= AA 4:414).

59. Kant, *Groundwork*, 25 (= AA 4:414).

60. Kant, *Groundwork*, 25 (= AA 4:414).

by a hypothetical imperative, therefore, is not good *as such*, but only good for some possible or actual further purpose. Hypothetical imperatives that are good for some possible further purpose are, for Kant, problematically—yet indisputably necessary—practical principles. Hypothetical imperatives that are good for some actual further purpose are assertorically practical principles. Problematically practical principles are those imperatives of skill we find in the natural sciences, for example, that aim at an end and consider, not whether the end is rational or good, but “what one must do in order to attain it.”⁶¹ Assertorically practical principles are those imperatives that “not merely *could* have [ends or purposes] but that we can safely presuppose ... *do have* [ends and purposes] by a natural necessity.”⁶² For Kant, there is only one such end/purpose of an assertorically practical principle: happiness. In addition to the hypothetical imperatives, there is one imperative that commands immediately. This imperative is that which represents an action “as objectively necessary of itself, without reference to another end.”⁶³ This imperative represents an action as “*in itself* good, hence as necessary in a will in itself conforming to reason.”⁶⁴ This imperative of morality, this apodictically practical principle, is understood to be a categorical imperative, or—more precisely—the Categorical Imperative. Before attending to the latter form of *the* CI, we must first explicate what Kant means by *a* categorical imperative. For Kant, a categorical imperative

61. Kant, *Groundwork*, 26 (= AA 4:415).

62. Kant, *Groundwork*, 26 (= AA 4:415).

63. Kant, *Groundwork*, 25 (= AA 4:414).

64. Kant, *Groundwork*, 25 (= AA 4:414).

“has not to do with the matter of the action and what is to result from it, but with the form and the principles from which the action itself follows.”⁶⁵ That an action in question is done from the command of the imperative itself, without outside influences, is what makes this command moral—what makes it a categorical imperative. What needs to be shown, however, is how each of these imperatives is possible.

With regard to the imperative of skill, the imperative resulting from problematically practical principles, its possibility is fairly straightforward: a rational person, who wills an end, must will the necessary means to that end as well. This is, for Kant, an analytic claim. The imperative of prudence, the imperative resulting from assertorically practical principles, is less straightforward. Happiness is an indeterminate concept for Kant, by which he means that “all the elements that belong to the concept of happiness are without exception empirical”⁶⁶ and must, therefore, be taken from experience. The consequence of this is that one cannot act on determinate grounds for the sake of happiness, but must rely on empirical grounds. The imperative of prudence cannot command, given its dependence on empirical grounds, but can only serve as council. The difference between the imperative of skill and the imperative of prudence, therefore, rests on a distinction noted between the problematically practical principle and the assertorically practical principle: that is, the difference between an end that is merely possible (the former) and an end that is given (the latter). That these imperatives are possible—however difficult—is fairly clear. What remains to be shown, at this point, is

65. Kant, *Groundwork*, 27 (= AA 4:416).

66. Kant, *Groundwork*, 28 (= AA 4:418).

how the imperative of morality is possible. Since the imperative of morality depends upon a will that is good in itself, and separate from all external influences, we cannot turn, as we did in the imperatives of skill and prudence, to examples. To turn to an example in support of the imperative of morality would be to fundamentally undercut the imperative, since that which gives the imperative its commanding quality lies within the fact that it is in no way dependent on empirical claims. As such, any investigation into the possibility of a categorical imperative must be an *a priori* investigation, since we do not have the advantage of a categorical imperative's reality being given in experience. What is more, a categorical imperative must be understood as a law, unlike the hypothetical imperatives, which are understood as principles: "what it is necessary to do merely for achieving a discretionary purpose can be regarded as in itself contingent and we can always be released from the precept if we give up the purpose; on the contrary, the unconditional command [of a categorical imperative] leaves the will no discretion with respect to the opposite."⁶⁷ A categorical imperative, therefore, must be a synthetic *a priori* proposition:

[The synthetic *a priori* is], therefore, a practical proposition that does not derive the volition of an action analytically from another volition already presupposed (for we have no such perfect will), but connects it immediately with the concept of the will of a rational being as something that is not contained in it.⁶⁸

What this means for Kant is that, unlike a hypothetical imperative—where one does not have an immediate awareness of what the imperative will contain and command—a

67. Kant, *Groundwork*, 30 (= AA 4:420).

68. Kant, *Groundwork*, 30 (= AA 4:420n).

categorical imperative is distinguished by the fact that when one thinks about a categorical imperative, one knows immediately what is contained therein: “For, since the imperative contains, beyond the law, only the necessity that the maxim be in conformity with this law ... nothing is left with which the maxim of action is to conform but the universality of a law as such.”⁶⁹

Therefore, says Kant, there is only one categorical imperative: “*act only in accordance with that maxim through which you can at the same time will that it becomes a universal law.*”⁷⁰ What is important to keep in mind is that Kant is *not*, in this analysis, imposing a ‘moral order.’ To see what he *is* doing, we must understand how he conceptualizes the relationship between a maxim and a law. A maxim, for Kant, is “the subjective principle of acting”⁷¹ and this must be kept separate, at least conceptually, from the objective principle of acting: law. The subjective principle of acting (one’s maxim) “contains the practical rule determined by reason conformably with the conditions of the subject ... and is therefore the principle in accordance with which the subject acts.”⁷² The law, on the other hand, “is the objective principle valid for every rational being, and the principle in accordance with which [one] *ought to act.*”⁷³ Thus, in his formulation of the CI, Kant does not say that the law determines one’s maxims (this, of course, would be a

69. Kant, *Groundwork*, 31 (= AA 4:421).

70. Kant, *Groundwork*, 31 (= AA 4:421). This is also the first formulation of the CI, also known as the Formula of Universal Law (FoUL).

71. Kant, *Groundwork*, 31 (= AA 4:421n).

72. Kant, *Groundwork*, 31 (= AA 4:421n).

73. Kant, *Groundwork*, 31 (= AA 4:421n).

violation of the CI itself, since, in such a situation, the location of the CI would be moved from the will to an external force); rather, what Kant is saying is that when one makes a decision about what maxims are to motivate one's moral actions, one must consider whether or not the maxim that one wills could be construed as a universal law. This distinction is important, because if the former is the case, that Kant is emphasizing the law over and against one's maxims, then Kant's entire project is in serious jeopardy. If, however, the latter is that case, and Kant's emphasis is on one's maxims of action and how they relate to a formal principle of universalization, then we are traversing very different terrain. If we understand the CI correctly, then we can better understand what Kant means when he says that to act in accordance with the CI is to "*act as if the maxim of your action were to become by your will a universal law of nature.*"⁷⁴

It is important to keep in mind, here, that if our first movement in this process is to ask ourselves, "What is that universal form of a maxim that could count as a universal law of nature?" then we have already missed the boat. While this concept remains tricky, it must be recalled that if we turn to an external form of the law, before we establish our maxim for consideration, we are taking the CI out of order and, ultimately, turning to an external source of authority, which violates Kant's emphasis on the emergence of a maxim from the rational will. While this argument may seem like simple semantics, it is not that way at all. The CI is a synthetic a priori principle, which means that it tells us

74. Kant, *Groundwork*, 31 (= AA 4:421). It is important to keep in mind, here, that Kant is not suggesting that there is an actual universal law of nature to which action must conform. Kant makes use of the 'law of nature' image here as an example of how we might think about the CI. This formulation is a thought experiment, indicated by the use of the *als ob* ('as if') at the outset of the sentence.

something new about its subject, but is, nevertheless, known independent of experience (on the basis of reason alone). The FoUL is a formal principle for evaluating our maxims, but it is not the law *as such* that determines our maxims. The only way we maintain the possibility of moral action—and morality in general—is if we act on our maxims—our self-given, subjective principles for action—and ask whether or not they could be chosen by anybody in the same position. It must be consistently and continually emphasized that if, in the FoUL, there is even the slightest hint of a universal moral law influencing or controlling or determining our maxims for action, we are in violation, not only of the CI *as such*, but of Kant's own articulation—and objective/goal—of why we must go through this process in the first place. Kant, himself, even points to this in a footnote,⁷⁵ where he acknowledges that within the *Groundwork*, he is not looking to an actual metaphysics of morals—that will come later. At this point, Kant is only interested in a groundwork—in understanding the conceptual foundations which give rise to an evaluation of particular actions. Only then can we turn to a more explicit metaphysics of morals. Kant's turn, therefore, to some examples, for the “enumeration of a few duties in accordance with the usual division of them into duties to ourselves and to other human beings and into perfect and imperfect duties,”⁷⁶ may seem counter-intuitive; however, if we understand the examples as simply that—examples—then we can understand Kant's task with greater clarity, and avoid distracting debates that, more often than not, miss the point of presenting exemplary material.

75. Kant, *Groundwork*, 31 (= AA 4:421n).

76. Kant, *Groundwork*, 31 (= AA 4:421).

Kant's four 'test cases' for the FoUL (roughly, the legitimacy of suicide because one is 'sick of life,' making a false promise in order to gain something, neglecting one's gifts and/or talents, and helping others in need) are very important in their own right. However, for the sake of brevity, I will put aside a detailed analysis of these test cases for the time being. We will, however, return to these examples later on when we turn to our discussion of autonomy and agency within the Kingdom of Ends. For now, we will focus on a different aspect of Kant's FoUL—namely, the contradiction tests. Kant notes—after discussing his four examples—that one thing remains clear when thinking about the relationships between these examples and the CI: “we must *be able to will* that a maxim of our action become a universal law.”⁷⁷ For Kant, this is an important reminder which aims to draw attention to a very real danger. This danger is the propensity of human persons, rather than acting from the moral law, to make exceptions for, and of, themselves when the moral law appears to come into conflict with some deeply held inclination they hold. The rational agent, in these cases, appears to be presented with a contradiction. For Kant, the possibility of contradiction arises in one of two ways: first, as a contradiction in conception; second, as a contradiction in the will. In cases of contradiction in conception, one's maxim cannot even be thought of as a universal law. In the very process of thinking, a contradiction arises and makes it impossible to even think this possibility consistently or coherently. These contradictions, as Korsgaard notes, violate strict, or perfect, duties—those “particular actions or omissions we owe to particular people, such as the duty to

77. Kant, *Groundwork*, 33 (= AA 4:424).

keep a promise, tell the truth, or respect someone's rights."⁷⁸ In cases of contradiction in the will, one can *conceive* of their maxim as a universal law, but they nevertheless cannot *will* their maxim as a universal law without contradiction. In such cases, we can think a particular maxim into universal law, but such a universal law would be impossible to will without contradiction. It would be logical to think them universally, but not to will them. These contradictions violate wide, or imperfect, duties—those duties “such as the duty to help others when they are in need, or to make worthwhile use of your talents.”⁷⁹ These contradictions pose a problem to rationality, as Kant understands and articulates it. For him, “since rationality commits us to willing the means to our ends, we must will a world in which these most general means—our own abilities and the help of others—would be available to us”⁸⁰ and, this, without contradiction. Thus, contradictions—either at the level of conception or at the level of willing—make it impossible for rational creatures to enact their rationality.

For Kant, what we have demonstrated up to this point—with the CI and the FoUL—is as follows:

If duty is a concept that is to contain significance and real lawgiving for our actions it can be expressed only in categorical imperatives and by no means in hypothetical ones; ... [we have also set forth] the content of the categorical imperatives, which must contain the principles of all duty.... But we have not yet

78. Korsgaard, introduction to *Groundwork*, xx.

79. Korsgaard, introduction to *Groundwork*, xx.

80. Korsgaard, introduction to *Groundwork*, xxi.

advanced so far as to prove *a priori* that there really is such an imperative, that there is a practical law ... and that the observance of this law is a duty.⁸¹

Korsgaard interprets this to mean that “[the] thought experiment we have just considered [in the CI and the FoUL] shows us *how* to determine whether a maxim can be willed as a universal law, not *why* we should will only maxims that can be universal laws.”⁸² The question is why we should even bother trying to universalize our maxims in the first place. In response to this question, Kant turns to the second formulation of the CI: the Formula of Humanity (FoH).

The first thing Kant notes in turning to his discussion on the FoH is that the CI, the principle out of which morality and duty flow, is not derived from human nature. For, as he says, “duty is to be practical unconditional necessity of action, and it must therefore hold for all rational beings ... and *only because of this* be also a law for all human wills.”⁸³ This is important for our discussion, especially if we keep in mind Kant’s critique of metaphysics, and his concomitant critiques of metaphysical philosophers and theologians. When it comes to the question of ‘*Why the CI?*’, as Korsgaard has put it, we cannot turn to human nature for an answer. If there is an *a priori* reason that we should universalize our maxims, we cannot find it in something like the natural law. Rather than turning to human nature, Kant turns to the concept of humanity. Unlike human nature, which maintains the accoutrements of an empirical grounding for morality, the concept of humanity presents itself to Kant as attending to the proper end of the CI, while

81. Kant, *Groundwork*, 34 (= AA 4:425).

82. Korsgaard, introduction to *Groundwork*, xxi.

83. Kant, *Groundwork*, 34 (= AA 4:425).

remaining within the realm of the synthetic *a priori*. What is derived, for Kant “from the special natural constitution of humanity ... [is that] it can yield a subjective principle [maxim] on which we might act if we have the propensity and inclination, but not an objective principle on which we would be *directed* to act.”⁸⁴ The moral law cannot have authority over our will unless our will is also, subjectively, motivated by the moral law. Otherwise, the moral law becomes an external, heteronomous, and empirical motivating factor outside the autonomous motivation of the will of a free agent. The moral law must motivate us from within our own will and, if this is so, then reason, which by itself determines our conduct, “must necessarily do so *a priori*.”⁸⁵

What all of this leads to is a discussion about why it is that *humanity* becomes an important category for Kant’s moral philosophy. The will, according to Kant, “is thought as a capacity to determine itself to acting in conformity with the representation of certain laws. And such a capacity can be found only in rational beings.” Now, says Kant, “what serves the will as the objective ground of its self-determination is an end” and what serves as the “ground of the possibility of an action the effect of which is an end is called a *means*.”⁸⁶ Korsgaard is, again, helpful in clarifying Kant’s point here: “As rational beings ... we act in accordance with our representations or conceptions of laws. But what inspires us to formulate a maxim or a law ... is an end. Whenever we actually decide to

84. Kant, *Groundwork*, 34 (= AA 4:425).

85. Kant, *Groundwork*, 36 (= AA 4:427).

86. Kant, *Groundwork*, 36 (= AA 4:427).

take some action, it is always with some end in view.”⁸⁷ Ends are what inspire us to formulate maxims, which in turn give rise to our representations and conceptualizations of law. If we, therefore, want to claim that there is anything like an unconditional end or moral law—i.e. if there is a CI—then there must be objective ends that are shared by all rational beings (otherwise, the objective end might be willed by some, but imposed on others). Kant, himself, asks the question in this way: “But suppose there were something the *existence of which in itself* has an absolute worth, something which as *an end in itself* could be a ground of determinate laws; then in it, and it alone, would lie the ground of a possible categorical imperative, that is, of a practical law.”⁸⁸ In response, Kant offers the following:

Now I say that the human being and in general every rational being *exists* as an end in itself, *not merely as a means* to be used by this or that will at its discretion; instead he must in all his action, whether directed to himself or also to other rational beings, always be regarded *at the same time as an end*.⁸⁹

In this discussion on means and ends, Kant distinguishes ‘things’ from ‘persons.’ When it comes to things, Kant notes that “the worth of any object *to be acquired* by our action is always conditional”—the worth of any ‘thing’ is conditional. When it comes to persons, Kant distinguishes them from things by noting that only “rational beings are called persons” because a person is considered, not as of conditional value, but as “an end in itself, that is, as something that may not be used merely as a means, and hence so far

87. Korsgaard, introduction to *Groundwork*, xxi.

88. Kant, *Groundwork*, 36 (= AA 4:428).

89. Kant, *Groundwork*, 37 (= AA 4:428).

limits all choice.”⁹⁰ Thus persons, unlike things, constitute not merely subjective ends for us, but rather “*objective ends*, that is, beings the existence of which is in itself an end, and indeed one such that no other end, to which they would serve *merely* as means, can be put in its place, since without it nothing of *absolute worth* would be found anywhere.”⁹¹

What follows from this is Kant’s most direct articulation of the FoH in the *Groundwork*, and I would like to quote it at length:

If, then, there is to be a supreme practical principle and, with respect to the human will, a categorical imperative, it must be one such that, from the representation of what is necessarily an end for everyone because it is an *end in itself*, it constitutes an *objective* principle of the will and thus can serve as a universal practical law. The ground of this principle is: *rational nature exists as an end in itself*. The human being necessarily represents his own existence in this way; so far it is thus a *subjective* principle of human actions. But every other rational being also represents his existence in this way consequent on just the same rational ground that also holds for me; thus it is at the same time an *objective* principle from which, as a supreme practical ground, it must be possible to derive all laws of the will. The practical imperative will therefore be the following: *So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.*⁹²

This is Kant’s articulation of the FoH and, while elements of it remain to be explicated in the third section of the *Groundwork*, Kant’s claim herein is a bold one. In order to follow the argument Kant has laid out, Korsgaard’s gloss on the logic underpinning this formulation can help clarify the situation. Korsgaard points out that most objects of human endeavor get their value from the way that they serve our needs, that is to say,

90. Kant, *Groundwork*, 37 (= AA 4:428).

91. Kant, *Groundwork*, 37 (= AA 4:428).

92. Kant, *Groundwork*, 37–38 (= AA 4:428–29).

“their value is not absolute or intrinsic, but relative to *our* nature.”⁹³ If the value of the objects of human endeavor are of no intrinsic worth in and of themselves, but only considered valuable in and through their relation to us—as rational, willing agents—then, in pursuing these objects of human endeavor—these *ends*—“we are in effect taking ourselves to be important.”⁹⁴ What this means, says Korsgaard, is that when Kant speaks about a ‘subjective principle of human action’—that is, a maxim—what he is suggesting is that insofar as human beings set ends for themselves—insofar as we value things, not in and of themselves, but in relation to our own agency and identity—we must, therefore, consider ourselves—and treat ourselves—as valuable, that is to say, as *ends*. For Korsgaard, “[this] suggests that the objective end which we need in order to explain why the moral law has authority for us is ‘the human being, and in general every rational being.’”⁹⁵ Thus, for Kant, it is *humanity*, insofar as it is linked to rationality, that is at the heart of the moral law and the CI. Humanity is that which possesses absolute value within Kant’s formulation of the CI. What this means, suggests Korsgaard, is that “insofar as we are rational beings that ... accord ourselves this absolute value, the formula enjoins us to respect ourselves and each other *as* rational beings. We should develop our rational capacities, and promote one another’s chosen ends.”⁹⁶

93. Korsgaard, introduction to *Groundwork*, xxii.

94. Korsgaard, introduction to *Groundwork*, xxii.

95. Korsgaard, introduction to *Groundwork*, xxii.

96. Korsgaard, introduction to *Groundwork*, xxii.

“The principle of humanity, and in general of every rational nature, *as an end in itself* (which is the supreme limiting condition of the freedom of action of every human being) is not borrowed from experience,”⁹⁷ but comes to us from *a priori* reasoning. Kant’s justification of this claim to *a priori* status for the principle of humanity is two-fold: on the one hand, the universality of this claim makes an experientially-based justification impossible—for there is no single experience that can be in all times and places (and therefore the principle must be *a priori*); on the other hand, in this principle “humanity is represented not as an end of human beings (subjectively) ... but as an objective end that ... ought as law to constitute the supreme limiting condition of all subjective ends”⁹⁸ (and must, therefore, arise *a priori*). The difference between subjective and objective ends is important here. Objectively, ‘the ground of all practical lawgiving’ must lie in the objective (i.e. universal) *form* of the law which makes it fit to be law. Subjectively, however, ‘the ground of all practical lawgiving’ lies in the *matter* of the law which, as Kant suggests, “is every rational being as an end in itself.”⁹⁹ In order to harmonize the objective *form* of the law with the subjective *matter* of the law, Kant turns to a third formulation of the CI which, at least initially, he identifies as “the idea *of the will of every rational being as a will giving universal law*.” In order to explicate this ‘idea,’ we will look more closely at this third formulation, which Korsgaard refers to as the ‘Kingdom of Ends.’

97. Kant, *Groundwork*, 39 (= AA 4:430).

98. Kant, *Groundwork*, 39 (= AA 4:431).

99. Kant, *Groundwork*, 39 (= AA 4:431).

According to Kant, the third formulation of the CI suggests that

all maxims are repudiated that are inconsistent with the will's own giving of universal law. Hence the will is not merely subject to the law but subject to it in such a way that it must be viewed as also giving the law to itself [or 'as itself lawgiving'] and just because of this as first subject to the law (of which it can regard itself as the author).¹⁰⁰

Thus, for this third formulation to make sense, we must understand the will, or at least the “idea of the will of every rational being,” as a *will giving universal law*¹⁰¹—a will that is supreme lawgiver and binder. This is at the heart of what the CI is for Kant: a law which pertains to the will of every rational being. If there is such a law—if there is a CI, says Kant—then “it can only command that everything be done from the maxim of one's will as a will that could at the same time have as its object itself as giving universal law.”¹⁰² Only as such can the duty imposed by the CI be understood as unconditionally binding on the human person. Korsgaard points out that “[to] be rational is, formally speaking, to act on your representation of a law, whatever that law might be; but ... the content or material of the maxims or laws on which we act is given by the value we necessarily set upon our own humanity or rational nature.”¹⁰³ Rationality for Korsgaard, and for Kant, is integral to the concept of the will, particularly as the will is engaged in the process of lawgiving. Therefore, as rational beings, we not only create the law, but we legislate it as well. The reasons, Kant notes, that previous efforts to discover this principle of morality

100. Kant, *Groundwork*, 39 (= AA 4:431).

101. Kant, *Groundwork*, 40 (= AA 4:432).

102. Kant, *Groundwork*, 40 (= AA 4:432).

103. Korsgaard, introduction to *Groundwork*, xxiii.

have failed is that they tried to understand the duty imposed by the moral law as coming from an external source. What these formulations of the law did not account for, and what Kant believes his formulation of the law does account for, is that the duty which impinges upon the human person must come from reason alone—it must be *a priori*—and it must come from the activity of the will of the human person herself. Kant says that a human person “is subject *only to laws given by himself but still universal* and ... is bound only to act in conformity with his own will.”¹⁰⁴ If we conform to the law because particular interest(s) are served, if we are, consequently, bound by the law from the outside (i.e. we are constrained to our duty by an external force) then our motivations to action are to be called heteronomous. Any motivation which is dependent upon an external source for commitment to the moral law is heteronomous motivation and therefore, for Kant, incapable of serving as a legitimate ground for the moral law. If, however, we conform to the law because we endorse the law itself from within our own will and rationality, if we bind ourselves to the law for the law’s own sake, and not because of outside coercion, then we can talk about autonomous motivation to the law. In such a case, whereby we bind ourselves to the law based on our own subjective willing of the law as law, we can genuinely speak about a moral law—a law that, in its objectivity, is universal and, in its subjectivity, emerges *a priori* from within the will. Therefore, if we are to claim that there is a moral law, and that it motivates us to action, then it must be an autonomous law which motivates the will *a priori* from reason.

104. Kant, *Groundwork*, 40 (= AA 4:432).

Now, in order for Kant to talk about this concept of autonomy without making each person an entirely isolated individual—which would, of course, go against the formulation of the CI Kant articulates in the FoH—Kant talks about this self-legislating human person (i.e. one who gives the law to herself) as one who exists within a kingdom of ends. By ‘kingdom,’ Kant means “a systematic union of various rational beings through common laws,”¹⁰⁵ while by ends Kant means, as we have seen in the FoH, humanity. Kant articulates the formula of the kingdom of ends as follows:

The concept of every rational being as one who must regard himself as giving universal law through all the maxims of his will, so as to appraise himself and his actions from this point of view, leads to a very fruitful concept dependent upon it, namely that of *a kingdom of ends*.¹⁰⁶

As Korsgaard notes, “the laws of reason are not something we find in the world, but rather something we human beings impose on the world.”¹⁰⁷ This, she argues, is precisely what we have come to in Kant’s discussion of the Kingdom of Ends—how the laws of reason can be considered normative and universal in the world.

The central role humanity plays in the kingdom of ends cannot be overstated. For Kant, “all rational beings stand under the *law* that each of them is to treat himself and all others *never merely as means*, but always *at the same time as ends in themselves*.”¹⁰⁸ The systematic union of such rational beings is what comes to be called the ‘kingdom,’ while

105. Kant, *Groundwork*, 41 (= AA 4:433).

106. Kant, *Groundwork*, 41 (= AA 4:433).

107. Korsgaard, introduction to *Groundwork*, xxiv.

108. Kant, *Groundwork*, 41 (= AA 4:433).

the relationships between human persons, and within humanity itself, constitute what Kant means by ‘ends.’ The rational human person must, therefore, consider herself as both a member of, and sovereign over, the kingdom of ends. As a *member* of the kingdom of ends, the human person gives himself universal laws, “but is also himself subject to these laws.”¹⁰⁹ As a *sovereign* in the kingdom of ends, however, the human person, as lawgiving, “is not subject to the will of any other”¹¹⁰ (i.e. the legislation she submits to is autonomously given). While this may, at first, seem paradoxical—one is subject to autonomous lawgiving in community, while at the same time not subject to the ‘will of any other’—Kant emphasizes that a “rational being must always regard himself as lawgiving in a kingdom of ends possible only through freedom of the will”¹¹¹ because, without this element of self-legislation in community, there can be no morality and no dignity.

With regard to morality, Kant argues that it exists “in the reference of all action to the lawgiving by which alone a kingdom of ends is possible.”¹¹² The principle of this morality, arising, for Kant, from the lawgiving will of the rational person, says: “to do no action on any other maxim than one such that it would be consistent with it to be a universal law, and hence to act only *so that the will could regard itself as at the same time*

109. Kant, *Groundwork*, 41 (= AA 4:433).

110. Kant, *Groundwork*, 41 (= AA 4:433).

111. Kant, *Groundwork*, 41 (= AA 4:434).

112. Kant, *Groundwork*, 42 (= AA 4:434).

giving universal law through its maxims."¹¹³ Actions emerging from, and done in accordance with, this principle are to be understood as practical necessitation, and this, argues Kant, is the concept of duty, which we identified earlier on in this chapter. While duty does not apply to the rational will of the human person *qua* sovereign (in the kingdom of ends), it does apply to the rational will of the human person *qua* member (in the kingdom of ends). Such duty, he says, rests on "the relation of rational beings to one another,"¹¹⁴ because the will of any and every rational being must be regarded, at the same time, as lawgiving, for otherwise they would not be considered as ends in themselves and, consequently, could not be the source of the dignity of humanity.

To explicate this concept of dignity, Kant argues that reason:

refers every maxim of the will as giving universal law to every other will and also to every action towards oneself, and does so not for the sake of any other practical motive or any future advantage but from the idea of the dignity of a rational being, who obeys no law other than that which he himself at the same time gives.¹¹⁵

What Kant identifies here, and what must be kept in mind when referring to a kingdom of ends, is that a rational being—a human person—exists, constitutively and irreducibly, within a matrix of other rational beings. Within this milieu, the human person is still beholden to act on their universalized maxim. The justification for the claim to dignity comes out of Kant's belief that within the context of humanity, the concept of dignity is constituted by one's ability to give laws to oneself and to obey them. However, if this

113. Kant, *Groundwork*, 42 (= AA 4:434).

114. Kant, *Groundwork*, 42 (= AA 4:434).

115. Kant, *Groundwork*, 42 (= AA 4:434).

concept of dignity only pertains to individual human persons (rather than to humanity), then we encounter a problem when the human person—who ‘posses’ dignity—is immersed in the unavoidable matrices of human intersubjectivity in the kingdom of ends. Therefore, Kant draws a distinction between the notion of *dignity* and the notion of *price* in the kingdom of ends. Kant says that “[what] has a price can be replaced by something else as its *equivalent*; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity.”¹¹⁶ Insofar as something with a price is replaceable—is not in itself unique and valuable as such—it is only of relative value. This, for Kant, is not a sufficient ground for the concept of dignity. Insofar as something has dignity, it does not *only* have relative worth, or price, but also has an inner worth that is in no way relative, but absolute. The question, therefore, arises: Where does dignity, as the ability to give the law to oneself and obey it while among a collection of others with the same ability, lie when it comes to the individual human person? How does morality, as “the condition under which alone a rational being can be an end in itself,”¹¹⁷ relate to this question of dignity? Is it in the human person *as such* or is it in something else?

The key concepts here for understanding Kant’s notion of dignity are those of morality and humanity: “morality, and humanity insofar as it is capable of morality, is that which alone has dignity.”¹¹⁸ Thus the concept of dignity—that which gives human persons absolute, inherent worth—does not lie in each individual person. Rather, the

116. Kant, *Groundwork*, 42 (= AA 4:434).

117. Kant, *Groundwork*, 42 (= AA 4:435).

118. Kant, *Groundwork*, 42 (= AA 4:435).

concept of dignity lies in the *humanity* within each person. By emphasizing the location of dignity within the concept of humanity—rather than in each individual human person—Kant’s logic avoids the accusation of promoting a form of dignity that is both isolated and exclusively individual. Humanity, in Kant, is a fundamentally communal concept that grounds dignity in a necessarily shareable and deeply intersubjective mode of being which is lived out in the ideal space of the kingdom of ends. Thus humanity, more so than the individual human person, is where dignity lies for Kant. This notion of humanity is articulated through the concepts of reason, morality, and the giving of universal law within a kingdom of ends. Yet, the question of the direct relationship between humanity and dignity still remains. For Kant, the dynamic of this relationship is most clearly evidenced through his notion of autonomy, which, itself, is deeply indebted to his notion of freedom.¹¹⁹ As Kant argues, autonomy—along with its concomitant freedom—is “the ground of the dignity of human nature and of every rational nature.”¹²⁰ This means that, for Kant, everything depends on the possibility of formulating a maxim such that it can be universalized in a way that one can both give and obey it within a community of other self-legislating rational beings who are all doing the same thing. Humanity—constituted by dignity, autonomy, and respect for the law,¹²¹ and always within the kingdom of ends—is the core of the CI; it is that which has absolute worth and

119. More will be said about the relationship between autonomy and freedom later on in this chapter, when we investigate Kant’s argument in the third section of the *Groundwork*.

120. Kant, *Groundwork*, 43 (= AA 4:436).

121. Kant, *Groundwork*, 43 (= AA 4:436).

can, in no way, be understood as having a relative worth or price—as being merely a means to an end. Humanity is also a limiting factor when it comes to the process of universalization. Humanity, as that which can never be acted against and which has absolute worth, serves as both the limit and the core of a practical moral philosophy. This is the heart of Kant’s project in articulating the CI, and, likewise, the heart of all Kant’s moral philosophy.

While Kant himself suggests that all three formulations of the CI are “at bottom only so many formulae of the very same law, and any one of them of itself unites the other two in it,” there remains, in his words, “a difference among them, which is indeed subjectively rather than objectively practical, intended namely to bring an idea of reason closer to intuition.”¹²² While this claim will be explicated further in the following chapter, it is important to note at this point that Kant claims maxims—the subjective principles for action—all have three distinct, but related, elements: *form* (“which consists in universality ... maxims must be chosen as if they were to hold as universal laws of nature”), *matter* (“namely an end ... a rational being, as an end by its nature and hence as an end in itself, must in every maxim serve as the limiting condition of all merely relative and arbitrary ends”), and what he calls a *complete determination* (“all maxims from one’s own lawgiving are to harmonize with a possible kingdom of ends”).¹²³ Having named, and briefly explained these three elements, Kant (re)turns to the concept with which he began the *Groundwork*: the will that is unconditionally good.

122. Kant, *Groundwork*, 43 (= AA 4:436).

123. Kant, *Groundwork*, 43–44 (= AA 4:436–37).

A will, Kant reminds us, “*is absolutely good ... whose maxim, if made a universal law, can never conflict with itself. This principle is, accordingly, also its supreme law: act always on that maxim whose universality as a law you can at the same time will.*”¹²⁴ The contradiction tests, mentioned in the discussion of the FoUL, are key here—an absolutely good will is one which is not in conflict with itself when it comes to moral action, one that can will a maxim and, at the same time, universalize it. Imperatives of such a good will—the universalized maxims of such a will—are consequently called categorical. Therefore, the formula of an absolutely good will, and, likewise, an expression of the CI, can be articulated thusly: “*act in accordance with maxims that can at the same time have as their object themselves as universal laws of nature.*”¹²⁵ Now what distinguishes rational nature and being from non-rational nature and being is that the ‘rational’ sets for itself an end. Such an end, in accordance with the formula of the will that is absolutely good, “must here be thought not as an end to be effected but as an *independently existing* end, and hence thought only negatively, that is, as that which must never be acted against and which must therefore in every volition be estimated never merely as a means, but always at the same time as an end.”¹²⁶ Thus, rational agency—as a constitutive dimension of humanity—becomes the limiting condition of the universalizability of a maxim. Inextricable from Kant’s understanding of the FoH—and, therefore, from his concept of humanity as well—is the notion of autonomous self-legislation of one’s maxim as both a

124. Kant, *Groundwork*, 44 (= AA 4:437).

125. Kant, *Groundwork*, 44 (= AA 4:437).

126. Kant, *Groundwork*, 44–45 (= AA 4:437).

law to oneself and as a law within the context of a community of others. Since every human person—every rational being—must regard herself as a giver and legislator of, as well as subject to, the universalization of her maxims, she “must always take [her] maxims from the point of view of [herself], and likewise every other rational being, as lawgiving beings.”¹²⁷ This is what gives rise to the kingdom of ends—that every rational being within the kingdom of ends must act as a lawgiving member of it.

In the end, Kant returns to one of the central concepts in this discussion: morality. In light of the analysis thus far, Kant suggests that morality is “the relation of ... actions to the autonomy of the will, that is, to a possible giving of universal law through its maxims.”¹²⁸ Actions that cohere, and coexist, with this understanding of morality are permitted, while those that cannot and/or do not are forbidden. Kant calls that will *holy* that is absolutely good—that harmonizes necessarily with the laws of autonomy. For the will that is not absolutely good, its dependence on the principle of autonomy is called *obligation*, and “the objective necessity of an action from obligation is called *duty*.”¹²⁹ Korsgaard offers a helpful analysis of the conclusion to this section of the *Groundwork*, when she asks us to “recall that morality is real if the moral law has authority for our wills.” While, Korsgaard notes, Kant has yet to prove this (that remains for the third section of the *Groundwork*), what the analysis up to this point has shown us is that “we now know what has to be true of us if the moral law is to have authority over our wills.

127. Kant, *Groundwork*, 45 (= AA 4:438).

128. Kant, *Groundwork*, 46 (= AA 4:439).

129. Kant, *Groundwork*, 46 (= AA 4:439).

We must be autonomous beings, capable of being motivated by the conception of ourselves as legislative citizens in the kingdom of ends. If Kant can show that we are autonomous, he will have shown that we are bound by the moral law.”¹³⁰ This, of course, is the project that remains to Kant in the third section of the *Groundwork*

The Third Section of the *Groundwork*

Kant himself begins the third section of the *Groundwork* by emphasizing the necessary link he needs to make between, on the one hand, a conceptualization of freedom and, on the other hand, the autonomy of the will—our autonomy as a dignified, self-legislating member of the kingdom of ends. He says: “*Will* is a kind of causality of living beings insofar as they are rational, and *freedom* would be that property of such causality that it can be efficient independently of alien causes *determining* it.”¹³¹ While recognizing that this is a negative definition of freedom, Kant suggests that a more positive understanding of freedom flows from this definition as well. Freedom of the will, for Kant, is autonomy: “the will’s property of being a law to itself.”¹³² This is precisely what Kant has in mind when he formulates the CI as the principle of morality. Consequently, Kant proceeds to make the not uncontroversial claim that “a free will and a will under the moral law are one and the same.”¹³³ While this still does not fully disclose the positive conception of

130. Korsgaard, introduction to *Groundwork*, xxv.

131. Kant, *Groundwork*, 52 (= AA 4:446).

132. Kant, *Groundwork*, 52 (= AA 4:447).

133. Kant, *Groundwork*, 53 (= AA 4:447).

freedom Kant noted earlier on, it does offer us some important insights that prove necessary for such a conception.

Since, for Kant, morality serves as a law for rational being across the board, and since morality, as the law for rational beings, must be derived—since it is a synthetic a priori proposition—from freedom, freedom must, too, be a property of rational beings.

Kant notes:

every being that cannot act otherwise than *under the idea of freedom* is just because of that really free in a practical respect, that is, all laws that are inseparably bound up with freedom hold for him just as if his will had been validly pronounced free also in itself and in theoretical philosophy.¹³⁴

Kant's emphasis here is on the practical, rather than the theoretical. The practice of reason is one that must be undertaken autonomously—it cannot have any determining factors outside of itself. Thus, “as practical reason or as the will of a rational being ... [reason] must be regarded of itself as free, that is, the will of such a being cannot be a will of his own except under the idea of freedom.”¹³⁵ This, then, is more akin to his positive conceptualization of freedom. Freedom, in the positive sense, is when the will and the moral law are one and the same thing. Nevertheless, even while Kant argues that the free will is the will that operates with, and is governed by, the moral law—thus affirming that human persons, as the possessors of free will in this sense, are also subject to the moral law—Kant is still faced with the problem of articulating what it is that precisely *gives* us

134. Kant, *Groundwork*, 53 (= AA 4:448).

135. Kant, *Groundwork*, 54 (= AA 4:448).

said freedom. While it has been presupposed up to this point, Kant must now make explicit how we know that we have a free will.

Kant begins by noting the apparently circular logic which might appear, at first glance, to be at play here—a tautology that presupposes freedom of the will, while using the will to argue for freedom. Kant notes that in this line of argumentation, “freedom and the will’s own lawgiving are both autonomy and hence reciprocal concepts, and for this very reason one cannot be used to explain the other or to furnish a ground for it.”¹³⁶ Kant, however, does not think that such logical circularity is at play here, and suggests, in an attempt to clarify his position, that we must adopt a different standpoint for inquiring into the relationship between freedom and the will as lawgiving. Kant suggests that we must “think of ourselves as causes efficient a priori [rather] than ... [representing] ourselves in terms of our actions as effects that we see before our eyes.”¹³⁷ To fully understand the point Kant is trying to get across here, we must turn to Kant’s *Critique of Pure Reason*, and his discussion—noted at the outset of this chapter—of the distinction between the noumenal and the phenomenal realms.

Korsgaard, in highlighting the importance of C1 for the discussion of freedom and the will in the *Groundwork*, notes that “Kant distinguishes between two different ways of thinking about the world that are available to us. We can think of the world as it is in itself, or as he calls it there the *noumenal* world, or we can think of the world as it appears

136. Kant, *Groundwork*, 55–56 (= AA 4:450).

137. Kant, *Groundwork*, 56 (= AA 4:450).

to us, or as he calls it there the *phenomenal* world.”¹³⁸ We can only *know* the world from the standpoint of the phenomenal—that is, we can only know the world insofar as it is given to the senses in appearances—but we can *think* about the world from the standpoint of the noumenal—that is, as it is in itself, behind appearances. The phenomenal world is deterministic, finite, and, as such, knowable. This, of course, fundamentally undercuts what we understand to be the idea of freedom—the idea that the subjective principles of our actions, in accordance with reason, are autonomous and self-legislating. From the standpoint of the phenomenal, there is a very real sense in which freedom, or the idea of freedom, cannot properly exist because “freedom cannot be an object of knowledge.”¹³⁹ This, however, does not mean that there is no such thing as freedom, because freedom, while not constitutive of appearances from the phenomenal standpoint, might be constitutive of things as they are in themselves, that is, from the noumenal standpoint. According to Korsgaard, what Kant is trying to get at here “cannot be evidence or knowledge that we really are free ... [instead] he is asking whether we have grounds for regarding ourselves as free.”¹⁴⁰ Therefore, we ask, do we have the grounds for regarding ourselves as free? Kant says yes, but only if we maintain both the noumenal and phenomenal standpoints.

Within the context of the *Groundwork*, Kant argues that the standpoints of the phenomenal and the noumenal pertain to the distinction between the ‘world of sense’ and

138. Korsgaard, introduction to *Groundwork*, xxviii.

139. Korsgaard, introduction to *Groundwork*, xxviii.

140. Korsgaard, introduction to *Groundwork*, xxviii.

the ‘world of understanding’ (respectively)—the former being always malleable, the latter being always the same. Insofar as one “regards mere perception and receptivity to sensations he must count himself as belonging to the *world of sense*, but with regard to what there may be of pure activity in him ... he must count himself as belonging to the *intellectual world*.”¹⁴¹ Even with regard to the ‘world of understanding,’ Kant wants to further distinguish between ‘understanding’ and ‘reason.’ Though the former is a self-activity—like reason—it produces “no other concepts than those which serve merely to *bring sensible representations under rules* and thereby unite them in one consciousness.” The latter, however, is a self-activity—unlike understanding—that shows “a spontaneity so pure that it thereby goes far beyond anything that sensibility can ever afford it,”¹⁴² and, consequently, demarcates the limits of understanding itself. The rational being, therefore, must regard itself as intelligence, “as belonging not to the world of sense but to the world of understanding.”¹⁴³ Thus the rational being, as intelligence, as belonging to the world of understanding, “can never think of the causality of his own will otherwise than under the idea of freedom.”¹⁴⁴ Thus, suggests Kant, the alleged tautology of freedom and the will as lawgiving is disproven:

we now see that when we think of ourselves as free we transfer ourselves into the world of understanding as members of it and cognize autonomy of the will along with its consequence, morality; but if we think of ourselves as put under

141. Kant, *Groundwork*, 56 (= AA 4:451).

142. Kant, *Groundwork*, 57 (= AA 4:452).

143. Kant, *Groundwork*, 57 (= AA 4:452).

144. Kant, *Groundwork*, 57 (= AA 4:452).

obligation we regard ourselves as belonging to the world of sense and yet at the same time to the world of understanding.¹⁴⁵

The human person sees herself as one who adopts both standpoints—the phenomenal and the noumenal. Insofar as the human person adopts the phenomenal standpoint, she senses herself to be the author of her own thoughts and choices; all her actions, as a member of the phenomenal world, however, fall under the laws of nature and are, therefore, deterministic. As one who adopts the noumenal standpoint, the human person thinks of herself as a member of the world of understanding; she is free and autonomous and, therefore, as free, her will is intimately joined to the moral law. The reason that we must view ourselves as members of both worlds, says Kant, is because “*the world of understanding contains the ground of the world of sense and so too of its laws*, and is therefore immediately lawgiving with respect to my will (which belongs wholly to the world of understanding) and must accordingly also be thought as such.”¹⁴⁶

This is also, for Kant, what gives us freedom: “All human beings think of themselves as having free will ... [yet] this freedom is no concept of experience, and moreover cannot be one.”¹⁴⁷ This conception of freedom must be held in tension with another, more deterministic, concept: nature. Calling to mind the relationship between the noumenal and phenomenal standpoints just articulated, the relationship between freedom and nature is one that, while appearing to be an insurmountable contradiction, must be assumed by the human person, and by philosophy as well, to be nothing of the

145. Kant, *Groundwork*, 58 (= AA 4:453).

146. Kant, *Groundwork*, 58 (= AA 4:453).

147. Kant, *Groundwork*, 59–60 (= AA 4:455).

kind: “Philosophy must therefore assume that no true contradiction will be found between freedom and natural necessity in the very same human actions.”¹⁴⁸ This claim is substantiated by the fact that, for Kant, the human person sees herself as both intelligence in the world of understanding and as a physical creature in the world of sense. For Kant, speculative philosophy is needed, at this point, to articulate the distinction between freedom and nature, the intelligible and the sensible, the noumenal and the phenomenal. This distinction, however, is necessary only insofar as speculative philosophy may then “clear the way for practical philosophy.”¹⁴⁹ While this emphasis on practical philosophy surfaces throughout the *Groundwork*, Kant, in this instance, wants to suggest that “[by] thinking itself into a world of understanding practical reason does not at all overstep its boundaries ... [but] if practical reason were to fetch in addition an *object of the will*, that is, a motive, from the world of understanding, then it would overstep its bounds.”¹⁵⁰ Practical philosophy is not, and cannot be, concerned with external motivations—it pertains to the noumenal world of understanding only as regards its grounding. Kant then goes on to highlight a point that has already been indicated in this chapter, and which will get taken up prominently in the following chapter in the work of Christine Korsgaard:

The concept of a world of understanding is thus only a *standpoint* that reason sees itself constrained to take outside appearances *in order to think of itself as practical*, as would not be possible if the influences of sensibility were determining for the

148. Kant, *Groundwork*, 60 (= AA 4:455).

149. Kant, *Groundwork*, 60–61 (= AA 4:456).

150. Kant, *Groundwork*, 62 (= AA 4:458).

human being ... [this] thought admittedly brings with it the idea of another order ... and it makes necessary the concept of an intelligible world.¹⁵¹

Any laws that are determined by their reference to an object of experience are, for Kant, heteronomous; therefore, freedom cannot be understood in these terms. Freedom must be understood as an idea, “the objective reality of which can in no way be presented in accordance with laws of nature and so too cannot be presented in any possible experience.”¹⁵²

The problem this creates for talking about freedom is evident even to Kant, who notes that “[the] subjective impossibility of *explaining* the freedom of the will is the same as the impossibility of discovering and making comprehensible an *interest* which the human being can take in moral laws; and yet he does really take an interest in them.”¹⁵³ The human person remains interested in freedom (interest, of course, being “that by which reason becomes practical, i.e., becomes a cause determining the will”¹⁵⁴), even if it remains impossible to explain *how* “the *universality of a maxim as law* and hence morality interests us.”¹⁵⁵ Freedom and the moral law are coterminous here, and Kant’s point is that, while we are ‘interested’ in freedom and the moral law, we cannot really explain how this interest is at all possible. *That* there is an interest in freedom/the moral law is clear, but what remains unclear is *how*. Thus the possibility of freedom/the moral

151. Kant, *Groundwork*, 62 (= AA 4:458).

152. Kant, *Groundwork*, 63 (= AA 4:459).

153. Kant, *Groundwork*, 63–64 (= AA 4:460).

154. Kant, *Groundwork*, 63 (= AA 4:460n).

155. Kant, *Groundwork*, 64 (= AA 4:460).

law—or, put another way, the CI—“can indeed be answered to the extent that one can furnish the sole presupposition on which alone it is possible, namely the idea of freedom.”¹⁵⁶ We must therefore *presume* the idea of freedom, not because we can provide the ‘how’ of its content (we cannot), but because the entire enterprise of the *Groundwork*—that is, “how the mere *principle of the universal validity of all its maxims as laws ... can of itself furnish an incentive and produce an interest that would be called purely moral*”¹⁵⁷—rests on the possibility of the ‘reality’ of this freedom. Kant notes this at the end of the *Groundwork*:

the idea of a pure world of understanding as a whole of all intelligences ... remains always a useful and permitted idea for the sake of a rational belief, even if all knowledge stops at its boundary—useful and permitted for producing in us a lively interest in the moral law by means of the noble idea of a universal kingdom of ends in themselves (rational beings) to which we can belong as members only when we carefully conduct ourselves in accordance with maxims of freedom as if they were laws of nature.¹⁵⁸

While this is the place where Kant ends his discussion of freedom in the *Groundwork* (as well as the *Groundwork* itself), he goes on to offer an alternative articulation of freedom when he turns to his *Critique of Practical Reason* (*Practical Reason*). I would like to briefly outline how Kant presents the idea of freedom in *Practical Reason* before concluding this chapter. Fleshing out Kant’s later argument in favor of the idea of freedom will help us understand how this concept works in support of Kant’s

156. Kant, *Groundwork*, 64 (= AA 4:461).

157. Kant, *Groundwork*, 65 (= AA 4:461).

158. Kant, *Groundwork*, 66 (= AA 4:462–63).

moral philosophy outside the *Groundwork*, and how it gets taken up in thinkers like Korsgaard, whose work and thought we will address in the following chapter.

The Critique of Practical Reason and the ‘Fact of Reason’

While the relationship between the idea of freedom in the *Groundwork* and the *Practical Reason* is more nuanced and complex than I am about to suggest, Reath offers a helpful generalization for understanding the construction of these two approaches to the idea of freedom in Kant, and what such constructions mean for Kant’s project in these two texts. Reath notes that, “whereas in the *Groundwork* Kant appears to believe that we must have grounds for ascribing transcendental freedom to ourselves before establishing the validity of the moral law, the second *Critique* reverses this order: here Kant argues that it is the validity of the moral law that reveals our freedom.”¹⁵⁹ As Reath articulates it, one is faced with an ‘either/or’ decision in understanding Kant’s idea of freedom on the whole: either you follow the trajectory laid out in the *Groundwork*, whereby one moves from transcendental freedom to the moral law, or you follow the trajectory laid out in the *Practical Reason*, whereby you move from the moral law to transcendental freedom. Nevertheless, I would argue that there is a fundamental similarity in both these approaches that grounds itself in Kant’s distinction between the *noumenal* and the *phenomenal* in C1.

Kant notes in the preface to *Practical Reason* that “freedom is real, for this idea reveals itself through the moral law.... freedom is also the only [idea of speculative

159. Andrews Reath, introduction to *Critique of Practical Reason*, by Immanuel Kant, trans. and ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1997), xiii.

philosophy] the possibility of which we *know* a priori, though without having insight into it, because it is the condition of the moral law.”¹⁶⁰ There are two important things to keep in mind here. First, what Kant means by ‘know’ and, second, what Kant means by ‘condition.’ In Kant’s epistemology, there are two important elements of cognition: intuitions and concepts. Intuitions “are singular representations through which material is presented to the mind” while concepts “are general representations originating in the spontaneous activity of the understanding.”¹⁶¹ These two elements of cognition come together in knowledge, where intuitions are brought under concepts in judgment. For Kant, as we have seen, our ‘knowledge of freedom’ pertains primarily to the *noumenal* world, where we have knowledge of the *thought* of freedom. Kant argues this point because what we ‘know’ in the *phenomenal* world is only the appearance of things, and not things in themselves. So when Kant says that freedom is the only idea of speculative philosophy ‘the possibility of which we know,’ he is emphasizing that, while we cannot prove the possibility of freedom in the *phenomenal* world, we must *think* the possibility of freedom in the *noumenal* world. Second, Kant offers a clarifying footnote when he uses the term ‘condition’ in the passage quoted above. Kant says:

Lest anyone suppose that he finds an *inconsistency* when I now call freedom the condition of the moral law and afterwards, in the treatise [i.e. the Practical Reason], maintain that the moral law is the condition under which we can first *become aware* of freedom, I want only to remark that whereas freedom is indeed

160. Immanuel Kant, *Critique of Practical Reason*, trans. and ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1997), 3–4 (= AA 5:4).

161. Reath, introduction to *Critique of Practical Reason*, xi.

the *ratio essendi* of the moral law, the moral law is the *ratio cognoscendi* of freedom.¹⁶²

The difference here is between ‘reason for being’ (*ratio essendi*) and ‘reason for knowing’ (*ratio cognoscendi*). What Kant is suggesting here, in light of his analysis of the *noumenal* and *phenomenal* worlds, is that freedom is the condition for the possibility of reasoning about the moral law, while at the same time freedom is only known through said process of reasoning about the moral law. What I think is important to note here is that freedom, depending on which standpoint you are viewing it from, both grounds and orients reason and the moral law.

To return to Kant’s discussion of freedom, what differentiates its articulation in *Practical Reason* from its articulation in the *Groundwork* is Kant’s development of the ‘fact of reason’ as that which proves the reality of transcendental freedom. Therefore, recognition of Kant’s argument in support of this position requires further discussion. To this point, Kant suggests that his analysis “shows that pure reason can be practical—that it, can of itself, independently of anything empirical, determine the will—and it does so by a fact in which pure reason in us proves itself actually practical, namely autonomy in the principle of morality by which reason determines the will to deeds.”¹⁶³ The ‘fact of reason,’ as Kant suggests here, is intimately connected to the autonomy of the will. In light of his analysis of the *noumenal* and the *phenomenal*—the supersensible and the sensible, as he will later call it—Kant argues that the moral law “provides a fact absolutely inexplicable from any data of the sensible world ... a fact that points to a pure world of

162. Kant, *Critique of Practical Reason*, 4 (= AA 5:4n).

163. Kant, *Critique of Practical Reason*, 37 (= AA 5:42).

the understanding.”¹⁶⁴ Kant’s point here is to move the moral law out of the realm of the sensible, where heteronomy abounds, to the realm of the supersensible, where the moral law becomes “nothing other than *a nature under the autonomy of pure practical reason*.”¹⁶⁵ If autonomy and the moral law are connected, and Kant thinks they are, then we are not concerned, in this analysis, with cognitions that come from outside pure reason, “but rather with a cognition insofar as it can itself become the ground of the existence of objects and insofar as reason, by this cognition, has causality in a rational being, that is, pure reason, which can be regarded as a faculty immediately determining the will.”¹⁶⁶ Thus, the moral law is given, and it is given as “a fact of pure reason of which we are a priori conscious and which is apodictically certain, though it be granted that no example of exact observance of it can be found in experience. Hence the objective reality of the moral law cannot be proved by any deduction ... and it is nevertheless firmly established of itself.”¹⁶⁷ Hence, we can now see why the argument is made that the relationship between freedom and the moral law is ‘reversed’ in *Practical Reason* from what Kant proposes in the *Groundwork*. Nevertheless, the concept of transcendental freedom remains in both and, in turning to Korsgaard in the next chapter, I hope to explicate further why these two articulations of the relationship between freedom and the

164. Kant, *Critique of Practical Reason*, 38 (= AA 5:43).

165. Kant, *Critique of Practical Reason*, 38 (= AA 5:43).

166. Kant, *Critique of Practical Reason*, 41 (= AA 5:47).

167. Kant, *Critique of Practical Reason*, 41–42 (= AA 5:47).

moral law are closer together than they may at first appear—particularly when we talk about the second and third formulations of the CI—the FoH and the KoE.

With this, I bring to a close my analysis of Kant's moral philosophy as it is presented in the *Groundwork*, primarily, and in the *Practical Reason*. The major elements of Kant's project have been articulated—the formulations of the CI (particularly the FoH and KoE), pure practical reason, autonomy, transcendental freedom, etc.—and it will be the task of the following chapter to offer an interpretation of this material through the work of the philosopher Christine Korsgaard. For Korsgaard, as for myself, the core of Kant's philosophy is the FoH—*so act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never as a means*. This core is only properly understood, in Kant's philosophy, within the context of the KoE—that is to say, within the idea that all human persons are autonomous, self-legislating members of the KoE, which is in turn subject to the legislation of all its members. How Korsgaard formulates this argument, and how it affects her—and Kant's—philosophy, will be the subject of the next chapter.

CHAPTER III
KORSGAARD AND THE DIGNITY OF HUMANITY

Introduction

In the previous chapter, I offered a close, critical reading of Kant's moral philosophy via the *Groundwork*, with supplemental discussions from the *Critique of Practical Reason* and the *Metaphysics of Morals*. In and through the argument presented in that chapter, I sought to draw out of Kant's works and thought what the philosopher Christine Korsgaard calls the normative source of ethics. In this chapter, I want to pursue Korsgaard's thought further, in order to both identify and draw out of her works what she intends to convey in and through the phrase 'the normative source of ethics'—namely, the dignity of humanity. In order to do this, I will offer, in this chapter, a systematic reconstruction of Korsgaard's argument in favor of the dignity of humanity as the source of normativity in ethics, at least as it is presented in her early work.¹

1. In her more recent work, Korsgaard has focused on a conceptualization of agency that crosses the border between human and non-human creatures. While I find Korsgaard's theory of action and agency compelling—and I will address it at the end of this chapter—the present study will have a different focus that applies most directly to the concept of humanity Korsgaard develops out of Kant. For some of Korsgaard's philosophical engagements with animals, see, for example, "Fellow Creatures: Kantian Ethics and Our Duties to Animals," *Tanner Lectures on Human Values* 24 (2004): 77–110; *Self-Constitution: Agency, Identity, and Integrity* (Oxford: Oxford University Press, 2009); "Interacting with Animals: A Kantian Account," in *The Oxford Handbook of Animal Ethics*, ed. Tom L. Beauchamp and R. G. Frey (Oxford: Oxford University Press, 2011), 92–118; "A Kantian Case for Animal Rights," in *The Ethics of Killing Animals*, ed. Tatjana Višak and Robert Garner (Oxford: Oxford University Press, 2016), 154–77; and "Kantian Ethics, Animals, and the Law," *Oxford Journal of Legal Studies* 33 (2013): 629–48.

First, I will turn to one of Korsgaard's earliest works—*The Standpoint of Practical Reason*²—in order to articulate how, on her reading, the subject orients herself within the two 'standpoints' of Kant's project—the theoretical and the practical. As Kant's moral philosophy operates within the framework of the latter, not the former, it is important for the encounter with both Kant and Korsgaard that we have a clear understanding of what it means to occupy the standpoint of practical reason. It is here that Korsgaard's interpretation of the first formulation of the CI—the Formula of Universal Law—takes center stage. Second, I will turn to another of Korsgaard's early works—*The Sources of Normativity*³—in order to offer an argument in favor of normativity within ethical discourse. As Onora O'Neill notes in the introduction to Korsgaard's 1992 Tanner Lectures at Cambridge University (the precursor to *The Sources of Normativity*), "normativity pervades our lives."⁴ Insofar as we make ethical claims and/or judgments, we adopt some normative framework in and through which our claims and judgments receive reflective approval and/or justification. In this section, I will offer Korsgaard's argument for the normativity of reflective logic in ethical deliberation—a logic that constitutes the apparatus for identifying the dignity of humanity, within the Kingdom of Ends, as the normative source of ethics. Third, and in order to more fully flesh out the

2. Christine M. Korsgaard, *The Standpoint of Practical Reason* (New York: Garland, 1990).

3. Christine M. Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996).

4. Onora O'Neill, introduction to *The Sources of Normativity*, by Christine M. Korsgaard (Cambridge: Cambridge University Press, 1996), xi.

concept of humanity Korsgaard is working with, I will turn to her collection of essays, *Creating the Kingdom of Ends*.⁵ In this collection, as well as in many of her other texts, Korsgaard offers her interpretation of Kant's second formulation of the CI—*so act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never as a means*—and locates it at the heart of Kant's ethical project. As the 'material' component of the CI, the Formula of Humanity grounds ethics in humanity and contextualizes it within the Kingdom of Ends. Therefore, in the fourth section of this chapter, I will turn to the Kingdom of Ends—the third formulation of the CI. Here, I will demonstrate how Kantian autonomy is possible, in a practical sense, within and among the members of the Kingdom of Ends. This will show how practical reason gives rise to autonomy as practical identity, reflective consciousness, and intersubjectivity. It is only in the Kingdom of Ends that we avoid the concept of autonomy-as-isolation/privatization, and turn to the concept of autonomy-as-intersubjectivity. Finally, in the conclusion to this chapter, I will revisit the question of what Korsgaard's analysis offers us with regard to the question of a groundwork for contemporary ethics that is both responsibly Kantian and relevantly Catholic. It is my contention that Korsgaard provides us with such a groundwork through a reading of Kant that (1) identifies the process of universalization as a process of reflective intersubjectivity by (2) grounding ethics in the Formula of Humanity, (3) understood

5. Christine M. Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996). My analysis will focus on chap. 4, "Kant's Formula of Humanity," and chap. 7, "Creating the Kingdom of Ends."

within the Kingdom of Ends. Before we get to this point, however, we must return to the beginning of Korsgaard's work—her dissertation on the standpoint of practical reason.

The Standpoint of Practical Reason:

Orienting the Subject in a Practical Position

In order to reconstruct, in a systematic fashion, Korsgaard's argument for grounding the material dimension of the normativity of ethics in Kant's Formula of Humanity, we must go back to one of Korsgaard's earliest writings—her dissertation, *The Standpoint of Practical Reason*. This is an important jumping off point for our discussion because in *Standpoint*, Korsgaard situates Kant's moral philosophy within a practical setting. This is distinct, as Korsgaard notes, from Kant's theoretical setting where, for example, the *Critique of Pure Reason* is situated. Kant's moral philosophy is not a theoretical project—it is a practical one. This distinction has important ramifications for how we read and interpret Kant's moral philosophy and for understanding Korsgaard's interpretation of it.

At the outset, it may be helpful to offer an articulation of what Korsgaard means by 'the standpoint of practical reason.' While the specifics of this standpoint will be spelled out in what follows, when Korsgaard suggests that we take up 'the standpoint of practical reason,' what she is suggesting is that we take up a certain perspective.

It is a perspective from which we see the world in terms of the interests of humanity. We can describe these interests in terms of rational action, the setting and seeking of ends, or even the free pursuit of happiness. And from this perspective, it is the system of the ideal ends of practical reason that emerges as the end in view, the ideal final good.⁶

6. Korsgaard, *Standpoint*, 254.

However, in order to flesh out what Korsgaard is articulating here, we need to return to the beginning of *Standpoint* and the discussion Korsgaard initiates around the difference between the theoretical and practical deployments of reason in the context of the question of the objectivity of ethics.

Without some sense of objectivity, without some degree of normativity, ethics quickly becomes a relativistic and vacuous enterprise. Without some standard through which, or in relation to which, ethical claims are assessed and/or discussed, ethics loses its meaning and its practical relevance. Thus, it will come as no surprise that Korsgaard begins *Standpoint* with an investigation into why objectivity in ethics remains a discourse worth pursuing. She argues that in the search for objectivity in ethics, one must adopt a particular standpoint, a standpoint that takes “[one’s] own commitment as a fact that is special in that it needs not merely a theoretically adequate explanation but a practically adequate one as well—an explanation that will not merely account for the existence and substance of that commitment but will justify it and keep it alive.”⁷

The reason Korsgaard is not satisfied with merely a theoretical perspective when it comes to the objectivity of ethics is that the theoretical perspective only provides us with an explanation of morality. The theoretical perspective provides us not with objectivity, *per se*, but with an object. It provides us with the good or the right as the *object* of morality, but it does not provide us with an objective *perspective*. While this object is a necessary element of morality, what the theoretical perspective does not do is tell us why this object is something we ought to pursue. *That* the good or the right is the object of

7. Korsgaard, *Standpoint*, 4–5.

morality is clear, but there is nothing within the theoretical standpoint that compels or gives a justification as to *why* the good or the right ought to be something one pursues.

To answer this *why* question, Korsgaard, like Kant, turns to the perspective—the standpoint—of the practical. The practical is not the theoretical applied in ‘real life.’ The practical and the theoretical run along different tracks, they attend to different questions. Though they are different discourses, they both find their starting point in reason. Thus, the practical standpoint has a different task from the explanatory task found in the theoretical standpoint. According to Korsgaard, the difference lies in the fact that from the standpoint of practical reason, the good and the right cannot simply be objects of knowledge. We must be able to do more than simply explain why the good or the right are objects of morality and ethics. Rather, we must be able to answer the question: So what? Let us assume that either the good or the right *is* the object of morality—So what? Simply explaining *what* the object of morality is does not, in any way, attend to the more pressing question of *why* one ought to pursue it. From the first-person perspective, why ought I pursue this end? Why ought I be moral?

For Korsgaard, responding to this question is the task of practical reason, and this is why we occupy the standpoint of practical reason when it comes to morality and ethics. Ethics “must after all have some sort of point ... it is not enough to make the good an object of knowledge. We must also make it something whose point is transparent ... [it] must be justified.”⁸ The impetus behind Korsgaard’s turn to the practical—in addition to following the trajectory of the Kantian argument—is that if we are to *do* ethics, and not

8. Korsgaard, *Standpoint*, 12–13.

just explain ethics, then we need to do so from a practical foundation in order to attend to the question of why one ought to be moral in the first place. Thus, the standpoint of practical reason becomes the space in which we take up, verify, and enact the standards of practical reason. According to Korsgaard, Kant has actually provided us with both a standard for, and a response to, the question of why I ought to be moral. He has provided us with a principle of practical reasoning—a principle which allows us to assess our employment of reason without falling victim to the Scylla and Charybdis of rationalism and empiricism. This principle is the Categorical Imperative (CI). While the ‘material’ dimension of this principle will be addressed later on in this chapter, I want to turn, first, to this principle’s ‘formal’ dimension (and first formulation): the Formula of Universal Law (FoUL).

It may be asked why, at this point in the discussion, a specific focus on the FoUL is called for, separate from a discussion of the other two formulations of the CI. What does a discussion of the FoUL contribute to the present analysis of the standpoint of practical reason? For Korsgaard, as for Kant, the FoUL serves as the ‘form’ of CI. This means that before we can discuss the ‘matter’ of the CI—the Formula of Humanity in the Kingdom of Ends—we must have a clear idea of what this ‘formal’ component of the principle entails. As Kant says, the three formulations of the CI are “at bottom only so many formulae of the very same law, and any one of them of itself unites the other two in it.”⁹ Thus, if we are attempting to understand our situatedness within the standpoint of

9. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1998), 43 (= AA 4:436).

practical reason, we need to understand the form the normative argument takes before we attempt to understand its content. In so doing, we distinguish the motivation for an action arising out of its form from the motivation for an action arising out of its purpose. While this latter motivation, from the purpose of the principle, is not morally valid on Korsgaard's reading of Kant—for this would give rise to heteronomy—the former motivation, from the form of the principle, is morally valid for Korsgaard. For her, “the distinguishing feature of a good will ... must ... be given in terms of [its] form.”¹⁰ Therefore, it only makes sense that we ought to begin with the ‘formal’ element of the principle of practical reason before examining the ‘matter’ of the principle.

In order to interpret the FoUL, Korsgaard offers four alternative lenses that take the form of four interpretations of Kant's contradiction tests. For Korsgaard, as for Kant, a contradiction is an impossibility when it comes to the universalization of one's maxims. If I conceive of a maxim that cannot be universalized—that is, if I conceive of a maxim that cannot be accepted as law by every other person in a similar situation to my own—then my maxim contains a contradiction in one of two ways. Either there is a contradiction present in the conceptualization of the maxim (in the thought of the maxim), or there is a contradiction present in the willing of it. According to Kant:

Some actions are so constituted that their maxim cannot even be *thought* without contradiction as a universal law of nature ... In the case of others that inner impossibility is indeed not to be found, but it is still impossible to *will* that their maxim be raised to the universality of a law of nature because such a will would contradict itself.¹¹

10. Korsgaard, *Standpoint*, 39.

11. Kant, *Groundwork*, 33 (= AA 4:424).

On Korsgaard's interpretation, "a maxim fails the first contradiction test if it cannot be thought as a universal law of nature; it fails the second contradiction test if it cannot possibly be willed as a law of nature."¹² Exploring the ways that a maxim might violate a contradiction test, suggests Korsgaard, is necessary for an interpretation of the FoUL that connects it to action and agency—necessary dimensions of moral reflection. Therefore, in order to explore these contradictions, Korsgaard articulates and critiques four frameworks of interpretation for the contradiction tests: the theoretical contradiction interpretation, the terrible consequences interpretation, the teleological contradiction interpretation, and the practical contradiction interpretation. I want to note the first two interpretations, as they remain prevalent in Kantian discourse, and the third interpretation, as Korsgaard sees some value in it, but I will focus on the interpretation of the FoUL which Korsgaard finds most compelling for Kant's ethical project: the practical contradiction interpretation.¹³

On the theoretical contradiction interpretation of the FoUL, there is "some logical or physical impossibility in the universalization of the maxim, or in the law of nature corresponding to the maxim or the system of nature in which that is a law, at least in the

12. Korsgaard, *Standpoint*, 40.

13. Kant's wider moral project ought to be kept in mind when talking about the interpretations of the contradiction tests. As Korsgaard notes, "The laws generated by this test are supposed to be the laws of an Ideal community—a Kingdom of Ends ... Now since on a Kantian view an Ideal must be generated from an idea, we cannot know the nature of the Kingdom of Ends independently of an analysis of the moral law itself. *It is not an end to which the moral law is a means, but rather an end that would be generated by the moral law if that law truly governed the world ...* Eventually, I will argue that the Kingdom of Ends is a world for action." (Korsgaard, *Standpoint*, 41, *emphasis mine*) This importance of this context will become more evident later on in the chapter.

case of the first [i.e. in conceptualization] contradiction test.”¹⁴ The contradiction articulated in this interpretation is one where the contradiction in the FoUL cannot even be thought, let alone willed. In conceptualizing the maxim on which you want to act, you have—in this very process—created a contradiction in terms of what you want to do and the universalization of this same action. The example Korsgaard draws on to make this point is Kant’s example, in *Practical Reason*, of the person who “has in his possession a deposit for which there was no receipt. The owner of the goods has died, and the man is considering whether he may keep the goods.”¹⁵ The contradiction here is similar to the contradiction present in the case of false promises (it is, in fact, a variation on that theme). If one adopts the maxim that in such cases as these, one does not have to repay the deposit, then this maxim must be universalized to see if it survives the contradiction tests. This maxim, however, does not pass the contradiction test, because in adopting this maxim, one is choosing to enact a world in which deposits are both made and not made. The contradiction does not even move to the question of the will in this case because it is clear that there is a contradiction in the *thought* of the maxim as a universal law. The person in this example wants there to be—at the same time—both deposits and ‘not-deposits.’ This is not possible in the world of the universalized maxim, and therefore the contradiction that takes place at the theoretical level disqualifies this maxim as a candidate for the FoUL.

14. Korsgaard, *Standpoint*, 42.

15. Korsgaard, *Standpoint*, 47.

On the terrible consequences interpretation, “the maxim cannot be universalized or made a universal law because that would have very terrible consequences—consequences so terrible as to be unacceptable to a rational being.”¹⁶ For Korsgaard, this is not a very coherent interpretation of Kant’s position since it presupposes something that Kant is trying, in his practical philosophy, to establish: the connection between moral goodness and rationality. The loaded phrase ‘rational being’ already implies the connection Kant is trying to establish. That being said, where the terrible consequences interpretation of the FoUL does find purchase in Korsgaard’s imagination is in the contradiction in willing a maxim as a universal law in relation to the two ‘obligatory ends’ Kant identifies in the *Metaphysics of Morals*: one’s own perfection and the happiness of others. For Korsgaard, neglect of these two ends *would* result in terrible consequences for humanity and, therefore, these ‘obligatory ends’ must be maintained throughout the process of universalizing a proposed maxim. Insofar as the terrible consequences interpretation points to the problem of a contradiction in the willing of a maxim that does not account for one’s own perfection and the happiness of others, rather than a contradiction in conceiving of it, this interpretation serves an important function.

What does it mean for a contradiction to exist ‘in the willing’ of something? For Korsgaard, to will something is not simply to desire it, but to aim at it though the means necessary to it. To wish or to want is not the same as to will. Willing requires both an end and the means necessary to that end. As such, willing implies action and, therefore, the contradiction in the willing of a maxim, on the terrible consequences interpretation of the

16. Korsgaard, *Standpoint*, 42.

FoUL, occurs in the process of willing an end that contradicts the same universalized will. Thus, when considering these two obligatory ends—one's own perfection and the happiness of others—both Korsgaard and Kant argue that, regardless of whether or not one does *in fact* pursue these ends, one cannot *in principle* exclude their possibility and, therefore, cannot contradict their being willed. So there is a contradiction in the willing of the maxim that one does not pursue one's own perfection, because a world of this universalized maxim is impossible to will. We can conceive of a world in which the maxim of not pursuing one's own perfection or the happiness of others is possible, but we simply cannot will such a world because we cannot, for example, know what the future holds for any of us. While we may not, for example, need or require love and sympathy at the moment, we cannot rule out the future possibility of their necessity in our lives and relations. This is what, according to Korsgaard, the terrible consequences interpretation of the FoUL brings to light, even if this interpretation, in the end, is itself not a compelling interpretation of the FoUL.

On the teleological contradiction interpretation of the FoUL, “the law of nature in which the contradiction emerges is a teleological law ... [in other words] the universalized maxim would not be a law fit for a teleologically organized system of nature.”¹⁷ What Korsgaard is getting at here is that on this interpretation of the contradiction test, “the contradiction emerges when an action or instinct is used in a way that is inconsistent with its natural purpose, or is not used in a way that its natural

17. Korsgaard, *Standpoint*, 42.

purpose calls for.”¹⁸ While Korsgaard does find some value in this interpretation of the FoUL, in the end it falls short of being entirely convincing. According to Kant, “we assume as a principle that there will be found in [an organ] no instrument for some end other than what is also most appropriate to that end and best adapted to it.”¹⁹ In other words, things are oriented to their appropriate ends. Kant makes use of this argument in order to demonstrate that happiness cannot be the natural purpose, or end, of practical reason. Practical reason—that unique capacity of human actors—is what gives us duty, but not happiness (for happiness, as I noted in the last chapter, is oftentimes better achieved by instinct alone). What is important here is that, with regard to instinct and happiness, human action—the willing of ends and the means necessary to those ends—is not required. No choice is made here—we just follow our instincts. This, however, remains at odds with the understanding of the human person as practically rational, as a chooser, as one who wills. Thus the critique of the teleological contradiction interpretation, according to Korsgaard, is two-fold. First, “even where we can assign a definite purpose to a natural device, it is not usually possible to show ... that the abuse of the device spoils it for its assigned purpose.”²⁰ Take, for example, lying. If certain individuals in a community lie, while the rest of the community does not, then these instances of lying will not entirely defeat the phenomenon of truth-telling. Second, “the potential abuser may not care about [a device’s] assigned purpose. It is not his purpose ...

18. Korsgaard, *Standpoint*, 57.

19. Kant, *Groundwork*, 8 (= AA 4:395).

20. Korsgaard, *Standpoint*, 64.

these purposes may have nothing to do with what the agent wants or indeed what any human beings wants.”²¹ The teleological contradiction interpretation fails because it does not take into consideration the human person qua agent—one who wills and who acts.

Without question, there are strong teleological tendencies within Kant’s ethical writings. Korsgaard notes five arguments that are explicitly so,²² and they are based on Kant’s belief that “[the human person] under the moral law is the purpose of nature teleologically conceived.”²³ While, on Korsgaard’s reading, the teleological tendencies in Kant’s ethics work when placed in the context of the FoUL, they do not work when placed in the context of the other two formulations of the CI. While I will discuss these two formulations in the following sections, I want to simply mention here that when Kant’s ethics is placed within in the contexts of humanity (understood as the freedom and the power to set an end for oneself) and action (understood as the choice of ends and the employment of means to those ends), the need for an appeal to a teleological justification of ethics fades. While nature, in Kant, may be teleologically oriented, human persons cannot be reduced to the natural. To live according to nature is to live according to instinct, and this is precisely not what is being advocated in either Kant’s or Korsgaard’s ethical systems. We are not simply natural, but moral creatures. We have practical reason, and while there is a sense in which practical reason is ‘natural’ to us,²⁴ we are also

21. Korsgaard, *Standpoint*, 64–65.

22. Korsgaard, *Standpoint*, 66–71.

23. Korsgaard, *Standpoint*, 66.

24. I take Kant’s and Korsgaard’s discussion of the ‘natural-ness’ of practical reason to be a descriptive task, and not a normative one. If the ‘natural’ were normative, we would remain

“released from the control of our instincts [i.e. nature]”²⁵ and, therefore, must act in the world freely and morally. For Korsgaard, “the specific characteristic of human being is the power to take something as one’s purpose, to choose it, to make its realization one’s project. We have this power because we are released from instinct.”²⁶ So while the teleological contradiction interpretation of the FoUL does provide us with some helpful guidance, it does not ultimately attend to the problem of moral reflection. Insofar as it is *practical* reason that remains the distinguishing feature of humanity, the interpretation of the FoUL that is most appropriate to the task of moral reflection is a *practical* contradiction interpretation.

On the practical contradiction interpretation, the contradiction involved in the process of universalizing one’s maxim is “a thwarted purpose or a self-defeating way of acting.” Korsgaard continues:

In the case of the first test, the contradiction is that the agent would be unable to achieve the purpose in her maxim in the world in which her maxim was a universal law. In the case of the second test, some purpose or purposes that belong to rational agents as such must be thwarted in the world of the universalized maxim.²⁷

What does this all mean? When we consider the two contradiction tests linked to the process of universalization in the first formulation of the CI (i.e. contradictions in

under the control of instinct, rather than taking up the duty of morality. The justification for this claim will become more apparent as we move through Korsgaard’s argument in the later sections of this chapter.

25. Korsgaard, *Standpoint*, 77.

26. Korsgaard, *Standpoint*, 84.

27. Korsgaard, *Standpoint*, 42.

conception and contradictions in the will), the *kind* of contradiction that we are looking for, which will disqualify a particular maxim from becoming a universal law, is a practical one. One of the principal forms such a contradiction can take, in Korsgaard's view, is the form of exceptionalism. If we are to say that a practical contradiction—a contradiction that would disqualify a maxim from universalization—is understood as a thwarting of one's own purpose, or is fundamentally self-defeating and/or self-destructing, then we need to examine the structure of such a maxim to understand why. As Korsgaard reminds us, "a maxim contains an action and a purpose, which the action is to achieve."²⁸ A practical contradiction is one where the action and the purpose contained in the maxim cannot be reconciled—where each undercuts or destroys the other. If the action contained in a maxim is exceptional, for example, then it necessarily thwarts its purpose of becoming universalizable. One cannot universalize an exception without undoing the form of universalization itself. Consider one of Kant's examples: the lying promise. Why does a lie work? Why is it effective? It is not because there is something inherent to the logic of lying that makes it so. Lying 'works' because it is exceptional. Human speech can be used to deceive only because most people use it honestly. If this were not the case, no one would believe anything anyone said, and we would therefore be without an effectual mode of communication. The contradiction presented in the case of lying is a practical contradiction—the goal of communication is thwarted by the lie, which makes an exception of itself, since it cannot be universalized.

28. Korsgaard, *Standpoint*, 92.

Korsgaard illustrates the practical contradiction interpretation quite convincingly. When the efficacy of the maxim you are proposing to universalize is based on an exception, she says, “you will obviously not be able to universalize the maxim describing that procedure.... [When] you will to universalize your [exceptional] maxim, you find yourself willing the use of a method that you know perfectly well would not work.... The contradiction is of the ordinary practical kind, willing in a self-defeating manner.”²⁹ Korsgaard then notes the moral implication of this interpretation, incorporating into her analysis the Formula of Humanity:³⁰ “The moral intuition is obviously that it is not fair to use a method whose efficacy depends on the fact that other people with the same purpose do not use it. You are in a literal way taking advantage of others. You are making them your tools, for they make your method work, they fuel its engine.”³¹ This is not only unacceptable from the standpoint of universalizing your maxim; it is also unacceptable—as we will see—from the standpoint of the Formula of Humanity, which states that no one is to be used merely as a means, and not at the same time as an end.

At the end of this discussion on what type of contradiction would invalidate the adoption of a universalized maxim, we are left with the practical contradiction interpretation as the most adequate interpretation of the FoUL. This says that when we

29. Korsgaard, *Standpoint*, 99–100.

30. In her early writing, Korsgaard refers to the Formula of Humanity as the Formula of the End in Itself. As we will see, these are simply two ways of saying the same thing: humanity is an end in itself and, on Korsgaard’s reading of Kant’s moral philosophy, humanity is *the* end in itself.

31. Korsgaard, *Standpoint*, 100.

consider the kind of contradiction that would disqualify a maxim from being universalized, we are considering a practical contradiction—one in which the maxim to be universalized is thwarted because it is inherently self-defeating and, therefore, impossible to rationally will. What remains to be discussed, before moving into the next section of this chapter, is how this articulation of the FoUL—along the lines of the practical contradiction interpretation—contributes to Korsgaard’s argument in favor of the standpoint of practical reason. In order to make this connection, Korsgaard offers an interpretation of a prominent theme in Kant’s moral philosophy, and one we have encountered before in this dissertation: the laws of nature. At the outset, however, a line of demarcation must be drawn between what ‘a law of nature’ means in the natural law framework of someone like Aquinas and his followers, and what ‘a law of nature’ means in Kant’s framework. According to Kant, you must “act as if the maxim of your action were to become by your will a universal law of nature.”³² On Korsgaard’s interpretation, what Kant is suggesting here is that a law of nature serves as a *Typic*, or model, in the process of determining maxims and, ultimately, making moral judgments. This means that “where the causality of freedom is to be judged, natural law serves only as the *type* [i.e. *Typic*] of a law of freedom.”³³ What this means, in turn, is that ‘a law of nature’ in

32. Kant, *Groundwork*, 31 (= AA 4:421).

33. Immanuel Kant, *Critique of Practical Reason*, trans. and ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1997), 60 (= AA 5:70).

Kant is a heuristic model—something that we make use of for “describing the conditions in which a purely rational choice can be made”³⁴—rather than a law, or maxim, in itself.

As previously noted, a maxim contains within it an action and a purpose, both a means and an end. Put in slightly different terminology, a maxim is “the connection between the action and the purpose that is supposed to justify the action. This connection is what Kant calls the *form* of the maxim.”³⁵ The use of the Typic of the law of nature, however, is not exclusively limited to the realm of the formal dimension of our maxims—it also provides us with a perspective, “a point of view from which our maxims can and should be assessed. It is in terms of this perspective that we are to understand why it is rational to act according to the categorical imperative.”³⁶ The perspective, or point of view, that the use of the Typic allows us adopt—as will be discussed below—is the standpoint of practical reason.

There are three models in Kant’s ethical writings that, for Korsgaard, represent the standpoint of practical reason: the world-creating position (embodied in the Typic noted above), the position of the legislating subject in the kingdom of ends, and the position of the free being choosing his/her own character. While the latter two positions appear in the *Groundwork* and *Religion within the Boundaries of Mere Reason*³⁷ (*Religion*),

34. Korsgaard, *Standpoint*, 138.

35. Korsgaard, *Standpoint*, 143.

36. Korsgaard, *Standpoint*, 150.

37. Immanuel Kant, *Religion within the Boundaries of Mere Reason and Other Writings*, trans. and ed. Allen Wood and George Di Giovanni (Cambridge: Cambridge University Press, 1998), 31–191.

respectively, it is the world-creating position that Korsgaard identifies as most appropriate at this point in her analysis (where she is analyzing the standpoint of practical reason and its relation to the FoUL). All three of these positions, for Korsgaard, “describe a perspective from which choice is constrained only by reason.”³⁸ The position of the legislating subject in the kingdom of ends is used “to account for the specific sense of obligation and the idea of human dignity that are associated with moral decision: our dignity comes from the fact that we are bound to the law only because it is our own law and we are its legislators; while we are obliged by it because we must also be regarded as *subjects* in the Kingdom of Ends.”³⁹ The position of the free being choosing his/her own character “is used to illuminate the idea of autonomy and the sort of motivation we have for acting according to the dictates of pure reason.”⁴⁰ The world-creating position, however, holds a special place for both Kant and Korsgaard—it is the position “from which we can get the most detailed and determinate knowledge of the dictates of pure reason.”⁴¹

When we adopt the perspective of the Typic—that is, the world-creating position—“the point is that we are to think of what sort of a world we would create under the guidance of practical reason.”⁴² According to Korsgaard, this places Kant, and us, in

38. Korsgaard, *Standpoint*, 151.

39. Korsgaard, *Standpoint*, 151–52. I will say more about the concepts of dignity and self-legislation in the later section on the Formula of Humanity in the Kingdom of Ends.

40. Korsgaard, *Standpoint*, 152.

41. Korsgaard, *Standpoint*, 152.

42. Korsgaard, *Standpoint*, 153–54.

the tradition of Leibnizian philosophy and the Leibnizian God,⁴³ who is “envisioned as choosing the world ... not arbitrarily, but in accordance with reason.”⁴⁴ The perspective of the Typic allows us to conceive of—to create—the ‘best of all possible worlds,’ not merely as a utopian fantasy, but in order to conceive the dictates of reason that would be at work in such a world in order for that world to be good. For Kant, “the decision as to what is good will not be preceded by any discussion of what is physically possible” because “goodness is not some property of the objects around us, but a purely rational characteristic of something as part of the world that ought to be.”⁴⁵ This is why, for Kant, conceiving of the ‘best of all possible worlds’ is not as romantic as it might appear to us today. It is a thought experiment, meant to assist us in determining more clearly the dictates of reason. As Korsgaard puts it, “the point of the Typic might be described this way: it puts us in the position of Leibniz’s God, and therefore in the position of making ... a choice that is at once purely rational, and, arguable, perfectly free: an autonomous choice.”⁴⁶

In the end, of course, the point of the Typic is to bring about the conditions for the CI via the universalization formula. The world-creating position represents any situation “in which what you are doing is choosing the laws of choice themselves.” The

43. G. W. von Leibniz, *Discourse on Metaphysics* (quoted and referenced in Korsgaard, *Standpoint*, 154–73).

44. Korsgaard, *Standpoint*, 154.

45. Korsgaard, *Standpoint*, 158.

46. Korsgaard, *Standpoint*, 155.

highly reflective nature of this process will be discussed later on in the chapter, but at this point it is important to note that the situation represented by the world-creating position is one which relies on the concept, or perhaps more appropriately the touchstone, of freedom: “the touchstone of the will’s choice is its own freedom.” The identification of freedom as the will’s touchstone is important. Freedom is not a ‘reason’ for choice, in the sense of freedom being something external to the human person that determines her choice (this would be heteronomy). Freedom is a postulate of pure practical reason and, as such, it does not determine what one does, but, in this case, serves as a reference point, of sorts, the presence of which allows choice to be made. The choice itself remains determined only by rational necessity. Once again, we must keep in mind the distinction Kant makes between theoretical and practical reason. Each takes its ‘starting point’ from reason, but how that reason gets employed depends upon which trajectory one takes up. In both cases, argues Korsgaard, “*the function of rational principles is to enable these faculties of reason [the theoretical and the practical] to do what they do.*”⁴⁷ The regulative principles of the understanding (theoretical reason) “are aimed at making the world a comprehensible place,” while moral principles (practical reason) “are aimed at making the world a world for the free rational pursuit of ends.”⁴⁸ For Korsgaard, as for Kant, both understanding and action are *rational* activities, which means that they are both “characteristic activities of human beings as the only known rational beings.”⁴⁹ However,

47. Korsgaard, *Standpoint*, 168.

48. Korsgaard, *Standpoint*, 168.

49. Korsgaard, *Standpoint*, 168.

more on this point will be said in the sections on the Formula of Humanity and the Kingdom of Ends.

Thus, at the end of this discussion, we are left asking the question: What does the standpoint of practical reason contribute to the overall conversation of this dissertation, and how do the FoUL, the Typic, etc., contribute to this discussion? In light of her analysis up to this point, Korsgaard says that adopting the standpoint of practical reason allows us to say something about the laws of nature (as Kant conceives them) and the FoUL: “from the standpoint of pure practical reason, then, we choose a world for action: the best of all possible worlds for the free rational pursuit of ends.”⁵⁰ The FoUL and the Typic, on Korsgaard’s analysis, are what place us in the standpoint of practical reason, “so that the choice of our maxims can be made in a way that is governed only by rational principles.”⁵¹ Here, we find the heart of this analysis: “By taking up a standpoint in which our choice is based purely on these rational principles rather than on any of our private interests or inclinations, we are enabled to make a choice that is based on pure reason, to adopt maxims and perform actions on a purely rational basis.”⁵² From this formal articulation of the CI, we are now able to move into the *matter* of this discussion: the Formula of Humanity and the Kingdom of Ends. Before we make that move, however, we must first make another detour through Korsgaard’s *Sources of Normativity*. What Korsgaard has argued, so far, is that ethical reflection requires universalization as its

50. Korsgaard, *Standpoint*, 173.

51. Korsgaard, *Standpoint*, 173.

52. Korsgaard, *Standpoint*, 173.

formal dimension. Without it, ethics is reduced to relativism or consequentialism—systems of thought that, in the end, provide no clear guidance for answering the question ‘How ought I to live and act?’ The reason that universalization is required for ethics is that the question of how one ought to live and act is unavoidable for the rational agent. The question may appear of secondary importance, or even of no importance, at first glance, but the question of how one ought to live and act is as central as it is inescapable. Therefore, in arguing for universality as the formal dimension of ethics, Korsgaard is making a clear statement about the role of normativity in ethical reflection. Thus, before we turn explicitly to the *matter* of the CI, we must first explore, in more detail, this question of normativity in ethics and explain, more fully, both why ethics requires universalization and how this requirement impacts—and is impacted by—the question of normativity in our lives and actions.

The Sources of Normativity

As noted at the outset of this chapter, Onora O’Neill—in her introduction to Korsgaard’s *The Sources of Normativity*—offers a clear and concise summary of Korsgaard’s argument in her Tanner Lectures. “Normativity pervades our lives,” O’Neill claims, “[yet] there is a huge disagreement about the source and the authority of the norms on which we all constantly rely.”⁵³ It is into this disagreement that Korsgaard enters, and in which she pursues a very particular line of interpretation. Korsgaard is after a practical grasp of normativity. She “is not looking for explanation ... [but] is principally interested in

53. O’Neill, introduction to *Sources*, xi.

normative claims that are relevant to action rather than knowledge.”⁵⁴ Normativity, as both O’Neill and Korsgaard will note, has developed a fairly ‘unsavory’ reputation in contemporary discourse, and it is this reputation that Korsgaard wants to reevaluate. For her, “normativity ... is not confined to principles and obligations [as Nietzsche argued]. It is pervasive.”⁵⁵ Korsgaard evaluates a number of alternatives in this text for articulating the source(s) of normativity, but ultimately comes down in favor of a combination of reflective scrutiny and Kantian autonomy. According to O’Neill, Korsgaard’s argument in this text is that “reflexivity [of the Kantian sort] provides a vindicable source of normativity.”⁵⁶ In what follows, I will offer a reading of Korsgaard’s argument in favor of this position in order to establish the normative procedure through which morality and ethics operate. After this analysis, I will then turn to Korsgaard’s articulation of Kant’s FoH and autonomy in the KoE in order to round out her Kantian argument for a normative grounding of ethics in these two formulations of the CI.

In the very first chapter of *Sources*, Korsgaard contextualizes her argument by asking the perennial question of moral philosophy: Why should I be moral? In order to explore the various responses that the history of moral philosophy has provided to this question, Korsgaard identifies four distinct trajectories of thought. The first three, she suggests, prove insufficient to the task of adequately responding to this question. The fourth approach, however, proves to be not only the most adequate response to this

54. Korsgaard, *Sources*, xi–xii.

55. Korsgaard, *Sources*, xiii.

56. Korsgaard, *Sources*, xiv.

question, but it also brings out and legitimizes the implicit elements in each of the other approaches that Korsgaard sees as deeply valuable and retrievable.⁵⁷ The question about why one should or should not be moral is a profoundly philosophical one. Through it, “we seek a philosophical foundation for morality ... [not] merely ... an explanation of moral practices.”⁵⁸ Ultimately, “we are asking what *justifies* the claims that morality makes on us,”⁵⁹ and this is what Korsgaard takes the normative question to be. Her response to this question, as I have already indicated, will be a form of Kantian autonomous, reflective consciousness, but before spelling this out, it will be helpful to briefly reconstruct the different arguments for the normativity of morality that Korsgaard rejects—at least, initially.

The first position which Korsgaard takes up is voluntarism, which she enfleshes in the figures of Thomas Hobbes and Samuel Pufendorf. Voluntarism, according to Korsgaard, is the view that “obligation derives from the command of someone who has legitimate authority over the moral agent and so can make the laws for her.”⁶⁰ Pufendorf spells this out by arguing that “the actions of human beings ... are in themselves morally indifferent. Values are not found in the world of nature at all ... [but rather] intelligent beings must impose moral values on nature.”⁶¹ Likewise, Hobbes constructs “a

57. Korsgaard, *Sources*, sec. 4.5.1–4.5.4.

58. Korsgaard, *Sources*, 9.

59. Korsgaard, *Sources*, 9–10.

60. Korsgaard, *Sources*, 18.

61. Korsgaard, *Sources*, 21.

completely mechanistic explanation of how human beings work and an ethics that is based upon it.”⁶² Both figures ask how nature, which is indifferent and mechanical, can come to have any moral principles or values. Each of them, argues Korsgaard, traces “obligation ultimately to divine command,”⁶³ but it is Hobbes who gives this belief its most incisive articulation: “Obligation must come from law, and law from the will of a legislating sovereign; morality only comes into the world when laws are made.”⁶⁴ Thus, the source of normativity for voluntarism is the law that is put into place by the sovereign. This is not to say, however, that “the sovereign ... can make anything right or wrong.”⁶⁵ Neither Pufendorf nor Hobbes makes this argument. While “the *content* of morality is given by reason independently of the legislative will,”⁶⁶ the voluntarist does not believe that this content makes any claim, or imposes itself in any binding way, on the subject. This only comes about when the content of morality is given the force of law, and this is why, for the voluntarist, “the role of the legislator is to make what is *in any case* a good idea into *law*.”⁶⁷ This is what gives the content of morality its normative force, its required/obligatory nature. From the position of voluntarism, “[the] legislator is not invoked to supply the content of morality or even to explain why people are often

62. Korsgaard, *Sources*, 22.

63. Korsgaard, *Sources*, 22.

64. Korsgaard, *Sources*, 23.

65. Korsgaard, *Sources*, 23.

66. Korsgaard, *Sources*, 23.

67. Korsgaard, *Sources*, 24.

motivated to do what is right. The legislator is necessary to make obligation possible, that is, to make morality normative.”⁶⁸

The second position which Korsgaard takes up is realism, which she enfleshes in figures like Samuel Clark, Richard Price, and Thomas Nagel. Realism, for Korsgaard, is the view that “moral claims are normative if they are true, and true if they are intrinsically normative entities or facts which they correctly describe.”⁶⁹ This definition may seem a bit confusing, and that is precisely the problem. In response to the question of normativity in morality, “the realist’s response is to dig in his heels. The notion of normativity or authority is an irreducible one. It is a mistake to try and explain it. Obligation is simply there, part of the nature of things.”⁷⁰ This articulation of the realist position places it in direct contradiction to Kant. For Kant, the search for the unconditioned moves along a regress that continues until it is “impossible, unnecessary, or incoherent to ask why again. The realist move is to bring this regress to an end by fiat: he declares that some things are *intrinsically* normative.”⁷¹ Here is where Korsgaard locates the problem with realism, not simply from a Kantian perspective, but from the perspective of the question of normativity itself. Realism simply “refuses to answer the normative question. It is a way of saying that it cannot be done. Or rather, more commonly, it is a way of saying that it need

68. Korsgaard, *Sources*, 27.

69. Korsgaard, *Sources*, 19.

70. Korsgaard, *Sources*, 30.

71. Korsgaard, *Sources*, 33.

not be done.”⁷² This, of course, poses a problem for an investigation into the sources of normativity. Korsgaard articulates the problem as follows:

The difficulty here is plain. The metaphysical view that intrinsically normative entities or properties exist must be *supported by* our confidence that we really do have obligations.... But for that very reason the appeal to the existence of objective values cannot be used to support our confidence.... So realism cannot answer the normative question.⁷³

One cannot simply claim that normativity *is*, because there is no way to respond to the perfectly reasonable follow-up question, *Why?* The argument either becomes tautological, or it is forced to adopt an arbitrary cessation of the logical regress in search of the unconditioned. This is why realism fails on Korsgaard’s reading.⁷⁴

Before moving on to Korsgaard’s analysis of the reflective endorsement option—one she first problematizes, but subsequently takes up within her Kantian framework—it is important to note another key component of the realist perspective that does not work on Korsgaard’s reading. For her, and aside from the objection just raised, realism asks a

72. Korsgaard, *Sources*, 39.

73. Korsgaard, *Sources*, 40.

74. The difficulty Korsgaard identifies here is particularly relevant to a Christian ethic grounded in the natural law. The difficulty with the realist position, she argues, is that it cannot answer the normative question constitutive of ethics without reverting to something like Divine Command theory, which ultimately says that something *is* because God has commanded it *to be*. The traces of this position in natural law thinking are strong, and present a serious challenge to a Christian ethic grounded in the natural law that wants to be communicable, or translatable, outside the parameters of its own internal logic. It is very difficult, if not impossible, for our reasons (for action) to be shareable if they are grounded—ultimately—in an exclusionary discourse confined within a particular faith claim. As we will see later on in this chapter, both Kant and Korsgaard require a concept of reason that is fundamentally shareable between rational agents. Only when reason is shareable, suggests Korsgaard, are we able to avoid the difficulty of the realist position.

particular kind of question of ethics and presumes ethics to be a particular kind of discourse. To put it concisely, realism sees ethics as an epistemological/theoretical endeavor of explanation, while Korsgaard sees ethics as a practical endeavor of action.

According to the realist position, as Korsgaard has articulated it, the source of normativity in ethics is our recognition of the fact that there simply are normative properties of things—“things appear normative, and there is no reason to doubt that they are what they seem.”⁷⁵ If this is the case, then the task of ethics is an epistemological and theoretical one. There simply *are* normative properties out there in the world, and it is the task of ethics to discover or unearth them. “When we ask ethical questions ... there is something about the world we are trying to find out.”⁷⁶ Korsgaard elaborates this point:

The world contains a realm of inherently normative entities or truths, whose existence we have noticed, and the business of ethics, or of practical philosophy more generally, is to investigate them further, to learn about them in a more systematic way.⁷⁷

But, queries Korsgaard, “isn’t ethics supposed to be a practical subject, a guide to action?”⁷⁸ While the realist would certainly concede this point, they, nevertheless, see ethics as a form of Aristotelian *techné*—“the application of theoretical knowledge to the solution of human problems.”⁷⁹ For Korsgaard, as well as for Aristotle, this is not the task of ethics. As I have said before, in Korsgaard’s Kantian ethics, the practical and the

75. Korsgaard, *Sources*, 44.

76. Korsgaard, *Sources*, 44.

77. Korsgaard, *Sources*, 44.

78. Korsgaard, *Sources*, 44.

79. Korsgaard, *Sources*, 44.

theoretical are two different movements which both find their starting point in reason. Practical reason is not the application of theoretical reason to ‘real world’ situations; rather, it aims at making the world a space for the free, rational pursuit of ends. This distinction lies behind Korsgaard’s concern with the realist approach.

Now, similar to her critique of the belief that normativity simply *is*, Korsgaard is also critical of the belief that normativity simply *is not*. On this latter line of argument, while we must assume the existence of physical entities in order to make sense of the world around us, “we have no reason to believe in the existence of moral entities or facts, because we do not need to assume the existence of such entities or facts in order to explain the moral phenomena.”⁸⁰ The explanation of the moral phenomena falls exclusively to psychology. We can explain why people hold particular beliefs based on what gave rise to those beliefs, “and leave their reasons out of it.”⁸¹ Normative claims are unnecessary because “belief in normative truth is not needed to explain what people think or do.”⁸² The danger here, once again, is that this approach “assumes that explanation and description of the phenomena [are] the sole or primary function of human concepts.”⁸³ On this approach, if we speak about normativity, we speak about it along realist lines: there are things out there in the world we take to be normative, and this claim needs no

80. Korsgaard, *Sources*, 45.

81. Korsgaard, *Sources*, 45.

82. Korsgaard, *Sources*, 46.

83. Korsgaard, *Sources*, 46.

further justification. Ethics, once again, becomes an exclusively descriptive and explanatory task that attends to the normativity that simply *is* in the world.

For Korsgaard, the realist position—in both its aforementioned forms—does not sufficiently attend to the question of the source of normativity. We do not, on Korsgaard’s reading, make normative arguments in order to explain normative phenomena that simply *are* in the world. “Normative concepts exist because human beings have normative problems. And we have normative problems because we are self-conscious rational animals, capable of reflection about what we ought to believe and do.”⁸⁴ In the background of Korsgaard’s argument, of course, lies Kant’s argument about the good being something we impose on the world through reason, not something inherent to the world itself. Like the good, normativity is something we impose on the world through reason, not something that just *happens to be*. As Korsgaard argues, “[it] is not because we notice normative entities in the course of our experience, but because we are normative animals who can question our experience, that normative concepts exist.”⁸⁵

For Korsgaard, then, the question of normativity is not simply a request for knowledge, description, or explanation. The question of normativity is one of practical reason and action. In this spirit, Korsgaard turns to the third position she critiques in her analysis: reflective endorsement. On her reading, this position—enfleshed in figures like David Hume, John Stuart Mill, and Bernard Williams—brings us closer to the fourth, Kantian position she will ultimately endorse, even while it remains an unsatisfactory

84. Korsgaard, *Sources*, 46.

85. Korsgaard, *Sources*, 46.

position in itself. This being said, a solid understanding of the reflective endorsement position is essential to understanding Korsgaard's constructive project.

Unlike the voluntarist and realist positions, the reflective endorsement position is favored by those who believe "that morality is grounded in human nature."⁸⁶ This is a complex claim, which I will spell out below. In short, the claim that the ground of morality emerges from human nature locates the source of moral normativity in a conceptualization of humanity. Once this is established, then we can ask the question: "[Do] we have reason to accept the claims of our moral nature, or should we reject them?"⁸⁷ Korsgaard's response to this question puts us in the standpoint of practical reason, and from here we can assess whether or not morality is good for us. This is done—explicitly by Korsgaard and implicitly, on her reading, by Hume, Mill, Williams, et al—by turning to a form of Kantian moral philosophy.

The grounding of normativity in human nature emerges in different ways in each of the philosophers Korsgaard engages here. For Hume, normativity emerges out of the sense and approval/disapproval of morality that is both internal and external to the human person. We act according to various standards that are both internally approved by our sense of human nature and externally approved by those around us (while avoiding those things that are both internally and externally disapproved). In *A Treatise of Human Nature*, Hume couples this moral sense approach to the normativity of morality with the reflective approach that Korsgaard is after (a point she does not miss):

86. Korsgaard, *Sources*, 19.

87. Korsgaard, *Sources*, 19.

“a sense of morals is a principle inherent in the soul ... *But this sense must certainly acquire new force, when reflecting on itself, it approves of those principles, from whence it is deriv’d, and finds nothing but what is great and good in its rise and origin.*”⁸⁸ Morality is normatively grounded, for Hume, in human nature because it is human nature that approves of morality both internally and externally, and which submits morality to the test of reflective consciousness. For Hume, on Korsgaard’s reading, “it is human nature to be governed by morality, and from every point of view, including its own, morality earns its right to govern us. We have therefore no reason to reject our nature, and can allow it to be a law to us. Human nature, moral government included, is therefore normative, and has authority for us.”⁸⁹

For Bernard Williams, “our ethical dispositions are judged good from every point of view which makes practical claims on us, including ... [our] own point of view. And in this way normativity is established.”⁹⁰ On Korsgaard’s reading, Williams arrives at this conclusion by examining the kind of convergence—that is, “what might lead us to the best kind of agreement”⁹¹—appropriate to ethics. The convergence appropriate to ethics in Williams is the convergence of our own moral sentiments, available via our human nature, with “the other practical claims our nature makes on us ... [in] congruence with

88. David Hume, *A Treatise of Human Nature*, III.3.iv (quoted in Korsgaard, *Sources*, 63).

89. Korsgaard, *Sources*, 66.

90. Korsgaard, *Sources*, 78.

91. Korsgaard, *Sources*, 67.

human flourishing.”⁹² Therefore, “if we find that a social world promoted the best life or at least a flourishing life for human beings, this would justify the values embodied in that social world.”⁹³ Here, human nature draws on “the resources of the social as well as the physical sciences ... [guiding] our reflections about what makes for human flourishing.”⁹⁴ Thus, the normativity of morality is both grounded in human nature, insofar as it brings together the different claims made on the human person into a convergence coherent with human flourishing, and reflectively endorsed.

Now, while both Hume and Williams argue that “morality, including moral motivation, is grounded in human dispositions” and that “the question of their [i.e. the dispositions] normativity is simply whether they are reinforced or undermined by reflection,”⁹⁵ John Stuart Mill argues that “*desire* is the source of normativity, in the sense that all reasons for action ultimately spring from it.”⁹⁶ Unlike Hume and Williams, who can be loosely characterized as internalists when it comes to grounding morality in human nature, Mill is best understood as an externalist. Unlike Hume and Williams, Mill separates the principle of morality from its justification. Within his utilitarian system, he separates the proof of the principle of utility—the principle that “pleasure and the absence

92. Korsgaard, *Sources*, 76.

93. Korsgaard, *Sources*, 75.

94. Korsgaard, *Sources*, 74.

95. Korsgaard, *Sources*, 78.

96. Korsgaard, *Sources*, 79 (*emphasis mine*).

of pain are the only things that are desirable”⁹⁷—from that which authorizes it. What, then, authorizes the principle of utility? According to Korsgaard, Mill is not entirely clear on this point. To a certain (internalist) extent, the authorization comes from “a feeling in our own mind.”⁹⁸ Where does this feeling, in turn, come from? For Mill, it comes from an external source—the system of rewards and punishments that frame the moral education—or upbringing—of the utilitarian agent. This external source, therefore, shapes the internal source, and the reflective interplay between these two sources is what sustains the identity of the moral/utilitarian agent. The onset of this reflective process is natural, says Mill, and grounds obligation. Therefore, in Mill’s account of the principle of utility—and its justification—normativity is sustained by reflection. The role reflection plays, here, is akin to the role of reflection in Korsgaard’s account of normativity, yet there remains a problem. This problem is best illustrated by framing the two forms of the normative question—Mill’s and Korsgaard’s—under discussion: for Korsgaard, the normative question is “should we allow ourselves to be moved *by the motives which morality provides?*”; for Mill, the normative question is “should we allow ourselves to be moved *by such motives as may be provided for morality* (either by nature or by training)?”⁹⁹ Mill’s answer to his own formulation of the normative question is that “morality is normative when reflection on our moral concepts leads us to be glad that

97. Korsgaard, *Sources*, 79.

98. John Stuart Mill, *Utilitarianism*, ed. George Sher (Indianapolis: Hackett, 1979), 27 (quoted in Korsgaard, *Sources*, 79).

99. Korsgaard, *Sources*, 81–82 (*emphasis mine*).

moral motives have been instilled in us.”¹⁰⁰ Thus, “[the] utilitarian sense of obligation, being in harmony with our social and sympathetic nature, is sustained by reflection, and therefore it is normative.”¹⁰¹ Desire is the source of normativity for Mill, and it is sustained by the reflective interplay between both external and internal sources constitutive of the principle of utility and its justification.

In light of these three analyses of how morality and normativity relate to human nature, we are left with the sense that reflective endorsement of our dispositions is constitutive for establishing normativity, but the conceptualization of reflective endorsement provided by Hume, Williams, and Mill remains a little unclear. At the heart of her critique lies Korsgaard’s concern that “[if] the reflective endorsement of our dispositions is what establishes the normativity of those dispositions, then what we need in order to establish the normativity of our more particular motives and inclinations is the reflective endorsement of those.” For the proponents of the reflective endorsement position, particularly Hume and Mill, the conversation around the dispositions that are reflectively endorsed is fairly generalized. It relies on the fact that “moral sentiments are supposed to be influenced by ‘general rules,’” but they are “rules which do not hold in every case.”¹⁰² Korsgaard is concerned with the level of generalization at work here when considering the important question of what carries normative weight. On her reading, “the whole point of using the reflective endorsement method to justify morality ... [is

100. Korsgaard, *Sources*, 82.

101. Korsgaard, *Sources*, 84.

102. Korsgaard, *Sources*, 88.

that] we are supposing that when we reflect on the things which we find ourselves inclined to do, we can then accept or reject the authority those inclinations claim over our conduct, and act accordingly.”¹⁰³ Therefore, when it comes to the normativity of the reflective endorsement position, we cannot leave the conversation on the level of generalization as Hume and Mill appear to do. The normativity of our reflective endorsements must consider the specific actions we seek to undertake. Put another way, the normativity of our reflective endorsements must consider our subjective principles of action—our maxims. This, of course, is precisely the kind of argument articulated by Kant when he identifies the deliberative process of the autonomous moral agent. Korsgaard articulates this process as follows:

According to Kant, as each impulse to action presents itself to us, we should subject it to the test of reflective endorsement, to see whether it really is a *reason* to act. Since a reason is supposed to be intrinsically normative, we test a motive to see whether it is a reason by determining whether we should allow it to be a *law* to us. And we do that by asking whether the maxim of acting on it can be willed as a law.¹⁰⁴

For Kant, the reflective endorsement test is not merely a philosophical exercise. “The test of reflective endorsement is the test used by actual moral agents to establish the normativity of all their particular motives and inclinations. So the reflective endorsement test is not merely a way of justifying morality. *It is morality itself.*”¹⁰⁵

103. Korsgaard, *Sources*, 89.

104. Korsgaard, *Sources*, 89.

105. Korsgaard, *Sources*, 89.

Up to this point in the text, Korsgaard has offered three ways that the normative question in ethics has been articulated in the history of moral philosophy. First, there was the voluntarist position, which explained normativity in the following way: “we are subject to laws, including the laws of morality, because we are subject to lawgivers.”¹⁰⁶ This, however, gave rise to an endless regress of the question ‘Why?’ Second, there was the realist position, which explained normativity, and attempted to short circuit the regress of the voluntarist position, “by postulating the existence of entities ... whose intrinsic normativity forbids further questioning.”¹⁰⁷ The challenge made against the realist position, however, remains the question of why certain entities, and not others, provide—or, perhaps, declare—a conclusive answer to the question ‘Why?’ Third, the reflective endorsement position grounded morality in human nature: “Obligations and values are projections of our own moral sentiments and dispositions. To say that these sentiments and dispositions are justified is not to say that they track the truth, but rather to say that they are good.”¹⁰⁸ However, on Korsgaard’s view, the question of normativity cannot simply depend on dispositions, but must be grounded in “the particular motives and impulses that spring from [them].”¹⁰⁹ It is this last concern that, for Korsgaard, pushes us toward Kant’s answer to the normative question. Kant believes that “we must show that particular actions are right and particular ends are good,” because “morality is grounded

106. Korsgaard, *Sources*, 90.

107. Korsgaard, *Sources*, 90.

108. Korsgaard, *Sources*, 91.

109. Korsgaard, *Sources*, 91.

in human nature, and ... moral properties are projections of human dispositions.”

Therefore, she suggests, the normative question “is one of reflective endorsement.”¹¹⁰

Proceeding from this acknowledgement of the theory of reflective endorsement, Korsgaard pursues her own argument for a theory of normativity. This argument, which takes its general direction from Kant, attempts to make two points: “first, that autonomy is the source of obligation, and in particular of our ability to obligate ourselves; and second, that we have *moral* obligations, by which I mean obligations to humanity as such.”¹¹¹ From this, Korsgaard articulates a solution to the problem that has prompted this inquiry: the problem of normativity.

“I perceive, and I find myself with a powerful impulse to believe,” says Korsgaard, “[but] I back up and bring that impulse into view and then I have a certain distance. Now the impulse doesn’t dominate me and now I have a problem. Shall I believe?”¹¹² This is the normative problem that the self-conscious structure of the human mind sets for itself: “The reflective mind cannot settle for perception and desire, not just as such.”¹¹³ What the reflective mind requires beyond perception and desire, what it needs in order to survive reflective scrutiny, is reason. Reason, for Korsgaard, is not an abstract, idealized concept or procedure. “‘Reason’ means reflective success,”¹¹⁴ and the terms ‘good’ and ‘right,’

110. Korsgaard, *Sources*, 91.

111. Korsgaard, *Sources*, 91.

112. Korsgaard, *Sources*, 93.

113. Korsgaard, *Sources*, 93.

114. Korsgaard, *Sources*, 97.

therefore, are normative terms that mean the work of reflection is complete. This problem can also be articulated in terms of freedom. Freedom, for Korsgaard, is a practical question—it is “the capacity to do otherwise, not the capacity to have done otherwise.” This is why Korsgaard is not put off by the arguments of determinism against freedom.¹¹⁵ It is also why freedom is articulated as a postulate of practical reason, and not of theoretical reason. The task of freedom is not to explain, third-personally from the vantage point of hindsight (this would make freedom into ‘the capacity to have done otherwise’ and, therefore, subject to deterministic critique), but rather to move us, first-personally, to see “our desires as providing suggestions which we may take or leave,” or even “to describe the condition in which we find ourselves when we reflect on what we do.”¹¹⁶ Freedom “is to be explained in terms of the structure of reflective consciousness, not as the (possible delusory) *perception* of a theoretical or metaphysical property of the self.”¹¹⁷

As previously noted, Korsgaard understands ‘reason’ to mean ‘reflective success.’

Yet we are still left with a problem: How do I decide when I have reflected successfully,

115. See Korsgaard, *Sources*, 95–97. Here, Korsgaard discusses the philosophical tension between determinism and freedom. She is critical of the deterministic position that allegedly undermines freedom from a theoretical perspective, since this is not a perspective we can reliably adopt. “The worry [presented to freedom by determinism],” she argues, “seems to be that if we were sure we were determined or knew how we were determined then either we could not act or we would not act, or else we would have acted differently. But why is this supposed to happen? ... I am claiming that [freedom] is to be explained in terms of reflective consciousness, not as the (possibly delusory) *perception* of a theoretical or metaphysical property of the self” (95, 97).

116. Korsgaard, *Sources*, 96.

117. Korsgaard, *Sources*, 97.

when I have ‘reasoned?’ Kant responds to this question by turning to the postulate of freedom and the concept of a free will. According to Korsgaard, he defines a free will “as a rational causality which is effective without being determined by any alien cause ... [the] free will must be entirely self-determining.”¹¹⁸ Note that a free will is ‘a rational causality’ and, therefore, “must act according to some law or other.”¹¹⁹ This leads both Kant and Korsgaard to conclude that if a will is to be genuinely free, then such a will “must be autonomous: that is, it must have its own law or principle.” For Kant, the law or principle of the free will is the CI.

At this point in the argument, it is important to note a distinction Korsgaard makes between herself and Kant. This distinction is important for Korsgaard’s later interpretation of the third formulation of the CI—the Kingdom of Ends. Whereas Kant argues that the CI is the law for a free will, he also suggests that the CI is the moral law. Korsgaard, however, makes a distinction between these two arguments. For Korsgaard, the CI is “the law of acting only on maxims you can will to be [universal] laws.”¹²⁰ The moral law, however, “tells us to act only on maxims that all rational beings could agree to act on together in a workable cooperative system.”¹²¹ Thus, on Korsgaard’s reading, the CI is the law of a free will, but this “does not establish that *the moral law* is the law of a free will.... For that we need another step. The agent must think of *herself* as a Citizen of

118. Korsgaard, *Sources*, 97.

119. Korsgaard, *Sources*, 97.

120. Korsgaard, *Sources*, 98–99.

121. Korsgaard, *Sources*, 99.

the Kingdom of Ends.”¹²² This distinction, which is not uncontested, will become increasingly important when we turn to the sections of this chapter on the FoH and the KoE.

Thus, the analysis Korsgaard has provided up to this point has established that the “reflective structure of human consciousness requires that you identify yourself with some law or principle which will govern your choices. It requires you to be a law to yourself. And that is the source of normativity.”¹²³ This reflective procedure, however, does require something of a back-and-forth if it is indeed to be reflective, and not simply dictatorial. This back-and-forth, in turn, requires one to conceptualize oneself as both a thinking self and an acting self. Without both of these ‘selves,’ the reflective structure of human consciousness would not, in fact, be reflective: “the reflective structure of human consciousness establishes ... a relation we have to ourselves.”¹²⁴ This kind of relationship, between the thinking self and the acting self, echoes both the relationship between the two standpoints of practical reason in Korsgaard’s own work and Kant’s understanding of the relationship between the *homo noumenon* and the *homo phenomenon* in his *Metaphysics of Morals*. According to Kant, “all duties must be grounded in duties to the self, and yet ... duties to the self are only intelligible if there are two aspects to the self.”¹²⁵ The relationship between the *homo noumenon* and the *homo phenomenon*, and,

122. Korsgaard, *Sources*, 99–100.

123. Korsgaard, *Sources*, 104.

124. Korsgaard, *Sources*, 104.

125. Korsgaard, *Sources*, 104n16.

consequently, between the thinking self and the acting self is constituted by the concept of authority—an authority, suggests Korsgaard, that is the self’s “source of obligation.”¹²⁶

Thus the authority we are talking about here is authority as autonomy—the autonomous self legislating for itself reflectively between the thinking self and the acting self. To this extent, the voluntarists discussed earlier in this chapter had a point when they turned to the authority of legislated law as the source of normativity. The difference between their position and Korsgaard’s, of course, is the question of where this authority lies.

Now, Korsgaard raises an important issue when considering the reflective procedure at work between the thinking and acting selves. “Autonomy is commanding yourself to do what you think it would be a good idea to do;”¹²⁷ yet, we must ask ourselves, how do we know what is a ‘good idea’ to do? In response to this question, Korsgaard turns again to Kant, who says that “we can tell whether our maxims should be laws by attending not only to their matter but to their form.”¹²⁸ This distinction between matter and form comes from Aristotle:

According to Aristotle, a thing is composed of a form and a matter. The matter is the material, the parts, from which it is made. The form of a thing is its functional arrangement. That is, it is the arrangement of the matter or of the parts which enables the thing to serve its purpose, to do whatever it does.¹²⁹

126. Korsgaard, *Sources*, 105.

127. Korsgaard, *Sources*, 107.

128. Korsgaard, *Sources*, 107.

129. Korsgaard, *Sources*, 107.

I want to note here, that while the heart of this project will turn to the matter—the FoH—rather than the form, it is essential to the success of this argument that form is neither disregarded nor marginalized. It is a central component of the argument, even if, in the following sections, I attempt to ground the normative matter of ethics in humanity.

To return to Aristotle's analysis of form and matter, the form of a thing is the successfully functional arrangement of its matter. For Kant, the maxim one submits to the test of universalization constitutes the form of the CI. A maxim *qua* form, for Kant, consists in two parts: an act and a purpose. When we are commanding ourselves to do what we believe it is a good thing to do—when we are being autonomous—we must determine where the goodness of what we are commanding ourselves to do lies. According to Korsgaard, “goodness does not rest in the parts [of a maxim]; but rather in the way the parts are combined and related”¹³⁰—i.e. the form. This form, however, is not simply a random arrangement of parts, but the *functional* arrangement of them. They must be arranged in such a way “that enables the thing to do what it does.”¹³¹ So the goodness of a maxim, according to Korsgaard's reading of Aristotle, lies in its form “if the action and the purpose are related to one another so that the maxim can be willed as a law.”¹³² If this is the case, suggests Korsgaard, then there turns out to be some value in the realist approach to the question of normativity. “A good maxim,” she says, “is good in virtue of its internal structure. Its internal structure, its form, makes it fit to be willed as a

130. Korsgaard, *Sources*, 108.

131. Korsgaard, *Sources*, 108.

132. Korsgaard, *Sources*, 108.

law. A good maxim is therefore an intrinsically normative entity. So realism is true after all.”¹³³ Korsgaard qualifies this statement, however, when she points out that on her interpretation, this “isn’t an exercise of intuition, or a discovery about what is out there in the world,”¹³⁴ as it is for the realists. On her reading, “[the] test for determining whether an impulse is a reason is whether *we* can will acting on that impulse as a law. So the test is a test of endorsement.”¹³⁵ Therefore, of these two forms of moral realism just identified—substantive moral realism and procedural moral realism—Korsgaard finds the most value in procedural moral realism, which argues that “there are answers to moral questions *because* there are correct procedures for arriving at them,”¹³⁶ rather than substantive moral realism, which argues that “there are correct procedures for answering moral questions *because* there are moral truths or facts that exist independently of those procedures.”¹³⁷

At this point in her argument, Korsgaard believes she has shown that there is such a thing as obligation because of the reflective structure of human consciousness. The distance this reflective procedure creates in human consciousness requires us to both act for reasons, since we have to choose between our impulses and whether or not we should act on them, and to have some conceptualization of our practical identity, which

133. Korsgaard, *Sources*, 108.

134. Korsgaard, *Sources*, 108.

135. Korsgaard, *Sources*, 108.

136. Korsgaard, *Sources*, 36.

137. Korsgaard, *Sources*, 36.

identifies us with the sources of our reasons for action—we become laws unto ourselves. When we must decide on what to do in a given situation, we ask ourselves the question: Do I have a reason to act on this impulse? According to Korsgaard, “we answer that question by seeing whether the maxim of acting on [the impulse] can be willed as a law by a being with the identity in question. If it can be willed as a law it is a reason to act, for it has an internally normative structure. If it cannot be willed as a law ... we get obligation.”¹³⁸ It is through the lens of this reflective distance that we must understand Korsgaard’s conceptualization of obligation. Let us take, as an example, a situation in which an agent is choosing an action. For Korsgaard, we must recall, practical reason—as a procedure, a process (rather than a static entity)—operates at the level of reflection. The agent’s action ought not be a knee-jerk one—it ought to be reflective and recognize a certain level of distance between the action in question and the agent’s choosing it. It is in the space of this reflective distance—between the action and the choosing (or not) of it—that the concept of obligation emerges. An agent, while able to articulate a maxim that can be universalized, may have to face the possibility of conflicting universalized maxims when determining action. If a maxim of action can be willed as a law, then its normativity for an agent is clear. If a maxim of action cannot be willed as a law for an agent, given her practical identity, but is nevertheless required of her, then obligation, rather than the internal structure of the maxim, becomes the conduit for normativity. This does not make obligation an external, heteronomous law imposing itself on the agent in question; rather, it is the wider setting of the agent’s practical identity that contextualizes and mitigates the

138. Korsgaard, *Sources*, 113.

role of obligation in relation to the other dimensions—other maxims, obligations, etc.—of the overall practical identity of the agent. Recall, for a moment, the recent discussion of the reflective structure of human consciousness. This structure requires something of a back-and-forth if it is indeed to be reflective. This back-and-forth, in turn, requires one to conceptualize oneself as both a thinking self and an acting self. Without both of these ‘selves,’ the reflective structure of human consciousness would not, in fact, be reflective. Similarly, within the hermeneutical exchange—the back-and-forth—between the first person perspective (as normativity) and the third person perspective (as obligation), we encounter reflective distance as the space of both normativity and obligation. Korsgaard believes she has established, preliminarily, that human beings have obligations and, thus, she has provided a preliminary answer to the question of the CI as the law of a free will. What she has not done up to this point—at least explicitly—is address herself to the question of the moral law, which she distinguishes from the law of a free will. While human beings have general obligations, as she has shown, what is the normative grounding of *moral* obligations? This move requires yet another step.

Korsgaard frames this step by turning to the concept/conception distinction articulated by John Rawls in *A Theory of Justice*. According to Rawls, a *concept* “refers to a problem, or ... in a formal way the solution to a problem.”¹³⁹ Concepts like ‘Good’ and ‘Right’ are identified as such because they are names for normative ‘problems’ that emerge out of our reflective nature. On the other hand, a *conception* is “a principle that is

139. Korsgaard, *Sources*, 113.

proposed as a solution to the ... problem.”¹⁴⁰ Unlike ‘Good’ and ‘Right,’ which are only “names for whatever it is that solves the problems in question,”¹⁴¹ the conceptions of ‘good’ and ‘right’ provide us with a process, or procedure, for coming to the ‘Good’ or ‘Right.’ According to Korsgaard, “the concept names the problem, [while] the conception names the solution,”¹⁴² and it is practical identity, she suggests, that navigates between these two. How? In Kant’s argument, she suggests, “we move from concept to conception by taking up the standpoint of a legislative Citizen in the Kingdom of Ends.”¹⁴³ This standpoint—otherwise referred to as the standpoint of practical reason, or the deliberative standpoint—will receive further attention at the end of this chapter. Suffice it to say, at this point, that for Korsgaard, a view of your practical identity is “a view of what you ought to do ... [and] a view of who you are.”¹⁴⁴ Your practical identity relies on your necessary, normative identification as a human, and therefore moral, being. This identification, in turn, requires you to take account of the social and moral world you live in as constitutive of your practical identity.

At this point in her argument, Korsgaard has articulated the normative problem in terms of both the reflective structure of the human mind and in terms of freedom. The solution she offers to this problem comes to us through the concept of practical identity.

140. Korsgaard, *Sources*, 114.

141. Korsgaard, *Sources*, 114.

142. Korsgaard, *Sources*, 114.

143. Korsgaard, *Sources*, 115.

144. Korsgaard, *Sources*, 117.

For Korsgaard, “[the] reflective structure of the mind is a source of ‘self-consciousness’ because it forces us to have a *conception* of ourselves.”¹⁴⁵ As I alluded to earlier in this chapter, a decisive component of this concept of practical identity is the standpoint from which self-evaluation is conducted—either the first-personal or the third-personal. Korsgaard notes that when a choice is made from the “third-person point of view, outside of the deliberative standpoint [i.e. the standpoint of practical reason], it may look as if what happens when someone makes a choice is that the strongest of his conflicting desires wins.”¹⁴⁶ This is the reading of the deliberative process evidenced in both the realist and reflective positions identified earlier in this chapter. However, this is not how the process works for *you*, in the first-personal, deliberative standpoint. “When you deliberate, it is as if there were something over and above all of your desires, something which is *you*, and which *chooses* which desire to act on.”¹⁴⁷ If this is the case, then you must possess a conceptualization of your identity made possible by the reflective constitution of the human mind (but not limited to it). This conceptualization, suggests Korsgaard, is best understood “as a description under which you value yourself, a description under which you find your life to be worth living and your actions to be worth undertaking.”¹⁴⁸ She calls this conceptualization your practical identity.

145. Korsgaard, *Sources*, 100.

146. Korsgaard, *Sources*, 100. As we will see in the following chapter, this is an example of what Korsgaard calls the ‘Combat Model’ of reasoning, which gets embodied, for her, in someone like Thomas Hobbes in his *Leviathan*.

147. Korsgaard, *Sources*, 100.

148. Korsgaard, *Sources*, 101.

Korsgaard acknowledges that there may be, and in fact ought to be, many contingent features of one's practical identity. Regardless of what these more contingent features may be, however, one thing remains constant: "you must be governed by *some* conception of your practical identity."¹⁴⁹ Korsgaard's point here is that, while different elements of your identity may change, what cannot change is that *you have some conception of your identity*—one that underlies, or upholds, its more contingent elements. The reason that you must be committed to a conception of your practical identity is that, unlike the contingent elements of practical identity that emerge in response to external factors, your practical identity emerges "from your humanity itself, from your identity simply as a human being, a reflective animal who needs reasons to act and to live."¹⁵⁰ This means that you must treat your humanity as a practical and a normative form of identity and, consequently, that you must "value yourself as a human being."¹⁵¹ But, says Korsgaard, "to value yourself just as a human being is to have moral identity ... [and] valuing ourselves as human beings involves valuing others that way as well, and [this] carries with it moral obligations."¹⁵² If this argument is correct, suggests Korsgaard, then "our identity as moral beings—as people who value themselves as human beings—stands behind our more particular practical identities.... We must conform to them not merely for the reasons that caused us to adopt them in the first place, but because being human

149. Korsgaard, *Sources*, 120.

150. Korsgaard, *Sources*, 121.

151. Korsgaard, *Sources*, 121.

152. Korsgaard, *Sources*, 121.

requires it ... all value depends on the value of humanity.”¹⁵³ The heart of this argument will be the subject of the following section on Kant’s Formula of Humanity. Suffice it to say, at this point, that Kant thought that insofar as human beings valued things, we must, necessarily, take ourselves to be important, value-conferring creatures. If this is the case, then “humanity, as the source of all reasons and values, must be valued for its own sake.”¹⁵⁴

Thus, at the end of her discussion in this section, Korsgaard has argued for the following:

human consciousness has a reflective structure that sets us normative problems. It is because of this that we require reasons for action, a conception of the right and the good. To act from such a conception is in turn to have a practical conception of your identity.... That conception is normative for you and in certain cases it can obligate you.... So a human being is an animal who needs a practical conception of her own identity, a conception of who she is that is normative for her.¹⁵⁵

What Korsgaard is offering here is a transcendental argument: “if you value anything at all, or, if you acknowledge the existence of any practical reasons, then you must value your humanity as an end in itself.”¹⁵⁶ While this argument leads one to recognize that she has moral obligations, Korsgaard does not believe that this argument shows, or is even meant to show, “that all obligations are moral, or that moral obligations always trump

153. Korsgaard, *Sources*, 121.

154. Korsgaard, *Sources*, 121.

155. Korsgaard, *Sources*, 122–23.

156. Korsgaard, *Sources*, 125.

others.”¹⁵⁷ We are, she acknowledges, more than simply moral agents. Nevertheless, to make the point more practical, Korsgaard acknowledges that “moral identity is [on the one hand] just like any other form of practical identity. To act morally is to act in a certain way simply because you are human, to act as one who values her humanity should.”¹⁵⁸ On the other hand, however, Korsgaard also wants to argue that “moral identity stands in a special relationship to our other identities. First, moral identity is what makes it necessary to have other forms of practical identity.... Second ... moral identity exerts a kind of governing role over the other kinds [of practical identity].”¹⁵⁹ To round out this argument, as well as set the stage for the final move of this dissertation, I want to briefly name, and flesh out, one potential objection to this analysis Korsgaard anticipates before moving into the next section of this chapter on Korsgaard’s reading of Kant’s FoH. The objection is that this argument, at most, gives us reason to value our own humanity, but not the humanity of others.¹⁶⁰ As valuing the humanity in yourself as well

157. Korsgaard, *Sources*, 125.

158. Korsgaard, *Sources*, 129.

159. Korsgaard, *Sources*, 129–30.

160. In lecture 4 of *Sources of Normativity*, Korsgaard also lays out two additional arguments that appear to problematize her argument, though she ultimately thinks they do not. The first is the argument that not only humans, but all plant and animal life too ought to have moral standing according to Korsgaard’s analysis. In short, Korsgaard agrees that animal life must have moral standing as a logical extension of the argument she is presenting here, but not plant life. The second objection is that her analysis does not answer the moral skeptic, who is unconvinced that we out to value anything at all, let alone humanity. Korsgaard’s response to this second objecting takes the form of failure of the second contradiction test—the contradiction in the will. While it is possible to imagine a world in which the moral skeptic, who essentially says no to life, is possible, we cannot, nor can the moral skeptic, will such a world without contradiction.

as valuing the humanity in others is essential to Korsgaard's project, a clarification of, and response to, this argument is warranted.

On this question of whether or not her argument—and Kant's argument for that matter—gives us a reason to value the humanity of others as we value the humanity in ourselves, Korsgaard makes a turn to language, and specifically to the possibilities of private and public language. Those who take up the position that Korsgaard's argument does not successfully draw the connection between my valuing my own humanity and my valuing the humanity of others assume the following: “[they] assume that an individual agent has private reasons, that is, reasons that have normative force for her, and they try to argue that those private reasons give the individual some reason to take the (private) reasons of other people into account.”¹⁶¹ The assumption, here, is that reasons are private and, therefore, any attempt at publicness is an attempt to make what are essentially private reasons publically normative. However, the problem here, as Korsgaard notes, is that while consistency “can force me to grant that your humanity is normative for you just as mine is normative for me,” while it “can force me to acknowledge that your desires have the status of reasons for you, in exactly the same way that mine do for me,” what this argument cannot do is “force me to share in your reasons, or make *your* humanity normative for me.”¹⁶² This is where, for Korsgaard, the argument from private reasons

For a more detailed analysis of these objections, and for Korsgaard's response to them, see *Sources*, sec. 4.3.1–4.4.2.

161. Korsgaard, *Sources*, 133.

162. Korsgaard, *Sources*, 134.

fails. What she suggests in its place is the position that “reasons are not private, but public in their very essence.”¹⁶³ She is not here referring to something like ‘publicity as objectivity,’ where, along the lines of substantive moral realism, reasons become objective, and what is good for me is, therefore, objectively good. What Korsgaard is referring to here is ‘publicity as shareability’—where if reasons “were essentially private, it would be impossible to exchange or to share them. So their privacy must be incidental or ephemeral.”¹⁶⁴ Reasons must be public.

Therefore, what Korsgaard believes we need is not an argument in favor of private reasons being brought into the light of publicness, but rather an argument “that acknowledges that our reasons were never more than incidentally private in the first place. To act on a reason is already, essentially, to act on a consideration whose normative force may be shared with others.”¹⁶⁵ While this argument aims to show that reasons are public, it is not yet clear why this makes reasons obligatory in shared, public space. If what makes reason obligatory for me is reflection, how do the reasons of others obligate me? To flesh this out, Korsgaard turns to Wittgenstein, and while theories of language are beyond the scope of this dissertation, it is necessary to raise the following argument given its centrality in Korsgaard’s understanding how the reasons of others can obligate me. For Wittgenstein, the notion of a private language is impossible. Language and meaning must be relational because they are normative notions—“to say that X means Y is to say that

163. Korsgaard, *Sources*, 134–35.

164. Korsgaard, *Sources*, 135.

165. Korsgaard, *Sources*, 136.

one ought to take X for Y.”¹⁶⁶ This procedure requires (at least) two: a legislator, to determine the relationship between X and Y, and a citizen, to consent to this determination. The idea of a private language “is inconsistent with the normativity of meaning.”¹⁶⁷ Neither reasons, nor meaning, ought to be considered mental entities—they are normative demands that we make upon others as well as ourselves. However I bind myself to meaning, so must I be able to bind others in the same way. “It is nearly impossible to hear the words of a language you know as mere noise ... [and that] means that I can always intrude myself into your consciousness.”¹⁶⁸ For Korsgaard, “the space of linguistic consciousness is essentially public, like a town square. You might happen to be alone in yours, but I can get in anytime.”¹⁶⁹ What all of this means in the case of moral obligation is that we must take the reasons of others as akin to our own reasons, they must have “something like the same standing with us”¹⁷⁰ as our own reasons, impulses, and desires do. When we do this, we engage in a process of exchange whereby, through the normativity of meaning and shareability of public reasons, I become an obligation to you, and you become an obligation to me. According to Korsgaard, “I force you to acknowledge the value of *my* humanity, and I obligate you to act in a way that respects

166. Korsgaard, *Sources*, 137.

167. Korsgaard, *Sources*, 137.

168. Korsgaard, *Sources*, 139.

169. Korsgaard, *Sources*, 139–40.

170. Korsgaard, *Sources*, 140.

it”¹⁷¹—and vice versa. This is the source of moral obligation for Korsgaard, and it lies in the fact that human beings “are social animals in a deep way ... It is not just that we go in for friendship or prefer to live in swarms or packs. The space of linguistic consciousness—the space in which meanings and reasons exist—is a space that we occupy together.”¹⁷²

At the end of her argument, Korsgaard observes—and hopes her reader has noticed—“that all of the accounts of normativity which I have discussed in these lectures [i.e. voluntarism, realism, reflective endorsement, and the Kantian] are true.”¹⁷³ This is, of course, a qualified statement, but the principal thrust behind it is accurate. The voluntarist position, which locates the source of normativity in the commands of a legislator, is to a certain extent true: “What it describes is the relation in which we stand to ourselves.... The thinking self has the power to command the acting self, and it is only its command that can make action obligatory.”¹⁷⁴ Similarly, the realist position, which locates the source of normativity in the objective value intrinsic to natural entities, is also to a certain extent true: “What it describes is the activity of the thinking self as it assesses the impulses that present themselves to us, the legislative proposals of our nature.”¹⁷⁵ Reflective endorsement, too, proves its value in its “power to compel obedience, and to punish us

171. Korsgaard, *Sources*, 143.

172. Korsgaard, *Sources*, 145.

173. Korsgaard, *Sources*, 164.

174. Korsgaard, *Sources*, 164–65.

175. Korsgaard, *Sources*, 165.

for disobedience.”¹⁷⁶ It emphasizes that “the relation of the thinking self to the acting self is the relation of legitimate authority,”¹⁷⁷ and this because when we have authority over ourselves, we are, in Kant’s terms, autonomous. Thus, “autonomy is the source of obligation.”¹⁷⁸ What provides these different philosophical approaches to the question of normativity with their valuable insights is an explicit, or implicit, grounding in a Kantian framework, at least on Korsgaard’s reading. When it comes to the question of normativity, she says:

In the end, nothing can be normative unless we endorse our own nature [I might say, here, constitution], unless we place a value upon ourselves. Reflection reveals to us that the normativity of our values springs from the fact that we are animals of a certain kind, autonomous moral animals.¹⁷⁹

The remainder of this chapter will focus on a more in-depth look into the two formulations of the CI that Korsgaard sees as integral to her argument that normativity rests in the autonomy constitutive of our humanity (i.e. in the dignity of humanity). The next section will look at Korsgaard’s reading of Kant’s second formulation of the CI, the Formula of Humanity. This section will be followed by an analysis of the third formulation of the CI, autonomy in the Kingdom of Ends, and I will end the chapter with a brief conclusion of Korsgaard’s argument in light of the overall thesis of my dissertation project.

176. Korsgaard, *Sources*, 165.

177. Korsgaard, *Sources*, 165.

178. Korsgaard, *Sources*, 165.

179. Korsgaard, *Sources*, 165.

The Formula of Humanity

In order to explicate Korsgaard's analysis of Kant's Formula of Humanity, I want to turn primarily to her article "Kant's Formula of Humanity" in *Creating the Kingdom of Ends*. While the argument for the FoH is most directly addressed here, there are other places in Korsgaard's corps of work that supplement this argument. I will turn to those other arguments as necessary in order to flesh out Korsgaard's reading of the FoH, but I will stick most closely to the aforementioned article.

At the outset, it is important to identify how Korsgaard is reading Kant on the FoH. To begin with, for Kant, if there is a CI, then there must be something of unconditional value. This '*something* of unconditional value,' according to both Kant and Korsgaard, is humanity—*qua* rational nature—as an end in itself. To support this claim, Kant argues the following:

The ground of this principle is: *rational nature exists as an end in itself*. The human being necessarily represents his own existence in this way; so far it is a *subjective* principle of human actions. But every other rational being also represents his existence in this way consequent on just the same rational ground that also holds for me; thus it is at the same time an *objective* principle from which, as a supreme practical ground, it must be possible to derive all laws of the will. (G 429)¹⁸⁰

In interpreting this passage, Korsgaard argues that, according to Kant, "rational action must be done with reference to an end that is good, and a good end is one for which there is a sufficient reason. It must be the object of every rational will, and it must be fully justified."¹⁸¹ What, then, can serve as such a good end? Kant disqualifies one popular

180. Kant, *Groundwork*, 39 (= AA 4:429).

181. Korsgaard, "Kant's Formula of Humanity," 120.

answer to this question: happiness. According to Korsgaard, “one can take neither everyone’s happiness nor just one’s own happiness to be good without qualification: the former does not form a consistent, harmonious object; and the latter cannot plausibly be taken to be the object of every rational will if the former is not. Thus, happiness cannot in either form be the ‘unconditioned condition’ of the goodness of the object of your inclination.”¹⁸² If happiness cannot be what makes “the object of your choice good and so your choice rational,”¹⁸³ then what remains to be shown is what *does* make this so.

Korsgaard begins this analysis by reminding us of something covered in the first section of this chapter: that the CI, if it exists at all, must have both a form and a matter. The form of the CI is the FoUL—the universalization principle—that says any maxim that one proposes to oneself *must* have the form of a universal law. This, however, is but one formulation of the CI. Korsgaard offers a summary of all three formulations of the CI as follows:

Kant tells us that universality gives us the form of the moral law; rational nature or humanity as an end in itself gives us the material of the law; and autonomous legislation in a kingdom of ends represents a complete determination of maxims and a totality of ends.¹⁸⁴

This brief summary of the three formulations of the CI is helpful, but, for the moment, we will put off a discussion of the third formulation as it will be the principal topic of the following section. First, we want to focus on the claim, as Korsgaard identifies it through

182. Korsgaard, “Kant’s Formula of Humanity,” 122.

183. Korsgaard, “Kant’s Formula of Humanity,” 122.

184. Korsgaard, “Kant’s Formula of Humanity,” 106.

Kant, that “‘humanity’ is argued to be the appropriate material for a rational principle, just as universality is its appropriate form.”¹⁸⁵ What, however, prompts Kant to make this claim? Why does he feel confident that humanity is the “appropriate material for a principle of practical reason?”¹⁸⁶ We know, from the analysis provided thus far, that rationality is *the* constitutive feature of humanity for Kant. By rationality, however, we do not principally mean an individual’s ability for abstract reasoning. Rationality, as understood by Korsgaard, is that constitutive dimension of humanity which allows it to not only set ends for itself and the means to those ends, but also to take reflective distance from the means and ends available to us and choose which means and which ends to pursue in line with our practical identity. Insofar as we value means and ends at all—and choose between them—we necessarily take the rational component of ourselves as valuable. In recognizing the value-conferring authority of our rationality, and in recognizing that that which confers value must itself be something of value to us—otherwise, why would we take its dictates seriously—we have some insight into how and why both Kant and Korsgaard take humanity *qua* rationality to be the most appropriate matter for the CI. Therefore, as the most appropriate matter for the CI, humanity serves both a positive and a negative role in relation to the universalization principle. Negatively, humanity cannot be acted against; positively, humanity serves as the ground for developing a constructive ethic. Humanity, therefore, becomes what Kant calls “the

185. Korsgaard, “Kant’s Formula of Humanity,” 107.

186. Korsgaard, “Kant’s Formula of Humanity,” 107.

objective ground of [the will's] self-determination.”¹⁸⁷ It becomes an ‘end’ that is, at the same time, subject, objective, shareable, and obliging.

Still, what *kind* of end humanity is depends on the different *kinds* of ends that are possible within Kant’s framework. As we have noted, there are two roles ends can play here: an end “can serve as a purpose pursued [i.e. a positive role], or it can play a negative role and serve as something one must not act against.”¹⁸⁸ For Kant, as for Korsgaard, while humanity ultimately occupies both the positive and negative roles identified above, it is its negative role—as something not to be acted against—that, at least initially, takes center stage. However, we must proceed cautiously here. Humanity, as an end, is not an incentive to or for the moral law for either Kant or Korsgaard. Rather, “the moral law commands that humanity be treated as an end.”¹⁸⁹ The point that this discussion returns to—already identified earlier on in this chapter—is the relationship between freedom and the moral law. While we will leave a more detailed discussion of the moral law until the next section (since, for Korsgaard, it is explicitly linked with the concept of the KoE), here we need to touch on the notion of freedom Korsgaard is working with. For her, recognizing that humanity is an end in itself confirms human freedom insofar as making humanity your end is the one thing you cannot be compelled to do by another. What does she mean here? Through the process of reflective distance, constitutive of the rationality inherent in the humanity of agents, one is presented with a choice in the

187. Korsgaard, “Kant’s Formula of Humanity,” 107.

188. Korsgaard, “Kant’s Formula of Humanity,” 108.

189. Korsgaard, “Kant’s Formula of Humanity,” 109.

process of identifying one's maxims for action. In determining which maxims one will follow, in the context of one's practical identity, we must choose in line with the CI *qua* law of a free will. That is to say, we must choose autonomously, rather than heteronomously, the maxims of our actions. As such, humanity—as the material dimension of the CI—requires us to choose our maxims independently of any incentives or coercive forces. Thus, if humanity is an end in itself, which Kant and Korsgaard have argued it is, then choosing our maxims for action in line with our humanity is not to choose according to some heteronomous force, but rather to choose in line with our own, autonomous, self-constitution. If humanity is an end in itself, then any choice we make in line with this end emerges out of our own self-legislative constitution and is, therefore, free in the sense Kant and Korsgaard are suggesting. While the role of humanity, as the material ground of the CI, has been identified, more still needs to be said about the constitution of this concept of humanity.

In the *Groundwork*, as we have seen, Kant links 'humanity' with 'rational nature.'

However, in the *Metaphysical Principles of Virtue*, Kant offers a more nuanced interpretation of this relationship:

The capacity to set oneself an end ... is what characterizes humanity.... Hence there is also bound up with the end of humanity in our own person the rational will, and so the duty, to make ourselves worthy of humanity ... by procuring or promoting the *capacity* to realize all sorts of possible ends.¹⁹⁰

190. Immanuel Kant, *The Metaphysics of Morals*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), 154 (= AA 6:392).

Kant “takes the characteristic feature of humanity, or rational nature, to be the capacity for setting an end.”¹⁹¹ These ends are set as options of choice, not by inclination, but by practical reason. Now, on Korsgaard’s reading, when one chooses an end, one also *necessarily* chooses the means to that end. This is, of course, the analytic necessity of the hypothetical imperative. Put differently, when one chooses both the means and the ends for a given action, one is, in effect, choosing a maxim. At this point in Korsgaard’s analysis, choosing a maxim is not yet choosing a *moral* maxim—“all maxims are freely adopted and so all ends are [freely] chosen.”¹⁹² Consequently, we must be clear that “it is the capacity for the rational determination of ends in general, not just the capacity for adopting morally obligatory ends, that the Formula of Humanity orders us to cherish unconditionally.”¹⁹³ While Kant will turn to the concept of personality—or, as we will see in the final chapter of this project, self-constitution—in order to ‘complete’ the concept of humanity in a moral way (this occurs in Kant’s discussion of the KoE where the question of morality returns to the scene), it is important to remember that when he speaks about humanity itself, Kant is “referring to a more general capacity for choosing, desiring, or valuing ends; ends different from the ones that instinct lays down for us.”¹⁹⁴ Thus, argues Korsgaard, the distinguishing feature of humanity:

is simply the capacity to take a rational interest in something ... to decide, under the influence of reason, that something is desirable, that it is worthy of pursuit or

191. Korsgaard, “Kant’s Formula of Humanity,” 110.

192. Korsgaard, “Kant’s Formula of Humanity,” 111.

193. Korsgaard, “Kant’s Formula of Humanity,” 111.

194. Korsgaard, “Kant’s Formula of Humanity,” 114.

realization, that it is to be deemed important or valuable, not because it contributes to survival or instinctual satisfaction, but as an end—for its own sake.¹⁹⁵

Following this, Korsgaard returns to, and more fully articulates, Kant's argument in favor of understanding humanity as both the 'matter' and the unconditional end of the CI. As suggested earlier, Kant's concept of 'good' is a practically rational concept. This means, on the one hand, that "if an end is good, it must be set by reason; and if an action is done under the full direction of reason, then the end must be good."¹⁹⁶ On the other hand, this means that "if an end is deemed good it provides reasons for action that apply to every rational being."¹⁹⁷ Together, these two considerations show that if one's end is to be good, it must be, first, set by practical reason and, second, shareable. For Korsgaard, it is humanity that qualifies as such a good end. When human beings act in accordance with their humanity—i.e. their human capacity to take a rational interest in something—they take themselves to be "under the direction of reason."¹⁹⁸ To take one's actions to be 'under the direction or reason' is to understand these actions to be directed—though not determined—by the CI as the principle of practical reason. Agents propose to themselves the possibility of action, and then—through putting some distance between the possible maxims for adoption and the reflective process of choosing—choose which actions to pursue in line with the formal dimension of the CI—the universalization principle.

195. Korsgaard, "Kant's Formula of Humanity," 114.

196. Korsgaard, "Kant's Formula of Humanity," 115.

197. Korsgaard, "Kant's Formula of Humanity," 115.

198. Korsgaard, "Kant's Formula of Humanity," 116.

Further, argues Korsgaard, “Kant uses the premise that when we act we take ourselves to be acting reasonably and so we suppose that our end is, in his sense, objectively good.”¹⁹⁹ Action, in this case, implies rationality. Whereas an *act* implies a particular movement or a particular event, *action*, on the other hand, incorporates both the specific act under consideration and the purpose, or end, of the act. Without both components—the act and its purpose—one does not have action.

Action, therefore—as distinct from a mere act—involves an objective component that presents an end to the agent. Once again, when an agent is presented with an end, the logic of practical reason instructs the agent to take a step back, to put some distance between the objective end under consideration and the agent’s choosing (or not) of that end. If the agent chooses a particular objective end as the end of a particular act, then the action the agent has undertaken is rational. Humanity, therefore, is constituted by the reflective process through which human persons not only recognize, but enact, the objective goodness constitutive of their humanity. Now, “since good is a rational concept, a good end will be one for which there is reason—an end whose existence can be *justified*.”²⁰⁰ Humanity, according to Korsgaard, serves as such an end. It is humanity that is rationally chosen from among alternative ends, through the forum of reflective distance, as the ground—the *matter*—of the principle of practical reason because only humanity, argues Korsgaard, serves as an end in itself. Its value, its rationality, its chosenness—these are qualities constitutive of humanity that serve to ground Korsgaard’s

199. Korsgaard, “Kant’s Formula of Humanity,” 116.

200. Korsgaard, “Kant’s Formula of Humanity,” 116.

argument. Humanity—the “end for which there is sufficient reason ... [the] end whose existence can be completely justified, and which therefore has a claim on every rational will”²⁰¹—is, for Korsgaard, the only rational end in itself.

Now, according to Korsgaard, there is a critical step in Kant’s argument for the FoH that remains to be explicated. The answer Kant provides to the question of what serves as a good end—what makes the object of one’s choice good and, therefore, rational—can be summarized as follows: “what makes the object of your rational choice good is that it *is* the object of a rational choice.” Korsgaard continues:

That is, since we still do make choices and have the attitude that what we choose is good in spite of our incapacity to find the unconditioned condition of the object’s goodness in this (empirical) regress upon the conditions, it must be that we are supposing that rational choice itself makes its object good. [Kant’s] idea is that rational choice has what I will call a value-conferring status.²⁰²

As Korsgaard suggests, when Kant says that rational nature/humanity ‘exists as an end in itself,’ what he is arguing is that when we make choices we do so under the belief that our choices, and our ability to enact those choices, have value-conferring status on whatever it is that we choose. When we act, she says, “we act as if our own choice were the sufficient condition of the goodness of its object: this attitude is built into (a subjective principle of) rational action.”²⁰³ What is more, when Kant proposes that ‘every other rational being’ thinks of her rational nature/humanity in the same way, Korsgaard interprets this to mean that “if you view yourself as having a value conferring status in virtue of your power

201. Korsgaard, “Kant’s Formula of Humanity,” 116–17.

202. Korsgaard, “Kant’s Formula of Humanity,” 122.

203. Korsgaard, “Kant’s Formula of Humanity,” 123.

of rational choice, you must view anyone who has the power of rational choice as having, in virtue of that power, a value-conferring status.”²⁰⁴ There are two consequences of this: first—and we will see this played out in the next section on the Kingdom of Ends—this means “that what you make good by means of your rational choice must be harmonious with what another can make good by means of her rational choice,” and, second, that in light of this, “we find that the unconditioned condition of the goodness of anything is rational nature, or the power of rational choice.”²⁰⁵ Rational nature/humanity, therefore, must be something of unconditional value—something which brings an end to the regressive questioning of ‘Why?’—because it is either impossible, unnecessary, or incoherent to ask ‘Why?’ again—and serves as an end in itself. If this is the case, then it further follows that you must treat rational nature/humanity, wherever you find it, as an end. As Kant identifies in the first *Critique*, rationality searches for the unconditioned. It is a search, however, that we cannot complete. We will never reach the unconditioned—a dimension of the noumenal realm and therefore outside the scope of phenomenal possibility—yet it remains a dimension of our thought. Therefore, the nagging question of ‘Why?’ is brought to a close only when this regressive questioning becomes impossible, unnecessary, or incoherent. Humanity makes this regressive questioning of ‘Why?’ incoherent, more than impossible or unnecessary. Korsgaard’s argument is that humanity is “an unconditional end ... you can never act against it without contradiction.”²⁰⁶ This is

204. Korsgaard, “Kant’s Formula of Humanity,” 123.

205. Korsgaard, “Kant’s Formula of Humanity,” 123.

206. Korsgaard, “Kant’s Formula of Humanity,” 123.

not a declaration by fiat, but the result of a procedural approach to moral philosophy. Humanity is an end in itself because it provides a solution to the regressive questioning constitutive of rationality, and—as such—offers a compelling, material ground within which the formal dimension of CI can be situated.

Autonomy in the Kingdom of Ends

For both Kant and Korsgaard, autonomy in the KoE is the crucial—and inescapable—‘third step’ in formulating the CI. In order to flesh out why this is the case, allow me, first, to return to the analysis I offered in chapter two of the KoE in Kant’s *Groundwork*. Then, I will turn to Korsgaard’s reading of the concept of autonomy in Kant. The (self-) constitution of the autonomous person—essential to Kant’s and Korsgaard’s moral and ethical projects—will be key to understanding how such a person lives into the KoE, and will therefore bring us to a more detailed analysis of the already noted difference between private and public reason. Finally, I want to bring together the discussions of the KoE and the FoH—along with the FoUL—in order to illustrate Korsgaard’s argument for grounding the source of normativity in the dignity of humanity.

First, we will return, for a moment, to Kant. In the *Groundwork*, following his discussion of autonomy, Kant offers the following description of the KoE:

The concept of every rational being as one who must regard himself as giving universal law through all the maxims of his will, so as to appraise himself and his actions from this point of view, leads to a very fruitful concept dependent upon it [*ihm anhangenden*], namely that of a kingdom of ends.²⁰⁷

207. Kant, *Groundwork*, 41 (= AA 4:433).

The term kingdom, here, designates “a systematic union of various rational beings through common laws,”²⁰⁸ where the ‘common laws’ of the kingdom are its members. “A rational being belongs as a *member* to the kingdom of ends when he gives universal laws in it but is also himself subject to these laws.”²⁰⁹ Being a member, however, does not mean that one is merely a *subject* in the KoE—one must also, at the same time, be a *sovereign*. Thus membership in the KoE requires one to be at all times lawgiver to oneself and others—since, otherwise, one would no longer be autonomous—while at the same time also being subject to the law. Kant articulates the balance between these seemingly incommensurable positions by turning to the principle of morality and the concept of duty. Since morality consists “in the reference of all action to the lawgiving by which alone a kingdom of ends is possible,” then this lawgiving must “be found in every rational being ... and be able to arise from his will.”²¹⁰ The principle of morality, therefore, says that members in the KoE must act “only so that the will could regard itself as at the same time giving universal law through its maxim.”²¹¹ As lawgivers, the members of the KoE must give the law, as the principle of morality, to themselves; as subjects, the members of the KoE, when they find a conflict between their inclinations and/or desires and the principle of morality, must make the principle of morality a duty.

208. Kant, *Groundwork*, 41 (= AA 4:433).

209. Kant, *Groundwork*, 41 (= AA 4:433).

210. Kant, *Groundwork*, 42 (= AA 4:434).

211. Kant, *Groundwork*, 42 (= AA 4:434).

The reason that the members the KoE must make the principle of morality a duty is that humanity—the constitutive principle of the rational being *qua* member of the KoE—is something that is never to be acted against. In the KoE, reason “refers every maxim of the will as giving universal law to every other will and also to every action toward oneself, and does so not for the sake of any other practical motive or any future advantage but from the idea of the *dignity* of a rational being, who obeys no law other than that which he himself at the same time gives.”²¹² As I noted in the second chapter, this is where Kant distinguishes between *price* (as what can be replaced by something else—a ‘practical motive’ or ‘future advantage’) and *dignity* (what is “raised above all price and therefore admits of no equivalent”²¹³). For Kant, “that which constitutes the condition under which alone something can be an end in itself has ... an inner worth, that is, *dignity*.”²¹⁴ Kant brings the concepts of morality and dignity together, via humanity, in the following way:

morality is the condition under which alone a rational being can be an end in itself, since only through this is it possible to be a lawgiving member of the kingdom of ends. Hence morality, and humanity insofar as it is capable of morality, is that which alone has dignity.²¹⁵

This is how Kant articulates, and fleshes out, the third formulation of the CI. What remains in this section is a turn back to Korsgaard for her interpretation of Kant’s

212. Kant, *Groundwork*, 42 (= AA 4:434).

213. Kant, *Groundwork*, 42 (= AA 4:434).

214. Kant, *Groundwork*, 42 (= AA 4:435).

215. Kant, *Groundwork*, 42 (= AA 4:435).

analysis and its relation back to the concepts of freedom and autonomy—neither of which can be lost in the KoE, since they ground it—and then how the concepts of freedom, autonomy, and the KoE together (along with the FoUL) provide the context within which we can finally make the claim that it is the dignity of humanity, articulated in the FoH and contextualized in the FoUL and KoE, that serves as the normative ground of ethics.

As previously noted, the concept of autonomy is central, not only to the KoE, but to Kant's practical project overall. However, as the ideal of the KoE brings out, Kant's concept of autonomy should not be interpreted as a form of isolated individualism. The autonomous agent is not the sole creator of all her own meaning and value, absent any influence or input from her physical or interpersonal surroundings. We must be both authors of, and subject to, the moral law in the KoE, and in order to do this, we must develop a fuller understanding of what Kant's concept of autonomy looks like. Korsgaard has argued for the identification of the CI with the law of a free will and, in her move to the KoE, seeks to connect this law with the moral law. In moving towards a substantiation of this claim, Korsgaard finds it helpful to first clarify what Kant means by the term 'will' which, in the *Groundwork*, comes to us through two distinct terms in German: *Wille* and *Willkür*. According to Korsgaard, "Kant distinguishes between the *Wille*—which is the will as giving laws—from the *Willkür*, which is the will as active and adopting maxims."²¹⁶ She illustrates this distinction further, and I think helpfully, but transposing a passage from Kant's *Doctrine of Virtue* in the *Metaphysics of Morals*:

216. Korsgaard, *Standpoint*, 288.

Laws proceed from the will [*Wille*]*—*maxims from the power of choice [*Willkür*]. In man the power of choice [*Willkür*] is a power of free choice. The will [*Wille*], which does not look to anything beyond the law itself, cannot be called either free or unfree, since it does not look to actions but rather, in an immediate way, to legislating for the maxims of actions (and so to practical reason itself). Thus the will [*Wille*] functions with absolute necessity and itself *admits of* no necessitation. It is therefore only the power of choice [*Willkür*] that can be called *free*. (DV 25/244; *Wille* and *Willkür* [Korsgaard's] addition)²¹⁷

Korsgaard, following Kant, turns to the *Willkür* in her practical articulation of the CI and the freedom it relies upon. The *Willkür*— as the *power* of choice—makes choices freely and autonomously because “[it] is in a state of absolute freedom.”²¹⁸ The CI, therefore, becomes “the law of a free *Willkür* because it adjures us always to choose our maxims as if we were in the position of a free *Willkür*.” She continues:

The categorical imperative is the law of practical reason because it is the maxim that the free *Willkür* chooses from the standpoint of practical reason. And it is the maxim that the free *Willkür* chooses from the standpoint of practical reason because its content is the command always to choose from the standpoint of practical reason. A free will and a will under moral laws are the same. The categorical imperative is *the* principle of autonomy because its entire content could be given in the formulation: always choose autonomously.²¹⁹

Now, what this distinction between *Wille* and *Willkür* emphasizes, in the context of the KoE, is that when we view ourselves as lawgiving, we must view ourselves from the standpoint of practical reason. This point has been emphasized before, but remains

217. Korsgaard, *Standpoint*, 288–89. To clarify, the insertion of the terms *Wille* and *Willkür* into this English translation of the text is what is being referred to as ‘[Korsgaard’s] additions.’ The insertion of these terms, from the original German, is intended to help clarify, for the reader, Kant’s argument here.

218. Korsgaard, *Standpoint*, 295.

219. Korsgaard, *Standpoint*, 296.

important for an analysis of how it is we are both givers, and subjects, of the moral law in the KoE.

In order to talk about the KoE, Korsgaard begins with an analysis of two of its constitutive elements: reciprocity and responsibility. Responsibility, according to Korsgaard, is a term that is often obscure in philosophy because of the multiple meanings the term possesses. One such meaning identifies ‘responsibility’ with the attribution of either praise or blame in a given situation. Another meaning of responsibility, however, does not deal in praise or blame, but rather in reliability and/or trustworthiness. We say someone is a responsible person, for example, when we want to express our belief that the individual in question is someone who we not only trust, but who you should trust as well. In analyzing Kant’s KoE, Korsgaard employs something of a blend of these two positions. For her, when we think about, or conceive of, a responsible person, “we think of the person as someone who should be regarded as reliable and trustworthy and so forth, and *therefore* as a candidate for praise or blame.”²²⁰ Such a concept of responsibility serves as a distinctive, yet constitutive, feature of adult, human relationships. “To hold someone responsible is to regard her as a *person*—that is to say, as a free and equal person, capable of acting both rationally and morally.”²²¹ Such a relationship, of course, must be reciprocal. What you hold for the other, she must hold for you: “When you hold someone responsible, you are prepared to exchange lawless individual activity for reciprocity in some or all of its forms.... You are willing to deal with her on the basis of

220. Korsgaard, “Creating the Kingdom of Ends,” 213n5.

221. Korsgaard, “Creating the Kingdom of Ends,” 189.

the expectation that each of you will act from a certain view of the other.”²²² Within this reciprocal and responsible relationship, Korsgaard indicates, there must also be respect, as respect is what moves you from, say, sentimentality to morality. Comparing it to the concept of love, Korsgaard says that while “love moves you to pursue the ends of another, respect reminds you that she must determine what those ends are; while love moves you to care for the happiness of another, respect demands that you care for her character too.”²²³

These three concepts—responsibility, reciprocity, and respect—are all constitutive elements of Kant’s KoE. To be a member, or rather a (legislating) citizen, of the KoE “is to extend to our inner attitudes and personal choices the kind of reciprocity that characterizes our outer actions.”²²⁴ Within this framework, I must conceive of my ends in such a way that you can make them your own, and I must conceive of your ends as my ends. For Korsgaard, in the KoE, “my own ends must be the possible objects of universal legislation, subject to the vote of all.”²²⁵ Only in this way can one’s authentic autonomy be realized and, similarly, can the moral law be realized. In this relationship of responsible reciprocity, that is to say, in the KoE, all members must be both free and equal persons—

222. Korsgaard, “Creating the Kingdom of Ends,” 189–90. At this point in her argument, I think Korsgaard’s language about how ends are shared and valued is a bit imprecise. I have already identified the direction that Korsgaard eventually goes—that of public, rather than private, reason—so I simply want to note, here, that she develops her argument on this question further, and I will take this perspective up at the end of this section.

223. Korsgaard, “Creating the Kingdom of Ends,” 191.

224. Korsgaard, “Creating the Kingdom of Ends,” 192.

225. Korsgaard, “Creating the Kingdom of Ends,” 193.

an argument that follows from the FoH. The responsibility constitutive of the KoE is, as I have indicated, mutual—responsibility of each for the other. For Korsgaard, there are two reasons why the responsibility constitutive of the KoE must be mutual: first, “[in] order to make the ends and reasons of another your own, you must regard her as a source of value, someone whose choices confer worth upon their objects, and who has the right to decide on her own actions,” and second, “[in] order to entrust your own ends and reasons to another’s care, you must suppose that she regards you that way, and is prepared to act accordingly.”²²⁶ The people who enter into these relationships of mutual reciprocity “must be prepared to share their ends and reasons; to hold them jointly; and to act together.”²²⁷ This is what it means to be a citizen in the KoE.

The question remains, however, as to how we bring this all about. For Kant, we must maintain the possibility—at the very least—of realizing the KoE in a practical way for the concept to even make sense. Nevertheless, precisely how we are to do this is not so clearly spelled out. Korsgaard, however, offer us an avenue for realizing the KoE, constituted as it is by responsibility, reciprocity, and respect. The avenue is that of deliberation. Deliberation is a process that is both internal and external. It is how we make sense of ourselves as agents, and how we make sense of the world around us as the KoE. In discussing the phenomenon of self-constitution—a concept that will be discussed in more detail in the next chapter—Korsgaard says that “deliberative action by its very

226. Korsgaard, “Creating the Kingdom of Ends,” 196.

227. Korsgaard, “Creating the Kingdom of Ends,” 196.

nature imposes unity on the will,”²²⁸ and, therefore, constitutes us, internally, as agents. As agents, however, we do not act alone. Therefore, “[in] order to act together [externally] ... in a way that represents, not some of us tyrannizing over others, but all of us acting as a unit, we must have a constitution that defines the procedures for collective deliberative action, and we must stand by their results.”²²⁹ Being constituted for collective deliberative action, says Korsgaard, is inextricable from the KoE. “Unless you hold others responsible for the ends that they choose and the actions that they do, you cannot regard them as moral and rational agents, and so you will not be able to see them as ends in themselves.”²³⁰ Given the weight Korsgaard places on the process of deliberation—an imperfect procedure to be sure, but a necessary procedure nonetheless—it is important to identify, here, the rationale behind it. It is at this point that I want to return, in greater detail, to a discussion I mentioned earlier on in my argument: the argument between private and public reason. By bringing out what Korsgaard is doing in this argument, I aim to contextualize how it is possible to both deliberate in the KoE and to hold our fellow ‘citizens’ in this position reciprocally, and respectfully, responsible.

As I have indicated, in order for the KoE to be possible, all rational beings must be able to deliberate together about the means and the ends of such a kingdom. One should not be sidetracked, in this discussion, by the question of whether or not such a kingdom

228. Christine M. Korsgaard, “Self-Constitution in the Ethics of Plato and Kant,” chap. 3 in *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 124.

229. Korsgaard, “Self-Constitution in the Ethics of Plato and Kant,” 108.

230. Korsgaard, “Creating the Kingdom of Ends,” 206.

has ever been *actualized*—certainly a legitimate question, but not the one we are pursuing here. The question being pursued here is how *to actualize*—to make possible in the present and the future—such a kingdom. How do we go about formulating a deliberative procedure such that it can bring about the KoE? How do we reason together in an at least potentially successful way? For Korsgaard, this brings us back to a process of reasoning addressed in *The Sources of Normativity*—private versus public reasoning. As discussed earlier in the chapter, Korsgaard—drawing on her articulation of Kant’s FoH—argues that “valuing humanity in your own person somehow implies, entails, or involves valuing it in that of others.”²³¹ The question remains: How? One answer to this question, which I have indicated already, is to say that valuing the humanity in someone means that you take her reasons *as* her reason—worthy of respect, recognition, and value. Her reasons are private to her, and insofar as you are required to value the humanity in her, you are likewise required to value her private reasons. The ‘publicity’ of reasons, in this case, comes about, or, rather, is “*created* by the reciprocal exchange of inherently private reasons, where ... [the ‘publicness’ of reason] in turn is forced on us by the content of the private reasons themselves.”²³² Yet, there is a problem here when we consider the normative force of this argument, which moves from private reasons to public reasons:

Consistency can force me to grant that your humanity is normative for you just as mine is normative for me. It can force me to acknowledge that your desires have the status of reasons for you, in exactly the same way that mine do for me. But it

231. Korsgaard, *Sources*, 132.

232. Korsgaard, *Sources*, 134.

does not force me to share in your reasons, or make your humanity normative for me.²³³

This, of course, poses a problem for Korsgaard. This argument forces us to recognize the private reasons of others as normative for them, but it does not require us to make the private reasons of others normative for us. I can observe the private reasons of others, but I do not have to make them my own. The problem this line of argumentation poses for Korsgaard needs to be addressed, since the KoE, as Korsgaard articulates it, is precisely that space where we *do* take the reasons of others *as* normative for us. Thus, the argument for publically recognizing the private reasons of others *as their own private reasons* will not work in the KoE.

The solution to this problem posited by Korsgaard is “that reasons are not private, but public in their very essence.”²³⁴ There are, she says, two ways in which reasons can be inherently public. The first way she identifies as ‘publicity as objectivity.’ In this case, reasons “are public because they are derived from or refer to certain objective features of the public world, namely, objective values.”²³⁵ This is an argument grounded in a form of realism for Korsgaard, where the private claim that a reason is good for me is simply a way of saying that this reason is objectively good for everyone. The second way in which reason can be understood as inherently public is through ‘publicity as shareability.’ In this case, the publicness of reason is “created by the reciprocal exchange, the sharing, of the reasons of individuals.” This line of argument “acknowledges the point ... [that if] these

233. Korsgaard, *Sources*, 134.

234. Korsgaard, *Sources*, 134–35.

235. Korsgaard, *Sources*, 135.

reasons were essentially private, it would be impossible to exchange or to share them. So their privacy must be incidental or ephemeral; they [i.e. reasons] must be inherently shareable.”²³⁶ For Korsgaard, this is another way of saying that what “both enables us and forces us to share our reasons is, in a deep sense, our *social nature*.”²³⁷ If we are social in this deep way, according to Korsgaard—not just incidentally social, or conveniently social—then we ought to make use of this fact when we consider the constitution of reason. If the KoE is to be realized, “then the kind of argument we need here is not one that shows us that our private reasons somehow commit us to public ones, but one that acknowledges that our reasons were never more than incidentally private in the first place. To act on reason is already, essentially, to act on a consideration whose normative force may be shared with others.”²³⁸

The shareability of inherently public reason, therefore, is what makes deliberation in the KoE possible—as well as the KoE itself possible. Nevertheless, we must still ask the question: Why must we deliberate in the KoE? Why must we deliberate about *reasons* in the KoE? To address this question, Korsgaard turns to an analysis of the normativity of language and meaning. “What obligates me is reflection,” she argues. “I can obligate myself because I am conscious of myself. So if you are going to obligate me I must be

236. Korsgaard, *Sources*, 135.

237. Korsgaard, *Sources*, 135. Again, when Korsgaard talks about ‘nature’ here, I would be more inclined to substitute the term ‘constitution.’ I think this is a more accurate term to designate what Korsgaard is after, given the context of this analysis.

238. Korsgaard, *Sources*, 136.

conscious of you. You must be able to intrude on my reflections.”²³⁹ Thus, the deliberative, reflective process of reasoning presupposes that it is at least *possible* to be affected by the reasons of others. The normative obligations of internal, reflective deliberation must also apply in external reflective deliberation. You must be able to obligate me—to make your reasons normative for me—in the same way that I must be able to obligate myself—to make my reasons normative for you. Language cannot be an inherently private endeavor that *happens to be* public at times, but the reverse: it is an inherently public endeavor that *happens to be* private at times. In support of this position, Korsgaard turns to Wittgenstein and his *Philosophical Investigations*. Korsgaard’s claim here, and her reason for turning to Wittgenstein, is that “the kind of normativity which he [Wittgenstein] thinks characterizes language and the kind of normativity which I have been attributing to practical reason”²⁴⁰ are similar in an important way. Whereas Wittgenstein believes that it takes a reflective, intersubjective relationship between two or more people in order to make meaning through language, Korsgaard believes that it takes a reflective, intersubjective relationship between two or more people in order to make moral meaning (i.e. normativity) through practical reason. This *public* process of making meaning through practical reason, argues Korsgaard, is mirrored *privately* in reflective consciousness—the deliberative, reflective interaction between the thinking self and the acting self.

239. Korsgaard, *Sources*, 136.

240. Korsgaard, *Sources*, 137.

Thus, because our reflective consciousness obligates us, and obligates us fundamentally in a public deliberation, it also obligates us privately. This process of reflective deliberation is the precise form that interaction takes in the KoE. Here, in the KoE—where we must employ language and meaning in order to undertake the reflective, deliberative process that gives us both obligation and the moral law—we must be able to use language and meaning normatively. For Korsgaard, the “space of linguistic consciousness is essentially public”²⁴¹ and this means that the normative meaning we share in the KoE via linguistic communication must be public—it must be shareable, not just in the sense of recognizing that each of us has a separate, normative language game for ourselves, but that, together, we share a normative language game, where our reasons and meaning are accessible to, and even reflectively confirmed by, the other members of the KoE. As such, “the reasons of others have something like the same standing with us as our own desires and impulses do,”²⁴² and this means that our reason, and our meaning, is already, necessarily, shared. While this brings into relief the concept of obligation in the KoE, what remains to be shown is the space of the moral law in the KoE.

To make this point about the moral law in the KoE, Korsgaard offers an illustrative example that moves from the question of obligation to the question of the moral law. She asks us to consider a situation in which someone (Person A) is bothering

241. Korsgaard, *Sources*, 139–40. While Korsgaard’s focus, here, is on specifically linguistic communication, I think her analysis can be expanded to include other forms of symbolic communication. While I do not have the space to explore this further in this project, I do want to note this possibility I see for her argument in the future.

242. Korsgaard, *Sources*, 140–41.

someone else (Person B), and Person B asks Person A to stop being bothersome. How does obligation in this case happen—the obligation, that is, upon Person A to cease being bothersome. According to Korsgaard, the obligation occurs when Person B asks Person A to stop being bothersome because Person B is implicitly asking Person A to consider how they would like it if the same bothersome interaction were happening to them. This interaction should not be read as a simple reiteration of the Golden Rule. Person B is not asking Person A to take their reason—as a private reason—for not wanting to be bothered into account. Person B is asking Person A to take up their (i.e. Person B's) end as their own (i.e. as Person A's). That is to say, in this moment, Person B is obligating Person A, not simply by asking them to cease the bothersome practice, but by asking them to consider—reflectively—how they would feel if the same practice were directed against them. Person A cannot simply go on being bothersome *in the same way*—though, of course, they can continue being bothersome. They have been called upon—as Korsgaard would say, obligated—to reflect on what they are doing, to undergo the deliberative, reflective process between their thinking and acting selves. If these actions were being done to them—if they took up the reasons and position of Person B—how would they like it? There is an appeal to consistency of reasoning in this argument, but not the type of consistency of reasoning that leads us down the road of publicity as objectivity (i.e. the Golden Rule). In deliberating on the question of 'How would I like it if this bothersome interaction was directed against me?' one is reminded, says Korsgaard, "of what the value of humanity requires."²⁴³ It does not simply require me to recognize that you have your

243. Korsgaard, *Sources*, 143.

own private reasons for wanting me to stop being bothersome. It does not require us to adopt and enact a ‘publicity as objectivity,’ or a form of ‘Golden Rule,’ ethics whereby Person A ought only do unto Person B what they would want Person B to do unto them. The logic of this ‘Golden Rule’ ethic requires us to adopt the position—which Korsgaard rejects—whereby reasons are essentially private, and morality requires only that I respect the normativity of your private reasons for you, even though they have no normative force for me. While one may recognize another’s reasons, they would not provide one with an obligation to stop being bothersome—the gap between private and public reason would not be bridged. However, when one considers ‘what the value of humanity requires’ from the perspective of ‘publicity as shareability,’ one is not simply being asked to recognize the other’s reasons as her own private reasons. She is being asked to consider the reasons that we share—the public reasons that have normative meaning for both of us. We are not simply invited to consider the private reasons of others, which will not, in the end, move us. The argument Korsgaard is proposing, which emphasizes the inherent publicness and shareability of our reasons, “invites [one] *to change places* with [another], and you could not do that if you failed to see what you and the other have in common.”²⁴⁴ Thus, the space of this reflective deliberation constituted by ‘publicity as shareability’—the space, in other words, of the moral law—is none other than the CI. This is why reflective, deliberative reason provides us with public, normative reasons in the KoE: “Human beings are social animals in a deep way. It is not just that we go in for friendship or prefer to live in swarms of packs. The space of linguistic consciousness—the space in which

244. Korsgaard, *Sources*, 143 (*emphasis mine*).

meaning and reason exist—is a space that we occupy together,”²⁴⁵ and the CI is our moral law.

In light of this, we can see why the KoE, as the contextual space for both the FoH and the FoUL, is so central to both Kant’s articulation of the CI and Korsgaard’s interpretation of it. Responsibility, reciprocity, respect, reflective consciousness, deliberation, and the normativity of meaning and language are all integrally intertwined in the KoE. For Korsgaard, “holding others responsible is an inevitable concomitant of holding ourselves so, both in particular personal relation and in more general moral ones.”²⁴⁶ Therefore, “when we enter into relations of reciprocity, and hold one another responsible, we enter together into the standpoint of practical reason, and create a Kingdom of Ends on earth.”²⁴⁷

Conclusion

Here, at the end of this chapter, the question ‘Where are we?’ returns. At the beginning of this discussion, we followed Korsgaard in developing a standpoint from which an agent could act in the world. The standpoint of practical reason “is a perspective ... from which we see the world in terms of the interests of humanity. We can describe these interests in terms of rational action, the setting and seeking of ends, or even the free pursuit of happiness. And from this perspective, it is the system of the ideal ends of practical reason

245. Korsgaard, *Sources*, 145.

246. Korsgaard, “Creating the Kingdom of Ends,” 209.

247. Korsgaard, “Creating the Kingdom of Ends,” 212.

that emerges as the end in view, the ideal final good.”²⁴⁸ Adopting the standpoint of practical reason orients us when engaging in discussions and conversations of Kant’s practical philosophy. We must first think in terms of the universalization principle of the CI—the FoUL. Kant is incredulous: the form of the CI—the form that a maxim must take if it is to be a moral maxim at all—is the form of universality. Nothing, at least at this stage of the process, gives content to the form of the maxim. All that it has to have is the form of universalization.

What gives the CI its normative content—that is, the source of its normativity—is reflective consciousness. What makes reflective consciousness normative, in turn, is the dignity of humanity—the ‘matter,’ or content, of the CI. The dignity of humanity is the source or ground—while universalization is the form—of normativity for both Kant and Korsgaard. Constituted by autonomous reflective consciousness made possible through the deliberative interaction between the thinking and acting selves, the dignity of humanity is that which creates value in the world. By virtue of the dignity constitutive of humanity, rational creatures create value in the world in and through their actions. To make something one’s purpose is to value it, and at the core of any system of valuation stands something that is valuable in itself. This, says Korsgaard, is identified by Kant as the dignity of humanity.

A complete description of the dignity of humanity, however, requires recognition of the others around us who are also constituted by the dignity of humanity—who are also value-creating beings and, therefore, ends in themselves as well. In order that we not

248. Korsgaard, *Standpoint*, 254.

be understood as isolated, ‘autonomous’ beings who are exclusively self-interested, Korsgaard brings out, in a compelling fashion, Kant’s third formulation of the CI: autonomy in the Kingdom of Ends. Through her discussions of reason, deliberation, normativity, language, meaning, reciprocity, and respect, Korsgaard offers a clear and compelling context within which the dignity of our humanity is both affirmed and confirmed. We are not just isolated individuals, but we are members of a KoE. In the KoE, we come to value and be valued as ends in ourselves, through the shareability—the publicness—of our reason. Practical reason, as reflective endorsement, is the process by which we are confirmed in our humanity. It is the source of our dignity and moves us to think rigorously and deeply about the human community to which we belong as legislating members.

If the argument I have been articulating in this chapter is correct, then Kant may well offer ethics a communicable, shareable, normative source, or groundwork, for ethics. It is in the dignity of humanity, so conceived by Kant and articulated by Korsgaard, that the source of normativity lies. It must have the form of universalization, and be embedded within the public, reflective, and deliberative context of the KoE; yet it falls to humanity, as autonomous, rational, and reflective, to serve as the normative groundwork for ethical reflection.

In the next chapter, I will take what has been discussed in this and the previous chapter, and compare it to the groundwork provided for ethics found in the natural law. My aim will be to compare and contrast these two ethical sources and ethical systems—around such issues as reason, deliberation, normativity, community, etc.—in order to

draw out of them a robust and responsible Christian ethic. It is my contention that Kant provides a more compelling groundwork from which to construct a contemporary Christian ethic, but it will be for the next chapter to discuss and evaluate the merits of this claim.

CHAPTER IV
PHILOSOPHICAL AND CATHOLIC ETHICS IN DIALOGUE

Introduction

Before we embark upon the final analysis of this dissertation, I think it is important to take stock of where we find ourselves at this point. In the first three chapters, I explored various theories of the natural law in contemporary Catholic ethics, offered a close reading of Kant's *Groundwork of the Metaphysics of Morals* as it pertains to his practical philosophy, and interpreted Kant through the work of Korsgaard in order to highlight those dimensions of his (and her) thought which pertain to contemporary questions of normativity, dignity, humanity, and rights. Underlying this entire analysis—sometimes in the foreground, sometimes in the background—is the perduring question of human rights. What are they? How—if at all—do we have them? What is the source/impact/justification of human rights within a particularly Catholic ethics? In the hopes of addressing these questions, this analysis has devoted itself to exploring the foundations—or the groundwork—for such a discourse. In order to understand what human rights are—and if we have them—we need to understand, as best we can, where they come from. Thus, while the politics of human rights is the conversation this dissertation hopes to contribute to, the content of this analysis has been deliberately more interested in exploring the theoretical and practical underpinnings of human rights discourse. Thus, this final chapter will not attempt to articulate a new—or renewed—list

of human rights or, as Finnis would put it, basic human goods. What this chapter will offer, however, is a synthesis of the different perspectives and foundations articulated thus far. The objective here is not a refutation of one argument through the hermeneutic of another, but rather a reflection of the benefits and challenges present in each. This being said, it is my belief—and part of the objective of this dissertation—to suggest to Catholic ethics that the practical philosophy of Kant, interpreted through the reflective action theory of Korsgaard, offers us a compelling starting point for these reflections that we ought to take more seriously, and consider in more detail, than we sometimes do. Too often, we defer to the tradition of the natural law for framing and constituting our ethics without sufficiently exploring alternative systems of thought. From an ethical perspective, I believe that Kant offers a system of thought that merits close, analytic reflection, and it will be part of the task of this chapter to identify why.

All this being said, allow me to briefly outline the structure of this chapter before embarking upon my analysis. First, I want to return, for a moment, to Korsgaard. In chapter three, I explored Korsgaard's work as it related to her interpretation and analysis of Kant. Yet, in addition to being an expert in Kant's practical philosophy, Korsgaard is a moral philosopher in her own right. In her book *Self-Constitution: Agency, Identity, and Integrity*,¹ she offers her own approach to practical, moral philosophy, and it is this approach that I want to take up in greater detail. For Korsgaard, it is the task of self-constitution that becomes the normative task of ethics—a self-constitution informed, to a

1. Christine M. Korsgaard, *Self-Constitution: Agency, Identity, and Integrity* (Oxford: Oxford University Press, 2009).

large extent, by Kant's practical philosophy and the three formulations of the CI. I want to explore this work further in order to both situate and articulate the kind of ethical project I understand both Korsgaard and Kant to be after on the one hand, and, on the other hand, offer a constructive, ethical approach that allows us to speak of dignity, humanity, and rights—for example—in a way that is both philosophically sound and practically compelling. Properly understood, I find Korsgaard's analysis to be compatible with, yet not uncritical of, a Catholic ethical approach to ethical reflection.

Second, I want to place the Kantian/Korsgaardian analysis I have been exploring in this dissertation in dialogue with the three representative natural law theorists from chapter one. Specifically, I want to explore the similarities and differences between these approaches. As you will recall, the natural law theory offered in Finnis places great emphasis on the natural goodness necessary for ethical reflection. The good is the ground of the right, and both are to be found in nature. Kant and Korsgaard, however, locate the ground of ethical reflection in freedom, not nature. While there are many similarities between Finnis, Kant, and Korsgaard, placing them in dialogue specifically on this issue will bring to light not only those places where they differ, but also those avenues for further engagement that might inform how Catholic ethicists do ethics today. In the work of Porter, it is in terms of virtue ethics that we find the natural law expressed. Once again, we find both similarity and difference between Porter's approach and the approaches of Kant and Korsgaard. In both, practical reason and practical identity occupy a place of central concern; however, in Porter's approach to, and understanding of, practical reason, virtue becomes an expression of the discovery of one's own nature, whereas in

Korsgaard's approach to practical reason—through self-constitution and practical identity—virtue is not an expression of a discovered nature, but rather, an expression of the reflective process constitutive of humanity, practical identity, and self-constitution. Once again, an exploration of the similarities and difference here can prove illustrative and informative for the practice of Catholic ethics today. In the work of Traina, we find the question of the particular and the universal placed in the fore of natural law thought, through a critical feminist hermeneutic. Traina aims to strike a balance between the experience and expression of particularity and 'thick' descriptions today with the more (critically informed) universality offered in the natural law theory that emerges out of Aquinas. Central to Traina's analysis—as it was in Porter's—is the question of practical reason. Again, Kant and Korsgaard are deeply interested in this question as well, and one of the key areas in this discourse where Traina, Kant, and Korsgaard both meet and depart is the question of practical reason as being either monological or dialogical—is practical reason something I bring to ethical reflection, or is it something that emerges within a community of reflection. Exploring and assessing these interpretations of practical reason, in light of the persisting challenges of adequately bringing together the particular and the universal in ethical reflection, will bring to light some of the key characteristics of both practical reasoning and Catholic ethical discourse.

Finally, in the conclusion of this chapter, I will offer a brief articulation of what my own understanding of Catholic ethics looks like in light of this analysis offered in this project. My hope is that the approach to ethics I offer in this section—as well as the dissertation as a whole—can bring to the table of Catholic ethics further avenues for our

collective reflection on the sources, methods, and practical impact of ethics in the 21st century. Additionally, in this section, I will also identify some of the challenges facing my project and some of the further avenues for research that I see coming out of it. One of the principal areas for further work I want to identify, here, is the area of theological reflection. My dissertation project is decidedly ethical in its sources, methodological approach, and form of argumentation. Nevertheless, I believe that the impact of this project is both deeply ethical and deeply theological. While I will not go into the details of the theological avenues I see this project traversing, I will raise up some of the principal theological question at the heart of my analysis. Addressing and assessing these questions, I believe, can both critically and constructively contribute to both the continuation of Catholic ethical reflection and the continuation of those forms of Catholic theological reflection that remain relevant to our 21st century perspectives.

Korsgaard and Self-Constitution

“Human beings are *condemned* to choice and action.”² This, suggests Korsgaard, is the fundamental context within which we approach and understand the question of human agency. It is a constitution that is at the same time both free and limited, both active and passive. It is into such a situation that the human person is thrown, so to speak, or—in Korsgaard’s language—condemned. ‘We cannot but...’ as the saying goes. Still, such a claim requires a clear investigation into the different dimensions of human constitution that both contextualize and nuance this standpoint. This is the task Korsgaard sets for herself in her book *Self-Constitution*, and it is the task I will undertake to explore in this

2. Korsgaard, *Self-Constitution*, 1.

section. In presenting Korsgaard's argument in this text, I will proceed as follows. First, I will explore Korsgaard's analyses of the concepts of agency, identity, and normativity. Building on this, I will next explore Korsgaard's arguments in favor of practical reason and the roles of autonomy and efficacy as constitutive of both agency and action. Finally, I will look to the concepts of unity, personhood, and the form of self-constitution that makes us citizens in the Kingdom of Ends. Once I have explored Korsgaard's argument in this text, we will return to the natural law tradition, as articulated in chapter one, in order to engage the more traditionally Catholic form of ethical reflection (i.e. the natural law) with a more robustly philosophical form of ethical reflection from Kant (and Aristotle and Plato) and Korsgaard.

Agency, Identity, and Normativity

In considering the question of agency, Korsgaard concedes that both human and non-human animals act, but argues that "[only] human actions can be morally right or wrong."³ There is something about human action that makes it distinct from non-human, or just general, acting. For Korsgaard, the distinctive feature of human action is communicated in and through the concept of rationality. Reason, she says, "is a power we have in virtue of a certain type of self-consciousness—consciousness of the grounds of our own beliefs and actions."⁴ Reason is a power, and as such, it is not something we have, but, rather, something we have the ability to do. Insofar as we are constituted by a form of consciousness that enables us to be reflectively aware of our beliefs and actions—

3. Korsgaard, *Self-Constitution*, xi.

4. Korsgaard, *Self-Constitution*, xi.

and to choose or reject them—we are able to determine our courses of action in day-to-day life. To put it another way, reason—on Korsgaard’s interpretation—is “the capacity for normative self-government.”⁵ This capacity for self-government requires agents to have a normative self-conception. The reason for this, suggests Korsgaard, is that when an agent chooses an action—when that action is attributable to that agent—then “you are constituting yourself as the author of that action, and so you are deciding who to be.”⁶ You—the agent—are developing a self-conception of who you are, and how you are to be in the world, in the very act of self-constitution—of choosing, and endorsing your actions. This normatively formed self-conception of oneself as an agent is alternatively termed, by Korsgaard, as one’s practical identity. Within this notion of one’s practical identity, we return to that distinctive feature of human agency that conditions our (i.e. human) actions—whether or not the actions we chose to endorse and enact are good or bad, right or wrong. For Korsgaard, a good action “is one that constitutes its agent as the autonomous and efficacious cause of her own movements.”⁷ How do we determine action that is autonomous and efficacious? Korsgaard turns to Kant’s two imperatives of practical reason: “Conformity to the categorical imperative renders us autonomous, and conformity to the hypothetical imperative renders us efficacious.”⁸ Such a notion of practical identity requires, at the same time, the self-constituted unity of the agent. In

5. Korsgaard, *Self-Constitution*, xi.

6. Korsgaard, *Self-Constitution*, xi.

7. Korsgaard, *Self-Constitution*, xii.

8. Korsgaard, *Self-Constitution*, xii.

order for an action to be chosen by an agent, and therefore attributable to her, the action in question must be attributable to the agent as a (unified) whole. Only then can this understanding of practical identity attend to the question of morality. According to Korsgaard, this notion of practical identity is inextricable from “a commitment to the moral law [that] is built right into the activity that, by virtue of our being human, we are necessarily engaged in: the activity of making something of ourselves.”⁹ The inescapable features of human action—goodness/badness, rightness/wrongness—constitute our concept of humanity, and if we are condemned—as Korsgaard suggests—to choice and action, then ethics and morality must reflect upon the concept of humanity at work in this analysis. Humanity, for Korsgaard, becomes a constitutive—if not the definitive—dimension of ethical and moral reflection, and this, I want to suggest, ought to be at the core of the dialogue between contemporary Catholic and philosophical ethics. First, however, we must explore Korsgaard’s analysis further, in order to understand how she comes to her position.

I opened this section by quoting Korsgaard on the condemnation of human persons to choice and action. Acting and choosing are simply that which we cannot but do—they are necessary. Still, what kind of necessity is indicated here? Korsgaard is clear that this necessity is not “causal, logical, or rational,” but rather “our *plight*: the simple inexorable fact of the human condition.”¹⁰ We can imagine—each of us in our own way—an encounter with a choice or action that we would prefer not to make or undertake, yet

9. Korsgaard, *Self-Constitution*, xii.

10. Korsgaard, *Self-Constitution*, 2.

we still make or undertake it. This is the kind of necessity—where we do not *want* to do something, yet we *choose* to do it anyway—that interests Korsgaard. Sometimes, she says, “we find ourselves doing what we think we ought to do, in the teeth of our own reluctance, and even though nothing obvious forces us to do it.”¹¹ There is something in this necessity of choice and action that compels us, and, for Korsgaard, it comes down to the normativity of such necessity. Thus, Korsgaard names the normativity of an obligation (to choose or act as we *ought*, rather than as we *want*)—the very operation of normativity within us—necessitation (a term she borrows from Kant).¹² This concept, notes Korsgaard, has fallen out of favor in moral and ethical theory of late, since it seems to imply one of two undesirable models for human constitution: The (Reformed) Miserable Sinner or The Good Dog. The model of The (Reformed) Miserable Sinner depicts an individual “who must constantly repress his unruly desires in order to conform to the demands of duty,” whereas the model of The Good Dog depicts an individual “whose desires and inclinations have been so perfectly trained that he always does what he ought to do spontaneously and with tail-wagging cheerfulness and enthusiasm.”¹³ Both of these models fail, for Korsgaard, because they fail to provide a compelling argument for why we are in fact necessitated. To put this in slightly more theoretical language, Korsgaard wants to articulate her approach to necessitation and self-constitution differently from either dogmatic rationalism (embodied in The (Reformed)

11. Korsgaard, *Self-Constitution*, 2–3.

12. Korsgaard, *Self-Constitution*, 3.

13. Korsgaard, *Self-Constitution*, 3.

Miserable Sinner model) or sentimentalist theories (The Good Dog model). In both these schools of thought, it is the implicit effortlessness of their goals (rationalism and goodness, respectively) in relation to necessitation that is unsatisfying to Korsgaard. For her, there is “a kind of struggle ... involved in the moral life,” and this struggle is not accurately portrayed in either of these models or approaches. For Korsgaard, “it is not the struggle *to be rational* or *to be good*” that is of principal concern, but rather the “ongoing struggle for integrity, the struggle for psychic unity”¹⁴ that incorporates and articulates the question of necessitation accurately. Therefore, she suggests that “[the] work of achieving psychic unity, the work that we experience as necessitation, is what I am going to call *self-constitution*.”¹⁵ Self-constitution, for Korsgaard, is the definition of action, and it is to the explication of this point that we now turn.

Unlike John Stuart Mill and the utilitarian school of thought, Korsgaard wants to suggest that action is not principally about production—about bringing something about.¹⁶ She would prefer to conceptualize action along a specifically Aristotelian-Kantian line of thought. While this may appear strange at first, Korsgaard explains why she brings these two thinkers together in her action theory. For Aristotle, she argues, “actions, or at least good actions, are chosen for their own sake, not for something they produce”¹⁷—as the utilitarians believe. What is important here, and what is a distinguishing feature of

14. Korsgaard, *Self-Constitution*, 7.

15. Korsgaard, *Self-Constitution*, 7.

16. See John Stuart Mill, *Utilitarianism*.

17. Korsgaard, *Self-Constitution*, 9.

Aristotle's analysis, is that in an action, both the act and the aim are inextricable from the overall concept. As Korsgaard says, the "key to understanding Aristotle's view is that the *aim* is included in the description of the action, and that it is the action as a whole, *including the aim*, that the agent chooses."¹⁸ Action thus understood is action for the sake of the noble, and this is the key dimension of Aristotle's thought that makes it "precisely the same as Kant's."¹⁹ Insofar as Aristotle's concept of the noble represents actions that contain both an act and an aim, it parallels Kant's understanding of the Categorical Imperative, which states that "the maxim of an action which is tested by it [i.e. the Categorical Imperative] includes both the act to be done and the end for the sake of which that act is done."²⁰ This, argues Korsgaard, is what Kant means by an action being done 'from duty.' This is a point that is much misunderstood in Kant's philosophy. Acting 'from duty,' says Korsgaard, "is not an alternative purpose that we have in our actions, but the characterization of a specific kind of value that a certain act performed for the sake of a certain end may have." She goes on: "The idea that acting from duty is something cold, impersonal, or even egoistic is based on the thought that the agent's purpose is 'in order to do my duty' *rather than* 'in order to help my friend' or 'in order to save my country' ... [but] that is just wrong."²¹ Acting 'from duty,' for Kant, means acting on a maxim that contains within it both an act (to be done) and its end (for the sake of

18. Korsgaard, *Self-Constitution*, 10.

19. Korsgaard, *Self-Constitution*, 10.

20. Korsgaard, *Self-Constitution*, 10.

21. Korsgaard, *Self-Constitution*, 11.

which the act is done). Acting ‘from duty’ is simply the description of a maxim that one reflects on endorsing through the Categorical Imperative. Thus, both Aristotle and Kant (and Korsgaard along with them) distinguish between acts—making a false promise—and actions—making a false promise in order to get some ready cash. For all three thinkers, “it is the whole action that is strictly speaking the object of choice ... [and therefore] it is the *action* which properly speaking is morally good or bad, noble or base.”²²

In light of this understanding of action, Korsgaard articulates the following understanding of agency (and, as we shall see, practical identity):

I believe that it is essential to the concept of action that an action is performed by an agent ... [one] must be able to attach the ‘I do’ to the action ... [it requires] someone to whom we can attribute the movement in question as its author. And I also believe it is essential to the concept of agency that an agent be unified. That is to say: to regard some movement of my mind or my body as *my action*, I must see it as an expression of my self as a whole.²³

What Korsgaard is getting at here is the deep connection she sees between action and agency. For an action to even be considered as such, it must be undertaken by an agent. What is more, for an agent to be understood as such, she must undertake, and be constituted by, her actions. This is not an uncontroversial point. Korsgaard argues that “in [a] relevant sense there is no *you* prior to your choices and actions, because your identity is in a quite literal way *constituted* by your choices and actions.”²⁴ Action and agency are not simply related, but are, in fact, inextricably connected—we cannot have

22. Korsgaard, *Self-Constitution*, 12.

23. Korsgaard, *Self-Constitution*, 18.

24. Korsgaard, *Self-Constitution*, 19.

one without the other, and if one is to be considered as ‘prior’ to the other, it is action, not agency, which takes this priority. How does Korsgaard defend this position? She begins by noting that human beings—human agents—are constituted by a specific form of self-consciousness—one that is distinct from other, non-human beings: “we [human beings] are conscious of the grounds on which we act, and therefore are in control of them.” As I have previously noted in Korsgaard’s work, a key difference between human and non-human creatures is the former’s ability to reflect on their incentives and choose to act (or not) upon them, rather than being presented with an incentive and, at the same time, acting on it, as in the case of the latter. The ability to reflect on our principles of action prior to choosing them is the form of self-consciousness Korsgaard is interested in, and the action of self-conscious reflection is what constitutes agency: “When you deliberately decide what sorts of effects you will bring about in the world, you are also deliberately deciding what sort of cause you will be. And that means you are deciding who you are.”²⁵ Put another way, “[it] is as the possessor of personal or practical identity that you are the author of your own actions, and responsible for them. And yet at the same time it is in choosing your actions that you create that identity. What this means is that you constitute yourself *as* the author of your actions in the very act of choosing them.”²⁶ This, says Korsgaard, is the paradox of self-constitution.

25. Korsgaard, *Self-Constitution*, 20.

26. Korsgaard, *Self-Constitution*, 20.

The paradox emerges out of an Aristotelian model of agency, whereby “a living thing is a thing that is constantly making itself into itself.”²⁷ Accordingly, one ought not think or speak about self-constitution in terms of production—of producing a self as a commodity or a result or a thing. One ought to think and speak of self-constitution as the “process that is the essence of life.”²⁸ This, suggests Korsgaard, is precisely what Kant is after when he speaks about being a ‘person’ in the *Groundwork of the Metaphysics of Morals*, rather than being a ‘thing.’ Insofar as the distinctive feature of personhood, in Kant, is rational activity, and rational activity, in Korsgaard, is “a form of self-conscious activity,” then “personhood is quite literally a form of life, and being a person ... is being engaged in an activity of self-constitution.”²⁹ In light of this, the paradox of self-constitution becomes less of a paradox. It is not the old ‘Which came first, the chicken or the egg?’ conundrum. The form of self-constitution at work in Korsgaard’s Aristotelian-Kantian analysis is a form of self-constitution whereby “what it is to be a person, or a rational agent, is just to be engaged in the activity of constantly making yourself into a person.”³⁰ The paradox, says Korsgaard, is overcome, and in its place is a more robust conception of practical identity. Such a conception recognizes the plurality and particularity of our practical identities, yet aims to bring them together into a unified whole.

27. Korsgaard, *Self-Constitution*, 41–42.

28. Korsgaard, *Self-Constitution*, 42.

29. Korsgaard, *Self-Constitution*, 42.

30. Korsgaard, *Self-Constitution*, 42.

If, as I have argued, Korsgaard is correct in her articulation of the relationship between action and agency, then one's practical identity must contain within it both the incentives and the principles that ground its normativity. Put another way, our practical identities must be both our "standing sources of incentives, as well as [the] principles in terms of which we accept and reject [them]." ³¹ As incentives, our practical identities are contingent; as principles, our practical identities are necessary. This interplay of the contingent and the necessary—and of trying to make the contingent necessary—"is one of the tasks of human life" ³² and the principal task of practical identity. We engage in this process because we must—it is the human plight to which we are condemned. "Carving out a personal identity for which we are responsible is one of the inescapable tasks of human life," ³³ argues Korsgaard, and, as such, determining which principles and incentives we will endorse to constitute this identity requires the recognition of the value of our humanity and the normativity of the principles of practical reason. Insofar as we are the bearers of contingent practical identities who act to make ourselves whole, we are implicitly recognizing our inherent value as rational beings in this process. By determining which of our contingent practical identities we reflectively endorse, we are endorsing "reasons that arise from a certain practical identity," and this, consequently, is just "to value yourself as the bearer of that form of identity." ³⁴ As Korsgaard says, "We

31. Korsgaard, *Self-Constitution*, 22.

32. Korsgaard, *Self-Constitution*, 23.

33. Korsgaard, *Self-Constitution*, 24.

34. Korsgaard, *Self-Constitution*, 24.

owe it to ourselves, to our own humanity, to find some roles that we can fill with integrity and dedication. But in acknowledging that, we commit ourselves to the value of our humanity just as such.”³⁵ What, however, keeps this form of practical identity from becoming relativistic—where any self-constitution is an acceptable self-constitution? The answer lies in Korsgaard’s analysis of the normative dimension of practical identity.

“Action is self-constitution,” argues Korsgaard, and “what makes actions good or bad is how well they constitute you.”³⁶ In determining our practical identity, there are actions which we will wish to claim as either good or bad, right or wrong. These claims are normative claims, and it is important to remind ourselves where Korsgaard locates the source of normativity. As we have just seen, our practical identity is the source of both the incentives and the principles that contribute to our self-constitution. The inextricably contingent dimension of practical identity means that we determine which incentives to choose in order to make ourselves into who we are. Some incentives arising from our practical identity will allow us to become who we are well, others will not. In order to determine which incentives of our practical identity we will endorse, we need to have the principles to make these determinations. This, as we saw in chapter three, is where the hypothetical and categorical imperatives come onto the scene. The hypothetical imperative tells us that we must choose an action that contains both a means and an end—something to be done, and some way of achieving that to-be-doneness. The categorical imperative tells us that any action we undertake must be at least potentially

35. Korsgaard, *Self-Constitution*, 24–25.

36. Korsgaard, *Self-Constitution*, 25.

adoptable by any other person in the same situation. That is, it must be universalizable in the sense in which Kant intends that term. Thus, the principle of practical reason—the combination of the hypothetical and the categorical imperatives—is what aids an agent in determining which incentives of practical identity are to be endorsed if we are to maintain—as Korsgaard believes we must—a sense of unified practical identity. The normativity of this principle lies in its inescapability. Insofar as we are human agents, we are condemned to action; insofar as we are condemned to action, we must determine which actions to undertake, and which to avoid; insofar as we must determine which actions to undertake, we require principles for making such determinations. Thus, according to Korsgaard, the “principles of practical reason are normative for us ... simply because we must act.”³⁷ In light of this, what remains to be explicated is not *that* these principles of practical reason are normative—Korsgaard has already made this point—but rather precisely *how* these principles of practical reason are normative. More specifically, what remains to be explicated is how these principles of practical reason serve to unify our practical identities and constitute our wills. It is to this task that we will now turn.

Practical Reason and the Roles of Autonomy and Efficacy in Agency and Action

When considering the question of how the principles of practical reason are normative, Korsgaard begins by identifying two prominent accounts of normativity that, in her analysis, fall short of fully convincing. These two accounts of normativity, which I will briefly discuss in turn, are the empiricist account and the rationalist account. A brief

37. Korsgaard, *Self-Constitution*, 26.

reflection on each account will help illustrate the key features of an account of normativity that Korsgaard believes her Kantian analysis to more adequately address.

According to Korsgaard, empiricists “have standardly assumed that hypothetical imperatives either are automatically normative or do not need to be normative because they are automatically motivating.”³⁸ A prominent representative of this position is David Hume, whose empirical analysis we addressed in chapter three. For Hume, a hypothetical imperative—which states that one must take the means to one’s end—is a self-motivating principle. Insofar as we pursue an end, we take the necessary means to that end. In fact, pursuing an end requires its means in such a way that to not pursue the means to an end is not to pursue that end at all. The descriptive account here is similar to Korsgaard’s and Kant’s accounts of the hypothetical imperatives, but what makes them different from Hume is that this is not where they locate the question of normativity. For Hume—and the empiricist position that he represents—the question of normativity is grounded in the hypothetical imperative, in the requirement that when we pursue an end, we necessarily take the means to that end. The problem, however, is that this does not serve as a solid ground for normativity. If, in setting an end, one must take the means to that end—and this, in turn, is the source of its normativity—then not taking the means to an end is simply not to actually take the end in question. In other words, the ground of normativity becomes free-floating on this account, because whatever one chooses to do, and actually does, is normative insofar as one has taken the means to the end under consideration. If one does not take the means, then the end in question simply was not actually the end

38. Korsgaard, *Self-Constitution*, 59.

one chose to pursue. Korsgaard's difficulty, here, comes through the prism of the 'ought.'

In this empiricist account, there is no place for the 'ought' because there can never be a conflict between what one does and what one 'ought' to do. In the empiricist account, suggests Korsgaard, "what looks like the principle of instrumental reason [i.e. the hypothetical imperative as the source of normativity] turns out simply to be a *description* of the inevitable effect that a certain kind of judgment has on the human will."³⁹

Ultimately, this is an insufficient ground for the question of normativity, and for this reason the empiricist account of normativity remains unconvincing for Korsgaard. What is not unconvincing, and what we need to keep in mind for Korsgaard's constructive account of normativity, is the operation of the hypothetical imperative. In pursuing—or, more accurately, willing—our ends, that we must take the means necessary to those ends is a constitutive principle of rationality. While by itself it is an insufficient *ground* for the question of normativity, Korsgaard will argue that, combined with the categorical imperative, the hypothetical imperative nevertheless remains a constitutive *feature* of normativity.

Alternatively, Korsgaard identifies the rationalist approach to normativity as "a step in the right direction,"⁴⁰ but one that, nevertheless, fails to sufficiently ground the question of normativity. She takes the rationalist to be akin to the externalist or the substantive realist—one, as noted in chapter three, who "supposes that there are eternal

39. Korsgaard, *Self-Constitution*, 61.

40. Korsgaard, *Self-Constitution*, 64.

normative verities of some sort”⁴¹ which are out there in the world. That is to say, there are ‘facts’ that are ‘real’ and, as such, carry normative weight in virtue of their ‘reality.’ The problem with this position, however, is that “the very phenomenon we are trying to explain” in exploring the question of normativity (i.e. the question of rational requiredness) “must be, so to speak, front-loaded into the picture.”⁴² The rationalist analysis must presume that which it is trying to prove, by smuggling the conclusion into its premise. This makes the rationalist articulation of the ground of normativity insufficient. Additionally, the rationalist account also misconstrues the question of the hypothetical imperative along the same lines. As Korsgaard notes, “we cannot explain how we are motivated to act on the hypothetical imperative, much less how we are bound by it, by appealing to the hypothetical imperative *itself*.... [The] hypothetical imperative cannot be a normative truth that we *apply* in practice, because it is the principle *in accordance with which* we are acting when we apply truths in practice.”⁴³ The specter of smuggling the conclusion into the premise appears once again. Like the ‘facts’ that allege normativity, the claim that the hypothetical imperative itself constitutes the ground of normativity is incoherent, since the hypothetical imperative is not a thing to be applied to a given situation. It does not operate in the realm of application; rather, it operates in the realm of principles. The problem of the rationalist position, suggests Korsgaard, “rests in thinking of the principles that define the obligatory and the forbidden as standards we

41. Korsgaard, *Self-Constitution*, 64.

42. Korsgaard, *Self-Constitution*, 65.

43. Korsgaard, *Self-Constitution*, 65.

apply when we are deliberating about what to do.”⁴⁴ Such principles cannot be applied because they are, first and foremost, what we engage when we want to apply a normative truth in practice. To engage these principles in order to apply normative truths, and then to turn around and invoke these same principles as normative truth, is to succumb to Korsgaard’s critique—that such a position includes the conclusion in the premise. As she, herself, says: “The argument I’ve just given against the rationalist account of normativity amounts to an argument that the principles of practical reason cannot obligate us to act if they enter into practical deliberation as premises.”⁴⁵ In light of the insufficiency of both the rationalist and the empiricist accounts of normativity and the principles of practical reason, Korsgaard offers her own, Kantian account of normativity and the principles of practical reason by recognizing the rational necessity of the hypothetical imperative, but only when it is coupled with the categorical imperative.

To understand Korsgaard’s position on the normativity of practical reason, we must first be clear about how she understands the hypothetical imperative. We have seen, in her analyses of the empiricist and rationalist account of normativity, how we ought *not* understand the hypothetical imperative, but it is important to see how she does understand it. The hypothetical imperative is, for Korsgaard, a straight-forward, clear-cut analytic principle: “The hypothetical imperative says that if you will an end, you must will the means to that end.”⁴⁶ The hypothetical imperative, then, becomes the constitutive

44. Korsgaard, *Self-Constitution*, 65.

45. Korsgaard, *Self-Constitution*, 67.

46. Korsgaard, *Self-Constitution*, 68.

principle of willing—as opposed to simply wishing or wanting. To will something—to choose to bring something, some end, about—is to adopt the hypothetical imperative as your principle. Consequently, “the person who wills an end *constitutes himself* as the cause of that end.”⁴⁷ Thus, the hypothetical imperative is a normative principle insofar as it is a constitutive principle of action. How, though, does this square with the analysis of, and warnings against, adopting the hypothetical imperative as one’s normative principle that Korsgaard has recently identified? The hypothetical imperative “describes what you do when you will an action: you determine yourself to be a cause, the cause of some end.”⁴⁸ The emphasis here is on the *cause*, but the question still remains: What is this cause? Korsgaard’s answer—and the dimension of her normative account that distinguishes it from the aforementioned accounts—is that the cause in question is *you*. While the hypothetical imperative tells us *that* you are the cause of some end, there is yet another, related principle that tells us that *you* are the cause of some end. That principle is the Categorical Imperative. As Korsgaard argued in her analyses of the empiricist and rationalist accounts of normativity, “we never make a choice that is governed only by the hypothetical imperative.”⁴⁹ To do so would be to undermine the very concept of normativity. On her account, “every choice we make is governed by the categorical imperative.”⁵⁰ In this way, Korsgaard argues that the hypothetical imperative ought not

47. Korsgaard, *Self-Constitution*, 68.

48. Korsgaard, *Self-Constitution*, 69.

49. Korsgaard, *Self-Constitution*, 70.

50. Korsgaard, *Self-Constitution*, 70.

be thought of as a principle in its own right; rather, the hypothetical imperative ought to be thought of as a dimension of the Categorical Imperative because it “captures an *aspect* of the categorical imperative: the fact that the laws of our will must be *practical* laws.”⁵¹ Thus, we come to see how the Categorical Imperative—as a principle which incorporates the hypothetical imperative as a constitutive aspect of it—serves as the principle of practical reason. “To act is to constitute yourself as the cause of an end”⁵² argues Korsgaard. On the one hand, “the hypothetical imperative picks out the *cause* part of that formulation: by following the hypothetical imperative, you make yourself the *cause*.”⁵³ On the other hand, “the categorical imperative picks out another part of that formulation—that the cause is *yourself*.”⁵⁴ Together, these two imperatives—which are really one in the principle of practical reason—ground Korsgaard’s account of normativity. We can now see more clearly the relationship between the hypothetical and the categorical imperatives, and how they, together, constitute the principle of practical reason. How, then, does this principle constitute each of us as agents, as Korsgaard believes it must? To answer this, we must now turn to the questions of action and agency, of autonomy and efficacy. Through elaborating Korsgaard’s arguments on these points we will be able to articulate a fuller description of the concept of self-constitution—and the consequent unity of the self—which she takes to be at the heart of her analysis.

51. Korsgaard, *Self-Constitution*, 70.

52. Korsgaard, *Self-Constitution*, 72.

53. Korsgaard, *Self-Constitution*, 72.

54. Korsgaard, *Self-Constitution*, 72.

As I have just argued, for both Korsgaard and Kant “the hypothetical and categorical imperatives are constitutive principles of volition and action.”⁵⁵ The concept of action to which they both subscribe says that action is “determining yourself to be the cause of some end.”⁵⁶ Insofar as action and volition are constituted by the principle of practical reason (that is, by both the hypothetical and the categorical imperatives), “[the] hypothetical imperative binds you because *what* you are determining yourself *to be* when you act is the *cause* of some end. The categorical imperative binds you because *what* you are determining to be *the cause* of some end is *yourself*.”⁵⁷ As the principle of practical reason, these two imperatives operate together, each attending to different aspects of the same maxim. Thus, the categorical imperative really does serve, for Korsgaard and Kant, as the one and only law of practical reason. If their analysis is correct, then how does this principle of practical reason make sense of the concept of self-constitution that Korsgaard has placed at the heart of her analysis? “[Action] is self-constitution,”⁵⁸ she argues, and the essential characteristics of the self-constituted agent—the agent who chooses her actions—are autonomy and efficacy. Yet, what does Korsgaard mean by this? Why autonomy and efficacy?

First, it is important to understand what these terms mean within Korsgaard’s analysis. When speaking of efficacy, she means “an agent is *efficacious* when she succeeds

55. Korsgaard, *Self-Constitution*, 81.

56. Korsgaard, *Self-Constitution*, 81.

57. Korsgaard, *Self-Constitution*, 81.

58. Korsgaard, *Self-Constitution*, 82.

in bringing about whatever state of affairs she intended to bring about through her actions.”⁵⁹ When speaking of autonomy, she means that “[an] agent is *autonomous* when her movements are in some clear sense self-determined or her own.”⁶⁰ These two features of agency—efficacy and autonomy—are guided by Kant’s two imperatives: “The hypothetical imperative commands us to be efficacious, and the categorical imperative commands us to be autonomous.”⁶¹ So the principle of practical reason—the Categorical Imperative with the hypothetical imperative as an aspect of it—is an agent’s principle for action, which for Korsgaard, is defined as self-constitution. Yet the question of agency still remains opaque. On the one hand, to be an agent is to act, and to act is to “insert yourself—your first-personal, deliberating self—into the causal network”⁶² of existence. Kant’s account of freedom is central to this entire analysis, but we cannot avoid the looming specter of determinism. For, as Korsgaard says, agents act in freedom, but “then you look back, over your shoulder ... and there they are: the prior causes.”⁶³ The freedom necessary for agency and action appears to be an illusion, particularly when we move—as Kant does—away from the concept of the individual, isolated agent and toward the concept of the individual agent in and among other individual agents. Korsgaard, however, does not think that freedom becomes an illusion or that the necessary

59. Korsgaard, *Self-Constitution*, 82.

60. Korsgaard, *Self-Constitution*, 83.

61. Korsgaard, *Self-Constitution*, 83.

62. Korsgaard, *Self-Constitution*, 86.

63. Korsgaard, *Self-Constitution*, 85.

contextualization of the individual agent among other individual agents requires determinism to reign. While I want to say more about this community of autonomous and efficacious agents—what Kant and Korsgaard refer to as the Kingdom of Ends—I, first, want to further flesh out Korsgaard’s notion of action. Her argument, as we have seen, is not immediately intuitive—an agent is constituted by her actions, rather than the other way around—but, upon reflection, her argument is a strong one, and one that will be essential to understanding how the community of individual, autonomous, and efficacious agents—the moral community, the Kingdom of Ends—operates and attends to the question of normativity.

Actions, for Korsgaard, are characterized by three features. First, “action is an intelligent movement.”⁶⁴ By intelligent, of course, Korsgaard does not mean something laudatory or praiseworthy. Intelligent means that an agent—human or non-human—responds “to representations or conceptions of their environment.”⁶⁵ Korsgaard uses the example of a spider moving toward a moth caught in its web. The spider’s movements are intelligent—they respond to the spider’s conception of its environment. By movement, Korsgaard also means something rather particular. She does not want to limit the concept of movement exclusively to physical phenomena. Rather, movement, for her, is “to render a change in the world (or in the limiting case, to prevent or forestall one).”⁶⁶ It is not the physical phenomenon that constitutes the movement, but the change or effect it has in

64. Korsgaard, *Self-Constitution*, 94.

65. Korsgaard, *Self-Constitution*, 94.

66. Korsgaard, *Self-Constitution*, 95.

the world. The second feature of action is that “action has intentional content.”⁶⁷ Action must be done ‘on purpose’ because this is what makes action “subject to a normative standard of efficacy.”⁶⁸ Action must be subject to the judgments of success or failure—particularly if action is self-constitution—and this can only be the case if action is done for some purpose. Thus, with two of its three features before us, we can say—with Korsgaard—that “action is an intentional movement of an animal that is *guided* by a representation or conception that the animal forms of his environment.”⁶⁹ The third feature of action is attribution. It is here that Korsgaard explains why “the most essential part of the person is *constituted* by her actions,”⁷⁰ rather than her actions beings constituted by her person. An action is attributable to an agent if it is attributable to her form; that is, if it is attributable to her functional organization—her self-maintenance or her self-conception. This form is what “unifies [the agent] into an individual object.”⁷¹ Action—as intelligent movement guided by one’s conception of one’s environment—is therefore attributable to the agent, or put another way, the agent is “formed ... *so as* to produce a movement of that kind.”⁷² For a non-human animal, this means that his

67. Korsgaard, *Self-Constitution*, 96.

68. Korsgaard, *Self-Constitution*, 96.

69. Korsgaard, *Self-Constitution*, 97.

70. Korsgaard, *Self-Constitution*, 100.

71. Korsgaard, *Self-Constitution*, 103.

72. Korsgaard, *Self-Constitution*, 103.

actions are self-determined “when they are governed by his instincts ... [which] are his will, the laws of his own causality.”⁷³ Human animals, however, operate differently.

Rather than acting on instincts, human animals—human persons—act on a combination of incentives and principles. An incentive, according to Kant, is “a motivationally loaded representation of an object.”⁷⁴ Whereas non-human animals act on their instincts and incentives, human persons act on principles of reason and rationality. It is important, here, to recall that for both Kant and Korsgaard rationality “is distinguished from everything else in nature by the fact that it acts not merely in accordance with laws, but in accordance with [the rational being’s] own representation or conception of a law.”⁷⁵ The power of rationality—the power of being a human person—is the power of self-determination. Thus, self-determination in this rational sense requires more than just incentives—it requires principles. A principle, says Korsgaard, “tells us what [an agent] *does* in the face of the incentives that are presented to her, rather than merely describing the effects which those incentives have on her mind.”⁷⁶ Principles are not simply rules or regulations that we find collected into a legal document or rulebook; rather, they “describe something essential to the mental economy of an active or self-determining being.”⁷⁷ Does this mean that non-human (non-rational) animals do not act

73. Korsgaard, *Self-Constitution*, 104.

74. Korsgaard, *Self-Constitution*, 104–5.

75. Korsgaard, *Self-Constitution*, 68.

76. Korsgaard, *Self-Constitution*, 106.

77. Korsgaard, *Self-Constitution*, 106.

on principles? Not exactly. The incentives of non-rational, non-human creatures—their motivationally loaded representations of objects—simply *are* their principles. That which is an incentive is, at the same time, a principle for action. This is not the case for human persons, whose incentives are not their principles for action. Why not? Whereas non-human animals do not choose their principles of causality—that which is their incentive is necessarily their principle for action—“human beings on the other hand do choose the principles of our own causality.”⁷⁸ That is to say:

there are actually two senses of autonomy or self-determination. In one sense, to be autonomous or self-determined is to be governed by the principles of your own causality, principles that are definitive of your will. In another, deeper, sense to be autonomous or self-determined is to *choose* the principles that are definitive of your will. This is the kind of self-determination that Kant called “spontaneity.” Every agent, even an animal agent, is autonomous and self-determined in the first sense.... Only responsible agents, human agents, are autonomous in the second and deeper sense.⁷⁹

What, however, is the ground for the spontaneity that gives rise to this deeper sense of autonomy? For Korsgaard, it is our capacity for reflective deliberation.

Human creatures have self-consciousness in a particular way—that is, in a way distinct from non-human creatures. As I just noted, when it comes to action, we—like all creatures—are presented with an incentive about which we must choose. We choose based on principles. The particularity of human self-conscious, however, is this: “once we are aware that we are inclined to act in a certain way on the ground of a certain incentive, we find ourselves faced with a decision, namely, whether we should do that. We can say to

78. Korsgaard, *Self-Constitution*, 108.

79. Korsgaard, *Self-Constitution*, 108.

ourselves: ‘I am inclined to do act-A for the sake of end-E. But should I?’”⁸⁰ What this ‘*But should I?*’ opens up in Korsgaard’s analysis is the space of reflective distance. It is in this space that we recognize that instincts operate within us, yet they “no longer *determine* how we respond to [our] incentives.”⁸¹ If instincts no longer serve to determine our incentives, then, suggests Korsgaard, we need something to take their place, and this is where principles enter the scene. In order to answer the question presented to the human persons by her incentive, we need, says Korsgaard, “principles ... which determine what we are to count as reasons. Our rational principles replace our instincts.”⁸² Through the concept of reflective distance—through asking the question *But should I?*—we are brought to the question of normativity. Neither instincts, incentives, nor principles alone answer the normative question; it is only within the space of reflective distance, opened up in the interaction among them, that normativity rests. The actions undertaken by human agents, therefore, must answer the normative question. We require the assistance of instinct, incentives, and principles, of course, when considering the question of normativity, but what the space of reflective distance really opens up for us—and what remains constitutive to Korsgaard’s analysis—is the question of our own self-understanding, our own self-constitution. Therefore, in the final move of this section, we will turn to Korsgaard’s concepts of unity, personhood, and the form of self-constitution that makes us citizens in the Kingdom of Ends.

80. Korsgaard, *Self-Constitution*, 115.

81. Korsgaard, *Self-Constitution*, 116.

82. Korsgaard, *Self-Constitution*, 116.

Personhood, Self-Constitution, and the Kingdom of Ends

In the previous section, I argued that the space of reflective distance constitutive of human psychology and human agency is the space in which the question of normativity is addressed. Reflective distance—through the exercise of practical reason—permits your agency to be directed by your actions—the ‘I’ of the agent, following Aristotle and Kant, is constructed by the actions that constitute it. Reflective distance achieves this by negotiating between the incentives and the principles that form your response to the normative question: *Ought I to do this?* Another way to speak about the space of reflective distance, argues Korsgaard, is to speak about self-consciousness. Self-consciousness, she says, “opens up a space between the experience of the incentive and what previously had been the instinctive response.”⁸³ This is a deliberative space, and one in which we must decide both how we are going to act and how we are going to act as a unified agent. Thus, both self-consciousness and reflective distance require principles through which both our actions and our agency are guided. As we have said before, action—in this Kantian/Korsgaardian sense—requires both an incentive and a principle. “[The] principle describes the agent’s contribution to the action,”⁸⁴ whereas the incentive presents itself to the agent as an object of choice—to be done or not to be done. When you make a decision about how to act (or not) on an incentive, “that decision may be *described* as your principle.”⁸⁵ The space of self-consciousness—the space of reflective distance—is a unique

83. Korsgaard, *Self-Constitution*, 125.

84. Korsgaard, *Self-Constitution*, 127.

85. Korsgaard, *Self-Constitution*, 127.

feature of human beings and makes us “capable of choosing ... what we sometimes call a ‘way of life.’”⁸⁶ This ‘way of life’ is deeply characterized by the necessity of choice in action and agency. Consequently, the notion of personhood found in both Korsgaard’s and Kant’s writing becomes “quite literally a form of life.” The ‘form of life’ that personhood describes—the ‘form of life’ constituted by reflective distance and choice—is that of being engaged in the activity of self-constitution: “Our chosen actions constitute us as persons.”⁸⁷

Another way to speak of personhood—that specific form of life constituted by reflective distance and choice—is to speak of practical identity. The identity of a person, says Korsgaard, “is constituted by his choices.”⁸⁸ Thus, the identity of a person is ‘deeper’ because, unlike animals, for example, a person “is consciously involved in its [i.e. identity’s] construction.”⁸⁹ This is what makes our identity practical—it is the kind of identity that allows us to “hold one another responsible, answerable, for what we do and what we are.”⁹⁰ This is also what sets personhood—as a ‘form of life’—apart from other forms of life (say, animality). Korsgaard believes that “the form of the human person is precisely the form of the animal that must create its own form ... [and consequently]

86. Korsgaard, *Self-Constitution*, 128.

87. Korsgaard, *Self-Constitution*, 128–29.

88. Korsgaard, *Self-Constitution*, 129.

89. Korsgaard, *Self-Constitution*, 129.

90. Korsgaard, *Self-Constitution*, 129.

every person must make himself into a particular person.”⁹¹ This is achieved, says Korsgaard, by pulling yourself—as a particular person—together in order to undertake choice or action. Yet, more needs to be said about what this ‘pulling yourself together’ looks like, and how it is achieved, for Korsgaard, in and through deliberation. Central to this notion of ‘pulling yourself together’ are Kant’s hypothetical and categorical imperatives. They create the normative space of reflective distance that allows the agent—the person—to be self-consciously self-constituted, and it is to this notion of constitution that we now turn.

Korsgaard offers two models for describing the moral psychology of the soul, as a prelude to her analysis of self-constitution: the Combat Model⁹² and the Constitutional Model. Both of these models aim to arrange, and describe, the practical identities of human persons, but Korsgaard believes that only the constitutional model serves to arrange and describe practical identity in a way that is coherent with both the dignity of the human person and the normativity of ethical reflection. She also believes that Kant’s account of the soul—his moral psychology—subscribes to the constitutional model. When we consider the normative question—that is, the question of what we ought to

91. Korsgaard, *Self-Constitution*, 130.

92. The Combat Model is, for Korsgaard, embodied in the work of David Hume, whose *A Treatise on Human Nature* suggests that, within the human person, “the difference between reason and passion is pretty much the same as the difference between one passion and another” (Korsgaard, *Self-Constitution*, 134). They are two forces, each working on the other and working for control of the soul. The ‘deliberative’ encounter between reason and passion is combative—each vying with the other for control of the soul. This encounter comes to completion when one element—reason or passion—overpowers, and defeats, the other. The unification of the soul—the goal of the combat model—is achieved when one side ‘wins.’ See, David Hume, *A Treatise of Human Nature*, ed. L. A. Selby-Bigge and P. H. Nidditch, 2d ed. (Oxford: Clarendon Press, 1978).

do—and consider it in light of the principle of practical reason—that is, the categorical imperative with the hypothetical imperative as an aspect of it—it is not through the model of combat that our encounter ought to be understood. When an agent deliberates, on the Kantian account, “[inclination] presents [a] proposal; reason decides whether to act on it or not, and the decision takes the form of a *legislative act*.” According to Korsgaard, such a procedure “is clearly the Constitutional Model.”⁹³ Through this constitutional model, suggests Korsgaard, Kant is able to counter the claims of those who wish to paint him as a dogmatic rationalist. The human person is not identified with reason as the constitutive feature of their practical identity. Following from Kant—and Plato before him—Korsgaard suggests that in the reflective, self-conscious process of deliberation constitutive of practical identity, the person in question “identifies, not directly with his reason, but with his constitution.”⁹⁴ Further, this person must identify *fully* with her constitution—she must be unified in and by her constitution—and this resulting unity of agency, suggests Korsgaard, is a requirement of action. Korsgaard and Kant reject “the *despotism* of reason”⁹⁵ which identifies the human person with her reason as her constitutive principle for action. Yet, if we identify with the voice of reason—which Korsgaard, Kant, and Plato all say we do—“it is only because we identify with our constitution, and it says reason should rule.”⁹⁶ While the analysis up to this point has

93. Korsgaard, *Self-Constitution*, 154.

94. Korsgaard, *Self-Constitution*, 154.

95. Korsgaard, *Self-Constitution*, 157.

96. Korsgaard, *Self-Constitution*, 158.

identified different features of self-constitution, there is a specter we ought to be wary of—one that has haunted Kant’s practical philosophy for some time. This is the specter of the ‘autonomous,’ isolated individual who is determined by her reason and self-sustaining in her actions and agency. Much of what has been said up to this point rejects this misreading of Kant’s analysis. Korsgaard, however, goes beyond mere rejection, and offers us an interpretation of Kant’s practical philosophy that shows how central the concepts of interaction and community are to his overall project. This comes out most clearly, as we shall see, in her articulation of Kant’s Kingdom of Ends.

Kant’s theory of interaction attempts to remedy an apparent tension within his own thought—a tension which comes to the fore when we consider “how you can devote yourself to the happiness of someone else without losing track of your own.”⁹⁷ The solution, as Kant sees it, “involves a reciprocal exchange that leads to a unification of ... wills.”⁹⁸ Kant is deeply indebted to Rousseau’s concept of the General Will⁹⁹ for conceptualizing his theory of interaction. The idea, here, is that in setting myself an end, I also, and necessarily, set myself the end(s) of those with whom I am interacting. Likewise, when they set an end, they also, and necessarily, include end(s) which I could adopt as my own. The ends we pursue, then, become shared ends—constitutive both for the individual conceiving of them and for the community with, and within, which she interacts. The

97. Korsgaard, *Self-Constitution*, 188.

98. Korsgaard, *Self-Constitution*, 188.

99. See Jean-Jacques Rousseau, *The Social Contract*, trans. and ed. G. D. H. Cole (London: J. M. Dent, 1913), bk. 2, chap. 3.

unification of wills and the sharing of ends, suggests Korsgaard, are necessary components of Kant's understanding of deliberative decision making: "When we interact with each other what we do is deliberate *together*, to arrive at a shared decision."¹⁰⁰ One of the key elements of Korsgaard's interpretation upon which this analysis relies is her understanding of the inherent publicness of reasons in any communicative, deliberative setting. I noted the importance of this discussion in chapter three, so I will simply say, here, that Korsgaard believes all reasons are, and in fact must be, public reasons. When we deliberate with others about shared ends, we are only able to do so because the reasons about which we deliberate and communicate are public. Additionally, it is the necessary publicness of reasons that makes them universalizable, and it is this universalization requirement—seen in the first formulation of the CI—that "[gets] us into moral territory."¹⁰¹

Another important feature of this analysis of the publicness of reasons is what this analysis says about the sources of these reasons—i.e. the individuals who are reasoning together. In this context of unified wills and shared ends, we must treat the reasons of all those involved in the deliberation as having normative force for all involved. My reasons, which are normative for me, must also be normative for you, just as your reasons, which are normative for you, must also be normative for me. To this extent, then, "I must also treat you as what Kant called an end in yourself—that is, as a source of reasons, as

100. Korsgaard, *Self-Constitution*, 190.

101. Korsgaard, *Self-Constitution*, 192.

someone whose will is legislative for me.”¹⁰² This, of course, is an articulation of Kant’s second formulation of the CI—the Formula of Humanity. We must be able to take the reasons of others as normative for ourselves, and in so doing, recognize that the humanity in their persons is that which is constitutive of their being ends in themselves. Korsgaard’s stance on this is important because it has bearing on how she understands the shared, deliberative process of reasoning together to take place. As she says, “[the] aim of the shared deliberation ... is to find (or construct) a shared good, the object of our unified will, which we then pursue by shared action.”¹⁰³ It is not that we aim at a best-case-scenario or compromise position (this might be the case in Hume’s Combat Model, but not in the Constitutional Model), but that we aim at a good—a shared good. What that good looks like requires shared deliberation about shared ends, and the recognition that—as ends in themselves—our interlocutors present us—as we present them—not with reasons to be overcome, but with reasons whose normativity is constitutive for our deliberation. Treating, and responding to, others’ reasons as normative is, and ought to be, our ‘default position,’ says Korsgaard, “just like hearing another’s words as meaningful is the default position.”¹⁰⁴

In the end, what this discussion offers us is a description of what deliberating, communicating, deciding, and acting looks like in the Kingdom of Ends. For successful shared deliberation, for the achievement of a shared good, two conditions of interaction

102. Korsgaard, *Self-Constitution*, 192.

103. Korsgaard, *Self-Constitution*, 192.

104. Korsgaard, *Self-Constitution*, 202.

must be met—“respect for the ... humanity [of others], and the treatment of her reasons as considerations with public normative standing.”¹⁰⁵ It is important to remember that the humanity of others is not ‘owned’ by them, in an individual sense. “What is your own,” says Korsgaard, “is not your humanity but what you make of it, your practical identity.”¹⁰⁶ With regard to the treatment of the reasons of others, it should be clear from the analysis above—and from chapter three—that reasons, if they are to have any normative force, must be public in the sense of being shareable. “Unless reasons are public,” says Korsgaard, “they cannot do their job.”¹⁰⁷ Thus, the Kingdom of Ends, as Korsgaard and Kant conceive it, is the space of this shared deliberation and its consequent shared good(s). The Kingdom of Ends is an ideal, to be sure. As Korsgaard notes, like a promise, any shared agreement—about ends, about goods, etc.—is not an empirical event in the phenomenal realm. Therefore, as in the case of promising, a shared agreement—such as the kind of agreement we are considering in the Kingdom of Ends—“cannot take place under the conditions of space and time ... as exercises of freedom, choices [and promises, and agreements] take place in the noumenal world.”¹⁰⁸ Therefore, when we make an agreement, according to Korsgaard, “we *meet* in the noumenal world.”¹⁰⁹ This meeting outside the strictures of space and time characterizes the ideal of

105. Korsgaard, *Self-Constitution*, 204.

106. Korsgaard, *Self-Constitution*, 204.

107. Korsgaard, *Self-Constitution*, 206.

108. Korsgaard, *Self-Constitution*, 190–91.

109. Korsgaard, *Self-Constitution*, 193.

the Kingdom of Ends. It is not a physical, empirical *place*, but rather the description of the space in which reflective agents, constituted by their individual practical identities, encounter other such agents and deliberate about, and decide upon, shared goods and shared actions. Thus, Kant's concepts of agency and interaction are not mutually exclusive. Kant's reflective agent is not an isolated individual, unaffected by what is going on around her. She is a deeply communal agent, who—in the realm of morality and normativity—acts and reacts only insofar as she understands her actions to be constitutive of not only her self-constitution, but the self-constitution of all the other reflective agents in her community. The Kingdom of Ends is what makes morality possible because it is what brings autonomous agents into shared, communal life.

Here, at the end of my analysis of Korsgaard's *Self-Constitution*, I want to recap what I have argued before we turn back to our natural law interlocutors. Human creatures are rational agents and, as such, “are aware of the grounds of [their] beliefs and actions”¹¹⁰—at least potentially. Insofar as an agent is aware of the grounds of her beliefs and actions, she is self-conscious, and this self-consciousness divides the agent by separating her “perceptions from their automatic normative force.”¹¹¹ What this means is that when considering an object, the agent considers said object on two different levels. First, there is the level of perception, where the object is considered as it presents itself—say, for example, as something to be fled from. Second, there is the level of reason, where the agent's response to the object is considered—so, in the same example, the level on

110. Korsgaard, *Self-Constitution*, 212.

111. Korsgaard, *Self-Constitution*, 213.

which you determine whether or not you will in fact flee from the thing-to-be-fled-from. In order to pull this self-consciously divided agent back together, she must make a choice. Such a choice calls for a principle of action, and one that comes from the agent herself. An agent, says Korsgaard, “is the autonomous and efficacious cause of her own movements.”¹¹² One is autonomous when “the movements you make have to be your own,” and one is efficacious when “your movements are the way in which you make things happen in the world.”¹¹³ If autonomy and efficacy are constitutive of agency, then the categorical and hypothetical imperatives (respectively) must be the constitutive principles for action. The hypothetical imperative tells us what we will when we will the means to our ends, while the categorical imperative tells us that we are the ones who will. As such, the hypothetical imperative is best understood as an aspect of the categorical imperative and, together, they make up the principle of practical reason. Now, in order to exercise the principle of practical reason in action, we need to be unified agents—agents to whom actions can be attributed, and by which they are constituted. Since we are self-consciously divided and require unification, deliberation enters the scene as you “attempt to reunite yourself behind some set of movements that will count as your own.”¹¹⁴ Deliberation is the process of choosing these movements, and they are chosen under the auspice of your self-constitution—one that tells you that you can only will in accordance with the categorical imperative. Otherwise, you are not actually willing in an effective,

112. Korsgaard, *Self-Constitution*, 213.

113. Korsgaard, *Self-Constitution*, 213.

114. Korsgaard, *Self-Constitution*, 213.

autonomous, and normative way. What this means is that “every rational agent must will in accordance with a universal law ... and the reasons that you legislate when you will the law have to be public ... have to have normative force that can be shared by all rational beings.”¹¹⁵ Thus, for Korsgaard, the question of normativity is intimately tied to the interrelated questions of action and agency, of efficacy and autonomy, and of self-constitution in the Kingdom of Ends. The moral law, says, Korsgaard, is the law of self-constitution—it is the law of making yourself into yourself. As she says at the end of this book:

in the course of this process, of falling apart and pulling yourself back together, you create something new, you constitute something new: yourself. For the way to make yourself into an agent, a person, is to make yourself into a particular person, with a practical identity of your own. And the way to make yourself into a particular person, who can interact well with herself and others, is to be consistent and unified and whole—to have integrity. And if you constitute yourself well, if you are good at being a person, then you’ll be a good person. The moral law is the law of self-constitution.¹¹⁶

Having argued—alongside Korsgaard—for the normativity of the moral law as self-constitution, we must now return to a conversation we began back in chapter one. We must explore, once more, the question of normativity in the natural law and ask our interlocutors: Is there anything we can learn from Korsgaard’s analysis of Kantian ethics that might require us to rethink how we approach the question of normativity in Christian ethics today? More specifically, can we explore—together—the questions posed by contemporary human rights discourse through the prism of this analysis? Where are

115. Korsgaard, *Self-Constitution*, 214.

116. Korsgaard, *Self-Constitution*, 214.

the points of distance between our analyses, and—perhaps more importantly—where are the bridges that exist between these frameworks which open up avenues for further discussion in the future. In order to tease out of this analysis all these different threads, I want to begin by exploring those places where the Kantian/Korsgaardian model appears to be at odds with Thomas’s natural law model. Following this exploration, I then want to focus on setting the groundwork for possible bridges between these two models. While there will certainly remain, between these two positions, irresolvable questions and conflicts, such recognition ought not exclude the possibility of common ground being achieved in other areas. Therefore, let us turn, now, to those questions that—at least potentially—appear to pose irresolvable conflicts between these two models.

Kantian Ethics and the Natural Law: Noticing the Gaps

In light of this analysis of Korsgaard’s *Self-Constitution*, we are now in a place where we can take our exploration of the question of normativity in both Kantian and the natural law ethics to the next level. Part of the task of this project is to present—or, perhaps, represent—to Christian ethics the Kantian paradigm for grounding the question of normativity. In order to do this, I sketched out, and explored, in chapter one three different models for contemporary natural law ethics. At this point—after exploring both the Kantian and the natural law paradigms—I want to make a case for the continuing relevance of, and constructive possibilities for, adopting a form of Kantian ethics—the form articulated by Korsgaard—into the Catholic/Christian ethical framework. As I said at the outset of this project, the dominant framework for Catholic/Christian ethics today remains the natural law, and this is why natural law ethics has been my interlocutor, so to

speak, throughout this project. In order for Kantian ethics—of any form—to be considered as both a responsible critic and a viable dialogue partner for natural law ethics within the Catholic/Christian tradition, it must demonstrate that it is up to the task of grounding a robust form of ethical reflection. It is my contention—and has been in the background of my argument throughout this project—that Kantian ethics, interpreted through Korsgaard’s own practical philosophy, can be—and is—a sufficiently robust, ethically normative, and practically compelling ground for ethical reflection in the 21st century. The task that lies before us now—and the task that will serve to bring this project to a close—is to support this claim through a reflection on the arguments explored in the first three chapters. More specifically, the following two sections will aim to identify two important themes: where the discourses of natural law ethics and Kantian ethics diverge, and where the discourses of natural law ethics and Kantian ethics converge. This section will look at those places within natural law ethics where there appears to be a tension between it and the Kantian ethics I am trying to retrieve. Following this section, however, we will then turn to those places within these two ethical frameworks where, I will propose, we can build bridges between the two discourses. While the tensions identified in this section will remain, that does not preclude us from recognizing, articulating, and reflecting upon those areas where there may be more in common between these two forms of ethical reflection than we may have originally imagined. What all of this means for the question of human rights and human dignity will be addressed in the concluding chapter of this project. First, however, we will turn to those areas within the natural law tradition that stand in apparent tension with the tradition of Kantian ethics.

The Question of the Law in John Finnis

While the question of the law features prominently in the works of Aquinas, Kant, and Korsgaard, it also features quite prominently in the work of Finnis. Thus, the law is a point of convergence for both Finnis and the Kantian tradition, yet it is also a point of divergence insofar as these two perspectives narrate the grounds and process of the law quite differently. For Finnis, the law is grounded in a metaphysical conception of the good, whereas for the Kantian tradition, the law is grounded in autonomy and freedom. While I will return to the points of convergence between these two traditions in the next section, I want to spell out a little more clearly what is at stake in each of these positions and why it is important to the broader questions of this project—the questions of normativity, dignity, and human rights.

As we saw in chapter one, Finnis's notion of the good is deeply shaped by how he understands Aquinas's notion of the good. That 'good is to be done, and evil avoided' is the self-evident, indemonstrable first principle of practical reason. It is the inherent desirability of the good—a feature that it contains within itself, prior to reflection—that makes it normative, and the impact of its normative force is felt because of this first principle of practical reason. The goodness of the good is good, for Aquinas, because of its desirability. If something possesses the quality of desirableness, it is because that 'something' is good—it is to be pursued, while its opposite (i.e. evil) is to be avoided. For Aquinas, this concept is not without limitation. The good—which is the individual good for Aquinas—is contextualized within, and limited by, the common good. The common good is what prevents the (individual) good from becoming a purely solipsistic good. Yet,

the question remains as to what *grounds* this good. Where does the regressive line of questioning—*Why* is this a good?—come to an end? For Aquinas, this regressive line of questioning is brought to a close by positing a state of affairs—of which we have no experience—in which the question ‘*Why?*’ no longer makes sense to ask. This is where we can locate Aquinas’s—and Finnis’s—metaphysics of the good. The good—as we intuit and experience it—is known to us, is recognized by us, because of the pre-existing state of affairs that is a metaphysics of the good. This state of affairs is, therefore, the original state of affairs from which all other states of affairs find their grounding and their impetus. Another way of putting this, which Aquinas adopts, is to speak about the uncaused cause of all states of affairs in (causal) existence. As we noted in chapter one, this uncaused cause in Aquinas—and in Finnis—is another way of identifying and describing God. Thus, in Aquinas, it is God that serves as the ultimate ground for a metaphysics of the good. God is the source of the good, and all human good(s) are part of, and causally the result of, God’s original, uncaused good.

Finnis takes up this metaphysics of the good from Aquinas, and formulates his approach to ethics in light of it. While the good is grounded in the uncaused cause of goodness, what is central to Finnis’s analysis is how this goodness is actualized in the physical, causally linked, phenomenal world. The concept of the good he takes from Aquinas is the ‘theoretical possibility’ that grounds the actualization of the good in practice. So, for Finnis, the question of normativity is answered in this theoretical possibility—the normativity of the good is grounded (and contained) within this metaphysics, and the good(s) we see in the world—the phenomenal embodiments we

identify and label as ‘good’—are simply proof-positive, or verification, that the good, as a theoretical possibility, is, in fact, an actuality. The turn, in Finnis, to the effects (in the world) which we call good and which, therefore, justify our commitment to a metaphysics of the good belies Finnis’s own interests in ethical reflection. He is less interested in investigating whether or not this metaphysics of the good is a sufficiently developed foundation for ethical reflection, and more interested in evaluating the effects of this good in the observable world. For this reason, argues Finnis, ethics is a discourse whose practical understanding “is to be found in activity.” He continues: “Even when the activity is constituted by contemplation, attentiveness, waiting ... it is still radically distinguishable from the pure passivity of an experience [in the experience machine].”¹¹⁷ This is why, at the heart of his analysis of the good, Finnis offers his seven ‘basic human goods.’ In order to approximate the good, he says, we must practically appropriate and enact the basic human goods in a way that recognizes all of them, without diminishing any of them, and that respects their self-evident irreducibility not only in ourselves, but in others as well. For Finnis, the relationship between the basic human goods and the good is articulated in and through the natural law. The natural law is what connects the particularity of the basic human goods with his broader metaphysical notion of the good.

117. John Finnis, *Fundamentals of Ethics* (Washington, DC: Georgetown University Press, 1983), 38. Finnis uses the example of the ‘experience machine’ to illustrate the difference between activity and passivity in ethics. The experience machine is a machine to which a person is connected and which simulates different experiences—say, of writing a novel—for the person connected to it, but there is no actual activity on the part of the person in question to the end they ‘experience’ themselves to be moving toward—they do not, to continue the example, actually write a novel. The ‘experience machine’ example is used by Finnis to point out that activity, not passivity, is at the heart of ethics. This is a difficult claim to sustain today, and it is one to which I will return later on in this chapter.

Thus, the natural law becomes necessary for ethics insofar as it allows us to make sense of our basic human goods and enact them responsibly, which means in accordance with the good, metaphysically understood. In light of this, suggests Finnis, any investigation of the natural law ought to be an investigation into its principles of enactment, rather than its grounding principles. When we inquire into the normativity of the natural law, then, Finnis tells us that the normativity of the natural law is, on the one hand, self-evident and indemonstrable insofar as it is grounded in a Thomistic metaphysics of the good; on the other hand, we know *that* the natural law is normative because of the effects of its principles in the observable world—particularly the effects of its principles on the good, both common and individual. This is a different narrative than the one we find in Kant and Korsgaard, and it is worth recalling what they say on this question of normativity and the (natural) law.

For both Kant and Korsgaard, the law is grounded in freedom and autonomy, and it is Kant's critique of metaphysics that lays the groundwork for the possibility of freedom. In a nutshell, Kant believes that we cannot bridge the divide between the noumenal and phenomenal realms. While we can *think* the noumenal realm, we cannot *know* it in the way we know the phenomenal realm. This does not make the noumenal realm completely ineffectual for us, but rather holds it out as a possibility, or a hope, that cannot be indisputably proven or indisputably disproven. For Kant, when we consider the phenomenal realm—the realm of things as they appear to us—we must acknowledge that such a realm is causally determined. For every act we undertake, he says, there are a host of prior causes that determine it. Our inability to escape the causal determinism of the

phenomenal realm makes the possibility of freedom seem unlikely. And, for Kant, it is—in the phenomenal realm. However, if we think of freedom in the noumenal realm, then we are in a different position. The noumenal realm considers (at least the possibility of) things as they are in themselves. While we can say regarding our phenomenal selves that we are causally determined, we need not say the same regarding our noumenal selves. Our noumenal self retains the possibility of freedom given the different standpoint taken up. This is what makes freedom possible—that it can reasonably be thought of our noumenal selves. This is why Kant calls freedom a postulate of practical reason. Nevertheless, what makes freedom actual, for Kant, is its practical necessity in the phenomenal realm. When we act, we must act in freedom, or at least believe ourselves to be acting in freedom. Since there is nothing in the phenomenal realm to lend legitimacy to such a claim (of freedom), we must, in the process of acting, confirm the ‘reality’ of noumenal freedom if our action is to be recognizable as such. Thus, for Kant, freedom is not just a possibility, but rather an ‘actuality’ insofar as it is a constitutive principle for action, not simply because it is possible (though it is), but—more concretely—because it is actual (through its being necessary for action). The law (*nomos*), for Kant, is grounded in this understanding of freedom; yet, the law itself, if it is to be law in a practical sense, is articulated by Kant in a particular sense: in order for *nomos* to be *nomos*, it must be *auto-nomos*. To explicate this point, let us turn to Korsgaard.

Autonomy, says Korsgaard, is the giving of law to oneself. In order for law to be law in Kant’s sense—that is, in freedom—we must be the source of that law; it must come from us and we must, in turn, give it to ourselves (and, as we shall see, to others in the

Kingdom of Ends). Without this autonomy grounded in freedom, law becomes heteronomous—something we are given from outside ourselves and, therefore, something that determines us—and our actions—from the outside. Along this trajectory of thought, we are limited to the phenomenal realm, where everything is determined by prior causes. The possibility of freedom—which is necessary for action—evaporates because we cannot act autonomously—we are simply determined by outside forces. This is why it is so important for Kant to articulate the law in terms of *auto-nomos*. Without such an articulation, we are no longer free, we are no longer responsible, and, consequently, we are no longer agents. Our humanity becomes an illusion and our actions become only the appearance of what we believe them (falsely) to be. Autonomy, therefore, becomes central to any reflection on ethics, normativity, and the law for Kant and Korsgaard. For Finnis, however, this emphasis on autonomy is misplaced. As he sees it, there is a fundamental difference between Kant’s central principle for action—“Treat humanity as an ends and never merely as a means”—and his own central principle for action—“Respect every basic human good in every one of your acts”—and the difference is this: “Kant’s conception of the ‘humanity’ which is to be respected in every act is restricted, fundamentally, to only one aspect of human flourishing or human nature.”¹¹⁸ This ‘one aspect,’ according to Finnis, is rationality. For Kant, he argues, humanity “means ‘rational nature,’ i.e. the powers necessarily associated with rationality and ‘the power to set ends’ (i.e. free will or ... autonomy).”¹¹⁹ So according to Finnis, Kant’s

118. Finnis, *Fundamentals*, 122.

119. Finnis, *Fundamentals*, 122.

grounding of the law in freedom and autonomy misses the point, or at least mischaracterizes it. To say that humanity is at the heart of law and normativity (and ethics) is to focus one's attention on the wrong thing. It is not humanity that ought to be at the center of the discussion, but rather the basic human goods as a whole, and of which humanity—as rationality—is a part. Kant's analysis, therefore, is too narrowly focused. His reflections—and, by extension, those of Korsgaard—ought to focus on basic human goods. Here, we see a clear example of an irreducible difference between these two positions. While Kant and Korsgaard want to ground the question of normativity and the law in freedom and autonomy, Finnis wants to ground these same questions in a metaphysics of the good. This difference is fairly stark, and does not lend itself to a compromise position (since both positions adopt very different starting positions). Finnis's critique of Kant is not very convincing, because—at heart—his criticism of Kant is that he (Kant) does not adopt his (Finnis's) starting point. Additionally, Finnis's characterization of reason and rationality in Kant is problematized by Korsgaard, as we saw at the beginning of this chapter. Korsgaard articulates Kant's concept of reason not as a possession of we 'own' by virtue of our humanity (as Finnis does), but as something we *do*—a deliberative activity constitutive of human agency. Kant, it must be noted, is not interested in Finnis's starting point either, because he believes it to simply be beyond our capacities as human creatures—we cannot have a metaphysics of the good in the way Finnis wants us to. As Kant and Korsgaard will find no acceptable grounding for questions of normativity and the law in a metaphysics of the good, neither will Finnis find an acceptable grounding for these same questions in a description of noumenal freedom

and the autonomy necessary to it. Nevertheless, Kant, Korsgaard, and Finnis *do* want to talk about the effects of the law and, in the following section, we will explore what constructive arguments might be forged between these two positions, even though they will not find a resolution between their different starting points. First, however, we must look at the gaps between the Kantian/Korsgaardian position and those of Porter and Traina.

The Question of Theology in Jean Porter

While the tensions between the positions of Finnis and Kant/Korsgaard coalesce around the question of law, the tensions between the positions of Porter and Kant/Korsgaard coalesce around more theological concerns. For Porter, the theological dimension of Aquinas's—and the Scholastics'—theory of the natural law is inseparable from its history, its methodology, and its normativity. Thus, if we turn to natural law theory today in our ethical reflections, we are compelled to turn to the theological framework and foundation upon which this theory is built. This is a course of action that Kant and Korsgaard cannot follow, and, therefore, before we explore the possible bridges between the positions of Porter, Kant, and Korsgaard, we must recognize the gaps between their positions that cannot be bridged. We will look at four specific areas of dissonance, or gaps: subjectivity, practical reason and the will, virtue, and the place of Scripture/revelation.

For Porter, Aquinas, and the scholastics, one of the constitutive features of the natural law is its underlying metaphysics of order and continuity—that is, the natural. For them, there is a fundamental continuity between Creator and Creation, between God and the cosmos. This makes nature both intelligible and normative for human persons since

what we find in (and from) nature is of a part with what we find in (and from) God.

Further, insofar as human beings are the *imago Dei*—the very image of God—in creation, we, therefore, occupy a unique place in relation to both God and nature. Thus, when we consider the question of subjectivity in the natural law, we are considering it in light of this general metaphysics of order and continuity that allow us to fill the role of *imago Dei* set out for us by God. This raises questions for how Porter and the natural law tradition understand the concepts of agency and autonomy—two key features of subjectivity in the Kantian/Korsgaardian tradition. Within the natural law tradition, the questions of agency and autonomy are circumscribed by the metaphysics that make the natural law possible. All of creation is continuous with its Creator and, consequently, we can—and must—presume creation to be good, intelligible, and directed toward its ultimate goal—i.e. the Beatific Vision (ultimately) and the practice of the virtues in this life (a point we will turn to shortly). The concept of agency, as we understand it today, stands in tension with this vision. In Porter’s analysis, agency is constituted by, and grounded in, its createdness. Agency is not something we do, but something (predetermined) we must be. This will appear similar to Korsgaard’s understanding of agency which, as we will recall, is self-constitution. Yet, there is a difference between the positions here that is key. For Porter, to be an agent is to situate oneself within the natural—i.e. good, intelligible, teleological—order of creation that we are given. Agency is not self-constitution in the sense of constructing one’s own practical identity intersubjectively and in community, searching for an undetermined Kingdom of Ends in which one’s practical identity can become something it was not before—namely, recognized as one’s own by oneself and others.

Agency is our discovering of our roles in the intelligible order of creation and then participating in that order under the auspices of the good that is both our ground and our goal. A successful agent in Korsgaard's analysis is one who constitutes her own identity in community with others, undetermined by the confines of a pre-supposed common good. A successful agent in Porter's analysis is one who comes to know her identity through the community of the common good—and the practice of the virtues—as happiness.

A similar discrepancy arises when we consider the concept of autonomy. Certainly, as Porter notes, the concept of autonomy as we have it today (through Kant) was not on the minds of Aquinas or the Scholastics; nevertheless, insofar as we do have a concept of autonomy today—and one which human persons are compelled to recognize rationally, if not subscribe to necessarily—we must consider any contemporary reflection on subjectivity in light of it, even when we are discussing figures like Aquinas. To be autonomous, according to Kant and Korsgaard, is to be self-legislating, to give the law to oneself. This concept of autonomy is clearly at odds with a concept of autonomy along Thomistic lines. On Porter's analysis, the human person is one who acts in accordance with an intellectual apprehension of the good. The good 'sets the stage,' so to speak, from which the human person can approximate autonomy, but there remains a deeply heteronomous dimension within this approach. As we have already noted, Porter follows Aquinas in understanding the nature of the human person in creation as *imago Dei*. While the recognition of this opens the human person to the possibility of fulfilling her God-given role in the cosmic order, it does not necessarily (or, perhaps, at all) open her to the possibility of fulfilling her self-given role. As we have said, neither Kant nor

Korsgaard go down the road of isolated individualism, but if we are to consider the concept of autonomy in any recognizable fashion, then we must recognize the difference between giving oneself the law and being given one's law by something outside oneself—be it nature, creation, or God. Both Aquinas and Porter believe that the human person acts on behalf of her ultimate end—happiness. Thus, if one pursues happiness as her ultimate end (in either its natural or supernatural form), then we must acknowledge that she stands in a complicated (and, perhaps, impossible) relation to any form of autonomy we would recognize as such. While agency and autonomy are important to Porter, Kant, and Korsgaard, approaching these features of human being with the natural law tradition leaves many questions unresolved—and perhaps permanently so. Before coming back to the idea of happiness just mentioned, let us look at another area where there appears to be a gap between the understanding offered by Porter and that offered by Kant and Korsgaard: practical reason and the will.

The question of subjectivity—through agency and autonomy—brings us to another, related question: the question of action. While I will say more about the possible points of connection between the Aquinas/Porter theory of action and the Kant/Korsgaard theory of action later, we must first look at the gaps that exist between these two theories. To highlight some of these gaps, we will focus on two constitutive features of action: practical reason and the will. Kant and Korsgaard offer very specific understandings of both practical reason (i.e. that which gives rise to the will) and the will (i.e. the capacity for the free choice of maxims of moral action). Aquinas and Porter, however, also articulate specific understandings of both practical reason and the will, and

they are understandings that stand in fairly stark contrast to that of Kant and Korsgaard. Whereas for Kant and Korsgaard, the first principle of practical reason is the categorical imperative (with the hypothetical imperative as an aspect of it), for Aquinas and Porter, the first principle of practical reason is happiness: “all persons naturally seek happiness, that is, the fullest possible enjoyment of the good(s) that each believes will perfect and fulfill him or her as a human being.”¹²⁰ The difference here is clear. On the former account, the first principle of practical reason is a formal principle—a discursive space for evaluating action consistently, but without providing a determined end; on the latter account, the first principle of practical reason is an end—a predetermined goal that shapes our actions and evaluates them based on how well (or poorly) they achieve that already-determined end. Thus, for Aquinas and Porter—and the natural law tradition they propose—practical reason aims at bringing about the fullness of happiness for the human person by navigating and negotiating the contours specific to an objective state of happiness. This understanding of happiness as the end or aim of practical reason follows from both Aquinas’s and Porter’s account of the metaphysics of order and continuity that underlie not only the natural law, but all of creation. Happiness, in both its natural and supernatural forms, is the goal of practical reason—it is the end that human persons pursue. Practical reason, therefore, becomes the means for achieving one’s end(s). This is perhaps one of the starkest differences between Porter’s natural law tradition and Korsgaard’s Kantian tradition when it comes to practical reason.

120. Jean Porter, *The Recovery of Virtue: The Relevance of Aquinas for Christian Ethics* (Louisville, KY: Westminster John Knox, 1990), 86.

In addition to the gap between the natural law tradition and the Kantian tradition on the question of practical reason, there also remains a gap between these two traditions when it comes to the will. In the Kantian tradition, the will describes the process of selecting and endorsing maxims of action that possess the formal capacity of universality and the material content of being grounded in humanity. In Aquinas's natural law tradition, the will—rather than describing the process for choosing (and, consequently, endorsing) inclinations—is, itself, an inclination, or, in the language of Aquinas, a desire. The will, as a desire, is considered under the category of appetite, alongside passion. The will seeks out the good, but does so through the use of reason, rather than, as with passion, through the senses and imagination. Thus, will is equal to passion in Aquinas, though they operate along different trajectories and employ different means for achieving their ends. In the language of Korsgaard, this argument embodies the combat model, rather than the constitutional model, of the soul—or, in this case, the will. Both the passions and the will are spontaneous for Aquinas—that is, they are their own grounding. While there is a certain resonance between the spontaneity of the will in Aquinas and the spontaneity of the will in Kant (which we will address later on in this chapter), we can, nevertheless, see that the concepts of the will operative in each tradition are—like practical reason—in fairly stark contrast. In Aquinas's natural law tradition, as interpreted by Porter, both practical reason and the will are conditioned by the overall metaphysic of continuity that underlies the project. We know our 'end' (i.e. both natural and supernatural happiness) because creation is a continuation between the natural and the supernatural. In that God is the Beatific Vision (the supernatural end of happiness), it

is our task in this life to approximate that end as best we are able, and to do so through the natural end of happiness—i.e. the practice of the virtues.

Aquinas's theory of the virtues—as interpreted by Porter—is a unique feature of his natural law approach. In his belief that the proper end of all human persons is happiness, Aquinas recognizes a challenge. The ultimate end of happiness is a supernatural end—the Beatific Vision. However, we cannot come to this vision, at least insofar as we are living our terrestrial existence (and certainly not without a concept of grace). Therefore, the happiness that is the goal of human life is unattainable so long as we continue on our life's terrestrial pilgrimage. While, in the end, Aquinas recognizes that the Beatific Vision is the ultimate goal, he also recognizes that there must be a terrestrial—or in his language, natural—form of happiness as well (one that is attainable in this life). Porter argues that this natural form of happiness is the practice of the virtues. This natural form of happiness—this natural end—is constitutive of Aquinas's natural law theory: without a natural form of happiness, the precepts of the natural law are without structure or foundation. The natural law requires a natural end of human happiness. It is found, Porter argues, in the practice of the virtues. The practice of the virtues, therefore, becomes both the means and the end of natural happiness. It is not as if the practice of the virtues leads us to some *other* natural end or goal, but it is precisely in the practice of *practicing* the virtues that happiness consists. In light of this, Porter argues that the virtues must become habituated if their practice is to bring us to the good of natural happiness. To be habituated, for Porter, means that the virtues must become stable dispositions, or capacities, of the human person. How do they become so? By practicing them. Thus, the

natural end of happiness is not contained in something that the practice of the virtues achieves, *per se*; the natural end of happiness is contained in the practice of the virtues themselves. Thus the natural end of happiness is the practice of the virtues, and this is so because nature is, as we have said, ordered, continuous, and good. The practice of the virtues is a manifestation of the order of nature, and its goodness is, in Porter's terms, transcendental. That is to say, according to Porter, something (e.g. goodness) is transcendental if and when its ubiquity and generality are such that the concept in question can be applied to anything whatsoever—in any category of existence. Goodness, of course, is such a concept. Again, the continuity that characterizes the relationship between the supernatural and the natural give rise to the necessary ubiquity of the concept of goodness (since God is good, and creation is continuous with God, creation, too, must be good). This, according to Porter, is what makes goodness transcendental.

The gaps between this position and that of the Kantian/Korsgaardian perspective are wide. While Kant, in the *Metaphysics of Morals*, offers a substantial reflection on the concept of virtue, it is a concept that does not resonate with that of either Aquinas or Porter. Kant, himself, says that “virtue is not to be defined and valued merely as an *aptitude* and ... a long-standing *habit* of morally good actions acquired by practice.”¹²¹ Virtue, for Kant, is the moral courage to do one's duty, even when it appears to conflict with what one *wants* to do. For Porter, of course, to practice of the virtues, generally, is to practice the cardinal and theological virtues, specifically. What underlies the difference of

121. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1998), 148 (= AA 6:383).

perspective, here, is the difference of the approaches each tradition takes toward the question of the purpose of the virtues. For Kant, virtue describes what we must do in the face of desires and inclinations to the contrary. Virtue comes onto the scene at a moment of rupture—a struggle in which our desires lead us away from the moral law and into the compromised position of bad (i.e. determined, un-reflective, and un-endorsed) action. For Porter and Aquinas, virtue describes how we participate in the goodness and continuity of creation. It is not a scene of rupture, conflict, or struggle, but rather a scene of perfection and—ultimately—happiness. What Aquinas and Porter take for granted—that is, the continuity between the supernatural and the natural that makes the pursuit of happiness possible—is precisely what Kant wants to claim as impossible. For Kant, the natural/terrestrial/phenomenal search for happiness is a question of duty and struggle, not of practice and continuity. For Aquinas and Porter, we practice the virtues in order to bring about the natural happiness that, in some way, participates in the supernatural happiness of the Beatific Vision. For Kant and Korsgaard, we can hope in the possibility—in the *als ob*¹²²—of something like the Beatific Vision, but we cannot presume that it is either continuous with anything we do in the phenomenal realm or that the hope of its possibility sufficiently grounds any constitutive feature of, or framework for, ethical reflection. Thus, the theory of the virtues found in Aquinas, and articulated by Porter, is at striking odds with the concept of virtue found in both Kant and Korsgaard.

122. This reading of the *als ob* comes out of Derrida's reading of Kant, and is well articulated by Colby Dickinson in his article, "The Logic of the 'As if' and the Existence of God: An Inquiry into the Nature of Belief in the Work of Jacques Derrida," *Derrida Today* 4, no. 1 (2011): 86–106.

The final gap between these two traditions I would like to highlight coalesces around the role of Scripture/revelation at the normative level of ethical reflection. As noted when we discussed the role of reason in Porter's theory of the natural law, reason is an intrinsic characteristic of both the human and natural world. Reason, however, is not to be understood along 'Kantian' lines. That is to say, reason is not a stand-alone category. It is constitutive of human persons, yet one that must be put through the 'sieve of the norm' of a separate, but nevertheless normative, source of moral knowledge: revelation. Revelation—or, as Porter and the Scholastics put it, Scripture—is an independent source of moral know that operates alongside of reason and nature. Each of these sources offers its own contribution to the overall 'fund' of moral knowledge; nevertheless, there is an implicit hierarchy between them. Reason, while a legitimate source of unique moral knowledge, is at the bottom of the hierarchy, being normed by both Scripture and nature. The relationship between Scripture and nature is more nuanced, but, in the end, it is Scripture that serves as the norm to which even nature is subject. The difference, however, between the relationship of Scripture to nature and Scripture to reason is that Scripture and nature are, so to speak, two forms of the same revelation. What Scripture reveals is confirmed by nature, and what nature reveals is confirmed by Scripture (at least, when it comes to moral knowledge). Reason, too, is its own source of this knowledge, but the determinations of reason are always subject to the norms of nature on the one hand and Scripture on the other. What is 'reasonable' must be confirmed (or corrected) by Scripture. This is because it is through Scripture and revelation—more than through reason—that we come to know the natural law. Reason provides reflection that can

confirm what we come to know through Scripture, but it is, nevertheless, through Scripture that we come to know the natural law in a more direct and immediate sense. Once again, it is through the underlying metaphysics of order and continuity that this claim rings true for the Scholastics, Aquinas, and Porter. Scripture—and, to be clear, we are speaking here of the Christian Scriptures—reveals something of the good God who is continuous with nature along the natural/supernatural spectrum and who implants us with the capacity to reason because we are—and this, again, is confirmed through Scripture—the very *imago Dei* in creation. This all speaks to the deeply theological flavor of Natural law theories, and this is no coincidence. Porter takes natural law theory to be a deeply theological—and specifically Christian—project precisely because it locates the role of Scripture on the level of normativity. Following Aquinas, she argues that one cannot understand the natural law unless one understands that the natural law relies on Scripture as one of its normative sources (and, more to the point, as the norming norm of those sources). Scripture provides the natural law with both a revealed source of moral knowledge and an orientation toward the practice of this moral knowledge: “the natural law is fundamentally a capacity or power to distinguish between good and evil; it is intrinsic to the character of the human soul as made in the Image of God, ... and it is expressed or developed through moral precepts which are confirmed, as well as being completed and transcended, through the operation of grace.”¹²³ The natural law is a deeply theological project that takes its normative force not only from rational reflection

123. Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids, MI: Eerdmans, 2005), 13–14.

and the natural world, but also from the special revelation—through Scripture—of the Christian tradition. In light of this, suggests Porter, when we seek to understand the natural law, we must understand that it “is meant first of all as a theologically informed interpretation of human morality considered as a natural phenomenon and therefore as an expression of the distinctively human form of created goodness, and secondly as a theology of the moral life that locates and contextualizes it in relation to other central scriptural and doctrinal concerns.”¹²⁴

The normative role given to Scripture, in this account, is also deeply problematic for Kant and Korsgaard. While religion and the religious imagination play an important role in Kant’s overall philosophy, this role does not exist at the normative level of ethical reflection. Korsgaard—who gestures toward, but does not really pursue, some deeply theological themes and figures, such as St. Augustine—is also willing to grant space for a form of theological reflection, but neither she nor Kant gives religion, theology, or Scripture/revelation the central role that Porter, Aquinas, and the Scholastics do. This is, of course, in part because Kant and Korsgaard are philosophers, and Aquinas and Porter—as well as the Scholastics in question—are theologians. Nevertheless, when assessing the continuing relevance of the natural law for contemporary ethical reflection we must seriously consider whether or not an ethical framework that adopts a decidedly exclusive language game—Scripture might well be normative for (Catholic?) Christians, but that is to say nothing about its normativity for non-Christians—as both foundational and normative is capable of sustaining both itself—as a discursive ethical reflection—and

124. Porter, *Nature as Reason*, 326.

the broader questions of ethical reflection facing ethics generally—and Christian ethics specifically—in the 21st century. If we are inquiring into the sources of normativity for ethical reflection, and striving to offer a groundwork for ethical reflection that is both responsibly ethical and responsibly theological, then it seems that the role of Scripture in ethical reflection cannot be on the normative level. Kant and Korsgaard would certainly agree, but Aquinas and Porter would certainly not. The gap identified by this question of Scripture's role in ethical reflection raises a problem—namely, if Scripture cannot be addressed on the level of normativity in Christian ethics, where, then, can it be addressed without being reduced to an at best marginal, at worst irrelevant, feature of Christian ethical reflection? While the Kantian/Korsgaardian perspective I am trying to offer in this project is fairly mum on this question, I think that it is an answerable one. Theology is *not* defeated if the normativity of Christian ethics is *not* grounded in Scripture/revelation. I will turn to a more explicit articulation of this point when we turn to the potential bridges that we find within both the natural law tradition and the Kantian tradition.

The Question of Normativity in Cristina Traina

Traina is interested in finding common ground between two apparently disparate discourses: natural law ethics and feminist ethics. In fact, Traina argues that these two discourses do not simply share common ground, but are mutually informed and mutually dependent on each other. What natural law ethics lacks, feminist ethics provides; what feminist ethics lacks, natural law ethics provides. What Traina develops, then, is a form of natural law feminism that combines “feminist convictions with a clear, telic anthropology, a method of practical moral reason, and theories of integrity and social

justice that connect all dimensions of social and individual flourishing eschatologically.”¹²⁵ In articulating this position, Traina makes a clear turn to Aquinas and away from Kant. Yet, much of her analysis finds resonances within Korsgaard’s explicitly Kantian project. Therefore, in this section we will explore those areas of dissonance between Traina’s natural law feminism and the Kantian/Korsgaardian position, before turning to those areas of resonance between these two positions in the next section. The dissonance between these two positions coalesces around two key features of the natural law: nature and teleology.

As we have already identified through the work of Finnis and Porter, Aquinas’s notion of nature operates at the heart of his theory of the natural law. Specifically, it is the understanding of the human person as *imago Dei* that allows Traina to ground ethics—a particularly agential category—in a particular, religious (i.e. Christian) concept of nature articulated in natural law theory. This is so for two reasons. First, the natural law provides an articulation of the inherently telic nature of human anthropology. Human persons are naturally—in their role as *imago Dei*—oriented toward their end in God. This orientation is part of our very being—our essence—and although this essence contains within it a latent potentiality (which we will address in a later section), it nevertheless remains the case that ethics, on this line of argument, becomes grounded in human nature. Therefore, when we consider the task of an ethics grounded in nature, we are also considering the task of practical moral reason. For Traina, practical moral reason is a ‘how to’ manual for

125. Cristina L. H. Traina, *Feminist Ethics and Natural Law: The End of the Anathemas* (Washington, DC: Georgetown University Press, 1999), 323.

ethics. This, too, emerges out of the claim that ethics is grounded in human nature. Since, according to Aquinas and the natural law tradition, nature is given to us, we must infer from it the tools and procedures necessary for living out our natural essence—our human being. In such a framework, ethics—as the repository for these tools and procedures—becomes a ‘how to’ manual for properly navigating the realities of human existence in line with the proper orientation, or end, of human being. In Traina’s natural law feminism, the role of nature is critiqued for the binaries and hierarchies it, more often than not, imposes, but it is not abandoned. Feminist ethics, suggests Traina, provides the necessary critique that prevents nature in the natural law model from becoming oppressive. Such a concept of nature, articulated through the natural law, but corrected by feminist ethics, attends to both the universal dimension of nature—that there is something in all human beings that is the same, i.e. the *imago Dei*—and the particularity of individual human beings, who in their contexts and capacities are fundamentally different from one another.

The grounding of ethics in nature, as articulated above, stands in fairly stark contrast to the grounding of ethics in the Kantian/Korsgaardian tradition. Korsgaard, in particular, wants to emphasize—it is, in fact, central to her argument—the normativity of ethics, but she does not turn to nature and the ‘how to’ model to do it. Korsgaard, like many Kantians, turns to reason, but, as we have seen, a particular form of reason grounded in autonomy. Grounding ethics in a concept of nature—even a concept of nature critiqued by feminist ethics—presumes a foundationalism that Korsgaard wants to

avoid. Like Onora O'Neill,¹²⁶ Korsgaard offers a non-foundationalist reading of Kant's ethics—a reading that does not presume stable, attainable knowledge *qua* factum, but approaches ethics as a more hermeneutical task. One of the most notable features of Kant's ethics—the Categorical Imperative—is not the 'foundation' of ethics, as such. As O'Neill argues, the categorical imperative is a strategy—a procedure, a hermeneutic—rather than an algorithm for ethical reflection.¹²⁷ This is all to say there is a clear distinction between an approach to ethics that grounds reflection in nature, and an approach to ethics that grounds reflection in a strategy, or a deliberation. For Korsgaard, what makes ethical reflection normative is not to be found in a particular 'thing' (in this case, nature), from which the tools for cultivating an ethical life take root and grow; rather, what makes ethical reflection normative is the dialectic between the formal and material dimensions of autonomous, reflective deliberation. To a very real extent, it is in a form of discourse, rather than in a collection of data, that ethics finds its grounding. This is why, when we consider practical (moral) reasoning in Kant, as opposed to Aquinas and the natural law, we do not come out with a 'how-to' manual to be performed and enacted within a particularly casuistic logic; rather, when we consider practical (moral) reasoning in Kantian terms we are considering a strategy for ethical deliberation that is not grounded in a pre-existent 'fact,' but rather in the rationally required components of the

126. See Onora O'Neill, "Reason and Autonomy in *Grundlegung III*," chap. 3 in *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989).

127. See chap. 1, sec. 3, "The Structure of the Practical Principles," and chap. 5, sec. 2, "Contradiction in the Will," in Onora O'Neill, *Acting on Principle: An Essay on Kantian Ethics*, 2nd ed. (Cambridge: Cambridge University Press, 2013).

deliberative procedure itself. Thus, while Traina wants to suggest that a natural law feminist ethics provides a normative foundation for reflection in a concept of nature, Korsgaard wants to suggest that the question of normativity is not founded in something static, like nature, but rather in something dynamic and discursive, like the dialectic of form and matter articulated within the strategy of the Categorical Imperative.

There is another area where we find a gap between the natural law position of Traina and the Kantian position of Korsgaard. While this gap is related to the previous exploration of nature, it merits its own investigation. That is to say, the gap between these two traditions presented by the concept of teleology is a substantial problem in ethical reflection. As we have seen, the human person—in her nature—is teleologically oriented according to Traina's natural law feminism. Yet—and this must be recognized—Korsgaard and Kant, too, take up the question of teleology in ethical reflection. Korsgaard, in fact, makes the argument that the hypothetical imperative—that one takes the means necessary for achieving one's ends—is a constitutive feature of the Categorical Imperative. Without it, the categorical imperative becomes the empty, formal principle that so many accuse it of being. Therefore, even according to Kant and Korsgaard, we need a concept of teleology in ethics. So what is the difference between the teleology of Traina and that of Kant and Korsgaard? I want to suggest that the difference lies not in teleology itself, but in the way teleology is characterized and deployed. I agree with Korsgaard: all actions require ends for which they are done. This simply is the way action operates. Without the concept of an end included in one's conceptualization and pursuit

of a particular course of action, things like unity, agency, and practical reason make no sense.

Nevertheless, the difference between Korsgaard's position and that of Traina is the extent to which the teleological argument extends. For Traina, as we have seen, teleology is grounded in human anthropology—to be a human person is to be oriented toward an end. For Korsgaard, however, teleology functions as the operation of the hypothetical imperative. The difference here is that teleology on Traina's account is a condition of human being; on Korsgaard's account, teleology simply describes how human persons set and achieve their ends. Teleology, in Korsgaard, has a very limited role that does not carry in its wake certain necessary features of human being or nature. Our ends can change, and, therefore, the concept of teleology in Korsgaard does not articulate a necessary feature of human being. For her, teleology is best understood as 'open.' An open teleology says that things are arranged for the best (i.e. the successful achieving of ends), but this arrangement is not independent of human persons—our actions do have an effect on the ends we set and our success (or failure) in achieving them. If the concept of an open teleology best describes the teleological task in Korsgaard's ethics, then when it comes to Traina's concept of teleology, it might be most appropriately described as 'closed.' There is no moral evaluation of terminology here—simply a description of the operation. Traina's notion of teleology, which comes out clearly in her natural law ethics, is grounded in human nature—a nature created, not by human persons, but by God. This is a concept of teleology that has a distinct beginning and distinct end. Human persons perform a myriad of potentialities within the bookends of this concept, but the bookends

remain. Thus, according to the concept of a closed teleology, things are not *arranged*, but, rather, occur for the best (i.e. the successful achieving of ends) independently of human action, which, again, possesses some flexibility within the overall teleological structure, but does not contribute to this overall structure as such. Traina's concept of teleology relies—as does the method and framework of natural law theory—on a deep metaphysical concept of nature. As we saw in Porter, nature—as continuous, though not identical, with super-nature—can serve as a sufficient ground for a teleological (or, in her case, virtue) ethics because nature in general, and human nature in particular, is a stable, ordered reality instituted by God. Whether as creation, broadly understood, or as the *imago Dei*, nature provides a foundation and framework for a natural law ethic that is, at the same time, a teleological ethic. Thus, while both Traina and Korsgaard turn to teleology as a constitutive feature of ethical reflection, the specific form of teleology they turn to is, in fact, quite distinct.

One final area to explore when considering the gaps between these two positions comes to the fore in Traina's analysis of the relationship between the natural law and feminist ethics. As we have seen, Traina explores the textures of these two discourses and asks the question: How, if at all, are they related? She finds that there is a way to see these two discourses as not only complementary, but deeply interdependent. There is much, she says, in the tradition of the natural law that correlates with the methods, grounds, and goals of feminist ethics; feminist ethics, too, shares many of the foundations and objectives of the natural law. Most specifically, she argues that the natural law and feminist ethics exist in an interdependent, even symbiotic, relationship. Feminist ethics,

as articulated by Traina, is a pluriform discourse that brings together a variety of positions under the auspices of the concept of ‘feminism’ or, perhaps better, ‘feminisms.’ What this particular discourse offers contemporary ethical reflection is not merely a reminder (though it is that as well), but a methodology, a foundation, and action guiding objectives that bring ethics ‘down out of the rafters.’ It immerses the discourse of ethics in the particularity of life—in the thick descriptions that both texturize and contextualize practical ethical reflection. Feminist ethics, according to Traina, provides an entrée into the question of particularity—contingency, historicity, embodiment—that is essential to the task of ethical reflection. This is what feminist ethics offers to the natural law—particularity. The natural law, on the other hand, considers not only the grounds but the overall framework within which ethics is reflected, deliberated and enacted. The natural law provides more than a sounding board for evaluating the particularities of ethical thought. For Traina, the natural law offers us a firm foundation for ethical reflection—it provides ethics with the grounds for its normative claims. Thus, the natural law speaks to the universal dimension of ethical reflection and ethical claims. Where better, suggests Traina, to ground the universal, normative dimension of ethics than in a tradition that grounds itself in the natural, created order? Insofar as the natural law is a discourse imbued with normative force because of its construction and constitution, it only makes sense to turn to such a discourse when trying to articulate the universal dimension of ethics. Therefore, what the natural law offers to feminist ethics is this universality. It provides feminist ethics with a framework that protects it from the tendencies toward relativism inherent in some of its more post-modern articulations. For feminism to be an

effective critique, it must go beyond the paralysis of radical deconstruction. It requires an effective, universal framework to ground normative claims and guide ethical reflection.

The natural law, suggests Traina, offers such a framework.

What this overall narrative provides, then, is an approach to ethics that attends to both the universal claims ethics needs to make (through the natural law) and, at the same time, attends to the particularity of time, place, history, context, etc., that is equally required of ethical reflection if it is not to become detached and abstracted. Traina's natural law feminism, then, provides an approach to ethics that attempts to balance the universal and the particular by interweaving them into a single, yet still critically corrective, approach to ethics. The question becomes: Why is it that the natural law is the most compelling universal, normative discourse for ethics today? For Traina, the central claims of the natural law—critically corrected by feminist ethics—most convincingly and most effectively meet the requirements of contemporary moral reflection. Korsgaard, however, will provide a different answer to this question. It is not to Aquinas and the natural law that she will turn in order to articulate the normative dimension of ethical reflection, but to Kant and Aristotle. In this, however, we can already catch a glimpse of the bridge that might bring these two discourses together. When we return to Traina's analysis and the possible bridges that can be constructed between she and Korsgaard, we will return to this question of the universal and the particular and see if the natural law is, in fact, the most compelling source of normativity for ethical reflection.

Kantian Ethics and the Natural Law:

Building Bridges for Ethical Reflection

Law and Rights in Finnis, Kant, and Korsgaard

As we noted in the previous section, Kant, Korsgaard, and Finnis adopt different—and rather incompatible—starting points in their reflections on the question of the law. Finnis grounds the law and all normative, ethical reflection in a metaphysics of the good, while Kant and Korsgaard ground the law and all normative, ethical reflection in freedom and autonomy. Despite these very different starting points—and the consequent differences of method and approach to the question of the law—all three of these figures nevertheless share certain concerns over the effects of their reflections for the broader task of ethics. While the grounding of law in these traditions remains incongruent, they both, nevertheless, wish to articulate their understanding of the law within the contemporary discourse of rights. Therefore, in order to explore this shared space of rights, which both the Finnis/natural law tradition and the Korsgaard/Kantian tradition wish to claim, we will turn here to those features of the discourse of rights that both traditions offer as essential to it: practical reason, self-constitution, and the communities within which they operate.

As noted in chapter one, Finnis takes the entirety of his analysis in *Natural Law and Natural Rights* to be concerned with the question of human rights. Thus, for him, the question of the law—and the specific question of the natural law—is fundamentally a question about rights. The understanding of rights he is after, however, is an understanding deeply dependent upon an articulation of the law as grounded in the good

and, more specifically, in his notion of 'basic human goods.' The very question of rights, suggests Finnis, becomes important to us because of the underlying metaphysics of the good that grounds it. Distancing himself from two paradigms of human rights discourse which he finds unsatisfactory—that is, rights as individual choice and rights as individual benefit—Finnis offers a concept of rights as individual need. Finnis argues that the basic human goods can be understood as basic reasons for action—basic reasons that motivate us to act and interact in specific ways. More to the point, these goods/actions can be understood as basic human needs and, as such, these basic human needs can and must be met with a concept of corresponding basic human rights. Rights, therefore, are not primarily a matter of choice or benefit (though choice and benefit do figure into the picture later on) but, rather, they are primarily a matter of need. Rights respond to the needs of individuals whose lives are said to flourish when these needs are met. Key to this concept of flourishing in Finnis is the concept of dignity. The dignity of each human person is what gives them rights—especially absolute (inviolable) rights. What is the source of this dignity? For Finnis, the source of dignity of the human person is the soul. Therefore, on Finnis's account, the soul is what grounds the dignity, flourishing, and rights human persons claim as their own. The soul—insofar as all human persons have one, which Finnis believes that they do—also grounds the freedom and equality that make us the subjects of rights.

While rights are inherently individual for Finnis, he, nevertheless, recognizes the social constitution of human persons. Thus, the common good becomes the framework within which rights must be understood (and claimed, and granted, etc.). As noted in

chapter one, the model for the common good which Finnis adopts is the model of friendship. It is in friendship that the freedom, equality, and mutuality characteristic of his rights discourse take shape. As in genuine friendship, the common good is understood not as a situation in which each person pursues their own good amongst others pursuing their own goods. Rather, friendship and the common good are each constituted by the individuals involved, pursuing not only their individual goods, but the good of others *as* the goods of others. The good of individual A, says Finnis, must be an end for both individual A and her friend, individual B; and vice versa. This, too, is how the common good works: the good of the individual must be pursued by both the individual herself and the community of which she is a part; and vice versa. Both friendship and the common good, says Finnis, are coordinated for the purposes of self-constitution, self-fulfillment, and self-realization. Since, on his reading, self-constitution—and self-fulfillment, self-realization, self-possession—are the task of practical reason, it is important to remember what Finnis means by that term. For him, practical reason pertains to choice, action, and the freedom necessary for both—it is about agency, action and freedom. Nevertheless, for Finnis, practical reason is only one element of his broader ‘basic human goods’ approach to natural law ethics. Specifically, practical reason is the element that considers the agent’s self-constitution. Therefore, Finnis’s reflections on practical reason can be seen as an extended reflection on the workings of conscience. According to Finnis, when reflecting on the good, when engaging in practical reasonableness, one must (ultimately) follow the dictates of one’s conscience. This is all to say that, for Finnis, rights discourse must attend not only to individual need

(though this is, at heart, the core of his analysis) but to how this individual need is articulated in and among others through a concept of the common good.

Like Finnis, Kant and Korsgaard are deeply interested in the connection between the question of law and the question of rights. It is true—as we have seen—that whereas Finnis grounds the law (and rights) in a metaphysics of the good, Kant and Korsgaard ground the law (and rights) in freedom and autonomy. Yet, all three thinkers—and the traditions they represent—adopt certain features of rights discourse that bring them into closer proximity than might at first appear. I want to highlight a few of these features in order to identify specific discursive spaces in which natural law ethicists (à la Finnis) and Kantian ethicists (à la Korsgaard) might engage dialogically about rights and the law.

The concept of practical reason that emerges from Kantian ethics, for example, gets articulated in terms of the hypothetical and categorical imperatives. The hypothetical imperative tells us that in order to act, we must not only set, but will, an end. The categorical imperative tells us that in setting and willing an end, we must do so based only on a maxim ('I will do action-A for end-E') that can be adopted by every person in a similar situation, time, place, etc. (i.e. the maxim must be universalizable). Practical reason is a discursive, dialogical endeavor. It is not, as such, a pre-determined principle we apply to a particular situation, but rather describes the discursive encounter from which action emerges. The legal quality of practical reason comes through its formalism. That is to say, the feature of practical reason which embodies its law-like quality is its universality. If I can adopt a particular maxim for action as my maxim for action, then I must also acknowledge that this maxim ought to be adoptable by every person in the

same situation. Thus, the law-like quality of practical reason is not ‘legal’ in the sense of being determined from the outside and, then, applied to all persons in all situations. Rather, the law-like quality of practical reason indicates a procedural formalism that emerges from a subjective standpoint and is then confirmed from an objective standpoint—the latter standpoint, as I will explain below, being that of a citizen in the Kingdom of Ends. Practical reason, therefore, is inherently dialogical—it emerges from reflection, rather than being a presupposed factor. Korsgaard notes that many contemporary approaches to the concept of practical reason understand it to be a premise for normative reflection. It does not emerge from the conversation, so to speak, but is presupposed by it. Finnis, in fact, appears to do this. Practical reason is, for him, a criterion necessary for human flourishing through the basic human goods. It is a premise for normative reflection, rather than something that emerges from it. It is also, however, the process one goes through in normative reflection. It is, therefore, both premise and procedure. While the dual roles of practical reason in this account is problematic for Korsgaard, she, Kant, and Finnis, nevertheless, give an important place to practical reason in ethical reflection. Foregrounding practical reason as both traditions do gives rise to another feature of rights discourse on which Finnis and Korsgaard converge: the concept of self-constitution.

For Korsgaard, self-constitution means choosing and endorsing of your actions. It is the work of achieving your own psychic unity—of recognizing that there is a ‘you’ that exists, acts, and chooses—over and above the specific, day-to-day, physical dimensions of your practical identity. Self-constitution is, in brief, action—the action of making yourself

into yourself. Whereas the concept of practical identity speaks to the specific contours of one's person—how one identifies oneself within and among the different potentialities of one's life—the concept of self-constitution speaks to the broader task of life. It is a concept that appears paradoxical at first blush: it speaks to the choosing of actions prior to agency, whereas we often think of agency as preceding action. Nevertheless, Korsgaard argues that self-constitution is the task of making myself into myself, and, therefore, focuses on the action that makes agency possible. Action, she says, is what we are condemned to—it is the unavoidable and inevitable situation we find ourselves in. Only by attending to this question of action are we able to form our agency and, thus, form ourselves into not just persons—which is the task of practical identity—but into ourselves. If practical identity speaks to what is unique in each human person (i.e. our personhood), self-constitution speaks to that activity of being we all share (i.e. our humanity). Self-constitution, then, contains an inextricable element of abstraction. While it is the action of making myself into myself, it is also an action that extends beyond any specific person. The activity of self-constitution lies within our humanity, and, therefore, goes beyond our individual persons. Still, suggests Korsgaard, we must consider the question of whether or not there exists a limit on the action that is self-constitution. She suggests that there is, and the limit of self-constitution is the principle of practical reason—the categorical imperative with the hypothetical imperative as an aspect of it. As an agent's principle for action, the principle of practical reason is the principle of self-constitution. In this way, our concept of self-constitution avoids the pitfall of relativism. Not every form of self-constitution can reasonably be pursued, and the source of this

corrective—of this limit—comes through the inherently communal and social dimension of practical reason. Accordingly, this move into the communal and social is a move into morality. As Korsgaard has argued, the moral law is the law of self-constitution and it, therefore, remains to us to articulate this moral community, in which the law of self-constitution takes its shape: the Kingdom of Ends.

As noted above, self-constitution is not a concept that pertains to isolated individuals. The concept of practical identity gives rise to our personhood—those distinctive features of our agency that make us who we are as individuals. Self-constitution, however, gives rise to our humanity—that constitutive feature of our being which makes us moral agents, capable of choice and action. Therefore, the concept of self-constitution requires a moral community—i.e. a community of autonomous, free, and practically identified agents—within which it can take its bearings. This community—necessary for agency, identity, and morality—is described by Kant and Korsgaard as a Kingdom of Ends. While the Kingdom of Ends was discussed in chapter three, it is important to recall its features here if we are to, on the one hand, recognize what makes it distinctive, while, on the other hand, bringing it into constructive dialogue with another articulation of a moral community of agents—one that is more common in the discourse of Christian ethics: the Common Good. As noted earlier in this chapter, the Kingdom of Ends is an ideal—it is not found in the phenomenal realm (i.e. it is not a physical space, governmental order, etc.), but it is a ‘meeting space’ in the noumenal realm. It is a space where deliberating, communicating, deciding, acting agents meet in community to formulate the normative standards that make ethics and morality possible. As we saw in

chapter three, this meeting space of the Kingdom of Ends is characterized by responsibility, reciprocity, and respect. Only with these three features of its constitution in mind can we articulate the kind of meeting space the Kingdom of Ends describes—that is, a moral meeting space. The concept of morality, in Kant and Korsgaard, pertains to communities—it describes the way(s) in which individuals act and interact with each other. In more robustly Kantian language, morality describes the way(s) in which legislating citizens interact in the Kingdom of Ends. There are clear points of similarity between this concept of the Common Good—found in Finnis—and the concept of the Kingdom of Ends—articulated in Korsgaard. Both concepts—both spaces—address themselves to the question of how individual agents, each with their own practical identity, act and interact with others responsibly, reciprocally, and respectfully in community. Both the Common Good and the Kingdom of Ends prioritize flourishing, dignity, and rights as constitutive features of reflective deliberation. Still, an area of difference between them must be noted. The Common Good is a concept that asks us to consider, in a given situation or deliberative moment, not only our individual good, but also the good of the whole (the wider community). Our choices and actions, therefore, are made not only with an eye to what is good for us, but what is good for the persons and world we encounter and inhabit. Unsurprisingly, this concept focuses on an understanding of the good—an understanding of a whole that we contribute to in our thoughts and actions. Our contributions are ‘good’ insofar as they make the good of the whole more complete; they are ‘bad’ insofar as they do not. The concept of the Common Good, therefore, asks us to choose and (inter)act with an eye to the good that, as Finnis

has argued, is the ground and source of all our actions. While the concept of the Kingdom of Ends shares many of these concerns with the concept of the Common Good, it also departs from it in key ways. The Kingdom of Ends is the space of morality. Morality, here, ought not be understood as a pre-determined set of rules that make action and choice good or bad, based on how well or ill they correspond to our preapprehension of the good. Rather, morality describes a kind of deliberative encounter between practically identified individuals attending to a normative, constitutive feature of being: action as interaction. Recall that, for Korsgaard, we are condemned to action—it is fundamentally unavoidable. Thus, when we constitute our practical identity, we *cannot but* recognize that any articulation of my practical identity necessitates the recognition of *at least the possibility* of your articulation of your practical identity. This is how interaction becomes a way of thinking about normativity. The question of normativity is not answered by X—where X is a static fact—a ‘thing’ in Kant’s sense—that is simply applied in all times and places. The question of normativity is answered by the interactive process of reflective deliberation. Reflective deliberation does not provide answers, but, rather, it describes the normative procedure for ethical and moral reflection. Here, we are brought back to the concept of the Kingdom of Ends. This ‘meeting space’ describes the space of morality—that is, it describes the space where the question—the process—of normativity is addressed. The Kingdom of Ends differs from the Common Good in that in the Kingdom of Ends, the question of normativity is described, evaluated, and addressed. Its source is not a preexistent good, or a concept of a greater whole into which one must insert oneself and one’s good/bad actions. Its source is the very process of deliberative reflection that

creates meaning as it goes. The source of normativity in the Kingdom of Ends is not some *thing*, but, necessarily, some *one* or *ones*—the intersubjective, interactive legislating citizen(s). Therefore, while both the Common Good and the Kingdom of Ends share similar goals, they ground themselves in different discursive starting points. If we can't bring these two discourses together—which, given their very different starting points, I am reluctant to say that we can—then what remains for Christian ethics is to seriously consider each discourse in light of our contemporary (ethical, moral) situation. If the concepts of human flourishing, dignity, and rights are constitutive features of contemporary Christian ethical reflection, as I believe they are, then we ought to reflect on the contours of the space in which we undertake this reflection and deliberation and ask whether or not the more popular discourse of the Common Good is the optimal space for having such a discussion, or whether the Kingdom of Ends might not provide a more suitable concept for this reflective task.

Jean Porter and the (Revised) Role of Theology in Ethical Reflection

As a deeply theological project, we have noted some of the challenges—or gaps—that exist between the natural law tradition articulated by Porter and the Kantian tradition articulated by Korsgaard. Yet, despite the differences between these two traditions, there remain certain features of their thought that might serve as constructive bridges for further dialogue. While we will not be able to bridge all the gaps identified in the previous section, we can still reflect on those shared spaces between these traditions that might lead to constructive conversation on the future of Christian ethics. There are three specific

areas that I would like to highlight as shared, discursive bridge spaces: the unity and sociality of the agent, the role of virtue in ethical reflection, and the possibility of a revised theological approach to Christian ethics.

In both the natural law and the Kantian traditions there is a central place given—when reflecting on ethical normativity—to the concept of unity in both action and agency. As we have noted previously, the specific contours of both action and agency in these two traditions differ, sometimes greatly. Nevertheless, both traditions emphasize the importance of unity in thinking about agency and action. Porter, for example, recognizes that in the Scholastic tradition, unity of action and agency is intimately linked with the overall concern for articulating a metaphysics of order and continuity; a metaphysics which undergirds the entire Scholastic project, especially when it comes to the question of ethics. What this in turn gives rise to—when we consider the question of unity—is the belief that as the cosmos manifests the order and of God, so too the human person, as the *imago Dei*, must manifest an analogous ordering. That actions must fit into the overall ‘plan’ for creation and agency—if they are to truly manifest the *imago Dei*—is part and parcel of the project as well. Agents must be unified, in Scholastic logic, if they are to engage in actions appropriate to their nature, as well as the nature of God. Like God, whose form is one of relationality and sociality, the human agent must also be both relational and social because she is a manifestation of God’s creative nature in the world.

The Scholastic conception of rationality, too, plays a part in this commitment to the unity of the agent. It is rationality, as a natural capacity of the human agent, which makes this unity intelligible. This rationality and intelligibility, found in God and

mirrored in the human person, makes agency possible and, as such, requires an overall unified notion of human agency and action. Aquinas, too, argues for a sense of unity of action and agency. Aquinas's theory of morality, as noted in chapter one, relies on the concept of action, the constitutive features of which are practical reason and the will. The operations of practical reason and the will in this tradition rely on the natural orientation of the human person toward her final end: happiness. Any approximation of (natural) happiness in Aquinas depends upon a theological commitment to the fullness of happiness found in God. If we are to approximate happiness in this life, it is through the practice of the virtues, which in turn require an understanding of the practicing agent—the human person—and the actions she undertakes to be unified in a way that reflects, or mirrors, the unity of God. Only then can practical reason do its job of bringing us toward happiness. This is also the case when we consider the precepts of the natural law. For Aquinas and Porter, while there may be many precepts of the natural law, there nevertheless remains a more fundamental sense in which they are all one—all unified—because of the underlying metaphysics of order the natural law presumes. Thus, the concept of unity in action and agency is central to the task of ethical reflection in the natural law tradition—at least as it is articulated by Porter.

Kant and Korsgaard, too, prioritize the concept of unity in action and agency, and their clearest articulation emerges from Korsgaard's notion of practical identity. She traces the roots of this concept back to Kant's understanding of 'person.' On her reading, Kant's concept of 'person' describes a self-conscious, rational activity—a form of life. This self-conscious, rational activity—this 'form of life'—is our practical identity, which, in

turn, undertakes the process of making oneself into oneself—the process of self-constitution. Therefore, this concept of practical identity requires a form of unity in the person who is making herself into herself. Without this sense of unity—this ability to attribute to oneself the choices and actions one endorses and undertakes—we will have a very hard (if not impossible) time establishing a practical identity. Practical identity is what allows us to attach the ‘I do’ to our actions, and, in turn, is what permits us to say that a particular action is my action. Speaking in terms of ‘I’ and ‘my’ necessitates the recognition that there is, in fact, an ‘I’ who is constituting herself through her (or, from the first person perspective, my) action. For Korsgaard, as we have seen, there is no ‘I’ prior to action, yet this ‘I’ plays a decisive role in sustaining the practical identity of the self-constituting person. If this is the case, then we must consider how this process of self-constitution actually constitutes the practical identity of the ‘I’ and keeps it from going off the rails. If there is no ‘I’ prior to action, then what is to prevent practical identity from degenerating into a form of relativism? It is here that we return to the concept of unity—the concept that the self-constituting actions of the ‘I’ bring the agent together, rather than pull her apart. The necessity of this concept is not merely as a convention adopted to avoid an otherwise unstoppable degeneration of the agent into a mere heap, as Aristotle says. The necessity of this concept of unity emerges from Korsgaard’s ‘two standpoints’ position regarding the noumenal and phenomenal worlds. Phenomenally, the human person *could* become a mere heap of actions—each unconnected with the other and, ultimately, leading to a concept of ‘agency’ where the ‘I do’ is as irrelevant as it is illogical. We cannot attribute choice and action to a person if that person may, at time point A, do

action X, but, at time point B, may not and have no connection to action X. We require something to link the actions of an agent back to her if ethics and normativity are to be possible at all. It is not from the standpoint of our phenomenal selves that we can conceive of the unity of our agency and actions; rather, it is only from thinking ourselves from the noumenal standpoint that this becomes possible. Unity is required for any concept of the 'I' over time who is imputable, and it is through thinking of ourselves from the noumenal standpoint—rather than the phenomenal standpoint—that such self-description and self-identification are possible. Practical identity, then, is the phenomenal way we make sense of the noumenal unity that is required of us not by convention, but by rationality. Practical identity brings the plurality of actions that constitute my agency together, and the process of self-constitution—the reflecting upon, choosing, and endorsing of my practical identity—illuminates, from the noumenal standpoint, the unity necessary for not only becoming a person, but for recognizing the (rational) necessity of the concept of unity, not only for myself, but for the concept of humanity as well.

Another area where both the Aquinas/Porter and Kant/Korsgaard traditions meet is in the space of virtue. As we have noted, there are distinctive gaps between these two positions when it comes to how they understand virtue and the practice of the virtues. Nevertheless, virtue remains a concept that both traditions take to be integral to their overall practical ethics. The practice of the virtues is at the heart of the natural law's ethical approach. Happiness is the end which all human persons desire and work to bring about. The fullness of happiness is contained in the Beatific Vision, and the natural law approach recognizes that this is not an attainable end in our terrestrial lives. Therefore,

there must be an end in our worldly lives that approximates the fullness of happiness in the Beatific Vision, yet remains on the natural end of the continuum between the creator and creation. This, as we have seen, is the practice of the virtues. In practicing the virtues, we begin to habituate ourselves to the form of (ethical) living that coheres with the natural end—and approximates the supernatural end—of creation. This formulation of what it means to live and act virtuously takes two deeply Kantian themes as central: rationality and autonomy. As Porter reminds us, reason is a natural capacity for the human person—it both mirrors and manifests the intelligible order in our own humanity and the intelligible order in the wider created world within which our lives are embedded. For Aquinas and the Scholastics, she reminds us, all of creation acts—and must so act—in accordance with the rational, intelligible principles which are given to, and order, creation. Human agents, however, are unique among this creation through being the *imago Dei* therein. We not only act in accordance with the rational and intelligible principles of creation (as do all other animals, plants, etc., in the created cosmos), but we, alone, have the capability of choosing to follow these rational principles. Korsgaard, who would find much to agree with in this last statement, would say this is an exercise of the will—choosing and endorsing the principle of action that allows us to constitute our agency. Porter, however, says that this all takes place within the practice of the virtues. This is why she considers the practice to be rational—it reflects the rationality found in nature and the natural world. What is more, this practice is also autonomous. For Porter, insofar as the practice of the virtues pursues the end of happiness in our terrestrial lives, insofar as the practice of the virtues articulates how we live the *imago Dei* in creation,

insofar as the practice of the virtues governs the principles of our causality in the ethical/moral life—the practice of the virtues is autonomous.

Here, Porter and Korsgaard share an emphasis on autonomy related to virtue, but there is a difference between them as well. When considering the concept of autonomy, we can consider it in two ways. First, there is the sense of autonomy in which one is governed by the principles of one's own causality. This is a form of autonomy that exists across the spectrum of agency—insofar as one is governed by the principles of one's own causality, one is autonomous. This first sense of autonomy appears to be the sense in which Porter employs the concept: insofar as the causality of our actions is constituted by the practice of the virtues (good action is caused by the proper practice of the virtues, bad action by the improper practice of the virtues), then we are autonomous. Korsgaard would agree with this, to be sure. However, this sense of autonomy does not, for Korsgaard, pertain specifically to human agents—it pertains to all manifestations of agency. Human agency requires another, deeper sense of autonomy—a sense in which to be autonomous is to choose the principles that are definitive of one's will. How does the autonomous agent—in this second sense—choose such principles? According to Kant, she chooses through the 'spontaneity' of reflective deliberation. Thus, both Aquinas and Kant, Porter and Korsgaard, are interested in the rational and autonomous dimensions of virtue—though each articulates their position a little differently. If we return to the concept of practical identity for a moment, we can see that for Aquinas and Porter, one's practical identity—that of a human person as *imago Dei* in creation—is pursued through the practice of the virtues and is, therefore, rational—insofar as it is in the practice of the

virtues that our natural happiness is achieved—and autonomous—insofar as the practice of the virtues is governed by the principles of our own causality. While still occupying the shared space of virtue, rationality, and autonomy, Kant and Korsgaard narrate an alternative concept of practical identity. One's practical identity, specifically along Korsgaardian lines, is constituted by the rational deliberation which makes it possible. Practical identity is rational insofar as it brings together, into a coherent unity, the elements of the 'I' who wills maxims of action that attend to the plurality of its context, while also attending to the overall self-conception the 'I' possesses (the one who does not so will, does not have a practical identity). It is autonomous not because it is governed by the principles of its own causality (though it is that), but rather, it is autonomous because it definitively chooses the principle of one's own will—which is, for Korsgaard, self-constitution. Thus, both traditions share common questions and concerns about the concept of virtue and the concomitant concept of practical identity. While their conclusions may differ, virtue and practical identity remain bridging concepts between the natural law tradition and the Kantian tradition.

Finally, I want to look at another discursive space that, as noted earlier, is one which appears to constitute a sizeable gap between the natural law and the Kantian traditions, but which, on further critical reflection, might actually serve as a bridge between them: theology. To be sure, the (specifically Catholic) theological task is taken up by Porter and the natural law tradition more explicitly and systematically than by Korsgaard and the Kantian tradition. Nevertheless, they both remain open to theology, even if their engagements with it proceed along markedly different lines. One of the

clearest theological moves that Porter makes in her interpretation of the natural law is to ground it—normatively—in revelation and Scripture. As noted before, Porter locates Scripture at the heart of the natural law, as the ‘norming norm’ of both nature and reason. While each of these dimensions of natural law thinking offers their own unique contribution to the discourse, it is Scripture that serves to ground and validate their ‘findings.’ Thus, the normativity of the natural law is deeply connected to Scripture and revelation. It cannot, in fact, function morally without it. Morality, for Porter, is a fundamentally human phenomenon. It is not a site for transcendence, but rather the space in which we participate in the goodness of human nature. The goodness of human nature, however, is revealed to us through Scripture. Thus, not only the question of normativity, but the question of morality is deeply connected to the question of Scripture. I have already noted some of the challenges facing this position and the very real challenge this position creates for the question of normativity in ethics. Nevertheless, I do not think that this necessarily means that theology is not, or cannot be, part of this conversation. Theology can be a constructive interlocutor when it comes to ethics and normativity, but not if it turns exclusively to Scripture in order to answer the question of normativity. While this is not the form of theology that either Porter or Aquinas offers in their natural law theories, there are alternative theological forms that might be better suited to a constructive conversation on ethics and normativity.

Theology is not defeated if Scripture does not operate on the level of normativity. Korsgaard does not address Scripture—on the level of normativity or elsewhere—in her philosophical investigation of practical identity and self-constitution. The theological

does not serve as the ground for any argument, nor does Scripture serve to ‘norm’ the operation of reason or the process of self-constitution. One may be inclined to say, then, that Korsgaard’s Kantian approach to ethics has no place for theology. Yet, in *Self-Constitution*, Korsgaard does articulate a central part of her project in theological terms. As I have already noted, Korsgaard opens her analysis in *Self-Constitution* with the following sentence: “Human beings are *condemned* to choice and action.”¹²⁸ Here, there is a clear sense in which choosing and acting are the inescapable conditions of humanity—insofar as we are human persons, we must choose and act as constitutive features of our humanity. The narrative she turns to, as an illustration of this human ‘condition,’ is the expulsion from the Garden of Eden, found in the Book of Genesis.¹²⁹ By raising this point, I am not trying to suggest that Korsgaard is a crypto-theologian or even that she intends to slip into an otherwise philosophical discourse a theological argument. I do not think this is the case at all. Korsgaard turns to this narrative of the expulsion in order to illustrate the kind of situation human agents find themselves in. We do not live in the ‘Garden’ (and whether or not we ever did is irrelevant). We live in the ‘wasteland,’ where we must live together and act responsibly as autonomous, self-determined agents living, choosing, and acting among other autonomous, self-determined agents. The fallen condition of humanity is the narrative that Korsgaard takes to be constitutive of (i.e.

128. Korsgaard, *Self-Constitution*, 1.

129. It is also interesting to note that this same narrative—the expulsion from the Garden of Eden—is visually depicted for the reader of *Self-Constitution* on the cover of the book. The cover image is a copy of Thomas Cole’s *Expulsion from the Garden of Eden* (1828). Whether or not this is simply coincidental, it is still interesting to observe the role that this narrative plays without needing to engage in a debate about Scripture on the normative level.

normative for) all choice and action. Once again, I raise this not to suggest that Korsgaard is doing a kind of crypto-theology, but to point out that in her account of normativity, the expulsion from the Garden is a narrative that provides a hermeneutic for understanding the human condition. It is not Scripture *qua* revelation that she turns to, but Scripture *qua* story. In this narrative of the expulsion from the Garden, Korsgaard finds the resources for describing a particular situation, but not—at this level—for articulating normative claims about navigating such a situation.

Korsgaard is not alone in turning to Scripture on a level (in this case, the descriptive) other than the normative. Many theologians and ethicists in the Catholic tradition have made a similar move—not rejecting the role of Scripture in theological reflection, but addressing it on a different level than that of the normative. Hille Haker, for example, incorporates Scripture into her critical, narrative approach to ethical reflection.¹³⁰ Rather than addressing Scripture as a source of rules and regulations, from which our ethically normative claims are derived, Scripture serves as a narrative from which the identity of a particular person or community emerges. Scripture, and religion more generally, do not provide proof-texting for what one ought and ought not to do; rather, Scripture and religion contextualize the agent within both chosen and unchosen

130. See Hille Haker, “The Responsible Self: Questions after Darwin,” in *Evolution and the Future: Anthropology, Ethics, Religion*, ed. Stefan Lorenz Sorgner and Branka-Rista Jovanovic, *Beyond Humanism: Trans- and Posthumanism* 5 (Frankfurt am Main: Peter Lang, 2013), 21–34; Hille Haker, “Narrative and Moral Identity in the work of Paul Ricoeur and Contemporary Ethics,” in *Memory, Narrativity, Self and the Challenge to Think God: The Reception within Theology of the Recent Work of Paul Ricoeur*, ed. Maureen Junker-Kenny and Paul Kenny (Münster: LIT Verlag, 2004), 134–52; and Hille Haker, *Moralische Identität: Literarische Lebensgeschichten Als Medium Ethischer Reflexion: Mit Einer Interpretation Der Jahrestage Von Uwe Johnson* (Tübingen: Francke, 1999).

stories that allow the agent to make normative claims in line with her identity, but which do not serve as the ground for such claims. As Haker notes, “[the] stories of oneself are embedded in the knowledge systems, social relations and normative orders of, among others, particular cultures, legal traditions or religions, from which we all take up words, symbols, rituals, and actions, in order to give our identities new constructive shape.”¹³¹

Dietmar Mieth, too, incorporates Scripture into his theological reflections in a space other than the normative. Against an approach like Porter’s—but, nevertheless, interested in the question of virtue—Mieth wants to avoid the ‘essentialism’ found in the natural law. He addresses the concept of virtue along Kantian lines, suggesting that virtue can be understood “as *harmony of the will with the morally right*, based on the resolve to do what has been discovered to be morally right.”¹³² While interested in contextualizing his value-orientation approach within the theological concepts of hope, love, justice, and faith—much like Porter and Aquinas—he does not make the claim that Scripture serves as the normative source of these virtues. Scripture can help agents narrate and contextualize ethical normativity along theological lines, but it does not presume that Scripture is their ultimate source. Scripture, then, becomes a language for narrating ethical normativity, without being its source. Finally, John Caputo offers a philosophical approach to a form of event-theology that finds in Scripture a form of prayer—or, better, a form of poetics—that offers a hermeneutical approach to the reflective task of Christian theology and

131. Haker, “The Responsible Self,” 21–34.

132. Dietmar Mieth, “Continuity and Change in Value Orientations,” in *Changing Values and Virtues*, ed. Dietmar Mieth and Jacques Pohier, Concilium 1987/3 (London: SCM Press, 1987), 49.

ethics, without thereby determining them. On his approach, “the Scriptures are treated as hermeneutically explicative or phenomenologically disclosive or revelatory about a mode of being-in-the-world.... They disclose something about the structure of experience without pretending to represent facts of the matter.”¹³³ The ‘truth’ of Scripture, then, is poetic, rather than propositional. As poetic, Scripture—as an event—“wants to *become true*, to *make itself true*, to *make itself come true*, to be transformed into truth ... [it] is true the way a novel is true ... or the way a poem is true without picturing a fact ... [Scripture] does not record the strong force of hard facts; it describes the weak force of a call for the kingdom.”¹³⁴ Much more so than Korsgaard, these figures strive to incorporate Scripture into their ethical, philosophical, and theological projects without identifying it as the ground for ethical normativity. Scripture is a companion, a guide, a teller of stories that remains both true and formative for Christian ethics, without being reduced to a collection of do’s and don’ts from which our ethical projects and ethical pursuits are derived. While there is a significant gap between these positions, to be sure, it remains the case that Scripture—in the readings of all these figures—can be seen as a potential bridge between these positions. Scripture is intimately linked to the method and task of Christian ethics—just not at the level of normativity. Thus, theology remains a central concept in any articulation of Christian ethics. It can serve as a bridge between the natural law and the Kantian traditions, but only if we critically re-imagine it as a

133. John Caputo, *The Weakness of God: A Theology of the Event* (Bloomington: Indiana University Press, 2006), 118.

134. Caputo, *The Weakness of God*, 118.

hermeneutic for articulating ethical normativity, rather than as a source for founding normative claims.

Normativity Revisited: Traina,
Korsgaard, and the Future of Ethics

One of the constitutive features of normative reflection in both Traina and Korsgaard, as we have seen, is the question of agency. While both Traina and Korsgaard offer different articulations of the agent—her embodiment, her identity, her constitution—they, nevertheless, give a central role, in their ethical reflections, to the agent and the concept of agency. Therefore, I want to draw out of these two analyses areas, and lines of thought, that might serve to bridge the gap between the discourses of natural law ethics and Kantian ethics through an exploration of their shared interests. One of the principal features of agency according to Traina's natural law feminist ethics is the notion of the agent as potentiality. That is to say, the notion of the agent as containing within herself myriad possibilities pertaining to, amongst other things, choice, action, and agency. The agent is not predetermined. She remains open—constitutionally—to the possibilities of the actions, interactions, and encounters that constitute her subjectivity. As we noted before, one of the gaps between Traina's position and that of Korsgaard is the concept of nature. While a critically corrected concept of nature—teleologically organized and fixed in the natural law tradition—grounds ethics, and feminist ethics in particular, in Traina's analysis, Korsgaard turns to the deliberative, reflective process of practical reason in order to situate ethics. The difference, here, speaks to how each thinker imagines that space of ethics. According to Traina, ethics in the natural law tradition is applicational—a 'how to'

manual; for Korsgaard, ethics in the Kantian tradition is reflective—a deliberating, confirming, choosing, and enacting process. In other words, the ground for ethics in Traina is fixed and static, whereas the ground for ethics in Korsgaard is intersubjective and dynamic. However, to simply articulate Traina's position as fixed and static—and to leave the conversation there—is to short-circuit the overall ethical process embodied in Traina's analysis. True, the bookends of ethics are set—its beginning and its end. However, between these two bookends remains a varied and dynamic interplay of ethical choice and action. The natural law does not determine each and every ethical choice we make; rather, it remains open to a broad plurality of possible choices and actions, all of which are open to the agent. The task of the (ethical) agent, then, is to choose those actions that contribute to her overall self-development and flourishing as the entrée into the concept of good that both underlies and orients agency itself. In a very real way, this is just another way of articulating the feminist contribution to natural law theory. The natural law, as we have said, is concerned with the question of universality when it comes to ethics. Feminist ethics, on the other hand, is concerned with the particularity of ethical agents—agents who must understand themselves within the histories, geographies, genders, and classes they embody. Feminist ethics, then, refuses a strictly static notion of agency in general, and within natural law theory in particular. The form of agency identified by feminist ethics—dynamic, particular, embodied—is what serves as the critical correction to the natural law's more universalized orientation. According to Traina, this approach to particularity is not imposed on the natural law, but is, in fact, an inextricable feature of it, which is identified and developed in, and through, feminist

ethical reflection. According to this interpretation of Aquinas's natural law theory, creation does, in fact, have both a set beginning and a set end; yet, creation itself is a potentiality, and is constituted by a myriad of potentialities within it. It is, suggests Traina, a potentiality of ends. Thus, critically corrected by feminist ethics, the natural law ought not be conceived of as merely static, but rather as both static and dynamic and, consequently, both universal (as the natural law understands this term) and particular (as feminist ethics understands this term). Thus, according to Traina, the question of agency is best articulated through the dialectics of casuistry and personalism. The former being the logic (the 'how to' manual) of the ethical endeavor in natural law thinking, while the latter becomes the critical correction of that tradition that is not alien to it, but deeply embedded in it (and articulated through feminist ethics).

Korsgaard's concept of agency develops along a different trajectory of thought, but, nevertheless, explores the same space as Traina. This is not merely a case of coinciding terminology, but rather both thinkers—and the traditions they represent—require a conceptualization of the human person as agent in order to make sense of ethics in the first place. In Traina, agency is described in terms of potentiality; in Korsgaard, agency is described in terms of the 'openness' of self-constitution. Agency, in Korsgaard, is constituted by action. In order to identify an agential 'I' there must be actions that precede it. Korsgaard turns to Aristotle here, in order to articulate the kind of action under consideration. Specifically, and along Aristotelian lines, the action under consideration—the action that gives rise to the agential 'I'—is the action of constantly making oneself into oneself. Agency, then, can be described in terms of self-constitution:

agency makes ‘sense’ out of the actions that give rise to personhood and practical identity. Personhood is a form of life, and one’s practical identity is the way one navigates the plurality of possibilities available in the world of choice and action. What makes all of this possible is that human persons—human agents—are rational. Rationality is, for Korsgaard, the exercise of reason, which, in turn, is the exercise of a power we possess in virtue of the kind of self-consciousness constitutive of our being. That is to say, reason is not something we have, but something we have the ability to do. Reason and rationality are what guide us in determining good action from bad action. Insofar as our actions are autonomous and efficacious, says Korsgaard, then they are good actions. Such good actions will, in turn, contribute to a good practical identity and good self-constitution. Agency and action, then, are inextricably linked in Korsgaard, and in this, we can find a bridge between her position and that of Traina. In Traina’s analysis, the question of particularity is answered in the methodology of feminist ethics. An emphasis on historicity, contextuality, gender, etc., gives the concept of agency Traina offers deep ties to the plurality of everyday life. Further, the question of particularity is complemented by the question of universality through the natural law and, more specifically, the concept of the *imago Dei*, which serves to unify our particular choices and actions into a form of agency. Thus, it is in the interplay between the plurality of everyday life and the *imago Dei* that our agency emerges.

For Korsgaard, it is in the interplay between practical identity/personhood—as that which navigates the plurality of everyday life and action—and humanity—as that which brings the different elements of our practical identity into a unified whole—that

agency emerges. Kant's concept of humanity, therefore, performs a similar function in Korsgaard's analysis to the function of the *imago Dei* in Traina's. Each attempts to unify the agent in order to make ethics possible. For Kant and Korsgaard, humanity, so described, is an end in itself, and it provides the materiality of, and for, ethical reflection (in conjunction, of course, with the formal principle of ethical reflection: universalization). For Traina, it is the *imago Dei* that serves this function. While the differences between these two positions remain, we can nevertheless say that both Traina and Korsgaard turn to the concept of agency in order to navigate two interrelated tasks: first, the perennial ethical challenge of the relationship between the universal and the particular, and, second, the concept of unity which both thinkers argue is necessary for ethical reflection. Without a robust concept of agency—one which accounts for both particularity and universality—ethical reflection becomes either empty formalism (i.e. universality without particularity) or unchecked relativism (i.e. particularity without universality). Consequently, the concept of normativity—constitutive to the task of navigating the space between the universal and the particular—will no longer have a place within ethical reflection. Both Traina and Korsgaard, as we have seen, are deeply concerned with the question of normativity in ethics. Therefore, and in light of the previous analysis, we will now turn to the question of normativity as another possible space for bridging these two discourses.

One of the principal concerns underlying Traina's natural law feminism is the question of normativity. The specters of formalism and relativism loom on the horizon. If ethics does not concern itself with the particularity, contextuality, and embodiment of

thick ethical descriptions and reflections, then it risks becoming an empty formal category—theoretically and speculatively derived, but irrelevant to the practical dimension of ethics. Likewise, if ethics does not concern itself with articulating its universal relevance, it risks becoming relativist—‘anything goes’ so long as it is conceived of by an individual thinker. Neither of these options are—or ought to be—acceptable for genuine ethical reflection. Traina is right to both identify and problematize these unsatisfactory alternatives in her analysis. Her solution to the problem, as we have seen, is to locate the normativity of ethics within her understanding of natural law feminism. Within this framework, she says, the question of normativity is responsible to both the particularity embodied in feminist ethics and the universality embodied in the natural law. Korsgaard would agree with Traina’s location of the normative question in the dialectic between particularity and universality, but she would, of course, identify the features of this dialectic a little differently. Whereas Traina turns to the natural law in order to frame the formal, universal dimension of ethics, Korsgaard turns to Kant’s first formulation of the Categorical Imperative: *act only in accordance with that maxim through which you can at the same time will that it becomes a universal law*. The difference between these two positions being, in the former, the universal component of ethics is provided for us by the natural order of creation; in the latter, the universal component of ethics is autonomously chosen by the agent in accordance with the simple formality of the principle. In Kant’s formulation, we can say nothing (based on this first formulation alone) about *what* is normative—all we have here is the formal principle we need *in order to* decide if something is normative. In Aquinas’s natural law, what is normative is

provided for us in the order of creation; in Kantian ethics, what is normative emerges from the process of reflective deliberation under the auspice of the categorical imperative. The question of normativity requires universalization, which both Traina and Korsgaard recognize; similarly, the question of normativity also requires attention to particularity, and both Traina and Korsgaard articulate this attention to particularity in terms of the contingency of life.

Traina's concern with particularity in ethics comes out of her belief that the principal field of ethics is that of contingency, not necessity. The universal principles are necessary, but they are not where we begin. We begin with the contingent—the sensible, the human, the embodied. This starting point for ethical reflection is most ardently and comprehensively articulated in and through feminist ethics, and this is why it occupies such a central place in Traina's natural law analysis. Korsgaard's concern with particularity in ethics also comes out of her belief that contingency is central to any ethical analysis. If ethics is the task of self-constitution—if ethics contributes to the process of how we make ourselves into ourselves—then ethics must be concerned with our concept of practical identity insofar as it is our practical identity that brings together the contingent dimensions of our agency into a necessary whole. It is, in fact, the interplay of the contingent and the necessary—and, more importantly, of trying to make the contingent necessary—that is one of the central tasks of practical identity. So both Traina and Korsgaard want to affirm, and account for, the role of the contingent in ethical reflection; nevertheless, they also want to emphasize the role of necessity if ethics

isn't to become a simple collection—or, as Korsgaard says, a mere heap—of contingencies.

Korsgaard takes the phrase 'mere heap' from a figure who Traina, Korsgaard, Kant, and Aquinas all want to claim as a predecessor of their own ethical systems: Aristotle. The importance of Aristotle to all four thinkers has been noted already, but one element of his thought bears repeating here. When considering action, for example, Aristotle notes that it must have both a form and matter. The concept of form speaks to the proper arrangements of the parts of an action for its proper functioning—to allow it to do what it is formed to do. The concept of matter, on the other hand, speaks to the different necessary parts that go into making an action the particular kind of action it is. Once a particular collection of matter is properly formed into the action it is meant to be, then we can properly identify it as the action it is. Without both form and matter, action is impossible. As both Traina and Korsgaard recognize, ethics has both form and matter. For Traina, the form of ethics is the natural law, while the matter is articulated in the concerns and the particularities of her feminist critique. Hence, Traina identifies the proper understanding of ethics as natural law feminism—a description of the ethical task that attends to both its form and its matter. For Korsgaard, the form of ethics is universalization (through the first formulation of the CI), while the matter is humanity (through the second and third formulations of the CI). Hence, Korsgaard articulates the proper understanding of ethics along reformulated Kantian lines. Despite the difference here, both Traina and Korsgaard trace the roots of their ethical formulations back to Aristotle, and this provides a bridge between the two discourses.

As we have already seen, the question of normativity in both Traina and Korsgaard takes special account of the concept of teleology. I have previously characterized their approaches as closed, in the case of Traina, and open, in the case of Korsgaard. While the gaps between these two positions have already been spelled out, there remains a possible bridge between them through their use of practical moral reason and reflection. Both Traina and Korsgaard adopt the standpoint of practical reason as the standpoint of ethics. Whereas for Traina, ‘practical’ means ‘applicational,’ for Korsgaard, ‘practical’ means ‘giving rise to the will.’ The difference here is important. For Traina, the term practical implies that when we engage in ethical reflection, we concern ourselves with developing a guide for pursuing good ends and avoiding evil ones. To be practical in ethics is to provide a map for the successful selection of ends that promote and endorse the inherent goodness of creation, and our place in it. Ethics, practically speaking, ought to provide agents with the appropriate and necessary tools for both self-development and the full flourishing of human persons within our created order. For Korsgaard, the term practical refers to a reflective stance—an orientation—one adopts when one is choosing and deciding. Ethics, practically speaking, does not provide us with a map or tools for achieving the good, but rather orients the exercise of our wills toward what constitutes us as the agents we are and want to be. Flourishing and self-development—or self-constitution—are central here, but not in the sense of directing us toward the good of our created being. Flourishing, self-development, and self-constitution speak to the success (or failure) of how we orient ourselves in ethical reflection. It is not a question of what we choose, but a question of how we choose. The question of ‘what’ is important for

Korsgaard, but only as a secondary concern. The first question we must address is ‘how’—it is a question of reflective distance.

Neither Korsgaard nor Traina are interested in making ethical reflection *qua* practical reasoning a speculative activity. In both thinkers, the practical concerns itself—and us—with action. The question ‘What ought I to do?’ is a practical one—a normative question that requires an answer that gives rise to action. Once again, while they may differ in the details, both Traina and Korsgaard recognize the centrality of reflection, over speculation, to ethics. This is what makes both discourses teleological—at least to a certain extent. What ought I to do? Traina argues that the agent in this position ought to act in such a way that they bring about the ends of self-development and human flourishing as the morally good ends of created human nature. Korsgaard argues that the agent in this position ought to orient herself in such a way that when she wills a maxim of action she does so in accordance with the contours of the proper standpoint of deliberative ethical reflection, that is, the standpoint of practical reason. Both Traina and Korsgaard want to organize the ‘matter’ of action in such a way as to properly achieve its end. For Traina, this end is most clearly articulated in and through the concept of the *imago Dei*. For Korsgaard, this end is most clearly articulated in and through the concept of self-constitution. Despite their differences, both Traina and Korsgaard recognize the important role teleology plays—whether closed or open—in the formulation and framing of ethics.

Finally, when considering the question of normativity we must also consider the agent as the subject of normativity. For Traina, when considering the question of

normativity and the question of agency, we must also consider one of the two key methodological features of natural law feminism. One feature, which we will not explore in great detail here, is casuistry.¹³⁵ On Traina's critically corrected reading, casuistry aims "to discern what is good, both existentially and concretely, in a given situation and for particular actors."¹³⁶ It is a methodological approach that gives natural law ethics its grounding and legitimacy. The second feature of natural law feminist methodology, which we will consider here, is personalism. As noted earlier, in chapter one, if casuistry asks the question of what/whose good is at stake in a moral norm, personalism provides the answer: "a legitimate norm advances the integral good of particular persons."¹³⁷ If casuistry speaks to the universal side of natural law feminist thought, then personalism speaks to the particular side—emphasizing the human person as an individual agent whose historicity and embodiment constitute ethical realities that must impact the construction of moral norms. Personalism, then—with its emphasis on the particularity of embodied experience and its role in the construction of moral norms—becomes the entrée point of natural law feminism into the modern language of human rights. The concept of dignity—constitutive for understanding the human person as *imago Dei* in the natural law feminist account—operates in personalism as the source of normative rights claims, as the foundation for the two constitutive features, and goals, of our teleologically

135. For a more explicit engagement with Traina's understanding—and use—of casuistry, see my analysis in chapter 1.

136. Cristina L. H. Traina, *Feminist Ethics and Natural Law: The End of the Anathemas* (Washington, DC: Georgetown University Press, 1999), 105.

137. Traina, *Feminist Ethics*, 106.

oriented human agency: self-development and flourishing. Personalism “steadfastly directs ethics toward supporting the integral goods of individuals, comprehensively considered.”¹³⁸ It is in the particular, historical, embodied, thick descriptions of the human person that natural law feminism grounds normativity, and this grounding is what allows natural law feminism to speak about human rights. Traina proposes this as a normative model for a specifically Christian ethical interpretation of human rights, but one that is open to those who find in this discourse a compelling articulation of what it means to develop and to flourish as a human person who is embedded in the created order.

Korsgaard, too, attends to the question of agency and normativity. Whereas Traina turns to the language of personalism in order to articulate the form of natural law feminism that can take on a normative role in the discourse of human rights, Korsgaard will turn to the language of dignity and rights through the concept of humanity. It should be noted, however, that—in the spirit of finding shared space for dialogue between these two positions—Traina’s argument for a personalist approach to ethical reflection can, and perhaps ought, to critically correct Korsgaard’s position. While Korsgaard is clearly concerned with questions of embodiment, particularity, and embeddedness (since they are all constitutive features of ethics), her analysis can arguably be said to gravitate toward the a-historical, rather than the historical; to the ‘abstract’ rather than the ‘concrete.’ Korsgaard does not go to the particularity of embodied experience in order to construct moral norms—and for a variety of reasons we have already noted and discussed.

138. Traina, *Feminist Ethics*, 114.

Nevertheless, Traina's attention to historicity and context provides a helpful corrective to Korsgaard's analysis, and one that any Korsgaardian ethics ought to take seriously.

Keeping this corrective in mind, let us return to what Korsgaard herself says about dignity and humanity. We know that it is from Kant that Korsgaard draws her understanding of both concepts. Like Traina, Korsgaard believes that dignity is at the heart of the question of normativity in ethics and, following Kant in the *Groundwork*, she argues that the concept of dignity is intricately linked to the concept of humanity. Dignity, in Kant, describes the absolute value that persons—as opposed to mere things—possess in virtue of what they are. What persons are, are ends in themselves. The absolute worth of the person—their status as an end, and not merely a means—comes through their ability to be autonomous—to create the law for themselves and to be subject to it as well. However, Kant's notions of dignity, agency, and autonomy require the recognition that these agents are not isolated individuals. They are, rather, members of the Kingdom of Ends. What this means is that Kant's notion of autonomy is fundamentally intersubjective. Autonomy is not simply giving oneself the law in isolation; rather, it is giving oneself the law within a community of other autonomous beings who are constituting themselves in the exact same way. It is not enough to say that I am giving myself the law, and therefore I am autonomous. Rather, I must give myself the law in the context of the wider community of autonomous law-givers. Therefore, the law that I give to myself must be a law that any other member of the Kingdom of Ends—in the same position as I—could reasonably adopt as well.

But why should I? Why not simply give myself the law and be done with it? For Korsgaard, the reason that we can give the law to ourselves and be subject to it is because we recognize the absolute value of our self-given law. In doing this, however, we must also recognize this process of self-giving of law in others. It is a basic requirement of rationality if we are not to make an exception of ourselves (something neither Kant nor Korsgaard believe we ought to do). How, then, should we describe this requirement of rationality—that the absolute value of each person—articulated in their practical identity and unified in their self-constitution—must be accounted for in each and every act of autonomous self-legislation in the Kingdom of Ends? According to Korsgaard, what we have just described is the concept of dignity. This dignity, she suggests, does not reside in each human person as such—a point on which she would disagree with Traina and the natural law tradition. Dignity, says Korsgaard, resides in the shared description of autonomous beings in the Kingdom of Ends. It resides in the shared description of those beings as those with the power to autonomously set, and be subject to, ends through the process of self-constitution. In other words, dignity, as we have articulated it, resides in humanity. There is a clear point of departure, here, between the positions of Traina and Korsgaard. Traina wants to ground the concept of dignity in a ‘thick’ description of the human person as *imago Dei*. Korsgaard, on the other hand, understands dignity to be an expression of the self-constituting process constitutive of humanity. Korsgaard’s account is more ‘thin’ and abstract than Traina’s, but we must be clear about what this ‘thin-ness’ and ‘abstraction’ mean in the context of Korsgaard’s account and in the wider context of ethical reflection.

As Onora O'Neill points out, "[abstraction], taken straightforwardly, is a matter of bracketing, but not of denying, predicates that are true of the matter under discussion."¹³⁹ This is an important part of ethical reflection, and ought not be avoided for fear of confusing it with an inverse principle: idealization. Idealization, which we ought to be wary of, "ascribes predicates—often seen as enhanced, 'ideal' predicates—that are false of the case in hand, and so denies predicates that are true of the case."¹⁴⁰ Korsgaard's articulation of the dignity of humanity in more abstract terms, therefore, is not an attempt to create an idealized form of humanity that contains within it all the positive, desirable predicates that we, more often than not, attribute to 'humanity.' What Korsgaard is trying to do, in describing humanity in abstract terms, is identify the power inherent in each human person—the power to set ends and constitute oneself—that makes us ends in ourselves, not in individual isolation, but in community, in the Kingdom of Ends. Thus, it is through the concept of dignity—as the expression of self-constitution and the power to set ends—that Korsgaard articulates and describes the question of normativity, and it is through the Categorical Imperative that Korsgaard grounds the form (universalization) and the matter (humanity) of ethical reflection.

While Korsgaard does not go to 'thick' descriptions as Traina does to illuminate the normativity of ethical reflection—as noted earlier, both a constructive and a critical feature of her project—she, nevertheless, would agree with many of the embodied

139. Onora O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), 40.

140. O'Neill, *Towards Justice and Virtue*, 41.

outcomes of Traina's own ethical project in its relationship to the question of dignity.

Thus, both thinkers recognize that there is something in a conceptualization of dignity—whether constituted by the *imago Dei* or humanity—that makes ethics possible and, simultaneously, makes rational agents the subject(s) of normativity in ethics.

CHAPTER V

CONCLUSION: THE PATH FORWARD:

CATHOLIC ETHICS AND THE DISCOURSE OF HUMAN RIGHTS

Before moving forward into the discourse of human rights, I want to look back—briefly—over the ground we have traversed throughout the course of this project and try to draw together some concluding remarks on what we have accomplished, what remains to be explored, and how it all relates back to the question of normativity in Catholic-Christian ethics. We began with a question: What is the source of normativity in Catholic-Christian ethics? In order to explore this question, we began by looking at one of—if not *the*—most widely engaged, and relied upon, systems of ethical reflection in Catholic ethics today: the natural law. Grounded in the work of Thomas Aquinas, we looked at three contemporary instantiations of the natural law—Finnis, Porter, and Traina—in order to explore the different perspectives each thinker offered this investigation. Each of these thinkers is interested in the question of normativity, and in articulating normativity within Aquinas’s notion of the natural law. Finnis offered us a reading of the natural law that emphasized its law-like nature, and the consequent system of basic human goods and rights that emerge from it. Porter offered us an interpretation of the natural law that was more contextualized, and more theological, than Finnis. She interpreted the question of normativity through the three sources found in the natural law tradition: nature, reason, and revelation. Turning to Aquinas’s notion of virtue, Porter’s analysis offered us a

foundation for developing a specifically theological account of the normativity of ethics. Traina, too, offered us a reading of Aquinas's natural law that stressed the Catholic-Christian flavor of Aquinas's project. The question of normativity, however, could not simply be answered—as, perhaps, Porter thought it could—by reconstructing Aquinas's argument by itself. The natural law is not a perfect system, suggests Traina, and it requires critical correction if it is to be sufficient as a framework for contemporary Catholic-Christian ethics. This critical correction is provided, argues Traina, in an exemplary way through a feminist critique and a feminist ethics. Only by bringing the natural law together with a contextual perspective can we develop a framework for Christian ethics that is both sufficiently universal and sufficiently particular. It is in the interplay of these two dimensions of ethical thought that normativity emerges, and this is the very task of the natural law feminism Traina offers. Each of these analyses highlighted the compatibility of the natural law with contemporary ethics, and suggested that—properly understood—the natural law can serve as a sufficient framework for exploring and grounding both contemporary Catholic and Christian ethics.

Having explored these alternative interpretations of the natural law, we were still left with questions about the lasting ability of the natural law to address our contemporary ethical challenges. True, if we adopted the standpoint of Aquinas and the natural law, we found areas where compatibility with contemporary ethics was clear. However, we were also faced with a number of outstanding ethical challenges that were not sufficiently addressed within the framework of the natural law. What if contemporary Catholic-Christian ethics no longer treads the same metaphysical ground as Aquinas?

What happens when nature is no longer a stable foundation for ethical reflection? How is Catholic-Christian ethics, specifically, to participate in more general, contemporary ethical deliberation if the premises of natural law theory are not granted? In an attempt to explore alternative forms of ethical reflection that could, more adequately, attend to these questions and challenges, we turned to, and explored, the work of Immanuel Kant. Kant's philosophical ethics has great purchase within the boarder disciplines of philosophy and ethics today, yet it is a form of ethical reflection that is frequently marginalized—if not outright maligned—within the Catholic-Christian tradition. Therefore, in order to explore the possibility of a Kantian contribution to the question of normativity in Christian ethics we turned to an analysis of Kant's practical philosophy—specifically, his argument in the *Groundwork*. Here, we investigated Kant's account of the normativity of ethics in order to determine whether or not Kant offered a viable alternative to the natural law. I argued, in chapter two, that he did. Kant provides us with a deeply ethical and philosophical account of normativity, but not one as explicitly theological as some natural law proponents might prefer. Nevertheless, Kant's ethical analysis resonated deeply with some of the key themes in contemporary ethical reflection, and with many of the key features of the natural law tradition as it was presented in the works of Finnis, Porter, and Traina: law, rights, the good, virtue, normativity, dignity, humanity, etc. However, like turning to Aquinas, turning to Kant requires a critical hermeneutic for excavating his thought and interpreting it in light of 21st century concerns. For this interpretive task, we turned to Christine Korsgaard.

Korsgaard's project is deeply Kantian, and seeks to offer a reading of Kant that is oftentimes lost to more casual Kant interlocutors. Korsgaard's project is to offer a contemporary ethics in a Kantian key—keeping the core elements of Kant's analysis, but reinterpreting them in line with Korsgaard's own interest in practical philosophy, normativity, and ethics. For Korsgaard, Kant proves an essential interlocutor when reflecting and deliberating ethically. In his *Groundwork*, he offers both form and matter to ethical reflection through a formal universality necessary for normative ethical thought, and through an attention to the human particularity and contextuality necessary for ethical relevance. Kant's ethics is located squarely in his practical philosophy—it is concerned with, and oriented toward, action. The Categorical Imperative—perhaps Kant's most significant contribution to ethics—is, suggests Korsgaard, a strategy for engaging in ethical reflection. The three formulations of the Categorical Imperative offer us three constitutive components for a constructivist account of ethical reflection: formal universality of maxims, humanity as an end in itself, and autonomy in the Kingdom of Ends. Without attention to all three features of the Categorical Imperative, we lose sight of—and often misinterpret—Kant's lasting contribution to ethics. The question of normativity in Kant is *deliberated*, suggests Korsgaard, within the strategy, the method, of the Categorical Imperative. This strategy, in turn, finds its normative *grounding* in the concept of autonomy. Still, a lingering question remains as to whether or not his analysis provides a sufficient strategy and grounding for ethics within a more explicitly Catholic-Christian paradigm. If we follow Korsgaard's interpretation, he might, but it will require further analysis and a more deliberate articulation of his project in terms of the questions

and concerns Catholic-Christian ethics seeks to address. While Korsgaard herself remains within the discourse of practical and moral philosophy, her interpretation of Kant provides various avenues for interpreting and understanding his work that occupy common space—that share similar concerns and questions—with contemporary Christian ethical discourse.

In the final chapter of this project, we explored both the gaps and the bridges that exist between different contemporary interpretations of natural law and Kantian ethics. After exploring one of Korsgaard's most recent works—where she most clearly develops her own, constructivist account of ethics in line with Kant,¹ but also in the shadows of Plato and Aristotle—we were better able to assess and evaluate the arguments presented in and through these two traditions. What we found was that there were many areas where natural law ethics and Kantian ethics simply did not—and could not—meet. The gaps were too large, at times, and this required us to acknowledge that there were moments in the encounter between these two ethical traditions where common ground simply could not be achieved. However, we also discovered areas in both of these traditions where shared concerns or shared questions could, actually, serve as a constructive space for building bridges between these two discourses. The question remains, then, as to which tradition of normative ethical reflection provides us with the most compelling groundwork for ethics today. It is my contention that ethics in general—

1. Korsgaard's reading and rearticulation of Kant's ethics is clearly constructivist, but it is a constructivism without foundationalism. Here, she shares her anti-foundationalist reading of Kant with Onora O'Neill. For a further discussion of Korsgaard's own constructivist position, see Christopher Arroyo, "Freedom and the Source of Value: Korsgaard and Wood on Kant's Formula of Humanity," *Metaphilosophy* 42, no. 4 (2011): 353–59.

and Catholic-Christian ethics in particular—are best served, in their desire to contribute to contemporary ethical discourses, by adopting a more Kantian approach to the question of normativity and ethics. In support of this position, I would like to turn, now, to a particular discourse within the broader discipline of ethics that, I believe, manifests my claim—the discourse of human rights.

To be sure, the discourse of human rights is a broad and sweeping field of both study and action. It is not my aim to encompass the entirety of this discourse in my remarks here, but rather I want to look to the discourse of human rights as a contemporary framework for understanding and, more importantly, undertaking ethics today. The discourse of human rights is a shared, public discourse that unequivocally counts among its advocates and adherents—to only name a few—theologians, philosophers, and ethicists. Therefore, the discourse of human rights is an appropriate and fitting place to turn to in order to explore and evaluate the claim I have been making in this project—that Catholic-Christian ethics would be well served—and, consequently, well equipped—to engage in contemporary ethical reflection if it transitioned its *modus operandi* from the natural law to a more Kantian model of ethical reflection. In order to make this point more clearly, I want to turn to a recent contribution to the discourse of human rights, from the standpoint of Christian ethics, as an illustration of where Christian ethics actually finds itself in relation to human rights today. The text I will turn to is Linda Hogan’s recently published book, *Keeping Faith with Human Rights*.² Through

2. Linda Hogan, *Keeping Faith with Human Rights* (Washington, DC: Georgetown University Press, 2015).

an exploration of Hogan's main arguments and critiques, we will be able to reflect on the standpoint and impact of Catholic-Christian ethics on, and in terms of, human rights. Therefore, we can evaluate which of the two ethical discourses presented in this project—the natural law and the Kantian—frame Catholic-Christian ethics in a way amenable to a discourse—i.e. human rights—which both natural law and Kantian ethicists lay claim to. Hogan's text is not meant to be *the* definitive account of the discourse of human rights, but it is an account that represents both the goals and tensions of the discourse fairly and, to my mind, accurately.

Keeping Faith with Human Rights?

"Human rights represent one of the great civilizing projects of modernity."³ So opens Hogan's analysis in *Keeping Faith with Human Rights*. This clearly locates Hogan on one side of the intellectual spectrum when it comes to the question of human rights. As she notes, some have dismissed the discourse as unreasonable, illogical, or simply as a lingering vestige of the (failed) Enlightenment project.⁴ These voices, however prominent they are in themselves, represent a minority position within the discipline of ethics today.

3. Hogan, *Keeping Faith with Human Rights*, 1.

4. Alongside figures like Michael Sandel and Charles Taylor, the principal representative of this position, according to Hogan's analysis, is Alasdair MacIntyre. He critiques the human rights tradition both for assuming an underlying concept of shared nature which it does not defend (or even make explicit) and for imposing a form of universality that—without an underlying concept of nature—operates without any connection to human interests and goods. As we will see, these two features of the discourse of human rights—an assumed underlying nature and form of universality of norms—are key features of the discourse that Hogan want to critique and retrieve, rather than discard. See, for example, Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981).

Nevertheless, Hogan takes their criticism with the utmost seriousness, and attempts to re-narrate the discourse of human rights so as to either avoid or answer these objections.

Hogan's analysis is constructivist, and she specifically articulates this position in contradistinction to two others: natural law and (Christian) deontology. This is a point to which we will return later. Instead of drawing on, principally, the trajectories of the natural law or Christian deontology, she claims to be drawing "on the constructivist strand in political philosophy to argue that human rights are best conceived in a threefold manner: as ethical assertions ... as an emerging consensus ... and as emancipatory politics ... [or, in other words, as] the normative, the dialogical, and the political."⁵ This move to a constructivist articulation—and defense—of human rights gives Hogan the intellectual and imaginative space to re-conceive the discourse in a way that takes seriously the notion of ethical pluralism, which she believes underlies contemporary ethics, and re-articulate ethics in terms of the alterity/otherness constitutive of any morality that takes seriously the inherent sociality of its members. All of this leads Hogan to offer an intellectual, but also an imaginative, assessment of the discourse of human rights. As she notes, "it may be that, ultimately, it will be not so much our ability to engage in intellectual debate but rather our capacity to imaginatively inhabit the world of the other that will secure the kind of shared political culture about which we have spoken"⁶—i.e., the shared, discursive space of human rights.

5. Hogan, *Keeping Faith with Human Rights*, 3.

6. Hogan, *Keeping Faith with Human Rights*, 10.

The two great challenges facing the discourse of human rights today, according to Hogan, pertain to the roles of both nature and universalism within the discourse itself. I will address each of these features of Hogan's analysis in turn. First, Hogan argues that the concept of human rights, classically conceived, "is premised on the belief that all human beings share a fixed and essential nature from which one can determine the existence of certain universal human rights."⁷ However, this belief in a 'fixed and essential' human nature is untenable in contemporary ethical discourse because of the criticism this position has received from two contemporary standpoints in philosophy: the communitarian and the post-modern. The communitarian critique of the underlying human nature presupposed by the discourse of human rights is that this concept of nature privileges a vision of the human person as "detached, autonomous, and free"⁸—as if one's true nature, their true essence, stands outside of time, history, and community. For communitarians, this is impossible. The myth, as Michael Sandel identifies it, of 'the unencumbered self' is a myth that persists in human rights thinking, yet only to its detriment. No self is an unencumbered self—we all have histories, contexts, associations, and affiliations that we did not choose, but that we are, nevertheless, responsible to and for. According to the communitarian critique of human rights—which they take to presume the notion of the unencumbered self as its subject—there is no "idea of an essential self, or nature, upon which identity is inscribed ... [communitarians] argue

7. Hogan, *Keeping Faith with Human Rights*, 30.

8. Hogan, *Keeping Faith with Human Rights*, 31.

instead that our identities are shaped in and through the multifaceted commitments and contexts that ground us.”⁹

The second critique of the concept of nature presumed by human rights discourse comes from the post-modern standpoint in philosophy, exemplified—according to Hogan—in the work of Michel Foucault. Foucault’s critique of the concept of nature that undergirds classical human rights discourse is, on one level, similar to the communitarian critique. According to Hogan, Foucault’s critique is that “human life cannot be understood apart from the cultural practices through which it is constructed.”¹⁰ Therefore, akin to the communitarian critique, the post-modern critique recognizes that the myth of the unencumbered self is no longer tenable—“the modern understanding of the subject as autonomous and rational is no longer convincing.”¹¹ We are not isolated, individualized, ‘autonomous’ selves as modernity wanted to claim—participating in a metaphysics of nature that could be safely and rationally presumed. The human subject, as Foucault suggested, was ‘made not born.’ Thus, according to Hogan, the post-modern critique of the discourse of human rights is principally leveled against the concept of nature that (allegedly) underlies it. While different strands of post-modernism—as we will see—will critique different elements of human rights discourse, this first, and serious, critique remains relevant to any discussion of a natural grounding for human rights.

9. Hogan, *Keeping Faith with Human Rights*, 33.

10. Hogan, *Keeping Faith with Human Rights*, 34.

11. Hogan, *Keeping Faith with Human Rights*, 34.

While a critique of the discourse of human rights has been leveled by some against a presumed, underlying concept of nature, there is another critique which Hogan identifies as hitting at the heart of this discourse: the critique of universalism. Like the concept of nature, Hogan identifies the concept of universality as being integral to classical articulations of the discourse of human rights. If we are going to make a claim about a human right—or the very notion of human rights in general—then this claim will require universal applicability, it must make a universal claim upon the subject(s) of such rights. While Hogan recognizes—in a way, perhaps, that she does not regarding the concept of nature—that this feature of human rights is so embedded in the discourse that it is almost impossible to think about human rights detached from universalism, she nevertheless wants to rethink how it is we understand universalism and what this understanding might mean in our increasingly pluralistic context.

The discourse of human rights, argues Hogan, “advances one of the fundamental errors of enlightenment thinking—a claim to universality.... The idea of an abstract and universal rationality that exists independent of the social matrices in which it is exercised is rejected today not only by MacIntyre and other communitarian critics of liberalism but also by feminist and postcolonial scholars.”¹² The critique, here, is that while Modern, Enlightenment thinking presumed a form of rationality that was universally shared among all human persons—the way persons might share traits or characteristics—scholars in the post-modern era have problematized this presumption, and have argued that a presumed ‘abstract and universal rationality that exists independent of [its] social

12. Hogan, *Keeping Faith with Human Rights*, 38.

matrices' is not actually a shared capacity or feature of human being, but an imposition of the western, European philosophical paradigm. Moral reasoning ought not be concerned with transcendental ideals, but rather with the tradition dependent communities from which such reasoning emerges. Yet, in spite of this, many critics of liberal conceptions of universal rationality still wish to maintain—in order to preserve the discourse of human rights—a *form* of universalism outside of the classical philosophical paradigm. Thus, as Hogan points out, “although dismissive of universalist positions that are derived from abstract, transcendent reason, many critics retain a realist conception of truth and endorse a pluralist stance regarding moral values.”¹³ Hogan, for example, sees herself as one such critic, but another, I would argue, would be Traina.

For these, and other, critics, it is the concept of abstraction, rather than the concept of universalism “that is the basic stumbling block”¹⁴ that needs to be rethought. This rethinking and re-envisioning of universalism that takes into consideration the ethical pluralism from which moral reasoning emerges today—argues Hogan—becomes a form of embedded universalism. Rather than a universalism that concerns itself with abstract rationality or transcendental ideals, embedded universalism emerges from within communities and traditions. Citing agreement between herself and such diverse figures as Jeffrey Stout, Stanley Hauerwas, Gianni Vattimo, and Kwok Pui-lan, Hogan argues that “we must give up this unhealthy obsession with the idea of absolute truth in ethics and make peace with the reality that our ethical discourse is constructed and narrated through

13. Hogan, *Keeping Faith with Human Rights*, 40.

14. Hogan, *Keeping Faith with Human Rights*, 40.

the cultural and religious worlds we inhabit.”¹⁵ Along with a strong critique of any metaphysical position that allows for a correspondence theory of truth—which Hogan finds no place for in ethics—the move to an embedded universalism makes the discourse of human rights about “a form of situated knowledge,” rather than “a global version of public reason.”¹⁶ As a result, the question of universality is “better understood in terms of being particular or local expressions of universalist claims that over time and as a result of the persuasiveness of their appeal have evolved into a global moral language.”¹⁷ In the end, for Hogan and the critics of the form of universalism they take to be tied to the discourse of human rights, “human rights claims are not, in the end, grounded in an abstract or universal conceptualization of rationality but rather emerge from the complex interactions of multiple situated communities who ... articulate claims that they believe to have universal purchase. Human rights norms express the settled consensus as it is currently.”¹⁸

Hogan wants to maintain the discourse of human rights, but recognizes that this discourse faces many hurdles as it transitions from its nascent stages in western European Enlightenment thinking to its manifestations in contexts of ethical pluralism and global diversity in the modern world. The heart of her critique identifies two of the classical pillars of the discourse of human rights—a shared nature and universalism—as being in

15. Hogan, *Keeping Faith with Human Rights*, 104.

16. Hogan, *Keeping Faith with Human Rights*, 108.

17. Hogan, *Keeping Faith with Human Rights*, 109.

18. Hogan, *Keeping Faith with Human Rights*, 112.

need of revision in order for the discourse to remain relevant. We must think about human rights, today, in terms of constructed identity and embedded universalism if the discourse is to survive the critiques leveled against it. The discourse of human rights is a discourse that ought to be maintained, argues Hogan, and in order to do so, “human rights must be radically rethought as ethical assertions about the critical importance of certain values for human flourishing, as an emerging consensus generated by situated communities who are open to internally and externally generated social criticism, and as emancipatory politics whose *modus operandi* is ultimately that of persuasion. Only in this way will [the transformative potential of the discourse of human rights] be realized.”¹⁹

Normativity, Human Rights, and Christian Ethics

Having briefly laid out the analysis of the discourse of human rights offered by Linda Hogan, I want to look at her two principal claims—that the discourse of human rights needs to rethink its concept of nature and its dependence on universalism—in light of the analysis I have offered in this dissertation. As I previously noted, while Hogan’s analysis does not encompass the entirety of the discourse of human rights, she does provide an open and honest critique of two integral features of that discourse. These two features—nature and universality—have been integral in the overall analysis I have provided of both the natural law and the Kantian traditions in ethical reflection. This is no coincidence. Natural law and Kantian ethics have both contributed to, and claimed to be in line with, the discourse of human rights. Hogan recognizes this, when she identifies both the

19. Hogan, *Keeping Faith with Human Rights*, 208–9.

Kantian and the natural law traditions as contributors to our contemporary understanding of the universality and naturalism, respectively, upon which the discourse of human rights depends.²⁰ Therefore, in this final section, we will look back at Hogan's analysis in light of the argument of this project in order to ascertain, first, how each of these ethical traditions—the natural law and Kantian—are represented by Hogan and her interlocutors, and, second, whether or not the reformulated approach to Catholic-Christian ethics I have been exploring provides a constructivist approach to the discourse of human rights that retains the positive dimensions of Hogan's analysis, while taking a critical stance toward those areas of her analysis that remain problematic.

Hogan first addressed the question of nature in classical formulations of the discourse of human rights. Insofar as human persons share a common human nature, said nature serves to ground the normativity of, and to justify, all human rights. However, Hogan problematizes this feature of human rights discourse by narrating contemporary critiques of the 'natural' that bring into question—and at times, even outright reject—the surety and stability of the natural with regard to human rights. I think Hogan is right to identify the concept of nature as a classic pillar of human rights discourse and, as I have sought to explain in this project, I also agree with her critique that this classic pillar of human rights discourse is no longer characterized by the surety and stability it once possessed. In turning to both the communitarian and post-modern critiques of nature, Hogan presents a strong argument in favor of rethinking—or, even, moving away from—

20. While much of this argument has been identified in the previous section, for more on Hogan's argument that both the natural law and Kantian traditions have contributed to the discourse of human rights see Hogan, *Keeping Faith with Human Rights*, chaps. 1–2.

the natural as a reliable concept when conceiving of the discourse of human rights. As we have seen throughout this project, the concept of nature resonates within a particular form of thinking that relies on a robust, accessible, and theological metaphysics of creation.

When we look to Finnis, it is a particular concept of nature—articulated through the natural law—that grounds the basic human goods operative at the heart of his argument. We can speak of, and act in light of, our basic human goods because they are as natural to us as the first principle of the natural law: do good, and avoid evil. For Finnis, this first principle is not deducible, but rather stands as a self-evident principle of action. The proof of this principle comes not from a logic internal to it, but rather emerges and is confirmed, *a posteriori*, from the fruits of our actions. Relying on Aquinas's (theological) concept of nature, Finnis builds his argument upon this self-evident premise—that a concept of nature must be presupposed in ethical analysis, and this presupposed concept of nature is inherently, though not provably, good. Human rights emerge from the basic human goods constitutive of our personhood. Therefore, we are said to have dignity and rights when we have access to the basic human goods necessary for our flourishing, and our dignity and rights are affronted when we do not have such access.

When we look to Porter, we see that she develops, and defends, this concept of nature along more explicitly theological lines. Relying, too, on Aquinas, she argues for a concept of nature that emerges from a theological account of creation. One of the constitutive features of this account is the metaphysics of order and continuity that ground nature. Porter argues that there is a fundamental continuity between Creator and

Creation, between God and the cosmos. This makes nature both intelligible and normative for human persons since what we find in (and from) nature is of a part with what we find in (and from) God. Further, insofar as human beings are the *imago Dei*—the very image of God—in creation, we occupy a unique place in relation to both God and nature. Thus, for Porter, human rights are grounded in a concept of dignity that emerges from the *imago Dei*. We are, by (created) nature, the image of God in creation, and this imaging gives human persons dignity. This dignity, in turn, is what gives us rights and privileges—we are entitled to, and can justifiably claim, certain natural rights and conditions by virtue of our being the image of God in creation. Thus, on Porter’s analysis, human rights, and the concept of dignity that grounds them, speak to the full flourishing of the human person in line with their created nature as *imago Dei*.

The challenge these two positions face, in light of Hogan’s analysis, is that the concept of nature which they both presuppose, and upon which they ground their concepts of dignity and rights, is no longer viable in a pluralistic context. What Hogan has argued is that if the discourse of human rights is to maintain its purchase and viability today, it cannot rely on an outdated metaphysics of nature that presumes a stability and surety unattainable in our ‘post-modern’ social, cultural, and political situation. The critiques of the communitarians and the post-moderns have cut too deep, and the construction of the human—versus the naturalness of the human—has proved a clear and compelling corrective to an outdated model of analysis. Hogan identifies the feminist and postcolonial critiques as particularly convincing in this regard. If the validity of human rights is premised upon a (Christian) metaphysics of nature, or underlying concept of the

good, then the discourse remains, as Hogan argues, an imposition upon those who do not share in this worldview or discourse. If human rights are to remain an effective space for ethical reflection—and in particular ethical reflection in the Catholic-Christian vein—then the concept of nature can no longer serve as a pillar of that discourse, particularly if this discourse hopes to retain relevance and effectiveness in a pluralistic ethical (and cultural) context.

Hogan's critical move away from 'nature' is also a move that I have been exploring in this project through a re-consideration of Kant's ethics in light of Korsgaard's constructivist analysis. This move takes on particular importance when we reflect on Hogan's claims that nature is one of the central pillars of the discourse of human rights. If human rights no longer depend upon a fixed concept of nature for their grounding, what can ground our claims to human rights? For Kant and Korsgaard, ethics and morality are imposed on the world, not derived from it. Therefore, a grounding for human rights cannot be found in nature, but can—and, in fact, must—come from the shared, discursive encounter between moral agents. Here, Korsgaard's analysis of action and agency, practical identity and self-constitution come to the fore. Recall that, for Korsgaard, action is prior to agency. We do not first come to an understanding of the agent, and then determine what actions such an agent would undertake. We begin with action—the setting and choosing of ends—and through our actions, constitute our agency. An agent is one who is constantly making itself into itself, and for the human agent, this process is encapsulated in the concept of personhood. The task of being a person is the task of making oneself into the person one wants to become. It is not the case, in this account,

that becoming a person is a process of determining how to live into one's nature, but rather it is the process of determining one's practical identity through rational, reflective deliberation. The rationality constitutive of human agents is not an endorsement of a natural feature of our being, but rather rationality describes the process of constructing one's practical identity. Now, as I noted in my exploration of Korsgaard's work, there is a limit on this process, and this limit is the concept of self-constitution. Self-constitution, according to Korsgaard, is characterized by the reflective distance opened up by the Categorical Imperative—the space where the agent asks the question 'Ought I to do that?' In this space, agency is directed by action—our incentives (to create our practical identity, for example) must stand up to the test of our principles. Our constitution, therefore, is the constitution of an agent who must make herself into an agent. Self-constitution becomes the form of human agency (and humanity is its matter—a point to which I will return later), and this agency must operate, not in isolation, but in community.

Whereas the natural law aims to locate questions about agency and action—and, as a result, human rights—in a concept of nature, Korsgaard wants to locate the question of practical identity and self-constitution within the space of moral reflection—the Kingdom of Ends. The Kingdom of Ends describes, not a natural state, but rather a constructed moral (ideal) community that reflects and deliberates on action and agency, practical identity and self-constitution through the inherent publicness of reasons and rationality. It is in and through community that an agent becomes herself, not by means of a presumed nature that needs to be revealed or discovered, but rather by way of constructing and constituting herself as a moral agent in community with other moral

agents. Therefore, if Hogan's analysis is correct, and the discourse of human rights must move outside the concept of nature as the grounding for human rights, then it is my belief that human rights can be justified through Korsgaard's constructivist account of self-constitution. One need not presume an account of nature in order to ground the discourse of human rights, but rather, one can engage in the reflective, deliberative process of self-constitution in order to enter into the moral community of the Kingdom of Ends.

Yet, there remains a corrective necessary to this argument as well, especially in light of the post-modern critiques of human rights identified by Hogan. As I have suggested throughout this project, I believe that Korsgaard's argument for the normativity of ethics attends to the realities of embodied experience. Yet, it must be said, that her account, while making room for different forms of experience, remains, itself, rather distant from any such experience. Embodiment and experience, as concepts, are accounted for, yet Korsgaard does not actually engage embodiment and experience *themselves* as normative features of ethical reflection. Her account, it can be argued, errs on the side of formality and a-historicity, rather than context and history. The result of this is that self-constitution—what makes the 'me' into an 'I'—appears as a, perhaps, too formal approach to questions of agency and action.

In considering what an appropriate corrective to Korsgaard's analysis might look like, I would argue that Traina's natural law feminism provides a helpful model for articulating a critical corrective to a formal system of reflection and action. Traina's task, in her natural law feminism, is to more adequately attend to both the universal dimension

of ethical reflection (the natural law) and the particular dimension of ethical reflection (a feminist critique). Without dismissing the importance of Aquinas and the natural law, Traina reinterprets both through the thick, embodied, contextual, and historical descriptions of the feminisms she is engaged with. As I have already suggested, by bringing these two discourses—natural law ethics and feminist ethics—together, Traina offers a position that aims to navigate a compromised space between the usual binaries of universal and particular, abstract and concrete through a form of practical moral reasoning that is not afraid to take a stand, yet recognizes the need for continual self-critique. To take Traina's example, the moral lives of women—in their particularity, in their embodiment—are not simply related to normative ethical reflection in a casual manner. The process of normative ethical reflection—articulated in the natural law—is impacted on the level of its normativity by the lived experience of those to whom such ethical reflection ought to apply. Women's embodied experience corrects the normative ethical claims of the natural law, and this same procedure—of embodied experience, feminist or otherwise, correcting normative ethical claims—cannot be as easily identified in Korsgaard's own work. Once again, it is my view that the potential for this critical corrective is present, though latent, in both the formal and material dimensions of Korsgaard's position, but this potential corrective is not explored with any serious consideration by Korsgaard herself. This remains a gap in Korsgaard's work, and a gap—in light of Hogan's analysis—that needs to be identified and addressed if Korsgaard's constructivist project is to positively and effectively contribute to the discourse of human rights.

Before moving on to an analysis of Hogan's articulation of the universalism required for the discourse of human rights, allow me to offer one final thought pertaining to Traina's critical corrective of the natural law. When it comes to the discourse of human rights, Traina's attention to embodiment and experience resonates well with Hogan's overall argument in defense of human rights. This connection might appear surprising, given Hogan's critique of nature and Traina's defense of the natural law, yet both scholars recognize the importance of embodiment and experience at the level of normativity. I believe that Traina's analysis does a more convincing job of navigating between the particular and universal dimensions of experience than Hogan's—a point I will return to when considering the question of universality—but this claim does raise a question about the role of nature in Traina's argument. Traina wants to maintain the concept of nature and the natural law in order to express the universal dimension of ethical reflection. However, as I have been arguing along with Korsgaard and Hogan, a reliance on the natural to ground the discourse of human rights is no longer necessary or, according to Hogan, viable. I do not think this undoes Traina's argument, but it does call for a reconsideration of what it is, if not nature, that allows the discourse of human rights to make the claims that it does. In my view, it is in the concept of universality, as articulated by Korsgaard, that this question is answered. Therefore, I will now turn to the critique of the second inherent feature of human rights discourse Hogan identifies: universalism.

As I noted earlier, Hogan joins the critics of the discourse of human rights when they argue that "human rights claims are not, in the end, grounded in an abstract or universal conceptualization of rationality but rather emerge from the complex

interactions of multiple situated communities ... Human rights norms express the settled consensus as it is currently.”²¹ While it will come as no surprise that I do not endorse this claim, there is, nevertheless, an element of truth to the concern which gives rise to this position. The critics of universalism in the discourse of human rights, according to Hogan, object to that form of universalism that presumes a robustly metaphysical, yet intellectually accessible notion of truth from which we can take our ethical decisions. They object to the notion that there are human rights truths that were ‘discovered’ within the western European, Enlightenment context, that exist independently of human persons, and, in the end, force everyone into a position of obedience to a set of rules that only a select few were party to articulating. Such a conception of the universalism underlying human rights, Hogan notes, is deeply problematic, particularly when we find ourselves discussing human rights from within a social and cultural matrix constituted by pluralism. Rather than dismissing this dimension of the discourse, however, Hogan wants to articulate a constructivist position that retrieves universalism, but a form of universalism that emerges from communities, rather than a universalism that applies to communities. The specter—and at certain points, explicit naming—of Kant looms large in this argument. Nevertheless, as my analysis in this project shows, the form of universalism being challenged here has little to do with Kant’s notion of the universalism necessary to ethical discourse. In line with Korsgaard, I want to suggest a form of universalism in the discourse of human rights that reflects a more (accurate) Kantian understanding of the concept than Hogan offers. Her analysis, on the question of

21. Hogan, *Keeping Faith with Human Rights*, 112.

universalism, does not sufficiently attend to the question of normativity in human rights, and if we are to follow her in her articulation of an embedded universalism, I fear that the very concept of human rights will suffer because of it.

Hogan, MacIntyre, and the critics of a specifically Kantian form of universalism in the discourse of human rights cast Kant in a particularly unflattering light. Kant, on their reading, is a foundationalist whose articulation of the Categorical Imperative is an imposed moral absolutism to which we must conform. As Korsgaard and Onora O'Neill have argued, however, this reading of Kant and the Categorical Imperative is incorrect. Kant is not a foundationalist, and he is not articulating a form of moral absolutism that we must obey—or else! For Kant to adopt such a position, he would have to be in conscious violation of his own ethical position. Namely, he would have to envision the Categorical Imperative as providing a source of moral authority *outside the subjectivity of the agent* that individual must, nevertheless, adhere to. Such a position is, of course, a violation of the Categorical Imperative itself. The Categorical Imperative does not impose a moral absolutism, nor is it a foundation upon which ethics is done; rather, the Categorical Imperative is a strategy for navigating the oftentimes rocky terrain of morality. This clarification is important because it reframes the question of universalism in a different light. If the question of universalism is simply a question of obedience to an external source of authority one must accept, regardless of one's situation and context, then it is surely problematic. In this vein, Hogan's re-articulation of universalism as embedded universalism makes a great deal of sense (at least as a gesture towards a constructive alternative). If, however, the question of universalism is not a question of

obedience to an external source of authority, but rather a question of the subjective navigation of action and agency within the context of one's larger moral community, then the question of universality is not so easily dismissed. While I agree with Hogan that the question of universality is inescapable in the discourse of human rights, I am not convinced that the move toward embedded universalism will be a successful resolution to the problem she has identified.

Both Hogan and Korsgaard are constructivists when it comes to ethical reflection. That is to say, they both believe that it is in the (inter)action of persons and ideas that the question of normativity emerges and is addressed. In such a situation, Hogan's concept of embedded universalism is appealing—what we call 'universal' emerges from within communities, and as a result of their local contexts. This gives rise, however, to a problem. Hogan's analysis relies, in the end, on persuasion as the operative logic for determining which embedded practices become, in this case, universal human rights. This approach makes room for negotiation and re-negotiation of what counts as universal human rights, but it ultimately does not answer the normative question. If persuasion and consensus are the grounds upon which universal human rights are decided, this makes the very concept of universalism—and, consequently, the concept of normativity—ineffectual and, ultimately, empty. While persuasion and consensus are important for the procedural enactment of human rights, they do not serve the discourse well as its grounds.

One area where the problem with this line of thinking comes to the fore in Hogan's analysis is in her discussion of female genital cutting. In her chapter on constructing the subject of human rights, Hogan wants to lift up the voices of those who

have historically been 'spoken for' in ethical deliberation. She looks, specifically, to feminist and postcolonial critiques of the dominant western model of human rights in order to explore the question of "what human rights would look like if it were grounded in the concrete experiences of situated individuals."²² Her goal is to re-imagine the discourse of human rights through the voices of those who have not been able to speak for themselves in more 'universalist' conceptions of human rights. Her notion of embedded universalism is put into practice here, within the contexts and matrices of local communities. One of the practices she identifies as requiring the discourse of human rights to attend to, and recognize, the impact and influence of local customs and communities is female genital cutting. Hogan reminds us that, in light of feminist and postcolonial critiques, "the meaning of 'being or having a body' is culturally constructed"²³ and those who seek a universal articulation of human rights must attend to this. The practice of female genital cutting is one such space where western and non-western perspectives oftentimes collide. According to Hogan, "[the] frame of reference of much of the debate around female genital cutting has been in relation to the body as first and foremost the site of sexual meaning, specifically sexual pleasure. Yet this has a particularly Western resonance and is rarely, if ever, the lens through which the women in whose cultures female genital cutting is practiced construct the issue."²⁴ Hogan then

22. Hogan, *Keeping Faith with Human Rights*, 71.

23. Hogan, *Keeping Faith with Human Rights*, 77.

24. Hogan, *Keeping Faith with Human Rights*, 77.

goes on to cite the voices of female African scholars²⁵ who have disputed the representation of the practice in Western scholarship. Hogan's objective in raising this issue is not to take a stand on one side or the other of the debate over female genital cutting, but rather to raise the issue that "our conversations about human rights and specifically the meaning of embodiment will be nothing other than 'the dialogue of the deaf' unless ... we develop an awareness of the multiple constructions and interpretations of being and having a body."²⁶ Once again, Hogan is clear that she is not taking a stand on this issue, but wants to identify the question of cultural difference in order to illustrate the need for an embedded form of universalism that accounts for local context. Nevertheless, the analysis here is deeply problematic, and, from the point of view of human rights, the mere appeal to embedded universalism does not in itself offer a criterion of what may or may not count as a violation of a right.

Korsgaard's constructivist position in ethics, however, articulates a different sense of universalism, and one that I believe is more compelling for the discourse of human rights. Unlike Hogan, who wants to locate the universal dimension of human rights in

25. Hogan's two examples here are Leslye Amede Obiora and Fuambai Ahmadu. According to Hogan, while Obiora argues that female genital cutting cannot be streamlined into a single, easy-to-understand narrative originating (more often than not) outside of the communities in which the practice is present, Ahmadu lifts the practice up as a form of female empowerment and a way to represent the preeminent role of women in history and society (Hogan, *Keeping Faith with Human Rights*, 78). While Hogan's principal objective in this section is to lift up the voices of women in and from the communities whose practices are under discussion, her argument lacks the depth and nuance that such an argument ought to require. While Hogan is not trying to take a stand on this issue, her analysis, nevertheless, leaves something to be desired.

26. Hogan, *Keeping Faith with Human Rights*, 78.

embedded communities, Korsgaard wants to retain a concept of universalism that does not emerge from communities—at least not in the way Hogan suggests that it does—but rather is accessible to individuals and communities. To talk about human rights is, necessarily, to talk about a discourse that transcends, even abstracts from, local contexts and communities. This, however, does not mean that Korsgaard endorses the form of universalism that Hogan and others have rightly critiqued. The universalism of human rights—like the universalism of the Categorical Imperative—is a strategy for ethical action in community. Universalism is not about obedience to external law. In line with Kant, Korsgaard argues that the universalism necessary to ethical reflection—and, in this case, the discourse of human rights—is the process by which individuals, in their own contexts and settings, test their maxims of action. If I, from out of my practical identity, will to undertake an action, I must enter the space of reflective deliberation. Is this action (recall that for Kant and Korsgaard, action incorporates both the act and the end for which the act is undertaken) one that everyone in my position could likewise undertake? It is this reflective move that constitutes the universal component of ethical reflection for Korsgaard and Kant. Deliberating about whether or not one ought to endorse an action, and then, in turn, willing the action one endorses, describes the move from ‘me’ to ‘I’—from practical identity to self-constitution. This space of reflective distance, deliberation, and endorsement is the space of public reason, self-constitution, and, consequently, the Kingdom of Ends. Universalism is not about applying ‘truth’ in all times and places, but rather it is about undertaking the activity of ethical reflection.

If this is the case, and universalism is a strategy for ethical deliberation, then ethics requires a (public) space for this discourse to take place. This is the space of the Kingdom of Ends. To locate ethical discourse and deliberation—including the discourse of human rights—in the Kingdom of Ends, therefore, means that the question of universalism is necessarily public, and, therefore, always already taking into account the specifics of the other, autonomous moral agents deliberating alongside each other in this shared space of public reason. For Korsgaard, the Kingdom of Ends is, and must be, inherently public. Deliberation in this moral space is possible because our concept of reason is public, rather than private. We do not deliberate about our private reasons/ends in the Kingdom of Ends, but rather, the condition for the possibility of deliberation itself is necessitated by the inherent publicness of our moral reasoning. It is through this concept of public reasoning in the Kingdom of Ends that we are brought back to the concept of dignity.

As I have already noted, dignity in Kant and Korsgaard emerges as the shared description of autonomous beings in the Kingdom of Ends—it emerges out of a process of self-constitution. This process of self-constitution—of making yourself into yourself, of making the ‘me’ into the ‘I’—is the shared, public task of the moral community in the Kingdom of Ends. That is to say, the process of self-constitution, which gives rise to and grounds our dignity, is the shared, public, moral task of humanity. Therefore, if dignity is the moral task of humanity in the Kingdom of Ends, then the discourse of human rights requires a constructivist account of normativity to ground these concepts—of humanity and dignity—in the public space of moral deliberation. In the Kingdom of Ends, it is in the concept of humanity—not as something you own, but as something you participate in

through taking yourself and others to be inviolable sources of law—that dignity resides; consequently, it is in dignity—that is, in the self-constitution of humanity in the Kingdom of Ends—that the discourse of human rights finds a grounding that is both constructive and normative.

Reframing the Question of Christian Ethics

While much of my analysis thus far has been philosophical in method and argument, I have nevertheless maintained, throughout this project, that my goal has been the development of a particularly Catholic-Christian ethic. To this end, the question still remains: How is this project broadly Christian and, more specifically, Catholic? How is it more than simply a philosophical ethics? In the first chapter, for example, I suggested that there is a problem with the natural law, as a framework for contemporary ethical reflection—particularly within the discourse of human rights—insofar as it grounds the normativity of its claims in Scripture and revelation. Grounding ethical normativity in Scripture and revelation, however, is a very common feature of Christian ethics. What I hope to indicate in this section of my conclusion is that ethics does not need to be grounded normatively in Scripture to be considered within the framework of Catholicism and/or Christianity. While Scripture is a constitutive feature of Catholic-Christian identity, its impact and influence does not—or, in my view, ought not—operate at the level of normativity. I have made this claim already in this chapter, but I want to suggest, here, what that claim means for my project, for the discourse of human rights, and for the task of Catholic-Christian ethics today. More importantly, I want to suggest that from the standpoint of a re-imagined Catholic-Christian ethic, Korsgaard's analysis offers a

compelling hermeneutic for engaging in normative ethical reflection that can be, at the same time, robustly philosophical and robustly theological.

Catholic ethics, as embodied in the natural law, has been concerned with an overarching ethical theme that each of my contemporary interpreters of Aquinas addressed. This ethical theme is the relationship between the universal and the particular. Finnis, Porter, and Traina—each in their own way—addressed themselves to this theme and found, in the natural law, a resource for navigating the tensions therein. Whether substantively, methodologically, or both, the natural law was understood to be a constructive resource for contemporary ethical reflection—a resource that, despite its shortcomings, remained a relevant framework for undertaking the task of ethics in a way that was both ethically normative and theologically Catholic-Christian. Part of the reason for turning to Kant in this analysis is that he, too, wants to navigate the relationship between the universal and the particular in ethical reflection. Particularly in Korsgaard's interpretation, Kant offers us a principle of practical reason that aims to do just this: the Categorical Imperative.

Still, from a Catholic-Christian perspective, there appears to be a problem: Doesn't this approach, which grounds the source of normativity in the dignity of humanity, excise the theological from ethical reflection? Doesn't this approach diminish—if not entirely eliminate—the places of God and the Catholic-Christian tradition in normative ethics? Doesn't the natural law better account for the normativity of ethics without involving an external 'extra step' through Kant? I want to suggest that this is not the case. Korsgaard's articulation of the Categorical Imperative as the strategy

for deliberative, ethical reflection locates the source of normative ethics within the shared humanity that is constitutive of the Kingdom of Ends, as well as the Catholic-Christian worldview. As we have already seen, the concept of dignity and the discourse of human rights occupy a place of central concern in this analysis. The human person—by virtue of her humanity—is an inalienable source of ethical normativity. This is so not because each human person is imprinted with the *imago Dei*—as was suggested by the proponents of the natural law—but because each human person participates in the dignity of humanity by virtue of what she does and who she is—a self-constituting agent in the Kingdom of Ends. Therefore, it is the concept of humanity which gives us access to normative, ethical reflection and which constitutes us as human persons with dignity and rights.

It is precisely in this concept of humanity, I would argue, that God enters the picture. From a Catholic-Christian perspective, in placing humanity at the center and heart of ethics, we are, at the same time, placing God there as well. Catholic-Christians claim that God, in at least one of God's persons, participates in our shared humanity. To locate the source of ethical normativity in humanity, then, is to locate the source of ethical normativity in a space of shared occupancy by God and human persons. The difference, here, between Korsgaard's strategy and the arguments of the natural law is that the Categorical Imperative does not take its ethical orientation from God, but rather God becomes part of our ethical reflection through this strategy. The question is not whether God provides us with the source of ethical normativity—for Kant, this would be to capitulate to hegemony. The question is how we encounter God in our reflection on, and endorsement of, normative ethical claims.

To further explicate this claim—that God’s role in ethical reflection is not hegemonic, but rather an encounter—I want to turn, briefly, to an argument made by the German theologian Knut Wenzel. In a 2014 lecture entitled “Human Subjectivity and the Limits of Autonomy,”²⁷ Wenzel proposes a re-configuration of the concept of autonomy that, I believe, coheres with the form of autonomy offered by Korsgaard. Korsgaard, as we have seen, aims to contextualize the autonomous agent within a matrix of other autonomous agents. It is through intersubjective interaction that we constitute ourselves as members of the Kingdom of Ends. This discursive encounter is what makes agency—as well as community—possible. Still, for Korsgaard, there emerges from this encounter an “I” that, along with other “I’s,” becomes the subject of recognition, responsibility, and ethics. There is something both relational and absolute about the agent in herself. It is here that Wenzel offers a further—theological—account of this form of subjectivity. According to Wenzel, “[to] speak of an absolute aspect of subjectivity [something he, Korsgaard, and I want to maintain] ... is only to say that there is a dimension to the human in which she/he principally is not-integrated, undefined, non-discursive, unbaptized.”²⁸ There is an element of the autonomous subject that is absolute, yet—given the intersubjective reality of human subjectivity—it is not entirely accurate to say that subjectivity is something that one entirely possesses. There is always something ‘other’ about the subject. This is certainly presumed in the intersubjective analysis Korsgaard

27. Knut Wenzel, “Human Subjectivity and the Limits of Autonomy” (paper presented at Loyola University Chicago, Chicago, IL, November 11, 2014).

28. Wenzel, “Human Subjectivity,” 3.

provides in the Kingdom of Ends, but Wenzel wants to push this analysis further and suggest that there is something intersubjective about subjectivity—and, consequently, autonomy—as such. Again, Wenzel suggests that “to conceive of the subject as a reflexive one means to inscribe the same structure of otherness into the inner dimension of subjectivity that we already identified in intersubjective relations. This is to say that it is the same mode of indisposability ruling our external relations that also obtains in our internal relation, in our relation to ourselves.”²⁹ What applies between agents in the Kingdom of Ends must also apply to the agent herself. Autonomy, then, “is limited autonomously: by its own, internal, originating subject-structure.”³⁰ By looking to both Korsgaard and Wenzel, then, we find a form of autonomy that reflects, in its internal structure, the external structure of humanity in the Kingdom of Ends. The human agent is autonomous—unlimited by external forces. Yet, at its core, there is a dialogical encounter between the subject and herself.

We can find resonances of this position in many places throughout the Catholic-Christian tradition, but perhaps nowhere more clearly than in St. Augustine’s *Confessions*. Throughout the text—a form of spiritual autobiography that is, at the same time, a prayer—Augustine searches for God, calls on Him to show Augustine—throughout his life—where God has been present and active. “But how can I call unto my God, my God and Lord? For in calling unto Him, I am calling Him to me: and what room is there in me for my God, the God who made heaven and earth? Is there anything in me, O God, that

29. Wenzel, “Human Subjectivity,” 5.

30. Wenzel, “Human Subjectivity,” 7.

can contain You? ... Yet, since nothing that is could exist without You, You must in some way be in all that is: [therefore also in me, since I am].”³¹ This insight—alluded to at the beginning of the *Confessions* and explicated throughout the course of the text—that God is more intimate to Augustine than Augustine is to himself, is precisely the kind of dialogical encounter constitutive of Wenzel’s reformulated autonomy. After all his searching, Augustine finds, at the deepest level of his reflective self, not just an absolute “I”—though, of necessity, that is part of what he finds—but an “I” that is, and always has been, constituted by a relational, dialogical encounter with God. Thus, Augustine offers us a way of understanding subjectivity that sustains the “I,” but an “I” that is, at its deepest level, an intersubjective “I”—an “I” that is autonomous, but autonomous along the lines laid out by Korsgaard and Wenzel. It is an “I” that emerges from the autonomous, dialogical, intersubjective encounter between humanity and God.

To further spell out the theological turn I am proposing, we would need to undertake a series of theological analyses that I do not have the time or space to enter into. Suffice it, here, to note that a theological reflection along the lines proposed by my Korsgaardian analysis would require us to immerse this discourse within different strands of theological reflection. If God’s humanity, as articulated in the Christian tradition, is the key to formulating a normative ethics grounded in Kant’s Categorical Imperative, then serious reflection must be given, for example, to theologies of the Incarnation. Likewise, sustained attention to the various ebbs and flows of Christology is required if we are to approach, and understand, the complexity of the incarnation in terms of the life, death,

31. Augustine, *Confessions*, trans. F. J. Sheed (Indianapolis: Hackett 1993), 3.

and resurrection of Jesus Christ. These are essential theological reflections that must be looked upon, and understood, anew in light of an analysis of ethical normativity grounded in a concept of humanity that is both particular and universal. What concrete forms of theological reflection these enquiries will undertake is an important point for discussion. Suffice it, here, to suggest that as Augustine turned, in his reflection on God and humanity, to prayer, so we, today, might turn, in a similar fashion, to poetics. As noted earlier on in this chapter, John Caputo's 'weak theology' is articulated along these lines of prayer and poetry. Such a theological turn would not be incompatible with theological reflection within the Catholic-Christian paradigm. It is—as I hope my argument suggests—a turn which contains within it great potential for the future of theological and ethical reflection.

Now, at the end of this conclusion, I want to suggest the following. Catholic-Christian ethics is better served, when it comes to the question of normativity in ethical reflection, by turning to, and adopting, Kant's strategy of the Categorical Imperative, than by turning to the discourse of the natural law. Interpreted through Korsgaard, this project provides Catholic-Christian ethics with a way of navigating the tension between the universal and the particular without succumbing to the dangers of making universalistic (in the negative sense) claims on the one hand, or relativistic claims on the other. By locating the heart of normative ethical reflection in the concept of humanity—conditioned only by the intersubjective constitution of the Kingdom of Ends—Korsgaard has offered a hermeneutic for approaching the task of ethical reflection, especially when it is conceived of in terms of the discourse of human rights. If my analysis is correct, then it

may provide Catholic-Christian ethics with a normative, universal, and shareable ground, language, and model for engaging in constructive, ethical deliberation in the 21st century.

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