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## The Conceptions of Self-Evidence in the Finnis Reconstruction of Natural Law

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## ESSAY

# THE CONCEPTIONS OF SELF-EVIDENCE IN THE FINNIS RECONSTRUCTION OF NATURAL LAW

KEVIN P. LEE\*

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## I. INTRODUCTION

This essay examines the conception of self-evidence, which is the logical foundation of John Finnis' influential reconstruction of natural law jurisprudence. His most widely known book, *Natural Law and Natural Rights*,<sup>1</sup> is authoritative for many contemporary legal philosophers and jurists as the most coherent statement of contemporary natural law theory.<sup>2</sup> But, despite its widespread influence, many questions exist regarding the details of Finnis' natural law theory. In developing his theory, Finnis is concerned to avoid the critique of the legal positivists, who viewed natural law theories as committing the logical error of deriving normative claims from factual claims. David Hume was the first to identify this error, and G. E. Moore later described it as the "naturalistic fallacy."<sup>3</sup> Finnis believes this is a critical obstacle for natural law theories to overcome. To avoid committing this error, he seeks to build a version of the natural law that asserts the validity of its normative claims on the basis of the structure of practical reason itself, and thus overcomes the naturalistic fallacy by looking only to normative claims without reducing them to factual assertions. In his reconstruction of the natural law tradition, Finnis proceeds from certain pre-

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1. JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980).

2. Robert P. George writes:

Future intellectual historians will no doubt present the book, together with Professor Finnis' other philosophical writings, as part of the broad revival in more or less Aristotelian approaches to moral and political thinking that gained prominence beginning in the late 1970s. And they will be right.

REASON, MORALITY, AND LAW: THE PHILOSOPHY OF JOHN FINNIS (John Keown & Robert P. George, eds., 2013) [hereinafter REASON, MORALITY, AND LAW].

3. G. E. MOORE, *PRINCIPIA ETHICA* § 25 (1988).

moral principles<sup>4</sup> that are self-evident to practical reason as desirable goals for action. These normative claims are not derived from any factual claims, but are known immediately to be valid in themselves, since their validity is self-evident.<sup>5</sup> Finnis argues that since they are self-evidently valid, they cannot be derived from more basic claims of practical reason or from any factual or theoretical claims.<sup>6</sup> Therefore, he calls these principles self-evident truths of practical reason, and he refers to them as the basic forms of pre-moral goods. Finnis identifies seven such principles of practical reason.<sup>7</sup> The self-evidence of these Basic Goods is the foundational epistemic principle of the Finnis reconstruction of natural law.

Despite the critical role that the concept of self-evidence plays in his thought, Finnis acknowledges it provokes suspicion. “But is there not something fishy about appeal to self-evidence?” he writes.<sup>8</sup> While he suggests that a full explication of the argument for self-evidence exceeds the scope of his work, he “observe[s] in passing” that modern geometry (citing, notably David Hilbert)<sup>9</sup> makes use of “self-evidence” to identify fundamental concepts and (notably) some criteria for completeness.<sup>10</sup> He also implies that the natural sciences rest on elementary formal logic, which he takes to be founded on self-evident principles.<sup>11</sup> Self-evidence, he argues, is the basic sound principle of reason in any empirical discipline.<sup>12</sup> Despite the success of Finnis’ program, his conception of self-evidence remains to be rigorously explored and defended. The goal of this essay is to look closely at Finnis’ foundational claims against the rigorous standards of mathematics and logic. It is argued here that by those standards, self-evidence cannot play the role as a foundation for practical reason that Finnis seeks for it.

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4. FINNIS, *supra* note 1, at 59.

5. *See id.* at 66–69 (discussing the self-evident value of knowledge as a good to be pursued).

6. *See id.* at 66 (stating the value of pre-moral principles cannot be inferred from fact or otherwise deduced); *see also* ANTHONY J. LISSKA, AQUINAS’S THEORY OF NATURAL LAW, AN ANALYTIC RECONSTRUCTION 142 (1996) (rejecting reductivism).

7. *See* FINNIS, *supra* note 1, at 85–90 (explaining his reference to a basic good is not yet to mean a moral good, and listing seven basic goods: life, knowledge, play, aesthetic experience, sociability (friendship), practical reasonableness, and religion).

8. *Id.* at 67.

9. *See id.* (stating a discussion of self-evidence would need to be more complex).

10. *See id.* (discussing how self-evidence supports fundamental concepts, including completeness).

11. *Id.* at 67–68.

12. *Id.* at 68.

Part I considers the place of self-evidence in Finnis' theory of natural law. It argues that the existence of self-evident principles of practical reason is the foundation of his theory. Part II examines the conceptions of self-evidence that Finnis relies on in constructing his theory. It argues that he equivocates between two incompatible conceptions of self-evidence. And, Part III explains why Finnis cannot maintain neither pre-modern nor modern conceptions of self-evidence, and it suggests some implications of his equivocation.

#### A. *Locating Finnis' Claim to Self-Evidence*

This part of the essay shows that the Finnis reconstruction of natural law relies on the claim of self-evidence as its logical foundation. It makes two claims: (1) Finnis views the separation of fact and value (the naturalistic fallacy), which began with David Hume, as an achievement of modern philosophy.<sup>13</sup> Finnis believes the legal positivists reject natural law theories because they violate the separation of fact and value by attempting to draw moral norms from the facts about human nature; (2) To overcome their rejection, Finnis argues that seven basic pre-moral goods (the Basic Goods) are desirable goals for human beings to achieve.<sup>14</sup> Finnis argues that the validity of these Basic Goods is established through their self-evidence.<sup>15</sup> The epistemological foundation of his theory of natural law is the claim of the self-evident Basic Goods.<sup>16</sup>

##### 1. The Separation of Fact and Value

Finnis begins his reconstruction of the natural law by acknowledging his acceptance of David Hume's distinction between fact and value.<sup>17</sup> He quotes the famous passage from Hume's *A Treatise of Human Nature*:

In every system of morality, which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surprised to find, that

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13. *Id.* at 36–38.

14. *Id.* at 85–90.

15. *See id.* at 92 (arguing these Basic Goods to be self-evident and that each Basic Good cannot be reduced to another).

16. *See id.* at 90 (asserting the other forms of “Good” all derive themselves from the seven Basic Goods).

17. *Id.* at 36–38.

instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, it is necessary that it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it . . . his small attention would . . . let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceived by reason.<sup>18</sup>

Finnis reads this passage as establishing an absolute separation between facts and norms.<sup>19</sup> Finnis writes, “there can be no valid deduction of a normative conclusion without a normative principle and thus . . . [the] first practical principles cannot be derived from metaphysical speculations.”<sup>20</sup> The claim advanced here is that the first principle of the Finnis reconstruction of natural law is self-evidence.

Finnis begins by accepting the positivist claim that the divide between fact and values is an absolute metaphysical dichotomy.<sup>21</sup> He attributes the separation of fact and value to David Hume.<sup>22</sup> On Hume’s analysis, concepts are a type of “idea,” and ideas are mental representations of objects.<sup>23</sup> Factual ideas are ones that resemble some state of affairs in the real world.<sup>24</sup> Ideas can become associated with moral sentiments (emotional state), but there are no moral facts since the sentiment is representing no moral object. The moral good is merely a sentiment that resembles nothing in the external world. The separation between fact and value is a claim about the legitimacy of an inference (that *p* cannot be inferred from *q*). In the early twentieth century, however, Hume’s claim was given greater significance by the widely influential work of Rudolph Carnap, who worked in a Kantian framework.<sup>25</sup> Carnap followed the standard

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18. *Id.* at 36–37.

19. *See id.* at 37 (analyzing Hume’s proposition to mean that no moral conclusion can come from a non-moral premise).

20. John Finnis & Germain Grisez, *The Basic Principles of Natural Law: A Reply to Ralph McInerney*, 26 AM. J. JURIS. 21, 24 (1981); accord LISSKA *supra* note 6, at 162 (1996) (“Finnis is convinced that reductivism entails adopting the is/ought problem of deriving an ‘ought’ prescription from an ‘is’ proposition.”).

21. FINNIS, *supra* note 1, at 36–37.

22. *Id.*

23. DAVID HUMES, A TREATISE OF HUMAN NATURE 1 (L. A. Selby-Bigge eds., 1888).

24. *Id.* at 3.

25. STEWART SHAPIRO, THINKING ABOUT MATHEMATICS 4, 124–32 (2000).

interpretations of Kant that conceive of value judgments as imperatives (following Kant's derivation of the Categorical Imperative).<sup>26</sup> On this reading, to say "x is wrong" is equivalent to saying "do not do x" (i.e., it is an imperative). As such, it contains no factual content. Kant categorized such claim as "analytic," meaning that they are about the relations among ideas.<sup>27</sup> He contrasted analytic and synthetic propositions, which were about facts. Carnap interpreted Hume's distinction between fact and value to be a metaphysical separation between analytic and synthetic propositions.<sup>28</sup> Carnap's dichotomy was influential in logical positivism and appears to have been accepted by Finnis.<sup>29</sup> He accepts the dichotomous separation between facts and values, which he believes poses a critical challenge to any theory of natural law. Finnis notes that the dichotomy between fact and value has been cited as the reason for rejecting natural law by the leading positivist jurists of the twentieth century: Hans Kelsen, H.L.A. Hart, and Joseph Raz.<sup>30</sup>

According to the legal positivists, the natural law theories attempt to illegitimately derive the validity of law, a factual claim, from claims about moral validity.<sup>31</sup> Finnis quotes the following passage by Raz, describing the positivists' view of natural law:

Kelsen correctly points out that according to natural law theories there is no specific notion of legal validity. The only concept of validity is validity according to natural law, i.e., moral validity. Natural lawyers can only judge a law as morally valid, that is, just or morally invalid, i.e., wrong. They cannot say of a law that it is legally valid but morally wrong. If it is wrong and unjust, it is also invalid in the only sense of validity they recogni[z]e.<sup>32</sup>

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26. This section of the essay draws from Hillary Putnam's analysis of the Kantian evolution of the Fact/Value dichotomy. See HILLARY PUTNAM, *THE COLLAPSE OF THE FACT/VALUE DICHOTOMY* 16–18 (2002) (arguing that Kantian philosophers have agreed that "value judgments have the character of imperatives").

27. *Id.* at 16–17.

28. *Id.* at 18.

29. FINNIS, *supra* note 1, at 36–38.

30. *Id.* at 26.

31. PUTNAM, *supra* note 26, at 16–18.

32. FINNIS, *supra* note 1, at 26.

An influential reading of Finnis by Anthony Lisska<sup>33</sup> describes Finnis' natural law theory as a radical reconstructing of natural law.<sup>34</sup> Finnis is “undercut[ing] the functional view of Aristotelian ethics by suggesting that the metaphysical support normally used to interpret natural law in Aristotle and Aquinas is misguided.”<sup>35</sup> Lisska asserts that traditional natural law theories, including that of Thomas Aquinas, are based on some understanding of human nature. Finnis describes these theories as being “reductive” since they reduce moral meaning to factual claims about human nature. For Finnis, it is this reduction that must be avoided to avoid the improper inference of moral value from fact. In his reconstruction, Finnis sought to develop a fresh perspective that would free natural law from ontology to avoid the reduction of moral claims to factual claims, and thereby make natural law acceptable to the weathering critiques brought by the positivist philosophers.<sup>36</sup> His approach to overcoming the positivist critique of natural law involves the assertion of moral principles that are not derived from factual claims. In his reconstruction, the foundational principles of natural law are not reductive. They are self-evident, which means they are known immediately to be true in themselves.<sup>37</sup> He calls these self-evident moral principles the basic forms of good.<sup>38</sup>

## 2. The First Principles of Practical Reason

To summarize, Finnis acknowledges the validity of the absolute separation of fact and value and locates it as the common commitment of positivist philosophers. It is a fundamental challenge for natural law theories that seek to derive moral values from some understanding of facts about the nature of human existence. More precisely, they reject the claim that the moral good is derivable from an account of how human beings flourish in the sense of fully developing their nature as human beings.<sup>39</sup> The natural law promotes morally good lives in which the conditions for

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33. LISSKA, *supra* note 6, at 139–65.

34. *See id.* at 139–65 (describing Finnis' reconstruction of natural law theory and differences in his theory from those of other philosophers, such as Aristotle and Aquinas).

35. *Id.* at 139.

36. *Id.* at 142–45 (analyzing Finnis' beliefs about traditional natural law theories and his reconstruction of natural law theory).

37. FINNIS, *supra* note 1, at 59.

38. *See id.* at 59 (introducing the idea of “self-evident . . . forms of human good that . . . are . . . irreducibly basic”).

39. *See* LISSKA, *supra* note 6, at 142–43 (explaining Finnis' rejection of the powerful temptation to “envisage ethics reductively”).



fulfilling the transcendent nature of human beings is maximally achieved in society. The natural law is concerned with describing morality in terms of virtues that help achieve the optimal function by maximally pursuing dispensations towards self-evident goods.<sup>40</sup>

Drawing from Germain Grisez's work on moral first principles, Finnis developed an approach to natural law that sought self-evident first principles of practical reason that could serve as a foundation. Grisez and Finnis argued that Aquinas understood that the first principles of practical reason are self-evident. Robert P. George explains that:

According to Grisez and Finnis, Aquinas correctly understood that the underived (*per se nota* and *indemonstrabilia*) first and most basic principles of practical reason direct human choosing and acting towards intelligible human goods—the various irreducible aspects of human well-being and fulfillment which provide more-than-merely-instrumental reasons for action—and away from their privations. These first principles (and the basic human goods to which they refer in directing our choosing and acting—friendship, knowledge, critical aesthetic appreciation, skillful performances of various types, etc.) are not themselves moral norms. (Knowledge of them is moral knowledge incipiently, but only incipiently.) Rather, they guide and govern *all* coherent practical thinking, whether it results in morally upright action (e.g., visiting an ailing colleague in the hospital simply as an act of friendship) or immoral action (e.g., telling a lie to protect the reputation of a friend who has done something disgraceful).<sup>41</sup>

These basic pre-moral goods (the Basic Goods)<sup>42</sup> are the foundation of the Finnis reconstruction of natural law. Since these basic principles of practical reason are underived, they avoid the reduction of moral values to factual propositions that the legal positivists rejected.<sup>43</sup>

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40. See REASON, MORALITY, AND LAW *supra* note 2, at 2 (outlining the basis of natural law and the moral norms that form basic, self-evident “goods of human persons”).

41. *Id.*

42. See FINNIS, *supra* note 1, at 85–90 (explaining his reference to a basic good is not yet to mean a moral good, and listing seven basic goods: life, knowledge, play, aesthetic experience, sociability (friendship), practical reasonableness, and religion).

43. Finnis describes the defining criteria of the Basic Goods in three interrelated claims:

(i) what I mean by ‘basic value’ and ‘basic practical principle’, (ii) how such values and principles enter into any consideration of good reasons for action and any full description of human conduct, and (iii) the sense in which such basic values are obvious (self-evident) and even unquestionable.

*Id.* at 59.

These three claims form the foundation of the natural law for Finnis. He views the Basic Goods as (i) principles of practical reason; that (ii) are dispositions to be pursued; and (iii) are self-evidently valid.<sup>44</sup> Each feature of Basic Goods must be considered for its significance to the logical structure of the natural law. Each of these claims contributes to the foundation of his theory:

a. Basic Goods are the First Principles of Practical Reason

The Basic Goods are not rules; they are “basic practical principles.”<sup>45</sup> He explains:

Basic practical principles, such as that knowledge is a good to be pursued and ignorance is to be avoided, do not play the same role as rules do, in practical reasoning or the explanation and description of intelligent action. A basic practical principle serves to orient one’s practical reasoning, and can be instantiated (rather than ‘applied’) in indefinitely many, more specific, practical principles and premi[ses]. Rather than restrict, it suggests new horizons for human activity.”<sup>46</sup>

Finnis illustrates this claim with his cardinal example of a Basic Good, which is “knowledge.”<sup>47</sup> He claims, “[k]nowledge is something good to have. Being well-informed and clear-headed is a good way to be. Muddle and ignorance are to be avoided. These are formulations of a practical principle.”<sup>48</sup> By practical principle, he means a principle that guides action toward some purpose. Attaining knowledge can be a guiding principle because it defines a goal for action.

b. Basic Goods are Dispositions

The Basic Goods are dispositions to act since they are the goals sought in purposeful human action.<sup>49</sup> In this sense, they reflect human nature as the goals that human beings seek as good to achieve, but they are not derived from claims about human nature. Finnis believes this way of viewing the essence of human nature, as a set of dispositions, is consistent with

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44. *Id.* at 85.

45. *Id.* at 63.

46. *Id.*

47. *Id.* at 59–60.

48. *Id.* at 63 (internal quotations omitted).

49. *Id.* at 90–91.

Aquinas's description of essences as dispositions.<sup>50</sup> A dispositional view of essence is a necessary condition for discussing the conception of essences in Aquinas.<sup>51</sup> For Aquinas, an essence is "a set of dispositional qualities."<sup>52</sup> These dispositional qualities are the natural necessities that must be acknowledged by the primary rules of the law.<sup>53</sup> Basic Goods identify the dispositional qualities that evolve from human nature.<sup>54</sup>

Lisska observes this approach to essences has some similarity to Hart's concept of natural necessities.<sup>55</sup> He writes:

In *The Concept of Law*, Hart ponders what he refers to as the "core of good sense" in natural law thinking. This he spells out in terms of "natural necessities," which he refers to as the "minimum content of natural law." Like Hobbes before him, Hart considers "survival" to be the central linchpin in human existence and the "necessity" which in principle cannot be overridden by the law. Hart attempts to identify certain salient facts about the human species—what existentialist philosophers might call the human condition—which make moral and legal systems understandable and necessary.<sup>56</sup>

For Hart, these *natural necessities* must be accounted for in the primary rules, "while the secondary rules of procedure which are necessary conditions for any mature legal system."<sup>57</sup> This similarity to Hart suggests that Finnis' approach might succeed as a counter to the criticism of natural law leveled by Hart and other positivists.

### c. Basic Goods are Apodictic

Finnis believes that the Basic Goods are the foundation from which all other claims of practical reason can be established.<sup>58</sup> If one understands the seven principles that are the Basic Goods, then one immediately knows it empowers an individual agent when it is possessed and that such

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50. *Id.*

51. LISSKA, *supra* note 6, at 96.

52. *Id.*

53. *Id.* at 90–91.

54. FINNIS, *supra* note 1, at 94–96.

55. LISSKA, *supra* note 6, at 18.

56. *Id.*

57. *Id.* at 20.

58. FINNIS, *supra* note 1, at 90.

empowerment is better to have than to lack.<sup>59</sup> In this sense, the Basic Goods are apodictic. Lisska explains:

Finnis suggests that the mental process of determining the goods renders them “objective.” The goods to be obtained are self-evident—what Aquinas refers to as *per se nota* propositions. Since the propositions are *per se nota*, they are not reducible to facts about human nature.<sup>60</sup>

The mental process intended to guarantee objectivity is “cool reflection” as Lisska later notes.<sup>61</sup> The apodicticity of the Basic Goods overcomes the fact/value dichotomy by deriving the Basic Goods purely as necessary dispositions to act for desirable ends. Joseph Boyle explains that the Basic Goods “function in practical thought much as does the principle of non-contradiction in thinking more generally.”<sup>62</sup> Thus, the Finnis reconstruction of natural law stands on its own as a system of propositions that rests on the self-evidence of the Basic Goods.

Finnis illustrates the apodicticity of the Basic Goods through a description of knowledge. Finnis writes of the Basic Good of knowledge:

Is it not the case that knowledge is really a good, an aspect of authentic human flourishing, and that the principle which expresses its value formulates a real (intelligent) reason for action? It seems clear that such indeed is the case, and that there are no sufficient reasons for doubting it to be so. The good of knowledge is self-evident, obvious. It cannot be demonstrated, but equally it needs no demonstration.<sup>63</sup>

Lisska notes that Finnis is careful to point out that no account of the basic good of knowledge can establish it as such.<sup>64</sup> Any attempt to “reduce” knowledge to some fact about it—such as a psychological analysis<sup>65</sup> or an appeal to its universality<sup>66</sup> misses the mark, since “[t]he soundness of an answer to a particular question is never established . . . by the answer to [an]

59. *Id.*

60. LISSKA, *supra* note 6, at 145.

61. *Id.* at 158.

62. Joseph Boyle, *On the Most Fundamental Principle of Morality*, in REASON, MORALITY, AND LAW *supra* note 2, at 56, 59.

63. FINNIS, *supra* note 1, at 64–65.

64. LISSKA, *supra* note 6, at 157–59.

65. *See* FINNIS, *supra* note 1, at 65 (noting the psychological inclination to seek truth does not determine whether knowledge is a basic good).

66. *See id.* at 66 (rejecting moral skepticism and accepting moral cognitivism).

entirely *different question . . .*”<sup>67</sup> Anyone who understands the meaning of knowledge would know that it is desirable for it to be pursued because the connection is immediately understood as logically necessary. The truth of the Basic Goods is not assertorical, something that happens to be the case. They are apodictic because it *must* be the case. The apodicticity of the Basic Goods results from their self-evidence—from their immediate claim to logical necessity.<sup>68</sup> That knowledge is good to have, cannot be denied by someone who knows what knowledge is because to do so would be illogical. The apodicticity of the Basic Goods is fundamental to what Finnis intends by claiming that they are self-evident.

Some clarification of this point can be taken from Robert P. George's defense of the Finnis reconstruction against the critique brought by Michael Perry.<sup>69</sup> According to George, Perry misunderstands Finnis' conception of the Basic Goods by viewing them instrumentally, as means to the end of human flourishing.<sup>70</sup> In the sense that George ascribes to Perry, the truth of the Basic Goods would be assertoric.<sup>71</sup> But George argues that this is not a correct interpretation of Finnis, for the Basic Goods (note that George refers to them as “basic values”) are ends in themselves. He explains:

Perry seems to understand “value(s)” as providing reasons for action, but he differs from Finnis in treating flourishing as a value. Underlying this difference is a radically different conceptions of flourishing. Perry conceives of flourishing not as constituted by irreducible values (for example, friendship, knowledge, life, health and beauty), but rather as itself the ultimate value. Under his conception, Finnis' “basic” values are proximate reasons for choice and action. They are means of flourishing, rather than ends-in-themselves. As means they are instrumentally, rather than intrinsically[,] valuable. Their choiceworthiness derives from their capacity to produce flourishing. Contrary to Finnis' view, they are neither underived nor self-evident; their value can be inferred from their capacity to produce flourishing. The proposition that

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67. *Id.* at 65.

68. *Id.* at 64–65.

69. See ROBERT P. GEORGE, IN DEFENSE OF NATURAL LAW 264 (2001) (comparing the differences between Perry and Finnis' understandings of value); MICHAEL PERRY, MORALITY, POLITICS AND LAW 10 (1988) (“We should reject moral skepticism and accept moral cognitivism, which affirms that there can be moral knowledge.”).

70. GEORGE, *supra* note 69, at 264.

71. See *id.* (emphasizing the argument that knowledge is always good, regardless of what reasoning the thinker employs to understand knowledge).

knowledge conduces to flourishing may function as a minor premise that leads to the conclusion that knowledge is a value.<sup>72</sup>

George contends Finnis views the Basic Goods as comprehensive *ends in themselves*, in the sense that they are not aimed at some more complete view of human fulfillment.<sup>73</sup> They are sought in their own right for their own desirability.<sup>74</sup> And, they are known to be so because they are apodictic.

To summarize, Finnis explains that from this common view of natural law, “it is a necessary truth that every law has moral worth.”<sup>75</sup> This view is rejected by positivists, who seek to describe legal validity apart from moral terms because they do not want to conflate factual claims about the law with moral claims about what the law ought to be.<sup>76</sup> Finnis counters that the truth of natural law principles is not derived at all; they are immediately known to be true (apodictic) because they are self-evident.<sup>77</sup> Finnis does not defend the metaphysical basis for the natural law ethics of Aristotle or Aquinas. Instead, he argues that, since ethics is a form of practical reason, it can be separated from the hylomorphic, metaphysically teleological structure of Aristotelian and Thomistic metaphysics, and stand on its own as a system of apodictic propositions that rests on the foundational intuition of the Basic Goods.<sup>78</sup> The claim that Basic Goods are “self-evident” means they are not (and in principle cannot be) derived from more basic claims of practical reason or from any factual claims.<sup>79</sup> Critically, they avoid the improper inference of moral value from the facts about human nature precisely because they are self-evident, precisely because they are apodictic and therefore not derived or derivable from factual propositions.<sup>80</sup> The apodictic character of the Basic Goods is thus the foundation for Finnis’ defense of natural law against the legal positivists.<sup>81</sup> It is also the foundation

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72. *Id.*

73. *Id.*

74. *Id.*

75. FINNIS, *supra* note 1, at 26 (internal quotation omitted).

76. *Id.* at 29 n.6.

77. *See id.* at 32 (expressing how natural law principles are always true).

78. *See id.* at 23–25 (explaining that the origins of natural law derive from principles of universal good, practical reasonableness, and a set of general moral standards).

79. *See id.* at 73–75 (noting the idea that knowledge as a good to be pursued cannot be demonstrated because it is self-evident).

80. *Id.* at 75.

81. *See id.* at 27 (“The legal validity of positive law is derived from its rational connections with natural law, and this connection holds good, normally if and only if the law originates in a way which is legally valid.”).

of his claim for universality of his ethics because he holds that the recognition of the Basic Goods is, in principle, “objective” (i.e., universally recognizable) for all rational creatures.<sup>82</sup> It is thus his contention that recognition of the Basic Goods is the foundation from which all other claims of practical reason might be given rigorous scrutiny.<sup>83</sup>

## II. TWO CONCEPTIONS OF SELF-EVIDENCE

Despite the critical role that self-evidence plays in his theory of natural law, Finnis acknowledges that it is controversial. As noted above, he writes, “[b]ut is there not something fishy about appeal to self-evidence?”<sup>84</sup> While he suggests that a full explication of the argument for self-evidence exceeds the scope of his work, he “observe[s] in passing” that modern geometry (citing, notably David Hilbert)<sup>85</sup> makes use of “self-evidence” to identify fundamental concepts and (notably) some criteria for completeness. Finnis implies that the natural sciences rest on elementary formal logic, which he takes to be self-evident.<sup>86</sup> He argues for self-evidence, through what he takes to be basic, sound principles of reason in any empirical discipline.<sup>87</sup> Despite the success of Finnis’ program, the “fishiness” of his conceptualization of self-evidence remains to be explored and defended.

A close reading reveals that Finnis draws his conceptions of self-evidence from two sources. One is the medieval conception of *propositio per se nota* (propositions that speak for themselves). Finnis says the Basic Goods are self-evident in the same sense that Aquinas refers to the principles of natural law as *propositio per se nota*.<sup>88</sup> Therefore, they are not reducible to facts about human nature. However, when Finnis defends his appeal to self-evidence, he draws an analogy to the concept of self-evident definitions in mathematical logic (he notes David Hilbert’s and Oswald Veblen’s geometries in particular)<sup>89</sup> and also what Finnis calls “principles or norms of sound judgment.”<sup>90</sup> Self-evidence, however, is conceptualized quite

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82. *See id.* at 69 (holding that knowledge, as a basic good, is not demonstrable because it is self-evident).

83. *Id.* at 23.

84. *Id.* at 67.

85. *Id.*

86. *Id.* at 67–68.

87. *Id.* at 68.

88. *Id.* at 32.

89. *Id.* at 67.

90. *Id.* at 68. Finnis also identifies seven self-evident principles of empirical disciplines:

differently among these sources. Although Finnis does not consider the significance of these differences, the differences are substantial, and given the critical role that the concept of self-evidence plays in his theory, the significance must be given rigorous consideration if the theory is to be accepted. While Finnis acknowledges as much, he does not take up the task, suggesting that a full explication of the argument for self-evidence exceeds the scope of the book.<sup>91</sup> Comparing medieval and modern conceptions of self-evidence is the goal of this part of the essay.

#### A. *Finnis and Leonine Thomism*

To appreciate Finnis' relation to Thomas Aquinas, it is useful to consider Finnis' relation to the Roman Catholic intellectual tradition. As a committed Catholic, the Roman Catholic intellectual tradition is foundational for Finnis, and thus the desire to see his philosophy as an extension of that tradition should be given some attention at the start of this examination of his foundational concept of self-evidence because, as will be shown, there are Catholic attitudes and commitments that are at stake in the positions that Finnis develops.

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- (1) Deductive inferences are to be relied on and followed;
  - (2) Adequate reasons must be given to support a belief;
  - (3) Self-defeating theses are to be abandoned;
  - (4) Phenomena are to be considered real unless there is some reason to think otherwise;
  - (5) A full description of data is to be preferred over a partial description;
  - (6) A method of interpretation that proves workable should be relied on in similar situations; and
  - (7) Simple, predictive, and accessible accounts should be accepted over others.

*Id.* at 68.

These seven principles, Finnis takes to be objectively true. *Id.* at 69. They are not sentiments or intuitions for him. *Id.* Finnis observes that such principles are not demonstrable, for they are presupposed or deployed in anything that we would count as a demonstration. *Id.* "They do not describe the world. But although they cannot be verified by opening one's eyes and taking a look, they are obvious—obviously valid—to anyone who has experience of inquiry into matters of fact or of theoretical (including historical and philosophical) judgment; they do not stand in need of demonstration." *Id.* This conclusion is offered without much analysis. In fact, if the conclusion is about self-evident principles, then no analysis should be available, nor would presenting analysis do much to further the case for accepting the validity of the principles.

91. See generally *id.* at 67–73 (identifying the complexity in thoroughly discussing the principles of self-evidence, while providing a brief analysis of self-evidence and addressing potential counterarguments to the concept of self-evidence).



The Catholic context of Finnis' thought is formed by the 1879 encyclical of Pope Leo XIII, *Aeterni Patris*,<sup>92</sup> who called on Catholic seminaries to return to the teaching of Thomas Aquinas as a check against what he took to be the corrupting influences of modernity.<sup>93</sup> In drafting this document, Leo XIII was influenced by Joseph Kleutgen, a theologian of the period who was particularly concerned about rejecting Cartesian philosophy.<sup>94</sup> Kleutgen argued that the radical skepticism of Descartes's philosophical method had the effect of severing the mind from Being, which was assured by scripture to be God's creation and as such, morally Good. On Kleutgen's reading, Descartes asserted that the proper method for philosophy was to first draw into doubt all that can be doubted, which he believed was the source of a radical rupture in philosophy.<sup>95</sup> Philosophical knowledge (natural theology) of God was not a possibility under the Cartesian system, nor any philosophy honoring its legacy.<sup>96</sup> He believed that philosophy had

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92. Pope Leo XIII, *Aeterni Patris: Encyclical of Pope Leo XIII on the Restoration of Christian Philosophy, to the Patriarchs, Primates, Archbishops, and Bishops of the Catholic World in Grace and Communion with the Apostolic See* (Aug. 4, 1879), [https://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_04081879\\_aeterni-patris.html](https://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_04081879_aeterni-patris.html) [<https://perma.cc/2GEQ-7QAD>].

93. *Id.* at 25.

94. See ALASDAIR MACINTYRE, *THREE RIVAL VERSIONS OF MORAL ENQUIRY* 38–39 (1991). He argues that Kleutgen caused Thomism to confront all of the problems of post-Cartesian philosophy. *Id.* at 39. The importance of Thomas, for MacIntyre, lies not in his ability to provide an epistemology for refuting modernity, but in the development of an integration of Augustinian and Aristotelian metaphysical systems. Thomism unites, harmonizes, and synthesizes the metaphysics and epistemologies of Augustine and Aristotle but does not develop into an epistemology of justified knowledge, which has been a hallmark of modern thought. *Id.* For Aquinas, epistemology takes place within the context of a set of theological presuppositions that are taken as given. *Id.* The epistemology of modernity seeks a vantage point outside of presuppositions and prejudice from which epistemological claims can be justified. *Id.* at 33. Thomism relies on a tradition that gives meaning to Scripture, teases out its insights, and provides warrants for believing in its conclusion. Kleutgen's error is that "[he] instead treats Aquinas as presenting a finished system whose indebtedness to earlier writers is no more than an accidental feature of it." *Id.* at 38. Asking Thomism to do the work of refuting Cartesian epistemology distorts the nuanced synthesis of Thomism by "opening an epistemological question for which there is no place in Aquinas's scheme of thought." *Id.* According to MacIntyre, this led to a distortion in his thought that developed into a variety of anti-modern Leonine Thomism. *Id.* at 37. By adopting Suarez's misreading of Aquinas, MacIntyre argues, Kleutgen created the conditions that led to a fracturing of Thomism into a plurality of different responses to modernity. *Id.*

95. MACINTYRE *supra* note 94, at 59; see also GERALD A. MCCOOL, *FROM UNITY TO PLURALISM: THE INTERNAL EVOLUTION OF THOMISM* 15 (1999) ("[M]odern philosophies [the] newer theologies employed began with the Cartesian *cogito*.").

96. MACINTYRE *supra* note 94, at 58–75; see also MCCOOL *supra* note 96, at 21–23 (discussing post-Cartesian philosophy); STEPHEN MENN, *DESCARTES AND AUGUSTINE* 379–80 (1998) (contemplating the lingering doubt left over from these earlier hypotheses).

gone astray and that the result had been a crisis for European thought.<sup>97</sup> Most of the philosophers who took up Leo XIII's call to renew Thomism (known as the "Leonine Thomists") followed Kleutgen in viewing modernity as a rupture in intellectual history and as a crisis for the Church.<sup>98</sup> Although it was influential in many European seminaries and universities, the Angelicum was at the center of these efforts to confront modern philosophy.<sup>99</sup> The Thomism that developed there sought to reverse these modernizing trends by finding within the thought of Aquinas the philosophical resources to combat modern philosophy.<sup>100</sup>

Finnis developed significantly as a philosopher during the period of the greatest influence of *Aeterni Patris*, between 1910 and 1967. During that period, canon law required clergy to swear an anti-modernist oath that was promulgated by Pope Pius X on September 1, 1910 (it continued to be enforced until Pope Paul VI abolished it in 1967).<sup>101</sup> They were also required to take examinations on Thomistic theology and philosophy set out in "Twenty-Four Thomistic Theses."<sup>102</sup> These were divided into various topics (ontology, psychology, theodicy, and so forth) that were intended to demonstrate how Thomism established the existence of God through natural reason (i.e., independent from faith).<sup>103</sup> Implicit in the document is the belief that natural reason is sufficient to answer the most important theological questions.<sup>104</sup> Faith is important for knowledge of the nature of the divine but not for the moral life, which could be adequately known through natural law discernable through natural reason and argument.

Catholic thought in this period was fully committed to a realist epistemology that made possible a hylomorphic metaphysics and natural

97. MACINTYRE *supra* note 94, at 59.

98. FERGIUS KERR, AFTER AQUINAS: VERSIONS OF THOMISM 18, 37 (2002) [hereinafter KERR, AFTER AQUINAS].

99. FERGIUS KERR, TWENTIETH-CENTURY CATHOLIC THEOLOGIANS 1 (2007) [hereinafter KERR, TWENTIETH-CENT.].

100. *Id.*

101. See generally Pope Pius, *Pascendi Dominici Gregis: Encyclical of Pope Pius X on the Doctrines of the Modernists, to the Patriarchs, Primate, Archbishops, Bishops and other Local Ordinaries in Peace and Communion with the Apostolic See* (Sep. 8, 1907) [hereinafter POPE PIUS X], [http://w2.vatican.va/content/pius-x/en/encyclicals/documents/hf\\_p-x\\_enc\\_19070908\\_pascendi-dominici-gregis.html](http://w2.vatican.va/content/pius-x/en/encyclicals/documents/hf_p-x_enc_19070908_pascendi-dominici-gregis.html) [https://perma.cc/XA78-JQ9N] (attacking the modernist view); see also KERR, TWENTIETH-CENT., *supra* note 99, at app. (presenting the whole oath written by Pope Pius X).

102. *The 24 Thomistic Theses*, CATH. APOLOGETIC INFO., <http://www.catholicapologetics.info/catholicteaching/philosophy/thomast.htm> (last visited Aug. 26, 2019).

103. *Id.*

104. See *id.* (implying most theological questions can be answered with logic alone).

theology.<sup>105</sup> They opposed subjectivism, relativism, and the personalization of faith.<sup>106</sup> As Kerr puts it, “The history of twentieth-century Catholic theology is the history of the attempted elimination of theological modernism, by censorship, sackings and excommunications—and the resurgence of issues that could not be represented by such methods.”<sup>107</sup> The resurgence of approaches that could not be successfully repressed, to which Kerr refers, led to hotly contentious debates that are still felt among Catholic intellectuals.<sup>108</sup> Finnis’ precise location with respect to Leonine Thomists can be debated, but it seems clear that his project of reconstructing the natural law is sympathetic to the project of Leonine Thomism.

### 1. Catholic Commitments

A split between medieval and modern conceptions of self-evidence is related to the rejection of modern philosophy by Neo-Scholastic Catholic philosophers. The controversy centers on a disagreement over the concept of intentionality.<sup>109</sup> To gain some perspective on the relationship between theories of perception and theories of natural law, it is useful to consider the modern recovery of a medieval philosophical term, “*intentio*,” from which

105. *Id.*

106. KERR, TWENTIETH-CENT., *supra* note 99, at 1.

107. *Id.* at 4–5.

108. Kerr describes the paradoxical nature of this period:

Paradoxically, the revival of Thomistic philosophy in the wake of Leo XIII’s directive, intended to keep modern philosophy out of Catholicism, and especially German Romanticism, kept to very much the same canons of rationality that we find in the Enlightenment. The Enlightenment ideal was to attain timeless, universal and objective conclusions by exercising a unitary and ahistorical form of reasoning. Similarly, neoscholastic theology “identified truth and life with immutability and rationality; it opposed being to history and ignored concreteness in human life and in the economy of salvation”. For neothomists, as for Enlightenment philosophers, appealing to experience, tradition and historical studies was the wrong way to get to truth.

*Id.* at 2. Catholic thought in this period was fully committed to a realist epistemology that made possible a hylomorphic metaphysics and natural theology. *Id.* at 4; *see also* text accompanying footnotes 108–09. The resurgence of approaches that could not be successfully repressed, to which Kerr refers, led to hotly contentious debates that are still felt among Catholic intellectuals. *Id.* at 222.

109. Victor Caston, *Connecting the Traditions, Augustine and the Greeks on Intentionality*, in DOMINIK PERLER, ANCIENT AND MEDIEVAL THEORIES OF INTENTIONALITY 23, 29 (2001) (“But there is an even more fundamental problem still. *Which* concept of intentionality? The natural answer, of course, is *the* concept of intentionality, that is, a *correct* grasp of what constitutes intentionality. But this is precisely what our philosophers disagree about . . .”).

the modern word “intention” is derived.<sup>110</sup> Although today the word “intention” has a primarily psychological meaning, referring to purposive goals, for the medieval philosopher, *intentio* referred to the object of attention as it is represented to the mind.<sup>111</sup> The belief that the external world is mediated to the mind through some form of mental representation is massively influential today.<sup>112</sup> This was not always the case, however.<sup>113</sup>

The contemporary understanding owes a significant debt to Franz Brentano. In *Psychologie vom empirischen Standpunkt*<sup>114</sup> (*Psychology from an Empirical Standpoint*), Brentano sought to recover the medieval conception of “*intentio*” for modern philosophy.<sup>115</sup> Brentano was successful, and today, the concept, now known as “intention,” is widely accepted as foundational for thinking about consciousness.<sup>116</sup> He did this in the context of developing a scientific study of consciousness through an analysis of the totality of mental awareness.<sup>117</sup> For him, “philosophy is a descriptive study of what is given in direct ‘self-evidence’ (*Evidenz*).”<sup>118</sup> His project was to develop an empirical study of that which is given to conscious awareness in the lived experience of a phenomenon.<sup>119</sup> The medieval concept of *intentio* was useful for him because it was the term that the Scholastic philosophers

110. Caston, *supra* note 109, at 25 (2001).

111. *See id.* at 24–25 (Identifying the relevant uses of the word “intention” within the context of philosophy).

112. Charles Siewert, *Consciousness and Intentionality*, STAN. ENCYCLOPEDIA PHIL. ARCHIVE § 2, <https://plato.stanford.edu/archives/spr2017/entries/consciousness-intentionality/> [https://perma.cc/K57J-SEAG].

113. *See* Caston, *supra* note 109, at 23 (cataloging the discord among philosophers regarding the idea of intentionality).

114. FRANZ BRENTANO, *PSYCHOLOGIE VOM EMPIRISCHEN STANDPUNKT* (1874).

115. In an oft-cited passage in the *Psychologie*, he wrote:

The data of our consciousness make up a world which, taken in its entirety, falls into two great classes, the class of *physical* and the class of *mental* phenomena . . . . Every presentation . . . of sensation or imagination offers an example of the mental phenomenon . . . . Thus hearing a sound, seeing a colored object, sensing warm or cold, and the comparable states of imagination as well, are examples of what I mean . . . . Examples of physical phenomena, on the other hand, are a color, a shape, a landscape, which I see; a musical chord, which I hear; heat, cold, odor, which I sense . . . . These examples may suffice as concrete illustrations of the distinction between the two classes.

BRENTANO, *supra* note 114, at 39–41.

116. *See, e.g.,* Siewert, *supra* note 112, at § 9 (explaining how “[c]onsciousness is to be explained as a form of intentionality . . .”).

117. DERMOT MORAN, *INTRODUCTION TO PHENOMENOLOGY* 8 (2000).

118. *Id.*

119. *Id.*

used to refer to the ontological status of the mental objects that mediate the external world through representation.<sup>120</sup> They called these “intentional objects” (*esse intentionale*).<sup>121</sup> Brentano appropriated this concept, which he explained this way:

Every mental phenomenon is characterized by what the Scholastics of the Middle Ages called the intentional (or mental) inexistence of an object, and what we would call . . . [the] reference [or relation] to a content, direction toward an object (which is not to be understood as a reality [in this case]), or immanent objectivity.<sup>122</sup>

Roger Scruton uses a simple example to explain the notion of “intentional object:” “Whenever John is afraid, he is afraid of something; whenever he thinks, he thinks about something; whenever he believes, he believes propositions about something; whenever he is angry, he is angry about something; whenever he has an experience, he has an experience of something.”<sup>123</sup> The “something” to which Scruton’s example refers, in each case, is an object toward which the consciousness is directed.<sup>124</sup> Experiences are the conscious awareness of something (an intentional object), separate from the self, whether it is awareness of a past memory, something currently perceived, or some mental construct such as a prediction of a future event, or something imagined.<sup>125</sup>

Philosophers since the ancient Greeks distinguished between two types of mental acts, which Scruton called primary and secondary.<sup>126</sup> Scruton’s stated examples are of primary mental acts.<sup>127</sup> These are the mental acts directed toward intentional objects.<sup>128</sup> But, Brentano also recognized secondary mental acts which are awareness directed toward self-consciousness.<sup>129</sup> “Following Aristotle’s analysis in *De Anima*, Brentano holds that, in sensing, I am aware that I am sensing.”<sup>130</sup> In making this

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120. Cf. Caston, *supra* note 109, at 25.

121. *Id.*

122. Siewert, *supra* note 112, at § 3.

123. ROGER SCRUTON, MODERN PHILOSOPHY: AN INTRODUCTION AND SURVEY 215 (1994).

124. *Id.*

125. *See id.* (“Every Mental State is directed towards an in-existent object.”).

126. *Id.* at 85.

127. *Id.* at 215.

128. *Id.*

129. *Id.*

130. MORAN, *supra* note 117, at 8.

distinction between primary and secondary mental acts, Brentano gets to the heart of an issue that had long been debated in philosophy—what are the relationships among the thing thought, the intentional object (*esse intentionale*), the self-conscious mind, and reality?<sup>131</sup> Or, more broadly stated, how does the mind come to know the world, if at all? Brentano found that this concept of *intentio* was used with philosophical meaning in ancient sources.<sup>132</sup> He writes:

Aristotle had already spoken of this psychical indwelling. In his book *On the Soul* he says that what is experienced, as something experienced, is in the experiencing subject; that the sense receives what is experienced without matter; and that what is thought is in the understanding. In Philo, we likewise find the doctrine of mental existence and inexistence; but because he confuses this with existence in its proper sense, he arrives at the contradictory doctrine of logos and Ideas. The same holds for the Neoplatonists. Augustine in his doctrine of the *verbum mentis* and its issuing internally touches in this same fact. Anselm does this in his famous ontological argument; and the fact that he considered mental existence to be a real existence is held by many to be the basis of his paralogism (cf. *Ueberweg, Geschichte der Philosophie, II*). Thomas Aquinas teaches that what is thought is intentionally in the thinker, the object of love in the lover, and what is desired in the desiring object, and he uses this for theological ends. When Scripture speaks of the indwelling of the Holy Spirit, he explains this as an intentional indwelling through love. And he even attempts to find an analogy for the mystery of the Trinity and the procession *ad intra* of the Word and Spirit in the intentional inexistence which occurs in thinking and loving.<sup>133</sup>

Thus, Brentano was aware of the development of *intentio* from Hellenistic philosophy (Aristotle), through early Christian writers (Philo and Augustine) and medieval philosophy (Anselm, Aquinas, and later Scholastic thinkers).<sup>134</sup> Intentionality, he suggests, is a persistent feature of attempts to describe human consciousness.<sup>135</sup> After Brentano, the philosophical concept of intention is used to refer to the problems that *intentio* was

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131. Siewart, *supra* note 112, at 7.

132. Caston, *supra* note 109, at 23.

133. *Id.*

134. *Id.*

135. MORAN, *supra* note 117, at 8.

intended to explore since ancient Greece.<sup>136</sup> Thus, a closer examination of this history is warranted for appreciating the presuppositions of contemporary philosophy of mind.

a. The Aristotelian Conception of the Intentionality of Perception

The concept of self-evidence is tied to perception, being evident, and thus the understanding of how perception occurs is essential to the conceptualization of self-evidence. The difference between ancient and modern conceptualization turns on the difference between the realism of ancient philosophers and the skepticism of modern philosophers. When late medieval Scholastics, like Thomas Aquinas, rediscovered Aristotle's works on philosophy, they maintained the ontological realism of his metaphysics.<sup>137</sup> For the discussion here, an important claim is Aristotle's metaphysical conception of actual and potential. He argued that whatever a substance might become must be a potential of what it is.<sup>138</sup> He referred to what a substance *is* as its "actuality."<sup>139</sup> Anthony Kenny explains, "Aristotelians called the things which a substance is, or is doing, its actualities; and the things which it can be, or can do, its potentialities."<sup>140</sup> And, he writes, "[v]ery roughly, predicates which contain the word 'can', or a word with a modal suffix such as '-able' or '-ible', signify potentialities; predicates which do not contain these words signify actualities."<sup>141</sup> For example, a liquid substance such as water can be changed into a gas (steam) by heating it.<sup>142</sup> An Aristotelian would say that the actuality of water contains the potentiality of steam.<sup>143</sup>

Aristotle used these concepts to think about change in substance.<sup>144</sup> When ice melts or water evaporates, Aristotelians would say that "matter"

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136. See generally Jacob Pierre, *Intentionality*, STAN. ENCYCLOPEDIA PHIL. ARCHIVE (Feb. 8, 2019) <https://plato.stanford.edu/archives/spr2019/entries/intentionality/> [<https://perma.cc/SJU9-PDFZ>] (explaining intentionality).

137. See generally ANTHONY KENNY, *AQUINAS ON MIND* 23 (1994) [hereinafter KENNY, *AQUINAS*] (exploring Aquinas's view of Aristotle's conceptions of actual and potential).

138. *Id.* at 23.

139. *Id.*

140. *Id.*

141. *Id.*

142. See *id.* (explaining the concept of potentiality by considering how cream has the potential to be turned into butter).

143. *Id.*

144. See *id.* (comparing the changes in cream to the changes in a policeman).

has undergone a “substantial change.”<sup>145</sup> According to Kenny, “[t]he stuff which remains the same parcel of stuff throughout the change was called by the Aristotelians *matter*.”<sup>146</sup> Moreover, that which is altered during the change was called the *form*.<sup>147</sup> The term “substance” was used to refer to matter formed in a particular way.<sup>148</sup> The transformation from ice to water was said to be a substantial change.<sup>149</sup> The substantial form of matter distinguishes the kind of thing it is.<sup>150</sup> A stone is different from a snowball because it has a different substantial form.<sup>151</sup>

Aristotle contrasted the concept of substantial change with the sort of change that occurs when a thing acquires new attributes, such as when a child learns to read.<sup>152</sup> This second sort of change was called “accidental.”<sup>153</sup> The child acquires new potentials when the change occurs, but the substantial form of the child is not changed.<sup>154</sup> “In accidental change,” Kenny explains, the object that undergoes change “is not matter, but a substance of a particular kind: that is to say, matter informed by a particular substantial form.”<sup>155</sup> That is to say, as in substantial change (e.g., ice into water), where the object of change is matter, in accidental change (e.g., the child learning to read), the object of change is the substantial form. Kenny explains that “[a] man may be first *P* and then *Q*, but the predicate . . . ‘is human’ is true of him throughout.”<sup>156</sup> What is changed is an accidental form, which is an accidental form precisely because it is a form of the thing

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145. *See id.* at 24. (describing changes, such as the example of cream turning to butter, are cases from which “the Aristotelian notion of substantial change is derived”, and that “the stuff which remains the same parcel of stuff throughout the change” is called “matter”).

146. *Id.*

147. *See id.* (“The matter takes first one form and then another: first it is cream and then it is butter. When it is cream, the Aristotelians said, it has the substantial form of cream, and when it is butter, it has the substantial form of butter.”).

148. *See id.* (stating that “what changes . . . is not matter, but a substance of a particular kind”).

149. *Id.*

150. *Id.*

151. *See generally id.* (discussing the concept of substantial form).

152. *See id.* (describing accidental change as compared to substantial change through the example of a man learning Greek, considered an accidental change).

153. *Id.*

154. *Id.* at 23–24.

155. *Id.* at 24.

156. *See id.* (comparing how the “stuff which remains the same parcel of stuff throughout the [substantial] change was called by the Aristotelians matter” to how the “form which [a thing] retains throughout [an accidental] change [is called] its substantial form”) (emphasis added).



that can be changed without altering the type of thing it is.<sup>157</sup> Thus, Aristotle's theory of the potency and act is rooted in this multi-layered account of form and matter, which he applied to an analysis of the metaphysics and "ontology of *psuche* and of *nous*."<sup>158</sup>

Aristotle uses this metaphysics of form and substance to understand the nature of human perception.<sup>159</sup> It is a distinctive characteristic of his philosophy that he did not believe that forms had any actuality apart from the particular.<sup>160</sup> "Only particulars can properly be said to exist; and [so] . . . the reality of the individual is much more strongly marked . . . than it is in Plato's [philosophy]."<sup>161</sup> That is to say, throughout his philosophy, Aristotle stresses the existence of individuals, however, this also entails the enduring importance of the universal over the particular because individuals are distinguishable from each other only by virtue of accidental traits.<sup>162</sup> What matters for the human mind is the species because knowledge is only possible for forms abstracted from individuals. Although Aristotle affirms that individuals truly exist, the individual is but a fleeting union of matter and form.<sup>163</sup> Individuals pass away, but the form of the species is what continues to be intelligible to the intellect.

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157. *See id.* (defining accidental change as change of accidental form that occurs without altering the substantial form of the thing undergoing the change). In his *Lublin Lectures*, John Paul II (*née* Karol Wojtyła) wrote of the Aristotelian theory of potency and act:

With the help of this metaphysical theory [of potency and act] and using the principle of analogy, the peripatetic-scholastic philosophy explains every change both in the physical and moral order, regarding both material and spiritual beings. Every becoming and change consists in a being's transition from potency to an act—potency meaning a certain imperfection of a [human] being which is perfected through an act.

JAROSLAW KUPCZAK, *DESTINED FOR LIBERTY: THE HUMAN PERSON IN THE PHILOSOPHY OF KAROL WAJTYLA/ JOHN PAUL II*, at 40 (2000).

158. Amelie Oksenberg Rorty, *De Anima and its Recent Interpreters*, in AMÉLIE OKSENBERG RORTY & MARTHA NUSSBAUM, *ESSAYS ON ARISTOTLE'S DE ANIMA* 7 (1999).

159. *See* ETIENNE GILSON, *THE SPIRIT OF MEDIAEVAL PHILOSOPHY* 191 (1991) (explaining Aristotle's analysis of humanity and his recognition of the substance of men and the form of humanity).

160. *Id.*

161. *Id.*

162. *See id.* ("In the system of Aristotle[,] the unreality and accidental character of the individual physical being as compared with the necessity of the pure acts and the eternity of species are no less evident.").

163. *See id.* (stating that though Aristotle recognizes individuals, he also recognizes that they are "a mere substitute for the unity of the species" and that "[e]ach is born, lives a brief span, and disappears forever without leaving a trace behind").

Applying this to his account of perception, Aristotle asks: What is changed by perception, the perceiving organ, or the thing perceived?<sup>164</sup> He concludes that the sense organ undergoes some sort of alteration by the act of perception.<sup>165</sup> Accordingly, Aristotle treats perception as an interaction between the agency of the thing perceived and the passive reception of the sense organ. He speaks of the sense organ receiving the form of the thing perceived, and to that extent, becoming like the thing perceived.<sup>166</sup> Thus, for Aristotle, the act of perception involves the acquisition by the sense organ of the form of the thing perceived.<sup>167</sup> The sense organ is thus said to have the potential to receive the form of the thing perceived, and where such potential is lacking, for example as when a human being fails to hear a high-pitched dog whistle, the perception does not occur. The intellect receives the form of an object in the external world, and in this way, it is a representation of the world. This representational theory of perception is characteristic of the commonplace view that was developed by medieval thinkers such as Thomas Aquinas.<sup>168</sup>

#### b. Intentionality in Scholastic Thought

It is generally recognized that neo-scholastic philosophers substantially developed the concept of perception.<sup>169</sup> Following the Aristotelian view, Aquinas defined intentionality within the context of the metaphysics of potential and actual; however, Aquinas also extended Aristotle's conception of perception to include an account of the mind.<sup>170</sup> Aquinas defined

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164. ARISTOTLE'S *DE ANIMA* IN THE VERSION OF WILLIAM OF MOERBEKE AND THE COMMENTARY OF ST. THOMAS AQUINAS 233–34 (Kenelm Foster & Silvester Humphries trans., Yale University Press, 1965) (inferring the question from Aristotle's questioning of sensation in general).

165. *Id.* at 337.

166. *Id.* at 337–39.

167. *Id.*

168. KENNY, AQUINAS, *supra* note 137, at 35.

169. ANTHONY J. LISSKA, AQUINAS'S THEORY OF PERCEPTION, AN ANALYTIC RECONSTRUCTION 15 (2016).

170. John Haldane states the following about the importance of the Aristotelian approach to intentionality:

[G]iven the present day interest in the “aboutness” of thought, it is worth noting that . . . Aquinas [offers] a turn upon the nature of intentionality and its difference from physical relations. (Indeed, the very term and concept originate in the medieval notion of *esse intentionale*, the ‘intentional being’ of thoughts.)

John Haldane, *History: Medieval and Renaissance Philosophy of Mind*, in A COMPANION TO THE PHILOSOPHY OF MIND 335 (Samuel Guttenplan, ed., Oxford: Blackwell 1994).

intentionality in terms of “the immaterial intentional existence of forms in the mind.”<sup>171</sup> For Aquinas, mental states are about forms that exist immaterially in the mind.<sup>172</sup> Anthony Kenny describes Aquinas’s position this way:

[W]hen I think of redness, what makes my thought be a thought of redness is the form of redness. When I think of a horse, similarly, it is the form of horse which makes the thought be a thought of a horse and not of a cow. What makes the thought of a horse the thought of a horse is the same thing as makes a real horse a horse: namely, the form of horse. The form exists, individualized and enmattered, in the real horse; it exists, immaterial and universal, in my mind. In the one case it has *esse naturale*, existence in nature; in the mind it has a different kind of existence, *esse intentionale*.<sup>173</sup>

Elsewhere, Kenny explains that Aquinas is not arguing that the *esse intentionale* is a representation of something extra-mental.<sup>174</sup> He writes, “An *intentio* is not a representation, even though Aquinas sometimes calls it a likeness, or [similitude], of the object perceived.”<sup>175</sup> Kenny is at pains to argue that, for Aquinas, there is no intermediary between the perceiver and the thing perceived.<sup>176</sup> He writes that “if I pop a sweet in my mouth, my tasting sweetness . . . is one and same thing as its tasting sweet to me . . . .”<sup>177</sup> A slogan used by Aquinas is “*Intellectus in actu est intelligibile in actu*: ‘The actuality of the power of thinking is the very same as the actuality of the object of thought.’”<sup>178</sup> It is Aquinas’s purpose in stating this truism to thwart “the naïve representationalism that is tempting in this area.”<sup>179</sup>

Kenny points out that intellectual thought is indirect for Aquinas because the actuality of individuals is achieved through material existence, but the

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171. Anthony Kenny, *Intentionality: Aquinas and Wittgenstein*, in THOMAS AQUINAS, CONTEMPORARY PHILOSOPHICAL PERSPECTIVES 243 (Brian Davies ed., 2002) [hereinafter Kenny, Intentionality].

172. *See id.* at 243–44 (describing mental states when thinking of a physical item or being, stating that “[t]he form exists, individualized and enmattered, in the real [thing]; it exists, immaterial and universal, in my mind.”).

173. *Id.*

174. Anthony Kenny, *Medieval Philosophy*, in A NEW HISTORY OF WESTERN PHILOSOPHY 234 (2005) [hereinafter Kenny, Medieval].

175. *Id.*

176. *Id.* at 234–35.

177. *Id.*

178. *Id.* at 238.

179. *Id.* at 234–35.

immediate object of knowledge is the form of the species.<sup>180</sup> That is to say that while one experiences the variations of individuals, such as Socrates, concepts describe species.<sup>181</sup> Kenny writes, “The senses perceive accidental forms such as colour and shape; the immediate knowledge is form, such as humanity.”<sup>182</sup> For this reason, “[a]n accurate account of Aquinas’ theory of intentionality has to give full weight to his thesis that there is no intellectual knowledge of individuals,” but there has been a great deal of disagreement regarding how the mind can know individuals at all when the intellect can grasp only intellectual abstractions from the forms of particular beings.<sup>183</sup>

This question implicates broader questions about how natural beings and intentional beings are related under Thomistic ontology. Kenny’s solution looks to Aquinas’s account of the individuation of material beings, which for him, is achieved through space and time.<sup>184</sup> That is, for him, material things are individual because they cannot occupy the same place at the same time.<sup>185</sup> But, this approach to individuation allows for material objects to be identified by pointing, which is non-conceptual and extra-linguistic. In fact, Kenny argues, individuals can be identified with certainty only by pointing at them.<sup>186</sup> He concludes, therefore, that Aquinas is an anti-realist in the sense that he believes that certain knowledge of the world is not fully expressible in language, and in that sense, the individual is not fully intelligible.<sup>187</sup> That is, since we might identify a material object with certainty only by pointing to it, Kenny concludes the mind is incapable of certain knowledge of beings through intellection alone.<sup>188</sup> This conclusion holds significance for thinking about the way non-intentional awareness might play a role in the philosophy of mind.

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180. *Id.* at 237.

181. *See id.* (“[W]hat the intellect grasps directly by the intellectual idea is the universal; but indirectly it grasps individuals to which phantasms belong. And that is how it forms the proposition ‘Socrates is human.’”).

182. *Id.*

183. Kenny, *Intentionality*, *supra* note 171, at 249.

184. *Id.* at 244.

185. *Id.* at 44–47.

186. *See* Kenny, *Medieval*, *supra* note 174, at 237 (“Only by pointing, or taking you to see him, or reminding you of an occasion when you met, can I make clear to you which person I have in mind; and pointing and vision and memory are outside the realm of pure intellectual thought.”).

187. Kenny, *Intentionality*, *supra* note 171, at 251.

188. *Id.* at 250.

This opening to the non-intentional is central to the critique of Neo-Scholasticism advanced by Alasdair MacIntyre. He is particularly critical of “epistemologizing” Thomistic thought by making it serve essentially modern purposes for which it was not intended.<sup>189</sup> MacIntyre argues that the importance of Thomas lies not in his ability to provide an epistemology for refuting modernity, but in the development of an integration of Augustinian and Aristotelian metaphysical systems.<sup>190</sup> Thomism unites, harmonizes and synthesizes the metaphysics and epistemologies of Augustine and Aristotle, but does not develop into an epistemology of justified knowledge, which has been a hallmark of modern thought.<sup>191</sup> For Aquinas, epistemology takes place within the context of a set of theological presuppositions that are taken as given.<sup>192</sup> The epistemology of modernity seeks a vantage point outside of presuppositions and prejudice from which epistemological claims can be justified.<sup>193</sup> Thomism relies on a tradition that gives meaning to Scripture, teases out its insights, and provides warrants for believing in its conclusion. Kleutgen’s error is that “[he] instead treats Aquinas as presenting a finished system whose indebtedness to earlier writers is no more than an accidental feature of it.”<sup>194</sup> Asking Thomism to do the work of refuting Cartesian epistemology distorts the nuanced synthesis of Thomism by “opening up a kind of epistemological question for which there is no place in Aquinas’s scheme of thought.”<sup>195</sup> According to MacIntyre, this led to a distortion in his thought that developed into a variety of anti-modern Leonine Thomisms, which MacIntyre attributes to

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189. See ALASDAIR MACINTYRE, THREE RIVAL VERSIONS OF MORAL ENQUIRY: ENCYCLOPEDIA, GENEALOGY, AND TRADITION 39 (1991) (relating that Aquinas was a preeminent philosopher due to his ability to integrate Augustinianism and Aristotelianism, two quite different traditions).

190. See *id.* at 41 (relating that Aquinas was a preeminent philosopher due to his ability to integrate Augustinianism and Aristotelianism, two quite different traditions).

191. See *id.* at 33, 41 (asserting Aquinas integrated the traditions of Augustine and Aristotle, but relating also that the philosophical tradition of Aquinas is at odds with modern thought, which may be obtained by an enquirer learning how to make themselves an apprentice to a craft of philosophical enquiry to advance toward a knowledge of human good).

192. See *id.* at 37 (stating the idea of being is a given founded within the context of the action of God, and God presenting Himself to the mind).

193. See *id.* at 34 (discussing the fact that “[t]he standards of achievement within any craft are justified historically.”).

194. *Id.* at 38.

195. *Id.* at 38–39.

adopting Suarez's misreading of Aquinas.<sup>196</sup> Thus, MacIntyre argues, Kleutgen created the conditions that led to a fracturing of Thomism into a plurality of different responses to modernity.<sup>197</sup>

c. The Apodicticity of Non-intentionality in Christian Neo-Platonism

Given MacIntyre's critique of Neo-Scholasticism, it is significant here to consider the relation significance of Augustinian thought for the medieval conception of self-evidence that Finnis adopts. Does the understanding of apodicticity draw from Augustine's forgotten metaphysics of perception? The proper understanding of the relation between Augustinian thought and Thomist thought has been a source of great controversy.<sup>198</sup> In the early 20th century, the debate led to substantial hostility between Réginald Georghiou-Lagrange and the neo-Augustinians whom he pejoratively deemed *la nouvelle theologie*.<sup>199</sup> Their members included Henri de Lubac,

196. See *id.* (stating that Kleutgen's misidentification of Aquinas's central positions with Suarez's led to a development of new Thomisms).

197. *Id.*

198. Lagrange's philosophy centered on protecting realist metaphysics as the foundation for Scholasticism. See AIDAN NICHOLS, REASON WITH PIETY: GARRIGOU-LAGRANGE IN THE SERVICE OF CATHOLIC THOUGHT 12 (2008) ("The capacity of mind in its first opening co reality co capture by a fundamental appreciation the intelligible content of the sensuous realm Garrigou terms approvingly 'realist conceptualism', or, in another phrase, 'empirical rationalism'."). Aidan Nichols describes the argument in Lagrange's 1909 book, *The Common Sense: The Philosophy of Being and the Dogmatic Formulations*:

Every judgment, after all, contains in some form the word "is": joining subject and predicate; the copula is necessary in any statement, though this may have to be pointed up by paraphrase. 'This man walks' means 'This man is walking': what is designated by subject and predicate, the walking man, is in reality one and the same being, whether actual, as in straight reportage, or possible, as in literary fiction. Moreover, in all argumentation that is truth-attaining, whether a priori as in a syllogism or a posteriori by inference from effects, we are dealing once again, with the *raison d'être* of something—which can be an extrinsic 'reason for being', as well as an intrinsic one: a railway engine certainly has the latter, thanks to its construction, but it also has the former in, for example, the mind of a minister of transport who commissioned its production. *Etre*, 'being' is, Garrigou concludes, 'the objective light of intelligence, the principle of universal intelligibility'.

*Id.*

199. In particular, Lagrange resisted the work of Henri de Lubac, who argued against the nature/grace dialectic that had emerged in some forms of Neo-Scholastic thought. See D. Stephen Long, *Knowing God*, in T&T CLARK COMPANION TO HENRI DE LUBAC 269, 275 (Jordan Hillebert, ed., 2017) (stating that Lagrange singled out de Lubac in his 1947 criticism of modernism, titled *La nouvelle theologie ou va-t-elle?*); see also KERR, TWENTIETH-CENT., *supra* note 99, at 74 (describing de Lubac's central thesis in his work *Surnaturel*). De Lubac believed that there is a natural desire for truth that can be fulfilled only by the apprehension of God. KERR, AFTER AQUINAS, *supra* note 98, at 136. As Kerr explains, this view was strongly rejected by the Thomists:

Hans Urs von Balthasar, and Joseph Ratzinger, who would become Pope Benedict XVI.<sup>200</sup> The theologians of *la nouvelle theologie* argued that Thomists since the Reformation did not adequately appreciate the role of Augustinian aspects of Aquinas's thought.<sup>201</sup> They claimed that since Cajetan, Thomists had misunderstood the careful balance of faith and reason that had been achieved by the early Church and preserved in the authentic thought of Aquinas.<sup>202</sup> They were particularly critical of the neo-Scholastic philosophers for having succumbed to modernizing forces that further distorted the harmonies between faith and reason worked out by the early Church. The dispute included a disagreement over the concept of *intentio*, which was used with a philosophical and theological meaning much earlier than the medieval period.<sup>203</sup> Brentano acknowledged that he drew from ancient, not only scholastic, sources in his study of the philosophical problem of intentionality.<sup>204</sup>

Dominic O'Meara and Richard Sorabji have argued that Christian Platonists were, in fact, aware of and made theological use of the notion of *intentio*, even if they lacked a specific concept.<sup>205</sup> Sorabji explained, "there

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Many Thomists regarded this as an exorbitant claim. For one thing, they rejected de Lubac's ascribing their interpretation of the texts in question to blind acceptance of a misinterpretation introduced by Cajetan. According to de Lubac, Cajetan assumed that Thomas was an Aristotelian, working with a definition of nature from Aristotle's *Physics*, which effectively turned human nature into a reality essentially closed in on itself, with its own intrinsic powers, desires and goals. Out of fear of the supposed Reformation doctrine of the depravity of human nature, such theologians as Cajetan opened the way for post-Reformation Catholicism to insist so much on the value of nature that they ended with a two-storey model of nature and grace, juxtaposing the two, as it were, treating grace in relation to nature as essentially extrinsic and adventitious.

*Id.* Lagrange successfully argued that de Lubac's work should be declared to be heterodox, and for a period the Church suppressed it. See Long, *supra* at 275 (stating that de Lubac's work was called into question and deemed a heterodox). But, during the Second Vatican Council, the work of *la nouvelle theologie* played an important role and gained prominence in the Church. KERR, TWENTIETH-CENT., *supra* note 99, at 76–77.

200. Long, *supra* note 199, at 275; KERR, TWENTIETH-CENT., *supra* note 99, at 191–92, 201.

201. KERR, AFTER AQUINAS, *supra* note 98, at 137.

202. *Id.*

203. *Id.*

204. See Franz Brentano, *Psychologie vom Empirischen Standpunkt*, in REALISM AND THE BACKGROUND OF PHENOMENOLOGY 42 (Roderick M. Chisholm ed., D.B. Terrell trans., 1960) (drawing on older works while discussing the phenomena).

205. Dominic J. O'Meara, *Intentional Objects in Later Neoplatonism*, in ANCIENT AND MEDIEVAL THEORIES OF INTENTIONALITY 115, 115 (Dominik Perler ed., 2001); Richard Sorabji, *Why the NeoPlatonists Did not Have Intentional Objects of Intellection*, in ANCIENT AND MEDIEVAL THEORIES OF INTENTIONALITY 105, 106 (Dominik Perler ed., 2001).

are two kinds of thought in Neoplatonism[.]” there is a discursive form of reasoning (*dianoia*, *logos*) which refers to “the step by step reasoning which considers propositions.”<sup>206</sup> And there is intellect (*nous*), which refers to “the steady and even timeless understanding in which discursive thought ideally terminates.”<sup>207</sup> In the discursive form of reasoning, according to O’Meara, internal (mental) objects (intention) represent transcendent objects in discursive thinking.<sup>208</sup> He writes: “[i]f the objects of discursive thought are prior to it and independent of it, it thinks them all the same in a way corresponding to its nature, as concepts.”<sup>209</sup> Sorabji shows that the form of thought identified as *nous* was not intentional, in the sense of making use of mental objects.<sup>210</sup> Taking Plotinus as the exemplar, Sorabji argues that he was a metaphysical realist who viewed the objects of the intellect as existing prior to and independent of the intellect and possessing a greater actuality than the intellect.<sup>211</sup> He writes: “Plotinus’ intelligibles are not thought-dependent. Sometimes they are treated as identical with the intellect, sometimes as prior. None of this draws attention to ‘aboutness’ or intentional objects. The priority implies instead a realism about intelligibles.”<sup>212</sup> The awareness of *intelligibles*—the transcendent forms—is not *about* any particular object. This seems to have been an outcome of the metaphysics of Neo-Platonism. Following this approach, Augustine recognized both intentional and non-intentional forms of consciousness.

Similarly, Victor Caston has noted that Augustine’s thought played a transitional role between ancient and medieval traditions, drawing from Aristotle in part, but also rejecting other aspects of Aristotelian thought.<sup>213</sup> Caston notes that, with respect to the perception of the normal objects of cognition, Augustine:

[M]akes *intentio* the centerpiece of his analysis of *cognition* in *De trinitate*—every act of vision, memory, and thought is said to involve *intentio* as an essential element. The theory accounts for content by appealing to this *intentio*, together with forms or species that are replicated at each successive states of cognition. These views, moreover, stem from a critical engagement with Greek views on

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206. Sorabji, *supra* note 205, at 106.

207. *Id.*

208. O’Meara, *supra* note 205, at 115.

209. *Id.* at 124.

210. Sorabji, *supra* note 205, at 106.

211. *Id.* at 114.

212. *Id.*

213. Caston, *supra* note 109, at 34.



cognition: while rejecting key species aspects of Aristotelian and Stoic theories, Augustine also incorporates elements from each, to produce an innovate synthesis.<sup>214</sup>

A critical dimension to Augustinian thought has to do with his Platonism as it was expressed in his conception of the *imago dei* (divine image).<sup>215</sup>

Catholic thought has traditionally located the *imago dei* in mystical experiences of the divine image that are not intentional, in the sense of reducing the experience of divine mystery to some apprehension that can be expressed in a conception.<sup>216</sup> The Augustinian theologians tended to view this mystical experience as dwelling within all persons as the *imago dei*, thus they claimed that the awareness of the divine mystery that lies within all persons is an irrefutable witness to the moral meaning of human existence and the fundamental dignity of all persons.<sup>217</sup> Christian moral

214. *Id.* at 33–34. For a discussion on the *imago dei* and human dignity, see CLAUDIA WELZ, HUMANITY IN GOD'S IMAGE: AN INTERDISCIPLINARY EXPLORATION 30 (2016) (“One of the most influential accounts in Augustine’s idea that the divine Trinity is reflected in the mental faculties of the human being—namely, in memory (*memoria*), intellect, (*intellectus*) and will (*voluntas*).”); see also C. Scott Pryor, Article, *Looking for Bedrock: Accounting for Human Rights in Classical Liberalism, Modern Secularism, and the Christian Tradition*, 33 CAMPBELL L. REV. 609, 612 (2011) (analyzing human rights beginning in the late-eighteenth century).

215. Caston, *supra* note 109, at 34.

216. The Christian Neo-Platonists were involved with a common intertextual project that reads two very different texts in a single hermeneutic horizon. The texts were Book 7 of Plato’s *Republic*, which contains the allegory of the philosopher’s ascent from the cave, and the story in the book of *Exodus* in which Moses encounters God as a burning bush on Mount Sinai. PLATO, *THE REPUBLIC* 194–95 (Allan Bloom trans., 1968); *Exodus* 3:13–14. The early Christian Neo-Platonic theologians sought to bring these two sources together. According to Denys Turner: “[t]he effect of their doing so was a seismic shock which was still registering tremors twelve hundred years later . . .” DENYS TURNER, *THE DARKNESS OF GOD: NEGATIVITY IN CHRISTIAN MYSTICISM* 11 (1999). Though it rumbles no more, today its ancient movements form features of the intellectual landscape that are not difficult to detect. See *id.* at 12 (“what we perceive is the fixed metaphoric topography into which the landscape has settled.”).

217. Christians believe that God is the source and sustainer of all Being. Augustine affirmed in his reading of *Exodus* 3:13–14, the passage of scripture in which God reveals God’s name to Moses, that God is the God of Being. *Id.* In the Latin of the *Vulgate*, God’s name was rendered “*Ergo sum qui sum* [I am who am].” *Id.* at 3:14. Augustine interpreted this to mean that the Christian God is revealed in this verse to be the God who creates and sustains all that is. In reaching this interpretation, Augustinian Neo-Platonism was also influenced by Pseudo-Dionysius, who combined the epistemological interests of Plato with the theological concerns of *Exodus*. TURNER, *supra* note 216, at 13. Denys retells the *Exodus* narrative of Moses’s encounter with God on Mount Sinai using “a pastiche of both the *Exodus* narrative and Platonic imagery” of Plato’s allegory of the cave. *Id.* at 14. Both narratives contain a metaphorical ascent toward a blinding light, so intense as “to cause pain, distress and darkness: a darkness of knowledge deeper than any which is the darkness of ignorance.” *Id.* at 17. It is a darkness that comes not from the absence of light, but from its excess—from its

philosophy has typically been rooted in the theological commitment to the intrinsic moral worth of individuals as bearers of the *imago dei*, a commitment that is not reducible to a concept or proposition. This is because it draws meaning from lived experiences that are non-intentional, meaning that they arise from the apprehension of the divine that is not discursive.

The influence of Neo-Platonism among early Christians is particularly significant here because it transformed the conception of self-evidence. For example, Augustine sought God within his own interior self-awareness. In the *Confessions*, he explains that in his youth, he had been unable to find God because he lived outside himself.<sup>218</sup> He writes of his conversion that God within had been beckoning him on, drawing Augustine within himself on an *intinerarium intus*—but inward toward what?<sup>219</sup> What was the experience of the self in which the mystery of the divine was apprehended by Augustine? According to Burnaby, what Augustine sought during his “crucial year in his life when as a young ‘don’ at Milan he first read the ‘books of the Platonists’” was nothing less than an encounter with God made possible by the Neo-Platonic metaphysics of participation.<sup>220</sup> By concluding that God is immutable and incorruptible, and that evil was a privation of being, Augustine was led to find what was within himself that was also immutable

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blinding brilliance: a “luminous darkness.” *Id.* at 18. And the return from the encounter with this blinding brilliance is a return to a darkness which is transformed by the experience—“where there is only incredulity and ridicule to be had from those who cannot credit the witness to anything more real.” *Id.* And in this condition is the “pain of contemplating more than can be borne.” *Id.* Turner argues that this darkness is the source of the apophatic tradition in Western medieval theology, which brought a sharply focused metaphysical syntax and grammar to thinking about the mechanics of perception and the metaphysical nature of the human. *See id.* at 11–12 (discussing the impact on Western Christian linguistics). Since God is prior to any and all particular types of beings (indeed, since God is prior to Being as such), God must have attributes that are outside of those that can be experienced and understood by the persons who are simply beings in God’s creation. For this reason, God is not fully knowable by human beings.

218. AUGUSTINE, *CONFESSIONS* 150 (R.S. Pine-Coffin trans., 1961) [hereinafter *CONFESSIONS*].

219. *Id.* at 151. In his work on the Trinity (*de Trinitate*), Augustine writes:

There is an uncreated Being who has made all other beings great and small, unquestionably surpassing all that he has made, and so surpassing also the reasonable and spiritual being of which we have been speaking, namely man, made in the image of his Creator. And the Being surpassing all others is God.

AUGUSTINE, *The Trinity*, in AUGUSTINE: LATER WORKS 114 (John Burnaby ed., 1955) [hereinafter *The Trinity*].

220. JOHN BURNABY, *AMOR DEI: A STUDY OF RELIGION IN ST. AUGUSTINE* 29 (2007).

and incorruptible.<sup>221</sup> Thus, Augustine's inward turn is not to the modern self, if we mean self-awareness.

The experience of the divine was therefore essential to the search for the truth of moral meaning in the thought of Augustine.<sup>222</sup> For Augustine, when his mind turned inward, it found within itself the power to judge the changeable beauty of bodies.<sup>223</sup> In a critical passage in the *Confessions*, Augustine writes:

For I wondered how it was that I could appreciate beauty and material things on earth or in the heavens, and what it was that enabled me to make correct decisions about things that are subject to change and to rule that one thing ought to be like this, another like that. I wondered how it was that I was able to judge them in this way, and I realized that above my own mind, which was liable to change, there was the never changing true eternity of truth. So, step by step, my thoughts moved on from the consideration of material things to the soul, which perceives things through the senses of the body, and then to the soul's inner power, to which the bodily senses communicate external facts. Beyond this, dumb animals cannot go. The next stage is the power of reason, to which the facts communicated by the bodily senses are submitted for judgment.<sup>224</sup>

This complex passage expresses a theme found in many places in his writing. First, he wonders "how it was that I could appreciate beauty in material things on earth or in the heavens," and then he concludes that it is through the eternal, which is "above my own mind."<sup>225</sup> This theme of a journey into the self in order to find access to an apprehension of the divine is a distinctive feature of Christian thought.<sup>226</sup>

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221. *The Trinity*, *supra* note 219, at 157.

222. BURNABY, *supra* note 220, at 29.

223. CONFESIONS, *supra* note 218, at 151.

224. *Id.* at 151.

225. *Id.*

226. Augustine's journey inward does not end in skepticism or subjectivity as some interpreters have viewed it. It ends with the ineffable Other, an awareness of the presence of God within the human soul, and the human within God. *The Trinity*, *supra* note 219, at 23. And although God is known "through a glass darkly," God is rationally understood and mystically apprehended to be more actual than anything else encountered in human experience just as the Forms are more real for Plato than the flickering shadows of the Cave. *Id.* As John Rist puts it, "Where for Plato the dimly perceived existence of Forms establishes objectivity, for Augustine the dimly perceived memory of God *within* supplies this objectivity." JOHN M. RIST, AUGUSTINE: ANCIENT THOUGHT BAPTIZED 88 (1994). Through introspection lays the radical otherness of the divine Being in whom all beings are connected and united. When Augustine argues, "For if I am deceived, I am. For he who is not, cannot be deceived,"

Nonetheless, Descartes did not want his thought to be understood as continuing the Augustinian formulation of the *Cogito*.<sup>227</sup> In fact, he viewed his project as directly opposed to Augustine's in fundamental aspects.<sup>228</sup> Marion explains that while Descartes's *cogito* was similar to Augustine's, Descartes wrote "he [St. Augustine] does not seem to me to make use of it in the same way I do."<sup>229</sup> Descartes applies the *cogito* with different emphasis and to different effect.<sup>230</sup> Marion explains Descartes' intentions with this passage, taken from a letter by Descartes to Clovius, his friend and supporter:

I do indeed find that he does use it to prove the certainty of our existence. He goes on to show that there is a certain likeness of the Trinity in us, in that we exist, we know that we exist, and we love the existence and the knowledge we have. I, on the other hand, use the argument to show that this *I* that is thinking is *an immaterial substance* with no bodily element.<sup>231</sup>

Marion argues that what is original in Descartes' *cogito* is the belief that self-awareness establishes the existence of an immaterial substance that is also the first principle of epistemology—the ground of knowledge.<sup>232</sup>

For Augustine, the "[c]ertainty [of the *si fallor, sum* (if I am mistaken, I must exist)] refers the mind to a distant ground, far from setting it up as a principle subsisting in itself," as is the purpose of Descartes' *cogito ergo sum*.<sup>233</sup> By viewing consciousness as an immaterial substance separate from material bodies, Descartes was blinded to the beauty, mystery, and wonder

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he is affirming his relation to and dependency on the Trinity. ST. AUGUSTINE, CITY OF GOD 468 (Rev. Marcus Dods, M.A. trans., 1888).

227. JEAN-LUC MARION, ON DESCARTES' METAPHYSICAL PRISM: THE CONSTITUTION AND THE LIMITS OF ONTO-THEO-LOGY IN CARTESIAN THOUGHT 129 (Jeffrey L. Kosky trans., 1999).

228. *Id.* at 131.

229. *Id.*

230. *Id.*

231. *Id.* at 132.

232. *Id.*

233. *Id.* As an example, Marion quotes this passage:

I have no fear of the arguments of the Academics. They say, "Suppose you are mistaken?" I reply, "If I am mistaken, I exist [*si fallor, sum*]." A non-existent being cannot be mistaken; therefore I must exist, if I am mistaken [*ac per hoc sum, si fallor*]. Then since my being mistaken proves that I exist, how can I be mistaken in thinking that I exist, seeing that my mistake establishes my existence [*quando certum me esse, si fallor*]?

*Id.* at 129.

that Augustine experienced in his inward journey.<sup>234</sup> For Augustine, the *si fallor, sum* was generative of a sense of apodicticity—the feeling that a conclusion is necessary or self-evident.<sup>235</sup> He expressed his conclusion as self-evident, but his foundational intuition was not lacking in beauty, mystery, or wonder.<sup>236</sup> The wonderful extravagance of the experience, its lushness, and its splendor, was in fact, the very source of its sense of apodicticity.<sup>237</sup> To have had the experience of the divine, as Augustine did, left no doubt in the reality of God.<sup>238</sup> For Descartes, the sense of apodicticity associated with his version of the *cogito* was a result of the univocal and persistent self-awareness of the “I” that thinks its own existence.<sup>239</sup> This sense of certainty dissolves the extravagant lushness of Augustine’s interior experience in favor of conceptual clarity.<sup>240</sup> By making the *cogito* the first principle, Descartes’ philosophy became methodologically blind to the extravagant sublimity that Augustine associated with the *imago dei* that is experienced as the source of human dignity.<sup>241</sup> This aspect of the *cogito* formed the assault on the foundations of Christian anthropology—both the first faculty of the Scholastic philosophers and the foundational experience of the divine underwrote the Christian Neo-Platonists, which neo-Thomism brought to scrutiny in the late nineteenth and early twentieth centuries.

## 2. The Logic of the Schoolmen

### a. Aristotelian Origins

During the medieval period, the Aristotelian texts were reintroduced to Western Europe and had a strong influence on the universities. The recovery of Aristotelian logic focused on a collection of texts known as the *Organon*, in which Aristotle relates logic to metaphysics.<sup>242</sup> The first text

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234. *Id.* at 132.

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.* at 133.

241. *Id.*

242. William Kneale & Martha Kneale explain:

When Aristotle’s writings were collected by his pupils after his death in 322 B.C., a number of his treatises on reasoning were grouped together, and the collection came to be called the *Organon*, or instrument of science. The word ‘logic’ did not acquire its modern sense until some 500 years

within this collection—*de Categorea (The Categories)*—contains the following description of substance:

Substance in the most literal and primary and common sense of the term is that which is neither predicated of a subject nor exists in a subject, as for example, the individual man or horse. Those things are called secondary substances to which, as species, belong the things called substances in the primary sense and also the genera of these species. For example, the individual man belongs to the species man, and the genus of the species is animal. These, then, are called secondary substances, as for example both man and animal.<sup>243</sup>

The standard interpretation of this passage holds that Aristotle is “dealing with *things* and not with words.”<sup>244</sup> To understand the significance of this interpretation of the *Organon*, as being concerned with real objects, requires some understanding of how Aristotle believed that the mind comes to know objects and hold mental representations (*esse intentionale*) of them.<sup>245</sup> He draws a close metaphysical connect between the essence of things perceived and the words that express that essence.<sup>246</sup>

In *De Interpretatione (The Interpretations)*,<sup>247</sup> Aristotle lays out his principles for general statements. He is concerned with the relations among combinations of universal and particular statements.<sup>248</sup> General statements include: universal, like “all men are white,” and “no men are white;” and particulars, like “some men are white” and “some men are not white.”<sup>249</sup> Aristotle is not concerned here with cataloging the basic rules of all logical propositions, which would be the focus in the twentieth century, but only of the relations among these general statements.<sup>250</sup> The other texts are the *Analytica Priora (Prior Analytics)*<sup>251</sup> and the *Topica (Topics)*.<sup>252</sup> These texts

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later, when it was used by Alexander of Aphrodisias, but the scope of the study later called logic was determined by the content of the *Organon*.

WILLIAM KNEALE & MARTHA KNEALE, *THE DEVELOPMENT OF LOGIC* 23 (1962).

243. *Id.* at 26 (quoting ARISTOTLE, *Categoriae et Liber de Interpretatione*. Ed. L. Minio).

244. *Id.* at 27 (emphasis added).

245. *Id.* at 27–28.

246. *Id.* at 27.

247. *Id.* at 55.

248. *Id.*

249. *Id.* at 56.

250. *Id.* at 55.

251. *Id.* at 23–24.

252. *Id.*

continue and develop the analysis proposed in the *Interpretations*. The *Prior Analytics* introduces the concept of syllogism, and the *Topics* describes the dialectic method.<sup>253</sup> The final text in the *Organon* collection is the *De Sophisticis Elenchis* (*Sophistical Refutations*),<sup>254</sup> which deals with several specific logical fallacies.

#### b. Medieval Logicians

The medieval scholastic philosophers interpreted the texts of the *Organon* in accordance with the whole of Aristotelian philosophy. One of the first texts to take account of the whole of the *Organon* was John of Salisbury's *Metalogicon* (1159).<sup>255</sup> During the early medieval period, logic was a subject of much theological concern and debate. Two principle texts existed. One was by William of Shyreswood (the *Introductiones in Logicam*, also known as the *Summulae*)<sup>256</sup> and the other by Peter of Spain (who became Pope John XXI), the *Summulae Logicales*.<sup>257</sup> Their works were manuals of logic. The one written by Peter of Spain became a standard textbook in logic.<sup>258</sup> Kneale & Kneale note it was "still in use as late as the beginning of the seventeenth century, by which time there had been no less than 166 printed editions."<sup>259</sup> The differences between the two text traditions focused on the truth of conditional statements. The concept of probability did not yet exist.<sup>260</sup> The debates centered on the necessity of conditional statements. Peter of Spain (John XXI) wrote in his manual, "[F]or the truth of a conditional..., it is required, *quod antecedens non possit esse verum sine consequente*."<sup>261</sup> This translates to: the antecedent cannot be true without the

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253. *Id.* at 23.

254. *Id.*

255. *Id.* at 225.

256. *Id.* at 231.

257. *Id.* at 234.

258. *See id.* at 234 (explaining the importance of Peter of Spain's writings to future scholars).

259. *Id.*

260. One history of the concept of probability notes:

In 1865 Isaac Todhunter published *A History of the Mathematical Theory of Probability from the Time of Pascal to that of Laplace*. It remains an authoritative survey of nearly all work between 1654 and 1812. Its title is exactly right. There was hardly any history to record before Pascal, while after Laplace probability was so well understood that a page-by-page account of published work on the subject became almost impossible.

IAN HACKING, *THE EMERGENCE OF PROBABILITY* 1 (1993).

261. KNEALE & KNEALE, *supra* note 242, at 235.

consequent.<sup>262</sup> The question concerned whether the truth of a claim about an antecedent condition depended on the truth of the consequential outcome. In the later medieval period, these controversies would develop into debates about modalities.<sup>263</sup> Albert the Great's commentary on Aristotle's *Prior Analytics* draws from William of Shyreswood's manual and Peter Abelard's *Logica Ingredientibus*.<sup>264</sup> The obscure tract, *De Modalibus*,<sup>265</sup> contains Thomas Aquinas' thoughts on this subject. In *Summa Contra Gentiles*, he is concerned with the implications that God's foreknowledge will have on logic.<sup>266</sup> Since God is eternal and has foreknowledge of events, this question arises: Is the truth of contingent propositions determined by the consequences that are foreknown by God?<sup>267</sup> The question was of great interest among medieval logicians.<sup>268</sup> The analysis of these questions preceded from the assumption that there is a reality that is described by a proposition.<sup>269</sup> Grammar and syntax are not simply systems of symbolic representation. The symbols correlate to concepts that are mental representations (*esse intentionale*) of actual entities.<sup>270</sup>

### c. Finnis and the Logic of *Propositio Per Se Nota*

With this background in mind, a close examination of Finnis' use of Aquinas' conception of self-evidence can be analyzed. For Aquinas, natural law principles are *propositio per se nota* (self-evident).<sup>271</sup> He suggests that they are apodictic because they are immediately apprehended as logically necessary.<sup>272</sup> He writes: "They are not inferred from facts. They are not inferred from metaphysical propositions about human nature."<sup>273</sup> This claim bears careful examination since it seems *prima facie* to conflict with the metaphysical axiology of Catholic philosophy described above. Since the logic of Aquinas's *propositio per se nota* is not grounded in the same

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262. *Id.*

263. *Id.* at 237.

264. *Id.* at 236.

265. *Id.*

266. *Id.* at 237.

267. See AQUINAS, SUMMA CONTRA GENTILES: BOOK ONE: GOD 217–25 (Anton C. Pegis, trans., Notre Dame Press ed. 1975) (discussing God's infallible knowledge).

268. KNEALE & KNEALE, *supra* note 242, at 238.

269. *Id.* at 232.

270. *Id.* at 230–31.

271. FINNIS, *supra* note 1, at 35.

272. *Id.* at 36.

273. *Id.* at 33.



ontological foundations as the self-evidence of modern logic, what is the significance of this difference for Finnis' theory? Self-evidence is not itself a univocal concept since what counts as logically necessary evolved into different conceptions. Understanding these conceptions is critical for the Finnis reconstruction of natural law that needs to be given close consideration.

What is the conception of self-evidence that Aquinas picks out with his claim of *propositio per se nota*? Finnis writes:

Near the very beginning of the tradition of theorizing about natural right, we find Aristotle quite explicit that ethics can only be usefully discussed with experienced and mature people, and that age is a necessary but not a sufficient condition for the required maturity. He does not explicitly ascribe self-evidence or indemonstrability or axiomatic status to any ethical or practical principles, though he treats certain things as beyond question: for example, that no one would wish to attain 'happiness' at the cost of losing his identity. Aquinas, on the other hand, has a discussion on self-evidence, if we translate *propositio per se nota* as 'self-evident proposition' . . . . Aquinas's discussion begins by pointing out that while some propositions are self-evident to 'everyone', since everyone understands their terms, other propositions are self-evident only to 'the wise', since only the relatively wise (or learned) understand what they mean. He gives two examples of the latter sort of self-evident propositions, from the field of speculative philosophy; one is that 'a human being is a rational being', and the other is that 'a disembodied spirit does not occupy space'. He then proceeds to speak about the self-evident pre-moral principles which he later calls *communissima*, without, unfortunately, indicating which if any of them he thinks self-evident only to the relatively wise. An example is, perhaps, the principle 'to know about God is a good'. For Aquinas denied that the existence of God is self-evident, even to the relatively wise, in this life.<sup>274</sup>

In this passage, Finnis is introducing self-evident principles. He notes that even some of these that are, in principle, self-evident may not be self-evident to a person lacking wisdom.<sup>275</sup> Finnis appears to understand self-evidence in a similar way. To understand the truth of a *propositio per se nota* is simply to have wisdom about what is good. An open question is, what is meant by wise?

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274. *Id.* at 31–32.

275. *Id.* at 32.

Finnis' analysis of *propositio per se nota* makes understanding the conception of the wise a center inquiry of the Basic Goods.<sup>276</sup> Aquinas describes wisdom in the *Summa Contra Gentiles* I, 2:

And so, in the name of the divine Mercy, I have the confidence to embark upon the work of a wise man, even though this may surpass my powers, and I have set myself the task of making known, as far as my limited powers will allow, the truth that the Catholic faith professes, and of setting aside the errors that are opposed to it. To use the words of Hilary: "I am aware that I owe this to God as the chief duty of my life, that my every word and sense may speak of Him".<sup>277</sup>

This passage suggests that Aquinas understands the "wise" to be that which is in accordance with Truth, which is divine.<sup>278</sup> The work of the wise is to make that truth known. But what is truth? The reference to St. Hilary's *de Trinitate* suggests that Truth is not simply the self-evidence of mental clarity, but an openness to the lived experience of mystery that Augustine asserted in his *si fallor, sum*.<sup>279</sup>

This relation between Aquinas and Augustine on the concept of self-evidence is given some light by Matthew Lamb, who writes:

Thomas Aquinas articulates the Augustinian quest for understanding and truth theoretically by attending to the two sets of operations of the mind as understanding and judgment. The acts of judging occur in the intelligible light of active intelligence or agent intellect. This light is, as he states (linking Aristotle and Augustine), a created participation in the Divine Eternal Light. Aquinas grasped the essential point of Augustine's intellectual conversion. Intelligence in act does not rest in understanding, thinking, conceiving – the first act of the mind – but in understanding correctly, in knowing, in reaching correct judgments and truth. Aquinas transposed into a metaphysical wisdom the intellectual ascent of discovering the nature of the mind in Augustine and the other Fathers. With them he distinguishes between the orientation of the mind toward the sensible and imaginable (what he terms the "*ratio inferior*" or attention of the mind toward the data of sense) and the orientation of the mind to know itself, and through understanding its own spiritual nature,

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276. *Id.*

277. SAINT THOMAS AQUINAS, *SUMMA CONTRA GENTILES: BOOK ONE: GOD 62* (Anton C. Pegis trans., Notre Dame Press ed. 1975) (quoting St. Hilary, *de Trinitate* I, 37).

278. *Id.* at 62.

279. *See id.* at 82 (discussing the existence of God as "something than which a greater cannot be thought . . .").

beings like angels and God that are purely spiritual (the “*ratio superior*” or attention of the mind to itself and spiritual realities). I call these “orientations” since Aquinas is clear that they are not separate faculties but rather different objects intended by the mind. By attending to its own operations of knowing and loving, Aquinas grasps the central importance of this immaterial image of God as the best analogue to understand the central mystery of the Triune God.<sup>280</sup>

If this analysis is correct, the conception of self-evidence as *propositio per se nota* cannot serve the purpose that Finnis has in mind for self-evidence of Basic Goods because the good of the human as bearer of the *imago dei* is apodictic only where the lush presence of God is felt. Further, this sense of apodictic is fundamentally inconsistent with the separation of fact and value. If Aquinas accepted the dual nature of awareness (intentional and non-intentional), the claim that there are principles of practical reason that are *propositio per se nota* rests on an apprehension that such principles are apodictic as intentional and non-intentional perceptions.

#### B. *David Hilbert and Self-Evidence*

The other conception of self-evidence that Finnis looks to is that of modern philosophy. He specifically mentions David Hilbert and Oswald Veblen.<sup>281</sup> Modern philosophy’s encounter with logic was closely tied to developments in mathematics, which was given shape in the seventeenth century with René Descartes, Isaac Newton, Gottfried Leibniz, and Pierre de Fermat.<sup>282</sup> They collectively developed the new mathematics of calculus and applied it to the study of the mechanics of gravitation and motion. These innovations had consequences for philosophy and logic that shape the understanding of realism today. Nonetheless, Finnis does not acknowledge the differences between medieval logic and modern logic in his conceptualizations of self-evidence. As has been described above, medieval logic presupposes ontological realism, but the modern logics do not. Some consideration of how this critical change occurred is needed because the issue that arose in classical logic was substantial, and the crisis that developed led to the abandonment of classical realism and the adoption

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280. Matthew L. Lamb, *Wisdom, Faith and Reason in St. Thomas Aquinas: The Challenge of John Paul II's Fides et Ratio*, 1 FIDES QUÆRENS INTELLECTUM: J. THEOLOGY, PHIL., & HIST. 1, 9–10 (2001), [https://www.academia.edu/33230483/Wisdom\\_Faith\\_and\\_Reason\\_in\\_Aquinas](https://www.academia.edu/33230483/Wisdom_Faith_and_Reason_in_Aquinas) (emphasis added).

281. FINNIS, *supra* note 1, at 67.

282. SHAPIRO, *supra* note 25, at 73.

of the abstract symbolic logic that is dominant today. The consequences for the conception of self-evidence were substantial in ways that are directly relevant to Finnis' hope to ground the truth of the Basic Goods on the apodicticity of logical self-evidence.

### 1. The Challenges to Euclidean Geometry

In ancient and early modern philosophy, Euclid's *Elements of Geometry* was understood to be an inviolate foundation of knowledge. Scholastic philosophy confirmed the rationality of God by expressing the order of Creation.<sup>283</sup> They took Euclid as confirming that there are claims that are self-evident in the sense that to understand the claim is to understand its apodicticity. Early modern rationalism generally held that such self-evident claims could be the grounds for all claims to knowledge.<sup>284</sup> Nonetheless, in the late nineteenth century, challenges to the foundations of Euclidean geometry formed in many quarters.<sup>285</sup> In particular, the development of mathematical analysis of the geometry of curved spaces showed that Euclid's geometry was, in some regards, incomplete or inconsistent.<sup>286</sup> A new ground for understanding the foundational principles of geometry was needed.

The seventeenth and eighteenth centuries were dominated by two philosophical styles: rationalism and empiricism.<sup>287</sup> Descartes was a rationalist.<sup>288</sup> His belief that the foundations of knowledge could be determined through reason was endorsed by Baruch Spinoza, Leibniz, and many others who were the heirs to Platonism's conception of rational forms that exist apart from the world in which they participate.<sup>289</sup> Generally speaking, rationalists identified the foundational concepts of mathematics as knowable through reason alone (*a priori*). The other school, empiricism, was exemplified by George Berkeley, whose famous enquiry—"[C]an we not think of trees existing . . . when no one perceives them?"—was intended

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283. See KENNY, AQUINAS, *supra* note 137, at 57 (explaining "[i]n the ancient world and in the Middle Ages Euclidean geometry appeared to be the paradigm of ordered knowledge, a paradigm to which, in due course, all scientific disciplines could be made to conform.").

284. *Id.*

285. KNEALE & KNEALE, *supra* note 242, at 381–82.

286. *Id.* at 379–80.

287. SHAPIRO, *supra* note 25, at 74.

288. *Id.*

289. *Id.*

to question perception and knowledge.<sup>290</sup> Empiricism was also endorsed by David Hume, John Locke, Thomas Reid, and John Stuart Mill.<sup>291</sup> Only experience, they believed, could provide the groundwork of knowledge.<sup>292</sup> The English favored empiricism, which was an appeal to experience interpreted by an individual.<sup>293</sup> The philosophers in this group include George Berkeley, John Locke, and David Hume.<sup>294</sup> A common trope for them is that knowledge is simply the imprint of experience.<sup>295</sup> As John Locke imagines, human beings are born as pure potential, a blank slate (*tabula rasa*) on to which experience is written.<sup>296</sup> Experience is the source of all-knowing, and also the principle by which human beings are individuated.<sup>297</sup> John Stuart Mill made a similar claim.<sup>298</sup> Empiricists took different positions, Hume—for example—believed that mathematics was purely the study of relations between concepts.<sup>299</sup> Geometry, however, is empirical because it is about the relation between objects in space.<sup>300</sup>

This was the setting for Immanuel Kant's philosophy, which sought to reconcile the two. Kant introduced the vocabulary of synthetic/analytic and *a priori/a posteriori* in his attempt to understand mathematics and geometry.<sup>301</sup> Kant developed a general description of propositions of the form: "All *S* are *P*."<sup>302</sup> If (*S*) contains (*P*), then the proposition is analytic.<sup>303</sup> "For example, 'all bachelors are unmarried' [men] is analytic" because the concept "bachelor" contains the concept of "unmarried"

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290. GEORGE BERKELEY, A TREATISE CONCERNING THE PRINCIPLES OF HUMAN KNOWLEDGE 34 (1881).

291. *See id.* at 74, 91–102 (discussing empiricism and Mill).

292. *See id.* (stating empiricists use experiences from the five senses as a base for knowledge).

293. *See id.* (listing English empiricists whom believed "[t]he only access to the universe is through our eyes, ears, and so on.>").

294. *Id.*

295. *See id.* (asserting empiricists believe "anything we know about the world must ultimately come from neutral and dispassionate observation.>").

296. STEVEN PINKER, THE BLANK SLATE: THE MODERN DENIAL OF HUMAN NATURE 18 (2002).

297. *See* SHAPIRO, *supra* note 25, at 91–92 (stating human perception must conform to empirical knowledge).

298. *See id.* at 100 (recognizing Mills as claiming experience is the base of discovery).

299. *See id.* at 75 (discussing Hume's claim that all mathematics "concern (mere) relations among ideas . . .").

300. *See id.* at 94 (discussing Euclidean geometry).

301. *Id.* at 77.

302. *Id.*

303. *Id.*

men.<sup>304</sup> Synthetic propositions are those that are not analytic, meaning where  $P$  is not contained in  $S$ .<sup>305</sup> “All presidents are honest” is a synthetic proposition because the concept of president does not contain the concept of honesty.<sup>306</sup> For Kant, almost all mathematical propositions are synthetic *a priori*.<sup>307</sup> Kant’s account of mathematics came under increasing attack, particularly as the development of non-Euclidean geometry raised questions that Kantians could not answer.<sup>308</sup> This led to an epistemological crisis, which extended even to arithmetic.<sup>309</sup>

## 2. Responses to the Crisis

How might it be possible to prove that  $2+2=4$ ? It was in attempting to resolve this issue that Frege laid the foundation for the analytic approach to philosophy and jurisprudence.<sup>310</sup> Understanding Frege’s work on the foundations of arithmetic is significant for understanding why analytic jurisprudence is characterized by the abstractions that Tamanaha finds to be inadequate. And, it challenges Mills to respond in his theory to the epistemological concerns that drove Frege to take his position.<sup>311</sup> Frege argued that arithmetic is analytic, but by analytic, he meant something somewhat different from Kant.<sup>312</sup> For Frege, numbers are defined by a concept and all instantiations of the concept (this is called the “extension” of the concept).<sup>313</sup> For example, the concept of 2 refers to all instances of *two*. He expresses this formally: “The number which belongs to the concept  $F$  is the extension of the concept equinumerous with the concept  $F$ .”<sup>314</sup>

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304. *Id.* The understanding of concepts will not be explored here, other than to note concepts are modular or aggregates of other concepts, since one can contain another. *See also* H. J. PATON, *THE CATEGORICAL IMPERATIVE: A STUDY IN KANT’S MORAL PHILOSOPHY* 122 (1971) (giving an example of a synthetic proposition).

305. SHAPIRO, *supra* note 25, at 77; *See also* PATON, *supra* note 304, at 122 (analyzing Kant’s view that synthetic propositions are not analytic).

306. *See* SHAPIRO, *supra* note 25, at 77 (arguing that if the predicate concept is not contained in the subject concept then proposition is synthetic). A special set of propositions are synthetic, and yet their truth is known a priori through intuition (which is an immediate, singular insight), and some of these are synthetic a priori. *See id.* at 80 (explaining synthetic propositions are known through intuition rather than sensory experience).

307. *See* SHAPIRO, *supra* note 25, at 80

308. *See id.* at 83 (analyzing critics of Kant’s account of mathematics).

309. *See id.* at 75 (noting Hume claimed arithmetic is not empirical).

310. *See id.* at 96 (discussing Frege’s disagreement with Mill).

311. *Id.* at 97.

312. *Id.* at 108.

313. *See id.* at 112 (explaining Frege’s “extension” concept).

314. *Id.*

This is an analytic definition of a number in as much as the concept *F* identifies and is equinumerous with the instances of *F*.<sup>315</sup>

In a controversial argument, Michael Dummett observes that in paragraph 62 of the *Foundations of Arithmetic*, where Frege investigated the question “How are numbers given to us?” he immediately reformulates this question in his own terms by speaking of the meaning (*Bedeutung*) of sentences containing numbers. Dummett argues that this is one of the earliest formulations of the linguistic turn in philosophy.<sup>316</sup> As he puts it, the linguistic turn holds that “[a]n epistemological enquiry (behind which lies an ontological one) is to be answered by a linguistic investigation.”<sup>317</sup> For Frege, concepts are not objective in the sense that they are solely external events, nor are they objects fully grasped by mental acts. Nevertheless, they are not solely subjective either, since they are never mine alone.<sup>318</sup> Concepts are “timeless and immutable entities which do not depend for their existence on being grasped or expressed.”<sup>319</sup> Here, Frege appears to assert that linguistic context gives the thought of numbers their meaning. That is to say, the thought of a number would have no meaning outside of the context of a language in which numbers have sense. He generalizes this thesis to state that it is only in the context of a sentence that any word has sense by corresponding to the thought to which it refers.<sup>320</sup> According to Dummett, this argument by Frege, which began with the substitution of Kant’s subjective psychological question (“How are numbers given to us?”) with a linguistic one (“How do sentences containing numbers have meaning?”) began the “linguistic turn” in philosophy whereby analytic philosophy became focused on the analysis of abstract concepts.<sup>321</sup> Frege’s

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315. *See id.* (comparing the definition of a number to the concept of an object).

316. Shapiro notes, however:

Dummett locates the ‘linguistic turn’ with Frege, but this is controversial. Although Frege was clearly a pivotal figure in the eventual development of the semantic tradition, he did not hold that all necessary truth is truth by definition. Recall that, for Frege, the truths of geometry are *synthetic*, a priori . . . and so not true by definition. For Frege, analytic truths are derivable from ‘general logical laws and definitions’. Thus, the status of Fregean analytic truths turns on the nature of ‘general logical laws,’ but Frege did not say much about these . . .

*Id.* at 125 n.13.

317. MICHAEL DUMMETT, ORIGINS OF ANALYTICAL PHILOSOPHY 5 (1993).

318. *Id.* at 22–23.

319. *Id.* at 23.

320. *See* SHAPIRO, *supra* note 25, at 112 (“The extension of a concept is the class of all objects that the concept applies to.”).

321. *See* Dummett, *supra* note 318, at 5 (noting Frege’s argument began a linguistic turn).

approach embodies two distinguishing features of analytic philosophy: (i) A philosophical account of thought can be obtained through the analysis of language; and (ii) such an account can only be achieved through an account of language. For Frege and for the later analytic philosophers, meaning exists only in language.<sup>322</sup>

Hilbert and Veblen also attempted to respond to this crisis.<sup>323</sup> Veblen developed what he called “Projection Geometry,” which is a non-realist approach to geometry but found few followers.<sup>324</sup> Hilbert was far more influential than Veblen.<sup>325</sup> He hoped to find a new foundation for geometry that does not presuppose the existence of self-evident foundations.<sup>326</sup> Both Hilbert and Veblen were shaped by controversies of the late nineteenth century when the field of geometry experienced a prolonged period of crisis.<sup>327</sup> During this period, the logical foundations of geometry came under intense scrutiny that led to the replacement of classical logic by modern logic, which presented new opportunities to consider the foundations of mathematical knowledge.<sup>328</sup> In the late nineteenth century, this examination of foundations was given impetus when non-Euclidean geometries were discovered, raising questions about the foundations of the traditional Euclidean principles.<sup>329</sup> The immediate issues concerned reconceiving general principles of geometry that would be applicable to all forms, Euclidean and non-Euclidean. Fashioning such principles was what they sought to accomplish.<sup>330</sup>

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322. Frege’s approach to meaning and reference did not immediately transform philosophy, let alone legal philosophy. It marks the beginning of an approach that evolved, influenced by many sources, into a generalized approach to philosophy which focuses on the grammar and syntax of ordinary language. See ROLAND HAUSSER, FOUNDATIONS OF COMPUTATIONAL LINGUISTICS: HUMAN-COMPUTER COMMUNICATIONS IN NATURAL LANGUAGE 392 (2d ed. 2001) (analyzing Frege’s approach to meaning and natural language).

323. See generally JOAN ROSELLO, HILBERT, GÖTTINGEN AND THE DEVELOPMENT OF MODERN MATHEMATICS 96 (2019) (explaining Hilbert’s approach to mathematics); OSWALD VEBLER & JOHN W. YOUNG, PROJECTION GEOMETRY (1910) (articulating Veblen’s approach to mathematics).

324. VEBLER & YOUNG, *supra* note 324 (containing Veblen’s approach to geometry).

325. ROSELLO, *supra* note 324, at 96 (2019).

326. See SHAPIRO, *supra* note 25, at 151 (recognizing “Hilbert’s work in geometry . . . represents the culmination of these foundational developments.”).

327. *Id.* at 158.

328. See *id.* at 151 (analyzing Hilbert’s work as a new foundation for geometry).

329. See *id.* (arguing the late nineteenth century “marked an end to an essential role for intuition in geometry.”).

330. See *id.* at 153 (highlighting Hilbert’s method to reconceive general principles of geometry and apply them to all forms).



Hilbert writes on geometry and generally accepted practices in the natural sciences, both of which he believes make use of the concept of self-evidence.<sup>331</sup> In *Grundlagen der Geometrie (Foundations of Geometry)* published in 1899,<sup>332</sup> Hilbert attempted to found geometry on the basis of an entirely new conception and set of axioms that he believed could unite mathematics, logic, and set theory.<sup>333</sup> He “rebuilt [mathematics] by laying down principles which are sufficient to support the generally accepted doctrine...”<sup>334</sup> Central to his new system was the belief that axioms did not represent real forms.<sup>335</sup> That is to say, the foundational definitions of geometry reflect idealized forms with no actual existence. In a useful essay, Stewart Shapiro explains that Hilbert represents the culmination of a trend to view the “axioms of a given branch of mathematics serve as an *implicit* definition of the *primitive* terms of the branch.”<sup>336</sup> Shapiro neatly summarizes Hilbert’s view on this point:

We think of . . . points, straight lines, and planes as having certain mutual relations, which we indicate by means of such words as “are situated”, “between”, “parallel”, and “congruent”, “continuous”, etc. The complete and exact description of these relations follows as a consequence of the *axioms of geometry*.<sup>337</sup>

This assumption stands in sharp contrast to Euclid, who believed that the formal definitions of geometry correspond to actual Platonic forms.<sup>338</sup> Yet, for Hilbert, they are merely the grammar and syntax of geometric ideas.<sup>339</sup> Thus, Hilbert believed that the work of the geometer is to discern the logical structures of the relations among foundational definitions.<sup>340</sup> This reformulation of geometry “[did] not give rise to contradiction.”<sup>341</sup> Hilbert’s axioms result in a closed system of propositions that may not

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331. David Hilbert, *On the Foundations of Logic and Arithmetic*, in FROM FREGE TO GÖDEL 129, 129 (Jean Van Heijenoort ed., 2000).

332. DAVID HILBERT, *GRUNDLAGEN DER GEOMETRIE* (Tuebner, First ed. 1899).

333. *Id.* at 131.

334. KNEALE & KNEALE, *supra* note 242, at 682.

335. *See id.* at 685 (noting Hilbert sees axioms as undefined).

336. Stewart Shapiro, *We Hold These Truths to be Self-Evident: But What do we Mean by That?*, 2 REV. SYMBOLIC LOGIC 175, 175–76 (2009).

337. *Id.* at 176.

338. *See id.* at 176–77 (discussing Euclidean and Hilbert disagree on the assumption of axioms).

339. *See id.* at 177.

340. *Id.*

341. KNEALE & KNEALE, *supra* note 242, at 682.

contradict one another. Thus, Euclidian geometry and non-Euclidean geometry are demonstrably coherent but not logically necessary. The propositions of the Euclidian system cannot be translated to non-Euclidian geometry. Hilbert believed this process of axiomatization could be generalized to provide foundations for all areas of mathematics.

Hilbert, like Frege, attempted to construct geometry based on an entirely new conception and set of axioms he believed could unite mathematics, logic, and set theory.<sup>342</sup> Hilbert rebuilt mathematics “by laying down principles which are sufficient to support the generally accepted doctrine . . . .”<sup>343</sup> Central to his new system was the belief that axioms did not represent real forms. The foundational definitions of geometry did not reflect existing forms, as Euclid believed, but merely the grammar and syntax of geometric ideas. The work of the geometer is to discern the logical structures of the relations among foundational concepts. The attempt to create these axioms is known as the Hilbert program.<sup>344</sup>

Within the Hilbert Program, formal axiomatization is understood to be non-realist in a sense similar to the forms of modern logic described above.<sup>345</sup> The axioms are logical propositions that are viewed as symbolic of logical relations, not representative of forms of Being.<sup>346</sup> In this sense, they are not “natural.” Significantly, the Hilbert Program does not make use of the concept of self-evidence.<sup>347</sup> One difference between Hilbert and Frege’s projects was that Frege retained a realism he believed could yield self-evident truths.<sup>348</sup> Frege and Hilbert both sought to determine the foundation of mathematics on axioms.<sup>349</sup> Frege’s axioms were self-evident basic principles, while Hilbert’s were definitions that are part of a coherent logico-semantic system.<sup>350</sup> Since the Hilbert Program did not endorse a metaphysical realism, it did not look for self-evident principles in nature.<sup>351</sup>

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342. *Id.* at 685.

343. *Id.* at 682.

344. See Richard Zach, *Hilbert’s Program*, STAN. ENCYCLOPEDIA PHIL. ARCHIVE (Jan. 6, 2016), <http://plato.stanford.edu/archives/spr2016/entries/hilbert-program/> [https://perma.cc/FT4M-KWRE] (stating the Hilbert Program “calls for a formalization of all of mathematics in axiomatic form, together with a proof that this axiomatization of mathematics is consistent.”).

345. KNEALE & KNEALE, *supra* note 242, at 687–88.

346. Zach, *supra* note 345.

347. See *id.* (utilizing the terms intuition or intuitive knowledge instead of self-evidence).

348. KNEALE & KNEALE, *supra* note 242, at 509.

349. Patricia Blanchette, *The Frege-Hilbert Controversy*, STAN ENCYCLOPEDIA OF PHIL. ARCHIVE (Aug. 9, 2018), <https://plato.stanford.edu/entries/frege-hilbert/> [https://perma.cc/D6TT-J8XZ].

350. *Id.*

351. Øystein Linnebo explains:

Thus, Finnis' reference to Hilbert is an equivocation, as clearly Hilbert, in fact, completely rejected the classical ontological understanding of self-evident foundations and sought to found geometry on a new footing. His thoughts on the foundations of geometry are, nonetheless, insightful for understanding Finnis' claim. The practical consequence of this difference is illustrated with a brief example. Consider:

Aristotelian Syllogism<sup>352</sup>

First Premise: All men are mortal

Second Premise: Socrates is a man,

Conclusion: *modus ponens*—Therefore, Socrates is mortal

Propositional Calculus<sup>353</sup>

Formal premise: If "Socrates is a man," then "Socrates is mortal"

Formal conclusion: *modus ponens*— $P \rightarrow Q, P$

Predicate Calculus<sup>354</sup>

Premise 1: "If anything is a human, then it is mortal."

Premise 2: "Socrates is a man."

Conclusion: "Socrates is mortal."

Formal premises: For all  $x$ ,  $M(x) \rightarrow H(x)$ .  $H(S)$ .

Intermediate step: universal instantiation:  $H(S) \rightarrow M(S)$ .

Formal conclusion: *modus ponens*— $M(S)$

In the Aristotelian system, the universal "men" names some element "mortality" that is common to individual men.<sup>355</sup> It is a real feature or trait of men. In the Propositional Calculus, however, "men" is a set which

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Following the discovery of non-Euclidean geometry, the link between geometry and the physical space was abandoned for Hilbert's more abstract approach, which regards geometry as the study of any system of objects structured in some appropriate and loosely "spacelike" manner. An analogous development took place in algebra, where theories of algebraic structures each as groups, rings, and fields were formulated with the explicit aim of *not* having a particular interpretation. The aim was instead to characterize important classes of structures that have multiple realizations throughout mathematics and perhaps the physical world.

ØYSTEIN LINNEBO, PHILOSOPHY OF MATHEMATICS 155 (2017).

352. KNEALE & KNEALE, *supra* note 242, at 375.

353. *Id.* at 362.

354. *Id.*

355. *Id.* at 375.

includes all individual men.<sup>356</sup> There is no ontological assumption about the existence of mortality. In the predicate calculus, the intermediate step, the universal instantiation (H(S)→M(S)) symbolizes this relation.<sup>357</sup> The predicate calculus is concerned primarily with logical form, and not with the substance of the propositions. The non-generalizability of the Aristotelian syllogism was observed in an early work by Ludwig Wittgenstein: “Mankind is a class whose elements are men; but a library is not a class whose elements are books, because books become parts of a library only by standing in certain spatial relations to one another[—]while classes are independent of the relations between their members.”<sup>358</sup> This passage was part of a review of a textbook on Aristotelian logic.<sup>359</sup> Wittgenstein’s point is to argue that Coffrey had become confused because he had attributed ontological status to the terms of the predicate.<sup>360</sup> This led to confusion, particularly in the predication of classes. Symbolic logic seeks to avoid this confusion by not relying on any ontological presupposition.

To summarize, Finnis uses two incompatible conceptions of self-evidence.<sup>361</sup> One is that of Thomas Aquinas, who believed that some claims are true because the truth speaks for itself (*per se nota*).<sup>362</sup> In the philosophical synthesis of the Schoolmen, this meant that the relationship among beings (*ens*) that have actual existence (*in actu*) are transparent to the faculties of human apprehension.<sup>363</sup> This is due to the presupposition of a realist view of logic that assumed the existence and knowledge of objects in the world.<sup>364</sup> In the nineteenth and twentieth centuries, mathematical logicians, like David Hilbert, rejected the realism of the Scholastic logicians finding it to be naïve.<sup>365</sup> They developed a modern symbolic logic that did not need to presume an ontological status for the grammar and syntax of

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356. *Id.* at 362.

357. *Id.*

358. RAY MONK, HOW TO READ WITTGENSTEIN 4 (2005) (quoting Ludwig Wittgenstein, *Review: P. Coffey, The Science of Logic*, 34 CAMBRIDGE REV. 351 (1913)).

359. *Id.* at 5.

360. *Id.* at 7–12.

361. *See generally* FINNIS, *supra* note 1 (discussing self-evidence and how it is perceived by different philosophers).

362. *Id.* at 32–33.

363. BRIAN BIX, JURISPRUDENCE THEORY AND CONTEXT 67 (2012).

364. FINNIS, *supra* note 1, at 61–62.

365. KNEALE & KNEALE, *supra* note 242, at 683–84.

propositions.<sup>366</sup> Finnis sometimes looks to modern logic, even though it rejects the ontological realism of Thomistic philosophy.<sup>367</sup> Modern symbolic logic is a science of the symbolic representations of abstract sets. There is no ontological commitment whatsoever. Self-evidence, in the sense used in modern symbolic logic, is simply a correlation of the elements of sets.<sup>368</sup> The claim of self-evidence is the type of proposition that Kant called analytic, which is self-evidently true to anyone who knows the set in that sense of the concept.<sup>369</sup> That a bachelor is an unmarried man is self-evident to anyone who knows the concept “bachelor” and the phrase “unmarried man.”<sup>370</sup> Finnis equivocates between the premodern realist ontology and the modern linguistic construction of logic.<sup>371</sup> At times, Finnis will refer to Aquinas’ conception of self-evidence as *per se nota*. However, when he feels pressed to justify his concept of self-evidence, he looks to David Hilbert and modern representational constructions of logic.<sup>372</sup>

### III. ONTOLOGICAL COMMITMENTS AND THE HORNS OF A DILEMMA

Part I shows that the claim of self-evident basic principles of practical reason are the foundation for the Finnis reconstruction of natural law.<sup>373</sup> Part II shows that Finnis equivocates between two conceptions of self-evidence.<sup>374</sup> One is that of Aquinas and the medieval Scholastic philosophers (the Schoolmen), and the other is that of the modern philosophy of logic, which views logical propositions as symbolic relations instantiated in language. Taken together, the foregoing analysis in Parts I and II suggest that Finnis’ reconstruction of the natural law is founded on the horns of a dilemma.<sup>375</sup> If he accepts Aquinas’ conception of self-evidence, which is founded on a commitment to ontological realism, then he appears to violate the separation of fact and value, which he believes

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366. Edwin Mares, *Propositional Function*, STAN. ENCYCLOPEDIA PHIL. ARCHIVE (Jul. 20, 2011), <https://plato.stanford.edu/entries/propositional-function/#CatGra> [https://perma.cc/SH29-FSNG].

367. FINNIS, *supra* note 1, at 67.

368. *Id.* at 23.

369. *Id.* at 32.

370. SHAPIRO, *supra* note 25, at 77.

371. FINNIS, *supra* note 1, at 32–33.

372. *Id.* at 67–68.

373. *See supra* text and notes accompanying Part I.A.

374. *See supra* text and notes accompanying Part II.

375. FINNIS, *supra* note 1, at 25.

must be accepted in any contemporary natural law theory. However, if he accepts the relational view of self-evidence developed by twentieth-century logicians, then the moral meaning of the Basic Goods cannot be maintained. Self-evidence in the sense of linguistic correlation does not provide adequate ground for the normative basis of practical reason since it makes no claims other than ones of linguistic relation.<sup>376</sup> In the *Second Critique*, Kant argued that the categorical imperative must be a synthetic *a priori*, which involves some intuition about the moral law.<sup>377</sup> Reformulated this way, the Basic Goods seem to be intuitions about the moral good. They lack the sense of logical necessity and the universality that are needed for a normative legal theory in a liberal democracy, where views about the moral good are likely to differ.

#### A. *The Logic and Realism of Aquinas*

The realism of the Schoolmen's logic is appealing for a natural law theory because the natural law makes universal claims about the moral good. For Aquinas, the moral claims of the natural law reflect the mind of God (the eternal law), and this unites practical reason with theoretical reason.<sup>378</sup> The unity of Being and Good exists in God, whose goodness is synonymous with the Being that God spoke into Creation.<sup>379</sup> But, in the context of Finnis' reconstruction of the natural law, the realism of medieval logic is inconsistent and incompatible.<sup>380</sup>

This incompatibility is due to Finnis' acceptance of the legal positivists' separation of fact and value.<sup>381</sup> Since Finnis seeks to derive moral principles without relying on factual claims, the realism in logic cannot be accepted. The reason for this is that the realism in Aquinas' logic asserts claims about logical relation, the relations between objects, such as the claim of self-evidence.<sup>382</sup> A proposition that is self-evident (*per se nota*) is so because the relation between the objects to which it refers are ontologically

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376. IMMANUEL KANT, *CRITIQUE OF PRACTICAL REASON* § II THEOREM I (Thomas K. Abbot trans., 2018) available at <http://www.gutenberg.org/files/5683/5683-h/5683-h.htm> [<https://perma.cc/D6FW-JKXS>].

377. *Id.* at § III THEOREM II REMARK II.

378. THOMAS AQUINAS, *CONTEMPORARY PHILOSOPHICAL PERSPECTIVES* 295, 330 (Brian Davies ed., 2002).

379. *Id.* at 295–97.

380. FINNIS, *supra* note 1, at 74.

381. *Id.* at 66.

382. *Id.* at 32.

instantiated.<sup>383</sup> That is, there are actual entities that correspond to the self-evident terms.<sup>384</sup> Consider Boyle's explanation of the Basic Goods: "Since [the Basic Goods] are directions towards the fulfillment of the various dimensions of human beings, the workings of human nature provide data which, when understood practically, provide the concepts needed for the formulation of each of the basic human goods."<sup>385</sup> For example, consider again the Basic Good of knowledge.<sup>386</sup> Understood as a *propositio per se nota*, the claim that Finnis is advancing should be understood as meaning that there is some being (*ens*) called knowledge, and there is the human being which has a nature.<sup>387</sup> It is self-evident that knowledge is useful for human beings, given the data on human nature. However, the assertion of ontological realism also makes this claim violative of the separation of fact and value. The claim of self-evidence becomes nothing other than a claim about the facts of the relation between the things that are knowledge and the things that are the data of human dispositions.

The Thomistic approach is incompatible with the positivists. Hume, for example, viewed moral sentiments as having no corresponding perception.<sup>388</sup> His separation of fact and value, a consequence of his empiricism, supported his belief that facts have perceptual origins and moral claims do not.<sup>389</sup> Carnap applied Kantian philosophy to interpret the distinction between fact and value to be a metaphysical separation between analytic and synthetic propositions.<sup>390</sup> For Carnap, propositions are valid if, and only if, they are demonstrably valid as either analytic or synthetic propositions.<sup>391</sup> Either they are self-referential and therefore analytic, or they are synthetic and therefore provable through empirical investigation.<sup>392</sup> Carnap maintains an absolute dichotomy between factual claims that can be validated and moral claims that cannot be.<sup>393</sup> For him,

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383. *Id.*

384. *Id.* at 33–34.

385. Boyle, *supra* note 62, at 60.

386. FINNIS, *supra* note 1, at 61–62.

387. *Id.* at 61.

388. *Id.* at 37.

389. *Id.*

390. Hilary Putnam, *The Empiricist Background, in THE COLLAPSE OF THE FACT/VALUE DICHOTOMY AND OTHER ESSAYS* 7, 18 (2002).

**Error! Bookmark not defined.**391. *Id.*

392. *Id.* at 23–24.

393. *See id.* at 24–26 (discussing Carnap's insistence on rationally reconstructing language "as a value judgement or as a description[.]").

the realism of the Thomistic *propositio per se nota* is an assertion of the analyticity of some propositions that are transparently self-referential.<sup>394</sup> But, the Thomistic conception of self-evidence cannot be the foundation for moral knowledge because it cannot result in moral validity as Carnap understands it.<sup>395</sup> Thus, the realism of the Thomistic understanding of self-evidence is at best irrelevant to the rejection of natural law by the positivists, and at worst contradictory to it.

#### B. *The Modern Logic*

As shown in Part II, self-evidence in modern logic is a claim about obvious relations in abstract semantic symbols. It has no expectation of an ontological correspondence among the symbols. For example, returning to Finnis' cardinal example, knowledge as a Basic Good would be understood by modern symbolic language as a purely algebraic formulation. The claim for the self-evidence of knowledge as a desirable disposition for human beings is simply understood as the claim  $A \in B$ , where  $A$  is knowledge, and  $B$  is the set of desirable dispositions. The symbolic approach to logic cannot form the foundation of the moral theory that Finnis seeks because it is not a claim about moral norms. It is a claim about the facts of analytic relations between and among abstract terms. This understanding of self-evidence cannot support the role that Finnis seeks for it in his theory since it does not make a moral claim at all. For example, if we take the definition of "knowledge" to be the set of information about some object or process that is understood by a person, and the definition of "dispensation" as the many types of readiness of the human mind and body, then the claim that all knowledge is the object of a human dispensation can be formally stated. As an example, a formation statement of the self-evident claim that knowledge of geometry is a dispensation of human being would be set out in predicate calculus like this:

Premise 1: "If anything is knowledge, then there exists a human dispensation for it."

Premise 2: "Geometry is a type of knowledge."

Conclusion: "Geometry corresponds to a human dispensation for it."

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394. *Id.*

395. *Id.*



Formal premises: For all  $x$ ,  $K(x) \rightarrow D(x)$ .  $K(g)$ .

Intermediate step: universal instantiation:  $K(g) \rightarrow D(g)$ .

Formal conclusion: *modus ponens*  $\therefore D(g)$ .

This is not the conception of self-evidence that Finnis is seeking because it is abstract and formal. Therefore, it is insubstantial to the actual claims of practical reason, which are always substantial and particular. The modern symbolic logic reduces Finnis' claim for self-evident Basic Goods to factual claims about the logical relations of sets of abstract terms.

#### IV. CONCLUSION

This essay argues that Finnis looks for epistemological justification for the normative claims of natural law in his assertion of self-evident basic principles of practical reason. It considers Finnis' claims through a rigorous close examination of the concept of self-evidence. Finnis makes use of two concepts of self-evidence. One is taken from Aquinas' logic in which self-evidence is called a *propositio per se nota*.<sup>396</sup> The other concept is that of modern symbolic logic.<sup>397</sup> The medieval concept anticipates ontological realism, while the modern concept of self-evidence refers to correlations among symbols represented in language.<sup>398</sup> The essay argues that Finnis equivocates about which concept he is applying to his construction of self-evident basic principles of practical reason. But neither concept serves the purposes he seeks for the grounds of natural law. Self-evidence, as it is understood by both medieval and modern logicians, is inapplicable as the epistemological ground for Finnis' normative claims for the natural law.<sup>399</sup> This analysis suggests that the future of natural law theories may depend on rejecting the dichotomous separation of fact and value.

Whether there exists the kind of conception of self-evidence that can do the work that Finnis seeks for validating the Basic Goods remains an open question. But it seems unlikely. In an essay examining the assertion of self-evidence in the Declaration of Independence, Stewart Shapiro considers many concepts of self-evidence that have arisen in modern philosophy of mathematics by the most influential logicians—Hilbert, Gödel, Russell, Frege, and Zermelo.<sup>400</sup> He concludes:

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396. FINNIS, *supra* note 1, at 32.

397. *Id.*

398. *Id.* at 36.

399. *Id.* at 67.

400. Shapiro, *supra* note 337, at 177–204.

The notion of self-evidence occurs prominently—early and often—in the education of just about every American. The “Declaration of Independence of the Thirteen Colonies” that would later constitute the United States of America reads, “We hold these truths to be self-evident: that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness”. Let us leave aside the part of the Creator. I have no doubt that all people should indeed be treated as equal in any civilized community, and that the human rights listed are inviolable. But it is not so clear just what the author of this venerable document meant by “self-evident”. The propositions were not, and are not, Zermelo self-evident, applied unreflectively, although it would be a much better world if they were. Perhaps the truths are Fregean self-evident. Perhaps a sufficient grasp of the propositions, and in particular a clear and distinct knowledge of the concept expressed by the word “men” (or “people”, or “human”) is sufficient for one to know, without doing any reasoning, that the propositions are true. Would that it were so, but people who flout human rights could hardly be accused of not understanding the concept “men” (or “people”, or “human”). Like the axiom of choice, the truths in question are indeed obvious now, at least to many of us, but they were hardly obvious then. If they were obvious, the framers would not even have to state them, much less call them self-evident.<sup>401</sup>

This observation about the Declaration of Independence may well be true of Finnis’ self-evident Basic Goods. These truths assert privilege to some and deny privilege to others. Their terms are open to disagreement. Nevertheless, like the self-evident truths of the Declaration, they have served as guidelines or planning goals for law, which may frequently fail to meet the challenge of ensuring equal and maximal access to the goods of life, liberty, and happiness. They may be common goals for creating a legal system if they are not taken to be self-evident truths like those of propositional logic.

This leaves open the hermeneutical approach, where claims of universal applicability are subordinated to openness of inquiry, freedom to interpret, and freedom to live out life plans that may seem unintelligible to others, all in the name of serving the mysterious sense of intellectual obligation that has animated the search for truth throughout human existence. Rather than apodictic truths, there are trends towards seeking the sort of experiential truths that Augustine viewed as certain because of the quality of givenness

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401. *Id.* at 204–05.

of their lived experience.<sup>402</sup> The experience of living true to a life plan may be the best, or only, way of finding a sense of apodictic moral truth. But this conclusion would suggest that the universalism and comprehensiveness that Finnis seeks in natural law might ever prove elusive. Nonetheless, as Neil Gorsuch wrote: “Others have, and will for years to come, write and speak about, learn from and debate John Finnis’ contributions to ethics, philosophy, even Shakespearean scholarship and theology.”<sup>403</sup> It is an important contribution with lasting significance.

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402. An example of this can be found in Dominique Janicaud’s *The Theological Turn of French Phenomenology*, in PHENOMENOLOGY AND THE “THEOLOGICAL TURN”: THE FRENCH DEBATE 3, 28–34 (Bernard G. Prusak trans., 2000), which discusses the phenomenology of the unapparent and the question of givenness.

403. Neil M. Gorsuch, *Intention and the Allocation of Risk*, in REASON, MORALITY, AND LAW *supra* note 2, at 413, 413.