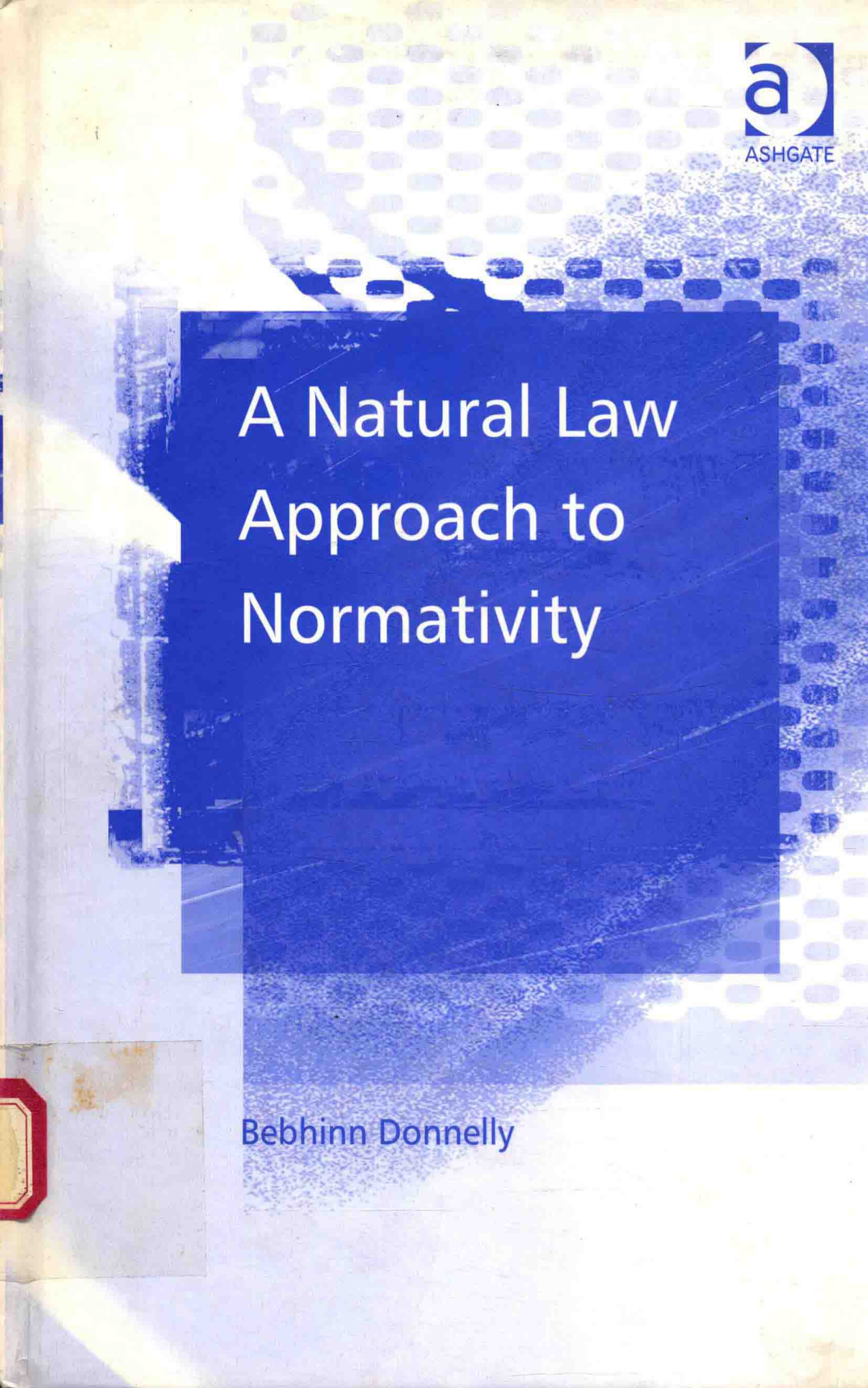
ASHGATE
A Natural Law Approach to Normativity
Bebhinn Donnelly

A Natural Law Approach to Normativity

BEBHINN DONNELLY
Swansea University, UK

ASHGATE

Published by
Ashgate Publishing Limited
Gower House
Croft Road
Aldershot
Hampshire GU11 3HR
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington, VT 05401-4405
USA

Ashgate website: http://www.ashgate.com

British Library Cataloguing in Publication Data
Donnelly, Bebhinn
A natural law approach to normativity
1. Law and ethics 2. Natural law 3. Normativity (Ethics)
I. Title
340.1'12

Library of Congress Cataloging-in-Publication Data
Donnelly, Bebhinn.
A natural law approach to normativity / by Bebhinn Donnelly.
p. cm.
Includes bibliographical references and index.
ISBN: 978-0-7546-4313-5 1. Natural law. I. Title.
K450.D66 2007
340'.112--dc22

2006031600

ISBN: 978-0-7546-4313-5

Printed and bound in Great Britain by MPG Books Ltd, Bodmin, Cornwall.

A NATURAL LAW APPROACH TO NORMATIVITY

In Memory of my Grandmother, Margo

Acknowledgments

I am indebted to colleagues at Swansea University, School of Law and to former colleagues at Birmingham University, School of Law for their support during the preparation of this book. The advice and assistance of Prof Iwan Davies has been particularly valuable. Gratitude is due to Andrew Simmester, Stephen Shute, John Gardner, Andrew Halpin and, particularly, Gordon Woodman for assisting, at various points, with the development of ideas contained herein.

Bebhinn Donnelly

Contents

Chapter 1
Introduction

The Evaluative Viewpoint, External to the Institution of Law

Law, whatever else it does, has the effect of regulating human behaviour. It might be hoped that it would at least seek to perform this role well and morally. Certainly those citizens subject to law ought to be free to consider and to reflect upon whether law's aims are good and whether it meets them prudentially. This process of reflection and evaluation seems important enough to warrant a central role in legal philosophy too. Of course, to evaluate law in this way, legal philosophy requires support in the form of an accompanying theory of morality and a theory of its application to law. Law's institutions cannot be expected to supply this knowledge for, in the absence of an account of morality, it cannot be assumed, though it legitimately may be hoped, that existing legal systems meet or aim to meet, or efficiently meet moral ideals. In order to gain an insight into the qualities that a good legal system ought substantively to possess it is necessary, therefore, to first step outside the institutions to which we belong. This book adopts that viewpoint, one external to the institutions of law and from that position it suggests that a normative guide for law can be found in nature. The approach derives from the natural law tradition advanced by Plato, Aristotle, and the Old Stoics, an approach taken to a new level of sophistication by St Thomas Aquinas and given an epistemological twist by the modern natural law of Finnis, Grisez and Boyle.

The viewpoint that is external to the social practice of law is not one that theories of law usually prefer. Legal philosophy often amounts to an analysis of law as a social institution; it considers the contribution of description and evaluation (moral or otherwise) to *that* analysis and examines whether description does or must entail an evaluative component.[1] Generally, the discussion, whether descriptive or evaluative, occurs at a level *internal* to the institution of law.[2] In this way a bias can be discerned in favour of the view that law, conceptually, (and legal philosophy) is tied to the *thing* law *as* a social practice. Whilst the conceptual importance of law as a social practice is self evident, it does not follow that it is impossible or unimportant to conceive of law in a broader way, from a viewpoint other than the institutional.

To see how the broader perspective emerges as a conceptually important one it might be considered that having asked the question, 'what is your concept of law?' it is very likely that one will encounter responses that refer to the importance

---

[1] See for example Dworkin, Ronald, *Law's Empire* (Oxford: Hart, 1998) for a discussion of why description may necessarily entail evaluative commitments.

[2] The internal viewpoint is defended most notably by Hart. See Hart, H.L.A., *The Concept of Law* (Oxford: Clarendon, 2nd ed., 1997).

of justice and fairness and morality. People it seems do conceive of law as an ideal; they think that law, whatever it is in fact, *ought* to reflect principles of justice and fairness and morality. These entailed concepts do not, by necessity, represent a mere process of abstraction from the practice of law nor do they necessitate taking a view on the 'science' of law; indeed they may be held with commitment, by someone subject to a wholly corrupt legal system. The people who conceive of law in this way may even be as numerous as the 'bad' men (defendants) of Holmes' realism, who want a practically useful 'prophecy' of what the 'courts will do in fact', however unfair that may prove to be, and 'nothing more pretentious'.[3] Indeed the 'bad man' himself may have a concept of law as an ideal, one emerging from a belief that law *as it is*, is unjust or inconvenient to the individual. Of course, to hold a concept of law as an ideal is not to be illogical; it is not at all to conclude that the ideal *will* be manifest in the positive law of legal reasoning. The 'bad man' will most likely expect the Judge to decide his case according to the law and its principles (or according to what he had for breakfast) and that may bear no relation to his 'ideal' concept of law.

'The' concept of law admits of more than one possibility; it may refer at least to law as an ideal and to law as a human institution, and to each in manifold and varying ways. Both broad ways of conceiving of law have value.[4] The importance of the ideal and of the perspective external to the institution again comes in to view when it is acknowledged that substantive normative meaning is derived *by* law from features of the world that are external to it. This has implications for the *scope* of the concept of law for it suggests that conceptual meaning flows not only directly *from* law as a practice, it flows from elsewhere *to* law as a practice. Judicial reasoning, in the UK, for example, however open textured, operates either under actual legislative limits or is always potentially limitable by legislative enactment, a potential recognised by Austin in the strongest possible terms.[5] Whilst legislation *is* given meaning by law, (through judicial interpretation) it is most fundamentally given prior meaning by the political world. It is useful to question, in an account of *law*, whether external domains, like

---

[3] Holmes, O.W., *The Path of the Law*, 10 Harv. L. Rev., pp.457-478, p.172/3.

[4] The dual perspective is alluded to famously by Bentham: 'To the province of the *Expositor* it belongs to explain to us what, as he supposes, the law *is*: to that of the *Censor*, to observe to us what he thinks it *ought to be*. The former, therefore, is principally occupied in stating, or in inquiring after *facts*: the latter, in discussing *reasons*... To the *Expositor* it belongs to shew what the *Legislator* and his underworkman the *Judge* have done *already*: to the *Censor* it belongs to suggest what the legislator *ought* to do *in future*.' In Postema, Gerald, J. *Bentham and the Common Law Tradition*, (Oxford, 1989), p.304.

[5] See Austin, John, *The Province of Jurisprudence Determined* (Weidenfeld & Nicolson, 1968), 'A subordinate or subject judge is merely a minister. The portion of the sovereign power which lies at his disposition is merely delegated. The rules which he makes derive their legal force from authority given by the state: an authority which the state may confer expressly, but which it commonly imparts in the way of acquiescence. For, since the state may reverse the rules which he makes, and yet permits him to enforce them by the power of the political community, its sovereign will 'that his rules shall obtain as law' is clearly evinced by its conduct, though not by its express declaration.'

politics, give *good* law to the system or not. The familiar jurisprudential process of looking inwardly to the practice of law (at how normative meaning is imposed on legislation by judicial reasoning, for example) is central to our understanding of that practice. But to do only this is to undervalue the very important sense in which much normative meaning is already given to law from elsewhere. Law, as part of what something else means, can be as much an important concept of law as the concept of law as an institution undoubtedly is. For this reason a legal theorist may be justified in starting a project not with law but with history or politics or psychology or metaphysics or nature to show how meaning does flow or, in this case, propose how it ought to flow from these domains *to* law. The objection may be made that such methods will not identify law *as law* but equally it may be suggested that law *as law* exists because certain of its mechanisms incorporate and derive substantive content from these and other realms of knowledge. Current jurisprudence of course addresses 'external' influences but it does so starting from law as practice and moving outwardly to 'extensions' of that practice, from the process of adjudication to the internalisation of community *morality* for example.[6] Dworkin and Finnis, for example, for different reasons, consider that moral evaluation plays an important role in the concept of law. But they view evaluation to be relevant either because it exists as an actual feature of the *practice*[7] or because it is required to identify the central case example of law as an *institution*.[8]

In this book evaluation is considered central to the philosophy of law because the concept of law is taken to refer to *law as it ought to be* as much as to *law as it is*.[9] The viewpoint external to the institution of law[10] is adopted not to show how politics or history have informed or can inform law but for the purposes of examining law as an ideal. The position reflects commitment to the view that law cannot be understood merely as performing functions required by law. Law is, itself, something required by an other, the other being, simply, the world in which law exists, and in the same way that law has requirements that it must meet there are other features of reality that have requirements, one such requirement being law. The examination begins, then, not with law but with those natural features of the world, particularly man and his society, which require institutions of law to exist.

The substantive questions that may arise from adopting the moral viewpoint external to the institution, questions like, how, and when, and over which realms of human activity law ought to exert its authority are ambitious, but to the thinking, active human being they ought to be viewed as unavoidable. With unparalleled authority, law prohibits and demands certain actions over *human*

---

6 See *op cit.*, n.1.

7 See *ibid.*

8 See Finnis, John, *Natural Law and Natural Rights* (Oxford: Clarendon, 7th ed.).

9 These are not intended to be exclusive categories. The concept of law may also denote, law as it is *substantively*, or law as it is *formed* by external sources. Categories may be narrower than these broad ones or there may be overlap between categories.

10 Though as the conclusion to the book will indicate this does not amount to a viewpoint external to 'law'.

beings with a uniquely free reason. When it is abused, as an instrument of Platonic social engineering, for example, law can aim to and can be used to supplant human reason. In that way it can contribute to making the human being slightly less human. Part of the natural law ideal is that human beings are to be human to the fullest possible extent, both as individuals and in communities. It is important, from that perspective, that law acts via and in order to advance rather than to thwart man's reasoning nature.

The Role of Nature

The central claim advanced here, derived in part from the classical natural law tradition, is that *moral* meaning resides in very basic, essential natural *facts* about our existence as human beings. This amounts to a belief that the moral 'ought' is located within the 'is' and that it can be identified therein by reason.

If traditional natural law theory has a major flaw it lies in its failure clearly to distinguish 'nature' in its various senses. Nevertheless, some important qualifications on the use of the term 'nature' in the tradition need to be identified. First, nature is not, in its usual application, taken to refer uniquely to human desires, or to biological dispositions, or to abstract governing principles, though it sometimes held these meanings. Rather the term 'nature' is best understood to refer to the empirical world - to the world of fact - potentially in all its guises. This approach to the ancients' concern with nature whilst an oversimplification reflects best the level at which nature was, most fundamentally, relevant to normativity.

Sometimes traditional natural law theory uses the natural empirical world convincingly, particularly when it attempts to isolate natural *essentials* of man's being and to show how these can inform what man ought to be. It is least impressive when it attempts to derive moral information from man's contingent 'nature', like his being wise, or a shoemaker, or a slave, or a thief, without reference to 'governing' essentials. Indeed a tension is evident throughout natural law between contingent and essential natural facts. For this reason a division is made between the two theoretical stages: the emphasis in Chapter 4 is on the use of contingent truths (albeit juxtaposed with our *essential/universal* nature as a 'political animal'); the emphasis in Chapter 5 is on the identification and use of universal truths. The division is an artificial one undertaken to reflect the undoubted theoretical superiority of the latter approach.

Scheme of the Book

The idea that essential facts about our being can provide a normative guide for man and for law in particular is somewhat peculiar to the natural law tradition. Indeed there are important fundamental challenges to the view that the world of fact can contribute in any way to the attainment of moral knowledge.

The apparent inability of nature clearly to impart moral truth is reflected most notably in Hume's belief that one cannot, without explanation of some kind,

derive an ought-proposition from an is-proposition. For Hume in particular, this meant that facts about man and his world cannot be translated into a moral guide using the medium of human reason. The dichotomy between 'is' and 'ought' that Hume depicts is the subject of Chapter 2; it can be seen to represent, in the most condensed form possible, an essential (if not *the* essential) normative problem, that the world in which we *do* live does not appear to inform how we *ought* to live. Hume's view, that the problem is resolvable, is accepted. But in the Chapter a distinction is drawn between the problem itself and Hume's characterisation of the problem as deriving from the limitations of human reason and consequently solvable only by sentiment. Hume's sentiment–based solution follows from his understanding of the nature of the problem but that solution cannot be accepted as uncontroversial in the same way that the problem can. Uncritical acceptance of Hume's solution as correctly reflective of the problem has led many to proceed with undue reverence for his conception of the 'is/ought' dichotomy and in particular to undervalue the usefulness of facts in moral reasoning.

Chapter 3 examines Kant's alternative approach to morality, one that might prove equally fatal to the natural law tradition. *The Metaphysics of Morals* is the basis for a critique as it reflects closely the metaphysical questions of concern. Kant's attempt is to overcome the apparent moral vacuum left by nature by limiting (almost to zero) the *epistemic* role of nature in fundamental moral reasoning. But the attempt, it is claimed, has more in common with the natural law tradition than is sometimes imagined. This may be because Kant does use nature deductively (rather than pure reason's principles alone) more than he acknowledges. First, the incorporation of the universalisability requirement in the categorical imperative appears to follow from an unacknowledged attribution of moral relevance to natural facts. Second, even allowing for the moral substance of the imperative, it is incomplete as a normative guide without assistance from further fact-based principles. It is suggested that the imperative works best where there are, implicit in Kant's position, natural bases that transcend the limits of *a priori* reasoning.

From these two chapters, it appears that Hume's non–cognitivism demands too much from sentiment and Kant's appeal to autonomy demands too much from reason alone. Chapters 4 and 5 present the alternative position evident in traditional natural law theory. A central claim, of that school, in opposition to Hume, is that reason, not sentiment, has the primary role to play in solving normative problems. In opposition to Kant, the world of fact (albeit fact, represented by nature in a *pre–contingency* sense) is taken to be central to moral knowledge.

Chapter 6 considers the important 'new natural law' theory advanced by John Finnis. It is suggested that his position is in some important respects less in keeping with the classical tradition than is claimed. Additionally, it appears that Finnis, like Kant, utilises natural facts epistemically, despite denying the same.

If, as classical natural law holds, realities can be understood to work naturally toward ends that represent the *fulfilment* of their reality, the notion of what people ought to be and to do is inherent in the notion of what they are as 'complete'/fulfilled people. Realities, in this way, can be understood to contain a

combination of fact and value so that the derivation of value from fact, is not illicit, but, rather, amounts to the identification of an inherent quality of the fact. Chapter 7 explores this possibility and suggests how it might be of assistance to law in particular. Whilst the aim of the book is to indicate how nature might provide a normative base for law, the actual application of the theory to law is located primarily (though not uniquely) in this final Chapter. This reflects simply the nature of the analysis required in order to determine how natural law might assist positive law and a desire to return to its application in depth at a future stage.

Chapter 7 concludes with an examination of the contribution that natural law (or any theory of law as an ideal) can make to the *philosophy of law*. In particular it notes the importance of carefully delineating between the domain of 'law as an ideal' and the domain of 'law as a social practice'. In this respect it should be noted that the caricature of natural law ('bad law is not law') which sets it up in opposition to legal positivism is not accepted. The labels 'natural law' and 'positivism' in so far as they are used to illuminate the criteria for legal validity have become less and less helpful as the complex arguments entailed in the two terms are seen to overlap. So, for example, a natural lawyer may take the view 'this is what law ought to be but law that is not this way may still be law' and many, traditionally labelled positivists, seem to take the view that law as it is may sometimes most accurately be identified by reference to what law ought to be. Indeed for the purposes of the debate about legal validity, arguably the terms have evolved to such an extent that it is possible for a natural lawyer to be more of a positivist than a positivist.

Chapter 2

Hume and Natural Facts

Introduction

As human beings we are uniquely moral creatures. It can be difficult to resist the idea that somehow we are *made* moral by the qualities that make us, characteristically, human. It will be suggested in Chapter 5 of this book that classical natural law is committed to this idea fundamentally; it proposes that our unique possession of reason and reason's interplay with other essential facts of human nature, account for our capacity to be moral. A challenge to this central natural law position can be found in Hume's sceptical claim that *reason* is not the source of nor does it explain, our morality and in his belief that facts, essential or otherwise, cannot remedy reason's deficiency in these respects. Hume's scepticism appears powerfully in his discussion of 'oughtness', particularly in the connected claims (a) that there is a dichotomy between 'is' and 'ought', such that the latter cannot without explanation be derived from the former; and (b) that reason, which by its nature is unreceptive to morality, cannot explain how the derivation validly is to occur. We cannot, according to Hume, *deduce* simply from the fact/from the 'is' of life that life 'ought' to be preserved or from the fact/from the 'is' of an act of killing that the killing ought not be done; to reason from 'is' to 'ought' in this way is to commit the 'naturalistic fallacy'. In contrast to Hume, traditional natural law presents a factual, empirical, natural world *full* of moral information, the relevance of which is to be discoverable by reason. So, Hume's claim that without explanation an 'ought' cannot be derived from an 'is', may be viewed as a fundamental challenge to traditional natural law.

Facts about who we are/what we do and facts about the world we occupy indeed do not obviously appear to disclose the information we require about how we ought to be and what we ought to do. But for Hume the 'is/ought' dichotomy was not to be viewed as an insurmountable problem; rather, human *sentiment* was thought to provide a bridge between 'is' and 'ought', accounting for our attribution of 'goodness' and 'badness' to certain facts.[1] The discussion that follows is not concerned to doubt the centrality of the 'is/ought' problem to normative philosophy but to challenge Hume's characterisation of the dichotomy as deriving from the limitations of human reason and consequently bridgeable only via sentiment. Hume's sentiment-based solution to the dichotomy, it will be argued,

---

[1] 'Bridge notions' were first introduced by MacIntyre in his re–interpretation of is/ought. MacIntyre, Alasdair, 'Hume on 'Is' and 'Ought,'' in (Tweyman. ed.), *David Hume; Critical Assessments* (London: Routledge, 1995), p.494.

should not be taken to follow logically from or reflexively to define, the nature of the problem he correctly identifies.

The Is/OughtProblem

> In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes some observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention wou'd subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason.[2]

There have been many and varying interpretations of this passage in which Hume outlines his position on 'is/ought'. Three issues are focused on below which bear upon the relationship between the 'is/ought' dichotomy and natural law theory.

1. It is examined whether Hume suggests here that reason cannot provide the 'ought' of moral *motivation* or makes the additional claim that reason cannot provide *knowledge* of morality. The latter position is the stronger objection to natural law theory wherein reason is taken to be the primary aid to attaining moral knowledge.

2. It is considered whether Hume has sufficiently demonstrated his belief that an 'ought' can *never* be derived from an 'is' by reason. If reason is not shown to be incapable of deriving an 'ought' from an 'is' then traditional natural law theory, which does attempt that derivation, may be valid, if it can be shown to be valid in its own terms.

3. It is asked whether Hume's sentiment-based bridge between 'is' and 'ought' can provide a good solution to the dichotomy, a solution that might stand alongside other approaches to normativity.

---

[2] Hume, David, *A Treatise of Human Nature* (Selby-Bigge, ed.) (Oxford: Clarendon, 2nd edition), p. 469.

Motivation/Moral Knowledge

The claim that reason has an inactive nature, incapable of providing moral *motivation* is emphasised throughout *The Treatise*:[3]

> Morals excite passions, and produce or prevent actions. Reason of itself is utterly impotent in this particular.[4]

Despite the many references to reason's inability to provide moral motivation, it is clear that Hume is concerned also to examine reason's role, if any, in the attainment of moral *knowledge*. Indeed reason's inertness in respect of motivation was significant not so much in itself but because it tended to indicate reason's limitations more generally. Crucially, it appears to follow for Hume that *because* of its a-motivational nature reason is not, of itself, receptive to moral knowledge:

> The rules of morality ... are not conclusions of our reason... As long as it is allow'd, that reason has no influence on our passions and actions, 'tis in vain to pretend, that morality is discovered only by a deduction of reason.[5]

Inevitably, we lack the *will* to act morally in the absence of motive-giving feelings (without the excitement of passions) to accompany our appreciation of what it means to be moral. But Hume's claim is not only that reason alone cannot motivate us to act morally (and that sentiment can); it is additionally that morality just is not knowable to reason and rather is obtained only through sentiment's experience of it. In this way our knowledge of what it means to be moral and our motive for being moral *coexist* in sentiment.

This approach to moral knowledge can be discerned in Hume's discussion of the 'is/ought' problem. When Hume claims that an 'ought' cannot be derived from an 'is' he is not claiming merely that when we understand the moral significance of the facts (the 'is') we still require an accompanying act of will (a motivational 'ought') in respect of those facts that reason cannot produce and sentiment can. He is proposing that we just cannot know the moral significance of the facts by operation of reason at all; that reason is, by *its* nature, incapable of translating 'is' onto 'ought'. Hume does not, in this way, fail to distinguish, or suggest that there is no analytical distinction to be drawn between moral motivation and the identification of moral principles. His claim rather is that it follows from reason's inability to motivate in respect of morality that it is also unable to identify morality. Sentiment is to perform *both* these roles that reason cannot.

---

[3] It is worth noting that, Hume 'does not really *prove* ... that reason cannot motivate.' See Korsgaard, Christine, 'The Normative Question' in *The Sources of Normativity* (O'Neill, ed.) (Cambridge: Cambridge University Press, 1996), p.12. Hume's critique is nevertheless well directed at those who did not think to show that reason *can* motivate.

[4] *op cit.*, n.2, p. 457.

[5] *ibid.*, p. 457.

According to Hudson this interpretation of Hume's position is inaccurate. His alternative suggestion is that Hume wants us to view sentiment as capable of providing moral motivation and even of creating moral 'notions';[6] he is not making the claim, however, that moral *meaning* resides in or is identifiable by sentiment. By analogy, Hudson suggests that although a footballer may be motivated by money to score goals for his team his motivation has no logical connection to the *meaning* of scoring a goal:

> If you score, you may win a bonus at football, and your motive in trying so hard may be desire, or need, for the extra money; but what scoring means in this game is logically distinct from the motives which induce men to try to do it or the profits they reap by doing it.[7]

However Hudson's analogy is not a good one because Hume's very point is that moral meaning is entirely *unlike* other types of *rationally* discoverable meanings such as the meaning of scoring a goal in football. According to Hume, motivation in respect of the 'rules' of morality and knowledge of those rules are *both* provided by sentiment. It is not just that men without sentiment will not play the game of morality; it is also that men without sentiment will not grasp the moral rules at all; indeed they will not know that the game is being played. They will lack such knowledge for the man without sentiment has no means to *receive* the moral knowledge that inheres *in* sentiment, reason being unreceptive to it.

The idea that Hume thought reason to be doubly unsuited to 'oughtness' (the oughtness of motivation *and* the oughtness of moral knowledge) can be discerned from Hume's suggestion that anyone seeking to show that a sense of morality *can* be acquired by reason must satisfy two conditions: (1) prove that reason can *move the will* to virtue *and* (2) prove that virtue can be *known* to reason.[8] Hume is clear that neither condition can be satisfied.

The question needs to be considered more carefully then, *why* the insistence that it follows from the fact that sentiment, not reason, provides moral motivation that morality cannot be *known* to reason? An idea of Hume's position in this respect can be gleaned from the analogy drawn between an act of parricide and the act of a sapling being killed by a parent tree. According to Hume reason perceives the two acts in the same way:

> 'Tis a will or choice, that determines a man to kill his parent; and they are laws of matter and motion, that determine a sapling to destroy the oak, from which it sprung. Here then the same relations have different causes; but still the relations are the same: And as their

---

6 W.D. Hudson, 'Hume on Is and Ought', in *op cit.*, n.1, p. 514.

7 *ibid.*, p. 514. For Hudson it follows that Hume did not intend to bridge the gap between 'is' and 'ought' by the device of sentiment; to claim that passions produce moral motivation, is to show that the passions are the situation in which moral judgment occurs and this does not amount to an attempt to derive an 'ought' from an 'is' because the 'oughtness' of moral *meaning* is just not reached at all.

8 See *op cit.*, n.2, p. 465.