

Tom Angier’s Natural Law vs. the Natural Law Formula

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Abstract: *This article presents a comprehensive overview and analysis of Tom Angier’s latest book, “Natural Law Theory”, published in 2021 by Cambridge University Press, and also compares its main conclusions with another study that analyses how natural law scholars have argued over the last century. To achieve this goal, the article initially outlines the core ideas of Angier’s book, which seeks to elucidate and assess the most significant theories of natural law throughout history, with an emphasis on the traditional approach rooted in Aristotle and the Stoics. Angier introduces the innovative “via negativa” method for identifying natural law principles within this framework. Following the exposition of the book’s content, the article draws parallels between Angier’s conclusions and the findings of another research project about the “Natural Law Formula” (or methods) currently used by natural law experts in legal literature. Both Angier and this research observe that contemporary authors face challenges in grounding the principles of natural law in the physical and spiritual human nature. Lastly, the article evaluates the “via positiva” and “via negativa” methodologies, highlighting their potential contradictions and concordances, while suggesting avenues for further refining Angier’s arguments.*

Keywords: *Natural law, New Natural Law School, John Finnis, Social Contract, Aquinas*

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I. Introduction

There was an interesting discussion about which could be the correct approach that natural law must take at the *Ubuntu, Natural Law & Human Rights Congress* that happened at Strathmore University in February 2022.¹ On one hand, Tom Angier presented on a paper on ‘The Prospects for Natural Law Theory in the 21st Century’, advocating for a methodology focused on the manifest injustices to derive from them the fundamental principles of natural law. On the other hand, I presented a lecture proposing precisely the contrary: a couple of positive methodologies – one based on the African philosophy of Ubuntu, and another on the practices of some natural law authors – that consider what is good and valuable to infer from them what must be considered moral and legal. After meditating on both approaches, I concluded that they are indeed opposing methodologies – one focused on the evil and another on the good – but not necessarily contradictory. Probably, they should be used simultaneously. Therefore, I decided to outline my thoughts about the best methodology for natural law by writing them down in this article.

This article at the same time serves as a review of the latest book by Tom Angier, titled *Natural Law Theory*, published by Cambridge University Press in 2021,² and as a reflection on the opinions conveyed within the book.

In Part II of this paper, I elucidate the core concepts presented in the book. The primary objective of the book is to illuminate and evaluate the key historical and contemporary theories of natural law while advocating for the significance of the traditional approach anchored in Aristotle and the Stoics. Within this framework, Angier seizes the opportunity to introduce a method, named *via negativa*, dedicated to detecting natural law principles.

¹ See the official website of the conference at <https://naturallawcongress.wordpress.com/>.

² Angiers T, *Natural Law Theory*, Cambridge University Press, New York-Melbourne-New Delhi, 2021, 64 pages.

Part III highlights certain parallels between Angier's conclusions regarding the new schools of natural law and the findings of a separate quantitative research focused on discerning the prevailing methodologies employed by natural law experts in legal literature. Both investigations reach the consensus that contemporary natural law scholars encounter difficulties in establishing a cohesive link between the physical and spiritual aspects of human nature and the foundational tenets of natural law. Consequently, a resurgence of the ancient tradition is deemed necessary to restore this absent connection.

Lastly, in Part IV, I evaluate the *via positiva* and *via negativa* methods, probing their potential for contradiction or concordance. This analysis also serves as a platform to underscore the book's merits and to propose potential avenues for enhancing the arguments of the author. It is important to note that the recommendations put forth are offered as mere proposals, subject to scrutiny and testing.

II. The author, his research and the book

Tom Angier is a Senior Lecturer in Philosophy at the University of Cape Town. He has been engaged in ethical and political theory from a neo-Aristotelian perspective. In a previous research endeavour, he delved into 'Natural Perfectionism: A Teleological Theory of Goods'. This work summarises the traditional understanding of human goods, which is in contrast to the self-evident seven goods proposed by John Finnis, and analyses how human nature can provide insight into understanding the goods of and for humans as perfections or completions of that nature.

In his recent book *Natural Law Theory*, Angier continues his endeavour of revisiting the core of human ethics: "It is time that ethics returned home – namely, to an unpacking of the human essence and its manifold ends."³ To achieve this goal, he begins by elucidating the framework of traditional natural law theory,⁴ which he then contrasts with various approaches that have emerged over the past centuries.

First, Angier outlines the two 'main competitors' in natural law theories, namely the social contractarian and the 'theological unificationist' theories.⁵ In

³ Angiers T, *Natural Law Theory*, 49.

⁴ Angiers T, *Natural Law Theory*, Section 1.

⁵ Angiers T, *Natural Law Theory*, Section 2.

the social contract theories of Hobbes, Locke, and Rousseau, the concept of ‘human nature’ is reconstructed as ‘man in the state of nature’ (whether good or bad), who struggles to live in society. This unsocial human nature is exactly the opposite of the *zoon politikon* of Aristotle. While the contractarian perspective places a greater emphasis on the pursuit of self-interest, the ‘political animal’ of Aristotle is more focused on the establishment of the *polis* and the common good for everyone. Angier observes that these two perspectives are fundamentally irreconcilable.

The natural law tradition, rooted in Greek thought and further developed by various theological perspectives, appears to be richer and more comprehensive, as long as it is nurtured by many sources: the sacred texts, philosophical traditions, different cultures, and other non-transcendental viewpoints. However, theology provides a broad perspective capable of unifying all these sources into a coherent framework. Particularly noteworthy in this regard is the theological system of Aquinas, who assumes that the natural law participates in eternal and divine law. Yet, he agrees that the content of natural law could be accessible without divine revelation due to its inherent rationality, and could be embraced by individuals who do not hold religious beliefs.⁶

However, after briefly explaining these theories, the author moves on to discuss the tragedy by Sophocles, *Antigone*. According to Angier, this play contains the *via negativa* method in an implicit and dramatic mode. This method ‘demonstrates what the world is like when that law is no longer honoured in people’s thoughts and actions’.⁷ He observes that some political philosophers, such as Jonathan Wolff, proceed likewise trying to identify manifest injustice to discover what must be done. Similarly, according to Angier, we must first focus on ‘the most basic form of natural evil’ to discern the essence of natural law. These basic evils correspond to the ‘three dimensions of being’ elaborated by Aristotle⁸ and Aquinas⁹ within a goal-oriented scheme of natural powers, which in turn are connected with inclinations related to life, sexual reproduction, and reason. Anything that refrains inclinations to achieve their goals is considered detrimental. Thus, by identifying the sources of these evils, we can grasp the essence of natural law.

⁶ Angiers T, *Natural Law Theory*, 16.

⁷ Angiers T, *Natural Law Theory*, 18.

⁸ Aristotle, *Nicomachean Ethics*, 1.7.

⁹ Aquinas, *Summa Theologiae*, I-II, q. 94, a. 2, related to the three basic inclinations.

Second, the author addresses the Darwinian evolutionary biology developed in the late nineteenth century, which ‘challenges the very notion of final ends or goal-directedness in nature, maintaining that what appears to be teleological orderedness is merely the product of random mutation and fittedness to particular environments.’¹⁰ After discussing the limitations of the so-called ‘naturalistic fallacy’, which puts ‘facts’ and ‘values’, ‘is’ and ‘ought’, in two different and irreconcilable universes, Angier points out that the Darwinian critique of the traditional understanding of the stable essence of the species and their natural teleology (two key tenets of Aristotelian naturalism) does not offer a satisfying explanation of reality. That which is in constant evolution and is absolutely fluid lacks stable essence; that which is just a product of mere chance has no end to pursue. Nevertheless, the concept of species, understood as a group with stable characteristics capable of interbreeding, remains in use today and carries various genetic and biological implications. This is why contemporary natural law theorists are inclined to adhere now to what Michael Devitt termed ‘intrinsic biological essentialism’.¹¹ Furthermore, we observe across all species an exquisite order in which each element is oriented towards specific ends. No organ or species can subsist independently, separate from this intricate network of interdependent aims inherent to the species.

Finally, Angier dedicates some thoughts to the New Natural Law Theory founded by Germain Grisez, Joseph Boyle, and John Finnis. This new perspective no longer relies, either directly or foundationally, on any inherent natural essence with predetermined ends.¹² As the leading voice of Finnis states,

“the first principles of natural law, which specify the basic forms of good and evil ... are not inferred from facts. They are not inferred from metaphysical propositions about human nature ... or about ‘the function of a human being’; nor are they inferred from a teleological conception of nature or any other conception of nature. They are not inferred or derived from anything”.¹³

¹⁰ Angiers T, *Natural Law Theory*, 23.

¹¹ Devitt M, ‘Resurrecting Biological Essentialism’, 75(3) *Philosophy of Science*, 2008, 378.

¹² Section 5.

¹³ Finnis J, *Natural Law and Natural Rights*, 2ed, Oxford University Press, Oxford, 1980/2011.

On Finnis' interpretation of the *Summa Theologiae*, Aquinas derives the principles of natural law solely from self-evident postulates, which are underived and indemonstrable.¹⁴ Therefore, Finnis needs to formulate seven self-evident and 'pre-moral' basic goods (life, knowledge, play, aesthetic, sociability, practical reasonableness and religion) to find a certain foundation for his entire natural law theory. Aligning these goods with the primary principle of practical reason, "good is to be done and pursued, and evil is to be avoided",¹⁵ Finnis then considers what plan of life each one must seek, in a kind of *via positiva* to ascertain natural law.

The theory of Finnis asks for an initial act of faith in his seven basic goods to be accepted. This point will face staunch criticism from Angier and other authors who observe that Finnis is trying to develop a 'natural law without nature'.¹⁶ Angier highlights that this new version of natural law significantly diverges from the traditional natural law theory, which emphasises the ontological dependence of the notion of human good on human nature. He also manifests a preference for the *via negativa* as a means of discovering what natural law commands, rejecting certain positive methods employed by the aforementioned authors.

III. The Natural Law Formula and the Missing Link

I enjoyed reading Angier's *Natural Law Theory*. It is lucidly written and effectively underscored certain conclusions I had reached in my own research.¹⁷ Currently, the concept of natural law has been extensively explored. There are over eight thousand articles addressing natural law¹⁸ and over eleven thousand

¹⁴ Finnis J, Natural Law and Natural Rights, 33-34.

¹⁵ *Summa Theologiae*, I-II, q. 94, a. 2.

¹⁶ Westerman PC, *The Disintegration of Natural Law Theory: Aquinas to Finnis*, Brill, New York, 1998, 231. McInerny R, *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas*, Catholic University of America Press, Washington DC, 1982; Feser E, 'Natural Law Ethics and the Revival of Aristotelian Metaphysics' in T Angier (ed.) *The Cambridge Companion to Natural Law Ethics*, Cambridge University Press, Cambridge, 2019, 276; Angiers T, *Natural Law Theory*, 46.

¹⁷ Riofrio JC, 'The Natural Law Formula and the Missing Link: Tracing and Updating Aquinas' Methodology', 74(6) *Forum Prawnicze*, 2022.

¹⁸ HeinOnline shows 85,867 articles that talk about "natural law", and 1,463 with "natural law" in the title in a request made in August 21, 2023.

books dedicated to the subject.¹⁹ Nonetheless, a substantial portion of these studies only possess a tenuous link with human nature and the real world. In my research, I discovered that authors throughout history commonly establish a sequential connection among several of the following elements to elucidate the content of natural law: *Being – Potencies, objects of the potencies, and inclinations – Goods and values – Ends and means – Principles – Rules – Rights – Personal relationships, cases and circumstances.*²⁰ In short, since ancient times, authors have tried to understand something called ‘nature’, which includes the being of things, plants, animals and people, of their factual possibilities and inclinations, to grasp from there what is good for them, their highest possibilities (ends), deriving from these considerations some principles, rules, rights and duties for particular circumstances. Nevertheless, there has been a notable shift in the past century towards focusing predominantly on rights, principles, and rules, often sidestepping substantial references to human nature and the real world.

The causes of this shift still remain somewhat ambiguous. Part of this could be attributed to the modern separation of concepts like *res extensa* and *res cogitans* (Descartes), and *noumeno* and *phenomenon* (Kant), placed into two opposite worlds that have no possible connection between them. The Neo-Kantians further emphasised the distinction between *is* and *ought*, exerting notable influence over various European philosophers and jurists, including figures like Hume, Bentham, and Kelsen, among others. In part, this missing link between natural law and human nature also could be caused by the influence of the most cited authors in natural law studies, who are Aquinas, Finnis, Locke, Fuller, Dworkin, and James Wilson (the drafters of the U.S. Declaration of Independence).²¹ Although Aquinas still continues to be the most frequently cited author among natural lawyers, most scholars often limit their quotations to the treatise on laws of the *Summa Theologicae*, neglecting the section dedicated to justice and other crucial parts of his work. Instead, authors show a greater interest in the social contract of John Locke, in the self-evident goods of Finnis,

¹⁹ The Library of Congress (loc.gov) shows 14,984 documents, and 11,479 books/printed material with “natural law” in the title in a request made in August 21, 2023.

²⁰ Riofrio JC, ‘The Natural Law Formula and the Missing Link: Tracing and Updating Aquinas’ Methodology’, 10.

²¹ Riofrio JC, ‘The Natural Law Formula and the Missing Link: Tracing and Updating Aquinas’ Methodology’, 7.

in the rational nature and rational legal system of Lon Fuller,²² and in the theological natural law infused with Enlightenment ideas adopted by James Wilson.²³

I concur wholeheartedly with Angier's assessment of the deficiencies within the new theories of natural law, which does not adequately consider human nature when formulating the principles of this branch of the law. While Angier elucidates the distinctions among these novel approaches and underscores their limitations, my research concerning the *Natural Law Formula* delves into how the intricate connection between human beings (their essence, potencies, objects of those potencies, and inclinations) can be intricately linked to legal values, goods, ends, principles, rules, rights, and obligations.

IV. 'Via negativa' vs 'via positiva'

a) Assessment of the via negativa

In his book, Angier develops a philosophical method with ethical objectives, known as the *via negativa*, which involves uncovering 'manifest injustice'. This method resonates with ideas found in political philosophy and human rights theory. As seen, he references the arguments of political philosophers like Jonathan Wolff and the Greek tragedy of Sophocles, *Antigone*, to elaborate his method. We observe that this technique finds parallels in the realm of human rights courts, where activists often present 'sad and sentimental stories of others' to advocate for the formal recognition of what they perceive as a human right.²⁴ For instance, thinkers such as Richard Rorty²⁵ and Martha Nussbaum²⁶ suggest that moral and political concepts, such as universal human

²² In Fuller L, *Morality of Law*, Yale University Press, New Haven, 1964, the author mentions some rational principles as a foundation of the legal system: generality, promulgation, non-retroactivity, clarity, consistency, and congruence, which more than "moral" seems to be rational.

²³ James Wilson's views on natural law were strongly influenced by thinkers like Scottish Enlightenment philosophers Francis Hutcheson and Thomas Reid, as well as the works of legal theorist William Blackstone.

²⁴ The idea appears in Rorty R, 'Human Rights, Rationality, and Sentimentality', *On Human Rights: The Oxford Amnesty Lectures*, S Shute and Susan Hurley (eds.), Basic Books, New York, 1993.

²⁵ Rorty R, 'Human Rights, Rationality, and Sentimentality'.

²⁶ Martha Nussbaum, 'Human Functioning and Social Justice: In Defense of Aristotelian Essentialism', 20(2) *Political Theory*, 1992, 206.

rights and inherent human dignity, derive their persuasive power from emotional reactions to grave injustices, evoking feelings of compassion and empathy.

In the realm of natural law, particularly within the domain of natural rights, certain scholars have employed an analogous negative method that emphasises the attention over duties in order to deduce rights. This approach operates under the assumption that if someone has a legal obligation to perform or provide something, another person must possess the corresponding right to demand it.²⁷ Felicien Rousseau, from the School of Philosophy at Laval University, expounds upon this method, which he deems to be aligned with Thomistic principles, in the following terms:

“For Thomas, man is by nature a sociable animal, made for living with God and other men, according to his most proper inclinations. The individual can claim ‘natural rights’ only if he begins by recognizing his duties with respect to the ‘natural rights’ of others. From the outset, the search by naturally sociable man for ‘his natural rights’ is marked with the seal of solidarity”.²⁸

For example, when natural law mandates an individual to maintain a secret or obey authorities, there should exist a corresponding natural right to privacy and another natural right for authorities to be obeyed.²⁹ Therefore, by identifying the duties of human beings (as proposed by Rousseau) and recognising their breach (referred to as ‘manifest injustice’ by Angier), the *via negativa* reveals what actions must be performed and what constitutes a natural right.

Another proponent of this negative approach is Ralf McInerny, who underscores the advantages of commencing legal analysis by focusing on duties. The author highlights, “rights as the reverse of obligations do not begin to cover the pullulating claims of rights, the lengthening lists of non-negotiable demands, the novel assertions put forward as somehow self-evident.”³⁰

²⁷ Virginia Black, ‘On Connecting Natural Rights with Natural Law’, 22 *Persona y Derecho*, 1990, 183-210, specially at 188.

²⁸ Felicien Rousseau, *La croissance solidaire des droits de l’homme: un retour aux sources de l’éthique*, Desclée, Bellarmin, Tournai, Montréal, 1982.

²⁹ Aquinas said that both are duties of natural law. *Summa Theologicae*, II-II, q. 70 a. 1, ad 2, *in finis*, and S.T. II-II, q. 104, a. 1, *in finis*.

³⁰ McInerny R, ‘Natural Law and Human Rights’, 36 *American Journal of Jurisprudence*, 1991, 14.

Several authors who acknowledge the potential for exploring the positive path to detect natural rights, often express a certain preference for the *via negativa*. Among these authors, Virginia Black asserts that followers of natural law should primarily “construe natural law as a mandate for moral and intellectual aspiration-as duties to perfect ourselves”.³¹

b) Assessment of the *via positiva*

On the contrary, there is another group of scholars that favours the *via positiva*, a method aimed at directly seeking what is right by focusing on what grants individuals the entitlement to perform or request others to do certain actions. Jacques Maritain is a notable proponent of this approach, deriving the human rights of each individual from their natural inclination to direct actions towards their own good and the common good of everyone in society.³² Other authors deduce natural rights directly from what is deemed worthy or good for human nature. For example, if life is considered good, then life must be protected. Regarding the human goods, we have identified two distinct approaches here: first, the traditional view, which anchors human goods (and sometimes ‘values’) in specific potencies, inclinations, behaviour or tendencies of human nature, and, second, the new natural law theory led by John Finnis, which proclaims the seven basic goods as self-evident. This latter approach is simpler and eliminates the necessity of justifying why these goods are good, but requires an act of faith in Finnis’ seven goods.

In any case, the path that considers human goods and inclinations is not the only route taken by scholars dedicated to natural rights and human rights.³³ Several methodologies have been employed for this purpose. Jurists, activists, and courts typically begin their arguments with the same starting points. Factual evidence, the notion of dignity, and principles such as non-discrimination or *neminem laedere* are utilized by most participants, regardless of their respective backgrounds. Factual evidence, such as that provided by sociologists, ethnographers, and evolutionary biologists, is also employed to advocate for the

³¹ Virginia Black, ‘On Connecting Natural Rights with Natural Law’, 205.

³² Maritain J, *Education at the Crossroads*, Yale University Press, New Haven, Connecticut, 1943; Masiello R, ‘Some Brave Ideas on an Old Rule of Law: The Natural Law According To Jacques Maritain - Jacques Maritain on the Natural Law and Human Rights’, 25(1) *The Catholic Lawyer*, 1979.

³³ See Juan Carlos Riofrío, ‘How to Deduce Human Rights From Natural Law and Other Disciplines’, *Ius Humani*, 2023.

protection of human rights. Natural lawyers usually emphasise the importance of considering various human ends, values, and certain unbreakable principles or rules. All these elements are encompassed within the aforementioned *Natural Law Formula*, which fundamentally serves as a positive method for identifying the content of natural law.

c) Are we talking about two contradictory methods?

Angiers, Rousseau, and McInerny have expressed their preference for the negative approach to natural law, sometimes being a bit sceptical towards the positive method. Certainly, among certain adherents of the Aristotelian and Thomistic tradition, there is a tendency to emphasize duties over rights, primarily because the two major exponents of this tradition did not extensively develop a doctrine of rights. Occasionally, they also complain that the *via positiva* is overly abstract and cannot directly establish rights in reality without falling into the so called “naturalistic fallacy”.

However, I do not find any insurmountable contradiction between these methodologies, either in Aristotle or Aquinas. If they did not discuss rights, it is probable because that the term ‘rights’ was not employed in the same manner as in the contemporary world. The big shift in the popular usage of that term occurred during the advent of modernity, precisely with the new developments of natural law carried out by Grotius and other scholars began to address the discussion of rights.³⁴

On the contrary, the same ancient tradition seems to necessitate both approaches from the very inception of ethical analysis. Indeed, the first principle of practical reason requires the presence of both methodologies: while the first part that states “good is to be done and pursued” aligns with the *via positiva*, the second part “evil is to be avoided” is connected with the *via negativa*.³⁵ Aristotle and Aquinas provide an extensive analysis of what could be considered good or evil (bad or sin) in their works, presenting these concepts prior to their ethical analysis of human actions. That is palpable in the *Summa Theologica*, where the *Prima Pars* encompasses the study of human nature, potencies, inclinations and goods, leaving the moral treatise for the *Secundae Pars* (*prima secundae* dedicated to the general principles of morality, and *secunda secundae* to specific virtues and vices).

³⁴ See Virginia Black, ‘On Connecting Natural Rights with Natural Law’.

³⁵ *Summa Theologiae*, I-II, q. 94, a. 2.

A considerably distinct question pertains to determining the most effective method for detecting content related to human rights and natural law. Numerous human rights activists, scholars, and courts tend to favor the *via positiva* approach, sometimes to an excessive extent, in their attempt to establish that every significant human need could potentially be considered a human right. Conversely, traditional authors frequently reject this approach as it appears to result in an inexhaustible proliferation of fabricated rights.

For me both methods are feasible ways to reach natural content, and both must be used to achieve the best outcome. Duties and rights are two sides of the same coin. Human rights appear beautiful in old declarations, but without knowing who has the duty to respect them, rights become empty words, children “that never had a father”, as Jeremy Bentham said,³⁶ or a check of an account without funds impossible to cash, as MacIntyre complains.³⁷ At the same time, to establish the conclusion that a human duty exists, we require a positive argument aimed at elucidating why someone is entitled to something: only if X holds value, X must be safeguarded. Not in vain, Mahatma Gandhi had bemoaned “the farce of everybody wanting and insisting on . . . rights, nobody thinking of . . . duty”.³⁸ The two sides of the coin must be seen. Checking everything twice is a good standard in many sciences. To secure accurate results, professional accounting registers every single movement of money twice: once in the debit column and once in the credit column. For the same reason, professional statisticians also double-check their results, considering both the probabilities and non-probabilities of the same event. In matters of human rights, we cannot afford to be amateurs.

V. Conclusion

From the reflections presented by the author of the *Natural Law Theory*, we can draw three main conclusions in this article. First, the doctrine that has been developed in the last centuries often falls short in linking the principles of natural law with human nature. As Angier points out, there is a need to unpack

³⁶ Bentham J, ‘Supply without Burthen’, in W Stark (ed.), *Economic Writings*, George Allen and Unwin, London, 1952, 334.

³⁷ MacIntyre A, *After Virtue*, Universidad of Notre Dame Press, Indiana, 2007, 65.

³⁸ Mahatma Gandhi, *Hind Swaraj*, 1909.

the human essence and its manifold ends to recover a law that is genuinely natural.

Second, in this era of human rights where virtually anything can be declared a right, it becomes crucial to emphasise the significance of the *via negativa*. This method involves scrutinizing actions that go against natural law in order to achieve a tangible comprehension of its principles and to establish a robust justification for each human right. Angier underlines the necessity of addressing evident injustices to uncover the foundational principles of natural law.

Finally, the *via negativa* cannot displace, contradict, or substitute the *via positiva*. Given that rights and duties are two facets of the same coin, it is worthwhile to consider both approaches in order to ascertain what genuinely constitutes a human right and a human duty. Applying a double-checking approach is a valuable standard not only in ethics but also in law.