

Can Natural Law Provide an Adequate Account of Normativity?

Luís Cordeiro Rodrigues
The University of York

Abstract. For various centuries, the question of whether natural law is normative or not has been posed. In contemporary legal philosophy, the scholar who is considered to be the main defender of natural law is the Catholic philosopher John Finnis. Finnis contends that natural law can provide a good account of normativity. However, is Finnis right? In this article, I aim at answering this question and I contend that, in broad terms, Finnis is correct in affirming that natural law can provide a good account of normativity.

Key words: John Finnis, natural law, normativity, philosophy of law, ethics.

One of the most ancient concepts of morality is the concept of *natural Law* – it is a concept with about 2,500 years of history (Freeman 2008). Since this date, natural law has been used in moral theories. To provide two historical examples, it was used in the medieval period by Thomas Aquinas and in the Enlightenment by John Locke (Freeman 2008). Today, natural law is still used in moral theories. Thus, due to its historical antiquity, the concept of ‘natural law’ has considerably changed. Nevertheless, the idea which remains today is that there are principles of natural law (Freeman 2008). A very common approach to natural law is that normative principles can be derived from facts. For instance, it could be contended that human beings are natural reproducers and then sexual relations ought to be performed only with the aim of reproduction. However, this inference from facts to norms has been contested (Hume 1739; Moore 1993). Critics argued that no “ought” can be derived from an “is.” In other words, there is no valid logical inference from a fact to a norm. This invalid inference was referred by Moore (1993) as the “naturalistic fallacy.” Facing this problem, some contemporary philosophers have taken a different approach to the problems of natural law. By way of illustration, Finnis (1980) rejects this approach, *i.e.*, his theory is not based on this invalid inference. Finnis (1980) considers that ‘basic human goods’ are self-evident. Thus, they are not and they cannot be derived from facts. This shift towards the principles of natural law avoids the naturalistic fallacy. In addition to the basic principles, Finnis selects principles of ‘practical reasonableness.’ These principles should be used as a methodology to make moral decisions, *e.g.*, abortion or the death penalty.

This contemporary theory of natural law has been largely contested; nevertheless, it is still considered the most consistent contemporary theory of natural law (Freeman 2008). The purpose of this essay is to analyse whether natural law can give an adequate account of normativity. In other words, it will be assessed whether Finnis’s account of natural law can be used as grounds for morality. Four criticisms against Finnis’s theory will be assessed. First, Finnis’s natural law is not only too abstract but also his methodology does not provide tools to answer difficult moral questions (Hittinger 1987; Nielsen 1991;

Weinreb 1987). In other words, the groundwork presented by Finnis is insufficient to enable individuals to make moral judgments, such as the morality of abortion. Second, it is implausible to assert that the human goods are self-evident (Hittinger 1987; Weinreb 1987). As a result, Finnis attempts to avoid the naturalistic fallacy which leads him to defend his theory on the grounds of an incoherent account of human goods, namely, self-evidence. Thus, if Finnis's theory is based on incoherence, it cannot be used as grounds to morality. Third, Finnis's approach cannot be supportive of natural law as groundwork for morality due to the fact that it is not a theory of natural law. This criticism results from the fact that Finnis considers the human goods self-evident (Hittinger 1987; Veatch 1981; Weinreb 1987). Consequently, if he rejects any connection with humans, then his theory is one of "natural law without nature" (Weinreb 1987). Fourth, Finnis's theory abstracts from human experience; subsequently, he excludes a basic good which is usually accepted as good, namely, pleasure (Smith 1997).

Taking this into consideration, this paper will be divided in two parts. First, Finnis's theory (1980) will be outlined. Second, the criticisms will be assessed. This paper will defend that Finnis's account of natural theory provides a consistent response to the criticisms. Hence, it can be contended that Finnis's theory is a consistent defence of natural law. In short, Finnis's account of natural law does provide an adequate account of normativity.

I. OUTLINE OF FINNIS'S ACCOUNT OF NATURAL LAW

Finnis's theory is considered the most consistent defence of the normativity of natural law (Freeman 2008). Finnis's aim is to provide ethical structure/moral standards for decisions of right and wrong (Finnis 1980; Wacks 2006). Hence, this ethical structure will enable individuals to make the right ethical choices. In other words, this ethical structure provides criteria in ordering human life, in the sense that it gives standards of conduct for individuals. Therefore, it can be contended that these moral standards for choosing well are located in the good of human persons (Boyle, Finnis & Grisez 1987a). Thus, Finnis's theory aims to elucidate what a worthwhile, valuable and desirable life consists of (Finnis 1980; Wacks 2006).

Bearing this in mind, Finnis presents two inventories, namely, **1**) basic human goods and **2**) the principles of practical reasonableness, which together, if correctly understood, provide the necessary and sufficient groundwork for making ethical decisions (Bix 1999; Finnis 1980). The same is to say that both together constitute morality (Finnis 1980).

The first inventory is constituted by seven basic human goods, namely, **a**) life (every aspect of vitality "[...] which puts a human being in good shape for self-determination" (Finnis 1980, 86); **b**) knowledge (the preference for truth rather than for falsity); **c**) play (engaging in performances that are good by themselves); **d**) aesthetic experience (the appreciation of beauty); **e**) sociability or friendship (acting so to promote ones friends well-

being); **f**) practical reasonableness (the ability to use one's own intelligence to practical problems in life) and **g**) religion (questioning about ultimate ends) (Finnis 1980).

Having claimed that these are basic human goods, Finnis asserts that they are what fulfil human life, they are equally valuable, none can be analytically reduced to the others and they are self-evident.

Basic goods are what fulfil human life because they are how human beings flourish. In other words, they are objects of human striving. Thus, as reasons for actions; they guide individuals to make choices (Finnis 1980). This position implies teleology but not in the sense that is usually used (Bix 2004). Finnis's theory is not teleological in the sense that there is one single human ideal for all humans to pursue; rather it is teleological in the sense that; "In volunteering acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with the integral human fulfilment" (Finnis 1991, 45). In addition, these objects of human striving are valuable for their own sake and not merely for the achievement of some other goods. Nevertheless, there are many ways to pursue the basic goods. In other words, there are indefinite ways to participate and realise these basic goods. However, all these ways are subordinated to the seven basic goods; they are ways to realise or participate in the basic goods. The difference between the basic goods and the ways to realise or participate in the basic goods is that the former are goods in themselves and the latter are goods only due to the fact they participate or realise in the basic goods. By way of illustration, one may value health for its own sake, but medical treatment only as a means to health (Bix 1999). Hence, other values are means or combinations of ways of pursuing and realising one or a combination of the seven goods (Finnis 1980).

These seven goods are also equally valuable and are not analytically reducible to the others. They are equally valuable in the sense that there is no hierarchy among them, *i.e.*, all are equally important. Nevertheless, individuals may choose to fulfil their lives with one rather than with another (Finnis 1980). They are not analytically reducible to the others because they are independent values. For instance, friendship is neither an aspect of aesthetic experience, nor an instrument for pursuing a good aesthetic experience.

Finally, the basic goods are self-evident. This is a controversial feature of Finnis's theory and it will be discussed in the next section of this paper. The basic goods are self-evident in the sense that they are not derived from anything (facts, speculative knowledge (as psychology), metaphysical propositions about human nature or the nature of good or evil) (Finnis 1980; Wacks 2006). In short, they are not syllogistically demonstrable. However, the fact that they are self-evident and are not derived from facts does not mean that the principles are obvious or that they are not grounded within human nature. According to Finnis, being self-evident does not imply that they will be given assent immediately. These basic goods are known by experiencing one's nature from the inside. In other words, "[p]eople of substantial experience, who are able and willing to inquire and reflect deeply, may be better able to discover the self-evident truth than would others."

(Bix 1999, 229) Moreover, not being derived from facts does not imply that they are not grounded in human nature; rather, basic goods are grounded in human nature indirectly, *i.e.*, “[...] the basic forms of good grasped by practical understanding are what is good for human beings with the nature they have” (Finnis 1980, 34). Considering that basic goods are self-evident avoids the naturalistic fallacy (Moore, 1993), namely, that an “ought” cannot be deduced from an “is.”

However, it may be claimed that the basic goods are insufficient to guide individuals; the basic principles are too general (in some cases) to direct individuals to the right actions, *i.e.*, the difference between right and wrong cannot be accurately drawn with the basic goods (Bix 1999). In fact, if there are many ways to participate and realise the basic values, it is necessary to have a methodology that leads individuals to make the right choices. Taking this into consideration, Finnis provides the second inventory mentioned above, namely, the principles of practical reasonableness. The principles of practical reasonableness are: **a**) a coherent plan of life; **b**) accept no arbitrary preferences amongst the basic values, (*e.g.*, not taking into consideration one of the basic values in a decision if the value is relevant); **c**) adopt no arbitrary preferences amongst persons (*e.g.*, racism would be an arbitrary preference); **d**) preserve a certain detachment from particular projects, **e**) at the same time as not abandoning them carelessly; **f**) the limited relevance of consequences, *i.e.*, efficient means should be used and consequences have a limited role in making decisions; **g**) respect for every basic value in every act; **h**) favour the common good of the community and **i**) the following of one’s conscience, *i.e.*, abstain from doing what one judges to be wrong. These nine principles of practical reasonableness are “[...] as each of the basic forms of good, [...] fundamental, underived, irreducible [...]” (Finnis 1980, 102)

This second inventory indicates how one ought to choose, *i.e.*, how to relate one’s decisions with the basic values. In other words, these principles of practical reasonableness guide individuals from the basic goods to judgments of right and wrong in particular situations, *e.g.*, abortion. Thus, these principles of practical reasonableness structure the pursuit of the goods (Finnis, 1980).

Bearing these two inventories in mind, Finnis asserts that both together constitute the principles of natural law. Thus, natural law consists on “the set of principles of practical reasonableness in ordering human life and human community” (Finnis 1980, 280). Bearing these two inventories in mind, Finnis asserts that law is a mean of effecting the goods. Law is derived from Finnis’s ethical code.

To sum up, Finnis’s natural law theory is based on two inventories, namely, the basic goods and the principles of practical reasonableness. There are seven basic goods and they are forms in which humans flourish. In addition, there are nine principles of practical reasonableness which direct individuals to make the right choices, taking the basic goods into consideration. The result of these two inventories is morality.

II. CRITICISMS OF FINNIS'S NATURAL LAW THEORY

Having outlined Finnis's natural law theory, four criticisms will be analysed. First, Finnis's account of natural law is insufficient to make moral judgments (Hittinger 1987; Nielsen 1991; Weinreb 1987). Second, assuming that the basic human goods are self-evident is incoherent (Hittinger 1987; Weinreb 1987). Third, Finnis's theory is not one of natural law (Hittinger 1987; Veatch 1981; Weinreb 1987). Fourth, Finnis excludes pleasure from the basic goods (Smith 1991).

The first criticism concerns the generality of Finnis's list of basic goods and the methodology to assess the morality of difficult normative issues as abortion. More precisely, it is contended, first, that the basic goods and principles of practical reasonableness are too general to make moral judgments; consequently Finnis's theory is compatible with more than one moral code and does not give any guidance for practical decisions (Nielsen 1991). Second, Finnis assumes that the answer to normative problems, as to whether abortion is moral or not, is self-evident and this is implausible (Hittinger 1987; Weinreb 1987). These criticisms are connected but they are slightly different. What they have in common is that both criticise the fact that no consistent moral conduct can be derived from Finnis's theory. However, the former contests the generality of the basic goods and of the principles of practical reasonableness, while the latter challenges the assumption that normative issues are self-evident. These criticisms are both false and due to their slight difference, they shall be discussed separately.

Thus, according to the first criticism, the level of abstractness that natural law is formulated generates conclusions that are too vague to be a foundation of morality and to help to make moral decisions (Nielsen 1991). Consequently, Finnis's formulation of natural law (1980) is compatible with more than one moral code; therefore, conflicting moral positions can be derived from the same natural law (Nielsen 1991). By way of illustration, it can be contended that Finnis's practical reasonableness principle of "no arbitrary preferences amongst persons" taken on its own does not provide an argument against a Nazi who desires to exterminate Jews (Harris 1981; Nielsen 1991). In fact, a Nazi may affirm that his choice is not arbitrary and he is justified to exterminate Jews. The Nazi may contend that he has a criterion to exterminate Jews; for his preference is not arbitrary.

Nevertheless, this is a misunderstanding of Finnis's theory. It is not true that such a programme as Nazism is compatible with Finnis's theory (Finnis 1980; George 1994; Harris 1981). The reason why the argument above seems to demonstrate that there is a multiple compatibility with Finnis's theory is because the principle of "moral reasonableness" has "no arbitrary preferences amongst persons" which is taken on its own. Taking this single principle into account and ignoring the other principles leads to this conclusion (Finnis 1980; Harris 1981). In fact, one of the principles of practical reasonableness is "the respect of every basic value in every act." Thus, in order to evaluate whether a political programme such as Nazism is moral or not, one should also take into consideration other aspects of Finnis's theory. In this particular case, "friendship,"

practical reasonableness and the “common good of communities” would have to be taken into account (Finnis 1980; Harris 1981). This is due to the fact that if the ‘common good of communities’ is taken into account, every citizen would be able to participate or realise “friendship” and “practical reasonableness” (Harris 1981); hence, relations of friendship of individuals of different races, religions and so forth, have to be permitted. In addition, individuals should be given the ability to exercise “practical reasonableness” in planning their lives (Finnis 1980; Harris 1981). To sum up, the counter-example of Nazism is false because it does not take into account all the basic goods and principles of practical reasonableness. In order to make a fair judgment, all the requirements should be followed and the example provided does not follow all the requirements. Hence, it is not true that any moral code can be derived from Finnis’s theory.

Moving now to the second part of the argument, it is contended that Finnis assumes that normative issues, such as abortion, are self-evident and that this viewpoint is implausible (Hittinger 1987; Weinreb 1987). In other words, these critics contend that Finnis’s assumption that normative issues are self-evident is incoherent. Assuming that these issues are self-evident is an implausible explanation to argue that abortion is morally wrong (Hittinger 1987; Weinreb 1987).

Nevertheless, it is false that Finnis asserts that normative issues are self-evident (Finnis 1977, 1980; George 1988, 1994). From Finnis’s viewpoint (1977, 1980), only the basic goods and the principles of practical reasonableness are self-evident. Accordingly, these reasons only provide the most basic premises for moral arguments and not the conclusions (Finnis 1980; George 1988, 1994). In contrast with basic values and principles of practical reason, normative problems are syllogistically demonstrable. Therefore, Finnis’s account of normative issues is supported by an argument, not by self-evidence. Thus, arguing that Finnis contends that normative issues are self-evident is false.

Another criticism linked to self-evidence is that assuming that the basic goods are self-evident is unsatisfactory due to the fact that the only propositions for which there is evidence are the empirically observable aspects of the world. “Values and methodological requirements just cannot be objective because they are not objects, not part of the stuff of reality” (Harris 1981, 732). In addition, the evidence for these propositions has to rely on the data of the senses. Thus, according to this view, it is necessary to have these data from the senses to have evidence for something (Harris 1981). In fact, when a good is considered self-evident, there is no direct argument available to support it, because it is not derived from any premise; hence, this can be considered an implausible justification of the basic goods (Hittinger 1987; Weinreb 1987). Consequently, natural law cannot provide an adequate account of normativity because the argument is constructed on the grounds of an implausible assumption, namely, the self-evidence of basic goods; for if it is based on an implausible assumption; it cannot be used as guidance for action. In short, self-evidence is not a solid foundation for morals. Moreover, it can be challenged that if the basic goods are, in fact, basic (self-evident) there is no need to appeal to anthropological and psychological findings, as Finnis (1980) does. In other words, it may be contended that

the fact that Finnis appeals to speculative inquiry, as anthropological and psychological findings, demonstrates that Finnis understands that his theory is vulnerable to sceptics. Thus, from this viewpoint, the fact that Finnis supports his theory with speculative knowledge is a symptom of the weakness of his theory (Hittinger 1987).

In order to answer this criticism, three comments can be made. First, if one agrees with the methodology used and the content of the basic goods, then the problem whether the basic goods are self-evident or not is of little relevance to purposes of practical decision making (Harris 1981). In other words, if one agrees with the fact that Finnis's conception of practical reasonableness is one which is convincing and that his conception of basic goods is correct, then if one is to make practical decisions it does not matter whether it is objectively the case that the basic goods are self-evident or not (Harris 1981).

Second, the use of speculative knowledge by Finnis is not a symptom of weakness in his theory (George 1988, 1994; Boyle, Finnis & Grisez 1987b). Finnis uses findings because they can be effective in rebuttal. In other words, they help to remove any particular doubt that one may still have about the basic goods. For example, if some findings demonstrate that all societies have a form of friendship, this reinforces the idea that friendship is a basic good. If this was not the case, *i.e.*, if the findings found that friendship was unknown in many cultures, then it would be doubtful that friendship was self-evident and that it was a form of human fulfilment (George 1988; Boyle, Finnis & Grisez 1987b). Hence, the use of anthropological and psychological data does not establish self-evidence, but it removes questions that may remain about self-evidence. Therefore, as Finnis asserts his appeal to speculative knowledge is only "[...] an aid in answering our own present question [...] an assemblage of reminders of the range of possibly worthwhile activities and orientations open to one" (Finnis 1980:82).

Third, using self-evidence as grounds to morality is not a less solid approach than using facts from the world, *i.e.*, empirical data. According to George (1994), if one cannot understand that, for example, pursuing knowledge is good for its own sake, one cannot be convinced by an argument based on natural facts that demonstrate that it is natural to human beings to pursue knowledge either. Furthermore, if it is the case that one cannot grasp the intelligible point that pursuing knowledge is a good by its own sake, one "[...] lacks the rational warrant for judging these goods to be reasons for action" (George 1994, 37).

Taking these three comments into consideration, it can be contended that the use of self-evidence by Finnis does not make his theory weaker. Self-evidence is not an implausible approach to human goods (George, 1994; Finnis, 1980). Consequently, Finnis's theory is solid and can be used as groundwork for morals.

However, self-evidence can also be criticised from another perspective. It can be contended that due to the fact that Finnis's theory is not based on facts of human nature, then his theory cannot support natural law either because it is not a natural law theory (Hittinger 1987; Veatch 1981; Weinreb 1987). In other words, basing the theory in self-evidence rather than in facts implies that there is no connection with human nature; consequently, if there is no connection with human nature, then it cannot be a natural

law theory (Hittinger 1987; Veatch 1981; Weinreb 1987). Thus, owing to the fact that Finnis's theory of natural law is "without nature", then natural law cannot be defended on the grounds of his theory. In short, Finnis's theory has an "[...] absolute independence of ethics [...] to a knowledge of nature [thus], the principles of morals are not thought of as being in any sense principles of being or nature at all" (Veatch 1981, 256).

Nevertheless, it is false that Finnis's theory is not based on human nature. The criticism just explained assumes that the fact that basic goods and moral norms are not inferred from human nature implies that Finnis's theory has no grounds on nature. However, the first premise does not necessarily imply the second one. As mentioned above, the basic goods are located in the good of human persons (Boyle, Finnis & Grisez 1987a). Hence, Finnis's theory is not detached from nature because a basic good can only be considered as such if it is human fulfilling, *i.e.*, if it can provide a reason for human action (Finnis 1980; George 1994). In fact, Finnis argues that if human nature was different, then also would be the basic goods. Thus, the seven basic goods are only basic goods because they are intrinsic aspects of human well-being. Therefore, the basic goods are not detached from nature because they are only so because they realise human fulfilment and well-being (Finnis, 1980, George 1994). Thus, Finnis's theory is supportive of natural law because it is not a theory of natural law "without nature."

Moving now to the final criticism, it is contended that there is a considerable gap between the basic goods that Finnis selects and what individuals usually consider to be goods (Smith 1997). As a consequence, Finnis's selection of human goods does not match with individuals' common considerations of what good is. In particular, individuals usually consider pleasure a good for its own sake and Finnis does not consider it a good. This gap may indicate that Finnis does not provide an accurate conception of goods for human persons. Moreover, it is incomprehensible that Finnis considers that individuals desire to experience various pleasures and at the same time excludes pleasure from the basic goods (Garet 1996). In short, there seems to be a gap between people's considerations about goodness and Finnis's list of basic goods. In particular, pleasure is usually considered to be a good and Finnis excludes it from basic goods (Smith 1997). Hence, the exclusion of a pleasure which is usually considered to be a good may indicate that Finnis's account of basic goods is an inaccurate conception of goods for human persons. As a result, if Finnis's account of natural law does not match with individuals' considerations, this may be a symptom that Finnis's theory does not provide an adequate account of normativity. This is due to the fact that if, as Finnis argues, the basic goods are located in human persons, and there is a mismatch between what good for human persons is and Finnis's theory, then his account of natural law cannot provide an adequate account of normativity.

Bearing this criticism in mind, as Smith (1997) only focuses on pleasure, the response to this criticism will also focus on pleasure. Thus, although it can be argued as a response that pleasure may seem, *prima facie*, a basic good, a careful analysis demonstrates that pleasure is not a good for its own sake (Nozick 1974). Nozick's thought experiment (1974) about an experience machine illustrates this point.

Suppose scientists made a machine that would give one any desired experience. During this experience one is floating in a tank, with electrodes attached to the brain. Suppose further that one after having the experience with this machine has the possibility to decide whether to be plugged to this machine or to live a real life. According to Nozick (1974), one would prefer the second option for three reasons. First, one does not want just to have the artificial experience of doing some things; rather one wants to, in fact, do them in reality. Second, one wants to be a certain kind of person, rather than an 'indeterminate blob' as one are when floating in the tank. Third, the experience with the machine is a man-made reality and there is no actual contact with the real world (although, one can experience as if it was a real world). Hence, due to the fact that one prefers to live a real life, in a real world with real pursuit of values rather than an artificial man-made reality in which there is no actual contact with deeper reality, one would prefer not to be plugged to the machine (Nozick, 1974).

Taking this into consideration, it can be contended that having the experiences is not everything that matters (Nozick 1974). Hence, pleasure cannot be something good for its own sake. For if it was, plugging to the machine would be more desirable than a real life. Therefore, despite the fact pleasure may seem, *prima facie*, a basic good, this idea is an illusion. Therefore, as Smith's claim (1997) is that the absence of pleasure indicates that Finnis's list of basic goods is not consistent with what individuals usually accept as a good and hence the list is inaccurate, it can be responded that the pleasure example is false and, thus, Finnis's list is not inaccurate.

III. CONCLUSION

Finnis's theory of natural law was discussed in this paper. More precisely, it was analysed whether Finnis's account of natural law can provide an adequate account of normativity or not. Finnis's theory is based on two inventories, namely, seven self-evident human goods and nine principles of practical reasonableness. These two together constitute the principles of natural law and are a consistent groundwork to make moral judgments (Finnis 1980). Four criticisms to this account of natural law were assessed in this paper. First, law is not only too general but the methodology is not accurate (Hittinger 1987; Nielsem 1991; Weinreb 1987). It was argued that Finnis's theory does in fact provide a consistent groundwork to make ethical decisions, if the basic goods and principles of practical reasonableness are accurately understood (Finnis 1980; George 1994; Harris 1981). Second, self-evident principles are an implausible assumption about basic goods (Hittinger 1987, Weinreb, 1987). In response to this criticism, it was contended that 1) the self-evidence of the principles is irrelevant to purposes of practical decision, if one agrees with the content of the basic goods and the methodology used by Finnis (Harris 1981); 2) the fact that Finnis uses speculative knowledge to support his theory is not a sign of the weakness of his theory; the use of speculative findings is due to the fact that they are effective in rebuttal (George 1988; Boyle, Finnis & Grisez 1987b); 3) using self-evidence as

an argument is as consistent as using empirical data (George 1994). Third, Finnis's theory of natural law is not sufficient to demonstrate that natural law is a ground for morality because his theory is not about natural law (Hittinger 1987; Veatch 1981; Weinreb 1987). It was demonstrated that this argument is based on a false premise, namely, that Finnis's theory is not based on human nature. The fact that Finnis does not derive his basic goods from facts does not necessarily imply that his theory is not based in human nature. This is due to the fact that the basic goods are so because they are intrinsic aspects of human well-being. Fourth, Finnis fails to include one value that is usually accepted as good for its own sake, namely, pleasure (Smith 1991). In order to answer this question, Nozick's thought experiment was outlined. This thought experiment demonstrates that despite the fact that *prima facie*, pleasure seems to be a basic good, after a careful analysis, it is concluded that it cannot be a good for its own sake, *i.e.*, a basic good (Finnis 1980; Nozick 1974).

Taking this into consideration, it can be concluded that the criticisms raised against Finnis's natural law theory can be refuted. In contrast, it can be contended that Finnis's theory is a consistent defence of the normativity of natural law.

lccmr1984@gmail.com

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