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## CONSUMPTION, DEVELOPMENT AID, AND NATURAL LAW

Gary Chartier

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# CONSUMPTION, DEVELOPMENT AID, AND NATURAL LAW

Gary Chartier\*

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### I. Introduction

The issue of aid to the global poor has rightly claimed increasing attention on the political and cultural agendas of the world's developed societies.<sup>1</sup> Proposals for debt relief, like Jubilee 2000,<sup>2</sup> are only among the most visible attempts to increase the resources available to the world's poorest people, most of them women and children. In this Article, I sketch an argument for a substantial commitment of resources by developed countries to the eradication of global poverty—an argument rooted in the so-called "new classical natural law" theory (NCNLT). The philosophers Germain Grisez and Joseph Boyle, Jr. and the legal theorists John Finnis and Robert P. George have pioneered a revival of the moral, political, and legal thought of Thomas Aquinas. These "new classical natural lawyers"<sup>3</sup> (hereinafter, clumsily, NCNLs) have sought to articulate a version of natural law thinking that is uncompromising in its support of traditional moral positions but also analytically rigorous and responsive to current philosophical concerns. It is clearly relevant to the problem of public assistance by developed to less developed countries.

I begin, in the Introduction, by emphasizing the importance of framing this commitment in moral and not only pragmatic terms. I consider one possible grounding for such a commitment, which I call the "Singer-Unger thesis." Then, I lay the groundwork for my elucidation of the NCNLT as an alternative source of support for an individual and collective moral duty to support relief and development efforts (hereinafter, clumsily, DRD).

In Part II, I explain the basics of the NCNLT. I explain briefly how its proponents understand basic human goods and highlight relevant features

<sup>1</sup> See, e.g., JEFFREY SACHS, *THE END OF POVERTY* (2005) (setting forth ideas on ending poverty around the world); but cf. WILLIAM EASTERLY, *THE WHITE MAN'S BURDEN: WHY THE WEST'S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD* (2006) (discussing various reasons why the Western world's attempts to provide humanitarian aid fail).

<sup>2</sup> See generally Alon Segev, *Investment: When Countries Go Bust: Proposals for Debtor and Creditor Resolution*, 3 *ASPER REV. INT'L BUS. & TRADE L.* 25, 68, 77 (2003); David L. Gregory, *From Pope John Paul II to Bono/U2: International Debt Relief Initiatives "in the Name of Love,"* 19 *B.U. INT'L L.J.* 257, 258, 268 (2001); Soren Ambrose, *Social Movements and the Politics of Debt Cancellation*, 6 *CHI. J. INT'L L.* 267, 272–75 (2005); Eric A. Friedman, *Debt Relief in 1999: Only One Step on a Long Journey*, 3 *YALE H.R. & DEV. L.J.* 191 (2000).

<sup>3</sup> Cf. Steven Macedo, *The New Natural Lawyers*, *HARV. CRIMSON*, Oct. 29, 1993, at 2 (discussing the relationship between the principles of justice and morality). The proponents of the position prefer "new classical natural law" to "new natural law" as a label for the focus of their position.

of their conception of practical reasoning. Then, I examine their conception of private property, before noting key elements of their understanding of distributive justice and attempting to suggest how this understanding follows from their moral theory. Finally, I note their rejection of the Singer-Unger thesis and explain how this flows from their account of property rights and justice in distribution.

In Part III, I explore the contours of the NCNLs' alternative to the Singer-Unger thesis. I consider the meaning of *genuine need* as a criterion of distribution, since the NCNLs suggest that private consumption in excess of genuine needs is unjust and that unneeded resources should be redistributed. I examine the NCNLs' norms for consumption, including criteria for distributive justice derived from the Golden Rule and the requirements of commitments and vocations.

In the Conclusion, I recap my analysis of the NCNLs' position. I suggest that a DRD understood as within the terms of the NCNLT can provide a morally attractive basis for significant public financial assistance to less-developed countries, as long as it is clear how to operationalize the NCNLs' norms.

#### A. *The Importance of Moral Grounding*

Arguments for global financial assistance are multiple. In an ironic reversal of the claim made by proponents of "trickle-down" economics that "a rising tide lifts all boats," advocates of international aid who wish to appear hard-nosed regularly note the positive consequences for developed nations of the substantial reduction or elimination of poverty.<sup>4</sup> All countries will be productive participants in international trade, with healthy and educated populations able to contribute more productively than poor and illiterate ones to the global growth of prosperity. Global economic well-being will minimize the occurrence of economically driven conflicts between rich and poor countries, and thus lead to an increase in stability and security. The absence of the economic pressures exerted by poverty will eliminate a stimulus to ethnic, cultural, and religious conflict—conflict with the potential to spill into the international arena. The eradication of poverty will also remove an important impetus to environmental degradation by poor countries

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<sup>4</sup> Cf. Samuel E. Goldman, Comment, *Mavericks in The Market: The Emerging Problem of Hold-Outs in Sovereign Debt Restructuring*, 5 UCLA J. INT'L L. & FOR. AFF. 159, 161 n.4 (2000) (detailing reasons that the Americans should be concerned with developing world debt).

that may find it difficult or impossible to survive except by exploiting nonrenewable resources.

It is surely in the best interests of developed societies to promote the economic well being of people around the world. Although the benefits deriving from global economic uplift are long-term. Over the short-term, serious responses to global poverty may well require belt-tightening in the developed world.<sup>5</sup> Such belt-tightening will be particularly problematic politically if it is—as it likely must be—undertaken as a matter of public policy.

Private donations will certainly make a difference, as will piecemeal policy changes like those involved in programs of debt relief. Changes in trade relations—in particular, the elimination of subsidies and tariffs—may substantially enhance the well-being of producers in less developed countries. Schemes like the Tobin Tax could doubtless also provide significant revenue for international development programs.<sup>6</sup> However, developed countries will likely need to employ general tax revenues to address the problem of global poverty if sufficient resources are to be generated and if the resultant burdens are to be fairly shared. Also, the necessary societal commitments will likely be sustainable only if those required to fund them are confident in their moral validity.

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<sup>5</sup> Perhaps not—perhaps meeting the problem of the poor will turn out to be profitable for developed countries even in the short term. Cf. STUART L. HART, *CAPITALISM AT THE CROSSROADS: THE UNLIMITED BUSINESS OPPORTUNITIES IN SOLVING THE WORLD'S MOST DIFFICULT PROBLEMS* (2005) (highlighting numerous approaches that global corporations could take in utilizing the power of the lower class towards transforming the global economy through disruptive innovations and sustainable industries); C. K. PRAHALAD, *THE FORTUNE AT THE BOTTOM OF THE PYRAMID: ERADICATING POVERTY THROUGH PROFITS* (2005) (advancing a new approach based on considerable case studies that demonstrates how large corporations can use the untapped resource of the "bottom of the pyramid class" toward considerable profit gain).

<sup>6</sup> See Myron Frankman, *Beyond the Tobin Tax: Global Democracy and a Global Currency*, 581 ANNALS 62 (2002) (explaining the original purpose of the Tobin Tax on foreign exchange transactions—to discourage speculative international financial transactions—and stating that if the tax were successful it could generate "fabulous sums" for international development); William R. White, Note, *The Tobin Tax: A Solution To Today's International Monetary Instability?*, 1999 COLUM. BUS. L. REV. 3 (1999) (stating that one of the by-products of the 1% Tobin Tax on all roundtrip currency transactions would be to raise substantial revenue that could be used by individual nations or to fund "domestic or multilateral political and economic activities"); Geoffrey G. B. Brow, *The Tobin Tax: Turning Swords into Plowshares?*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 345 (1998) (stating that one unintended benefit of the Tobin Tax would be its revenue raising ability, the results of which could go to international economic development funds, the United Nations, etc.); Amy Youngblood Avit, *Saving The World One Currency at a Time: Implementing the Tobin Tax*, 80 WASH. U. L. Q. 391 (2002) (stating that a benefit of the Tobin Tax is that the proceeds of the tax could be used by: (1) individual countries for national use if the countries themselves implemented the tax; (2) that the proceeds could fund international efforts to alleviate poverty; or (3) the proceeds could be distributed directly to developing nations in the form of foreign aid if the tax was implemented on a global basis).

Such commitments will have greater moral weight if individuals in developed societies are themselves responsible for contributing meaningfully to relief and development efforts. This is simply a special case of the general point that the moral legitimacy of redistributive (which is to say, almost all) taxation is most evident if it is viewed as a way of fulfilling the responsibilities taxpayers already have.<sup>7</sup> A crucial step in justifying public programs of resource allocation to development and relief efforts will thus be the demonstration that such individual duties obtain.

### B. The Singer-Unger Thesis

One readily available moral basis for a DRD is provided by what I label the "Singer-Unger" thesis, defended most visibly by Peter Singer and Peter Unger.

Singer assimilates a DRD to the more widely acknowledged moral duty to rescue. If I have a moral obligation to save a drowning child—presuming the only cost is, say, damage to my new suit—then, he argues, I must, by analogy, have a moral duty to save a poor child from starvation. This will be true as long as there are such children. Thus, it seems as if I should devote all of my resources to the relief of global poverty except when allocating them in other ways will be as or more productive of net global benefit.

Singer's programmatic statement remains his essay "Famine, Affluence, and Morality."<sup>8</sup> However, he has revisited the issue in a number of contexts. In the first edition of *Practical Ethics*, while declining to offer a general norm for individual donors, he suggested that readers persuaded by his argument *advocate* everyone's payment of a ten percent tithe for development and relief purposes, with the understanding that the persuaded themselves would give a good deal more.<sup>9</sup> In the second edition, he simply

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<sup>7</sup> It is when owners will not employ for appropriate public purposes resources effectively held in trust for the public, or when they "cannot effectively coordinate their respective efforts" to do so, that the state "may rightly help them to perform . . . [their duties] by devising and implementing schemes of distribution." JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 173 (1981) [hereinafter *LAW*].

<sup>8</sup> Peter Singer, *Famine, Affluence, and Morality*, 1 *PHIL. PUB. AFF.* 229 (1972).

<sup>9</sup> See PETER SINGER, *PRACTICAL ETHICS* (1st ed. 1979) ("[W]e are obliged to give to the point at which by giving more we sacrifice something of comparable moral significance. What would follow . . . is that public advocacy of this standard of giving is undesirable. It would mean that in order to do the maximum to reduce absolute poverty, we should advocate a standard lower than the amount we think people really ought to give. Of course we ourselves—those of us who accept the original argument, with its higher standard—would know that we ought to do more than we publicly propose people ought to do, and we might actually give more than we urge others to give.")

defended a ten percent minimum for everyone without a large number of dependants, without actively arguing that a higher donation level should, in reality, be expected of most people.<sup>10</sup> In a *New York Times* magazine article, he attempted a different tack, suggesting that everyone adopt a budget equal to one identified as standard by The Conference Board, and give away anything in excess of this amount.<sup>11</sup> His own practice, he has made ruefully clear in multiple interviews, is to give away a mere twenty percent of his income.<sup>12</sup>

While Singer framed his initial argument in terms of thought experiments, his own philosophical predilections are consequentialist. Peter Unger has developed the case for an essentially unlimited global DRD at greater length.<sup>13</sup> Though Unger's arguments are intuitionist in form, their practical results are relatively indistinguishable from those of Singer's. Among his recommendations is that each reader give away 51% of her total wealth for development and relief purposes.<sup>14</sup>

The Singer-Unger thesis is not dependent on any particular theory of the sources of the global wealth gap. It does not stand or fall with the claim that global poverty results from the abusive behavior of rich states. Whatever the sources of poverty, for Singer and Unger, it is the responsibility of those with resources to remedy it.

Not surprisingly, the Singer-Unger thesis has evoked negative reactions. A number of challenges have been empirical in nature. Are there likely to be unforeseeable consequences even to thoughtful and well-intended relief efforts? How confident can we be about the uses to which

<sup>10</sup> See PETER SINGER, PRACTICAL ETHICS 246 (2d ed. 1993) ("Some families . . . will find 10 per cent a considerable strain on their finances . . . . No figure should be advocated as a rigid minimum or maximum; but it seems safe to advocate that those earning average or above average incomes in affluent societies, unless they have an unusually large number of dependents . . . ought to give a tenth of their income to reducing absolute poverty.").

<sup>11</sup> See Peter Singer, *The Singer Solution to World Poverty*, N.Y. TIMES, Sept. 5, 1999, § 6 (Magazine), at 60 (stating that the Conference Board, a nonprofit economic research organization, concluded that an American household with an income of \$50,000 annually normally spends approximately \$30,000 annually on necessities. Consequently, anything over \$30,000 is money spent on "luxuries," not necessities, and should therefore be donated "to help the world's poor").

<sup>12</sup> See, e.g., Debra Galant, *Peter Singer Settles in, and Princeton Looks Deeper; Furor over the Philosopher Fades Though Some Discomfort Lingers*, N.Y. TIMES, Mar. 5, 2000, § 14NJ, at 1 (describing how a Princeton graduate student followed "the Peter Singer[] example of donating 20 percent of his income to charity . . .").

<sup>13</sup> PETER UNGER, LIVING HIGH AND LETTING DIE: OUR ILLUSION OF INNOCENCE (1996).

<sup>14</sup> See *id.* at 138 (stating that many Americans are affluent enough to be able to rather harmlessly part with 51% of their assets. Additionally, the younger the donor, the more easily the donor can absorb the 51% donation, as the donor "can expect that, in the years soon upcoming, [the donor] will be enjoying a significant income, part of which is to be placed aside for . . . retirement").

donations will be put?<sup>15</sup> Garrett Hardin famously argued against a general DRD on the grounds that it was not ecologically sound to keep all of the earth's population alive.<sup>16</sup> Robert Goodin<sup>17</sup> and Paul Gomberg<sup>18</sup> have made the case that what is required is not personal contributions to development and relief efforts but rather participation in political advocacy efforts designed to bring about society-wide policy changes.<sup>19</sup> R. M. Hare, Singer's teacher at Oxford, has also argued that, precisely on consequentialist grounds, few of us should aspire to saintly behavior (a category in which he clearly includes living up to Singer's proposed mandate).<sup>20</sup>

Such empirical arguments are likely to be interminable. As motivators of political action, they suffer from the same difficulties as appeals to collective self-interest: the future is simply too uncertain. Further, the public does not tend, as a rule, to reason about moral matters in consequentialist terms. In any case, broadly consequentialist arguments

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<sup>15</sup> Cf. David Schmitz, *Islands in a Sea of Obligation: Limits of the Duty to Rescue* 3–7 (Independent Institute Working Paper 18; 2000) [hereinafter *Islands*], [www.independent.org/pdf/working\\_papers/18\\_islands.pdf](http://www.independent.org/pdf/working_papers/18_islands.pdf) (last visited Jan. 31, 2006) (on file with the Washington and Lee Journal of Civil Rights and Social Justice) (stating generally that people are more likely to provide assistance in the case of a roadside emergency than in the case of a third world famine. Some of the potential donors' apprehension for contributing to famine in third world countries stems from prior mishaps such as money sent to Somalia for aid that was misappropriated and instead used to purchase guns, and grain sent to aid India that was infested with plague-carrying rats). Schmitz directs readers to Robert Hanna, *Must We Be Good Samaritans*, 28 CAN J. PHIL. 453 (1998).

<sup>16</sup> See Garrett Hardin, *Lifeboat Ethics*, in ENVIRONMENTAL ETHICS: READINGS IN THEORY AND APPLICATION 356 (Louis Pojman ed., 1974) (describing the "lifeboat" theory, which states that it is unreasonable and harmful to try to help everyone, as resources are necessarily finite); Garrett Hardin, *Living on a Lifeboat*, 24 BIOSCIENCE 561–66 (1974) (using the lifeboat ethics model to characterize international aid efforts, or "do-gooding," as ultimately harmful to the survival of mankind).

<sup>17</sup> See ROBERT E. GOODIN, PROTECTING THE VULNERABLE: A REANALYSIS OF OUR SOCIAL RESPONSIBILITIES (1985) (discussing various "special responsibilities towards our families, friends, clients, compatriots and so forth" and analyzing various cases, which suggest that it is "the vulnerability of the beneficiary rather than any voluntary commitment per se on the part of the benefactor which generates these special responsibilities"). Cf. Robert Goodin & Phillip Pettit, *The Possibility of Special Duties*, 16 CAN. J. PHIL. 651, 673–74 (1986) (addressing meta-duties and the relevancy of political action to meet those duties).

<sup>18</sup> See Paul Gomberg, *The Fallacy of Philanthropy*, 32 CAN. J. PHIL. 29, 61–65 (2002) (concluding that the application of the duty to aid to the need to end poverty is incorrect, but that rather the need to end poverty calls for larger scale solutions that emphasize the "common struggle").

<sup>19</sup> Even if one must choose between the two, however, one might still reasonably note that the needed investment of time and resources in political advocacy will be as overwhelmingly demanding, if justified in the same way, by analogy with the moral duty to rescue, as the needed direct investment in relief and development efforts.

<sup>20</sup> See R. M. HARE, MORAL THINKING: ITS NATURE, LIMITS, AND POINT 200–01 (1981) [hereinafter THINKING] (stating "it would be detrimental to nearly everybody if those who are able to be saints failed to become such, according to their capacity, "because many will never be able to accomplish such stringent principles. It is better left to each individual to aspire to the level of saintliness of which he or she is likely to be capable of achieving).



about these matters suffer from the in-principle difficulties that beset all forms of consequentialism.<sup>21</sup>

### C. *The New Classical Natural Law Theory as an Alternative*

I want here to examine the NCNLs' provocative non-consequentialist attempt to delineate the contours of a DRD. Their perspective is particularly interesting because it features *both* an unequivocal rejection of consequentialism and of the stance of Singer and other consequentialists regarding a DRD, *and* a clear commitment to the existence

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<sup>21</sup> For criticisms of consequentialist approaches, *See, e.g.*, ALASDAIR C. MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 61–63, 67–68, 185 (2d ed. 1984) (stating that the polymorphous character of 'pleasure' and 'happiness' renders those concepts useless to the ideology of the greatest happiness of the greatest number of people); LAW at 111–19 (1980) (explaining the consequentialist approach of choosing the act that will yield the greatest net good on the whole and stating that, in the long-run, it is "senseless" because what is 'good' is subjective, and it is futile to attempt to measure things that differ in kind and degree: "[I]t is senseless to try to sum together the size of this page, the number six, and the mass of this book"); JOHN M. FINNIS, *FUNDAMENTALS OF ETHICS* 80–108 (1983) [hereinafter *ETHICS*] (positing that the related theories of utilitarianism, consequentialism, and proportionalism pose a "threat to ethics" as they are impracticable rationalizations that operate separately from any independent moral standard); JOHN M. FINNIS, JOSEPH M. BOYLE, JR., GERMAIN G. GRISEZ, *NUCLEAR DETERRENCE, MORALITY, AND REALISM* 177–296 (1987) (comparing and contrasting consequentialist arguments for and against the deterrent of nuclear war, and how this compares to common morality's norm forbidding the killing of the innocent); GERMAIN G. GRISEZ & RUSSELL SHAW, *BEYOND THE NEW MORALITY: THE RESPONSIBILITIES OF FREEDOM* 111–14, 131–33 (3d ed. 1988) [hereinafter *MORALITY*] (comparing utilitarianism, a form of consequentialism, to situationism, in which the utilitarian problem of defining the 'greatest good' is amplified by the moral values of whomever is defining the situation); DAVID S. ODERBERG, *MORAL THEORY: A NON-CONSEQUENTIALIST APPROACH* 65–76, 97–101, 132–33 (2000) (contrasting the incompatibility of rights and the principle of double effect with Peter Singer's consequentialist moral theory); NEL NODDINGS, *CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION* 86–87, 151–54 (1984) (contrasting reciprocity and caring against Peter Singer's consequentialist arguments); ALAN DONAGAN, *THE THEORY OF MORALITY* 172–209 (1977) (comparing and contrasting Hebrew-Christian common morality with consequentialism and utilitarianism); BERNARD A. O. WILLIAMS, *MORALITY: AN INTRODUCTION TO ETHICS* 89–107 (2d ed. 1993) (contrasting consequentialism's focus on an action's "tendency to lead to intrinsically good or bad states of affairs" with utilitarianism's focus on an action's tendency to promote happiness); Bernard A. O. Williams, *A Critique of Utilitarianism*, in *UTILITARIANISM: FOR AND AGAINST* 77–150 (1973) (criticizing utilitarianism which is defined by the author as a subset of consequentialism, a system of personal morality, and which includes the notion that an action's virtue is measured through its consequences); Stephen R. L. Clark, *Natural Integrity and Biotechnology*, in *HUMAN LIVES: CRITICAL ESSAYS ON CONSEQUENTIALIST BIOETHICS* 58–76 (Jacqueline A. Laing & David S. Oderberg eds., 1997) (arguing, in the context of developments in biotechnology, that rule-consequentialism is preferable to act-consequentialism but that even rule-consequentialism produces "unacceptable consequences for ordinary moral judgment"); Germain Grisez, *Against Consequentialism*, 23 *AM. J. JURIS* 21 (1978) (arguing "that 'greater good' and similar expressions necessarily lack reference in the contexts which consequentialist theories require that they have it"); GILBERT C. MEILAENDER, *FAITH AND FAITHFULNESS: BASIC THEMES IN CHRISTIAN ETHICS* 89–113 (1991); ROBERT MERRIHEW ADAMS, *FINITE AND INFINITE GOODS: A FRAMEWORK FOR ETHICS* 298–300 (1999) [hereinafter *GOODS*] (offering various critiques of consequentialism, such as how the continuous need to evaluate goals detracts from the necessary will power, determination and motivation to overcome obstacles).

of substantial duties to promote the common good. They maintain that ordinary acts of rescue are morally obligatory. They nonetheless regard the Singer-Unger thesis as indefensible, however. In Part II, I explain the basics of their theory and make clear why they reject this thesis.

## *II. The New Classical Natural Law Theory*

In Part II, I outline the key elements of the NCNLT, introducing the NCNLTs' understanding of "basic human goods" and fundamental practical principles, or "modes of responsibility." I examine the criteria of distributive justice the NCNLTs believe follow from their understanding basic goods and practical principles. I offer an overview of their understanding of private property, in particular. I also explain their response to the Singer-Unger thesis, highlighting the ways in which it might be thought to flow from their understanding of basic moral norms, distributive justice, and property rights.

### *A. The Basics of the New Classical Natural Law Theory*

Central to the new classical natural law theory is a focus on responsible moral action. An action is morally justifiable if it exhibits appropriate respect for the fulfillment of the actor and those affected by her actions. Human fulfillment can be specified with reference to a range of human goods—life and bodily well-being, speculative knowledge, practical reasonableness, self-integration, play, friendship, religion, and aesthetic experience. Responsible moral action is action open to all of these goods.<sup>22</sup>

The NCNLTs describe these goods as *basic*: every one is inherently valuable; none is reducible to one or more other goods, or to any imagined substrate—"happiness," say, or "pleasure." Due to the incomensurability of these goods as categories, and of individual instances of particular goods, the consequentialist injunction to maximize the good is in principle incoherent—since it depends on maximizing the sum of all relevant goods, or something similar—so that no variety of consequentialism can be viable.

Several principles of practical reason or "modes of responsibility"<sup>23</sup> govern "participation" by persons in these fundamental goods. The principle

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<sup>22</sup> An action can be open to all of the basic human goods even if it does not involve pursuit of these goods. It will be open just so long as the actor does not choose to treat any of the goods as if it were not fundamentally and inherently valuable.

<sup>23</sup> For different but compatible lists of these "modes of responsibility," see GERMAIN GRISEZ & RUSSELL SHAW, *BEYOND THE NEW MORALITY: THE RESPONSIBILITIES OF FREEDOM* 117–53 (3d ed. 1988). Several of Grisez' modes of responsibility are: (1) "[d]o not, in response to feelings, act or refrain from acting toward someone on the basis of a preference unless the preference is required by human

of practical reason most significant for the issue of the DRD is the NCNLs' distinctive version (or cluster of versions) of the Golden Rule. This principle mandates fairness, relative impartiality; it precludes "arbitrary preferences among persons."<sup>24</sup> Consider Grisez's most developed formulation: "One

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goods."; (2) "[d]o not act out of hostility to the detriment of any basic human good."; (3) "[d]o not be an individualist in acting for the sake of the good in response to feelings of enthusiasm or impatience."; (4) "Do not let feelings of inertia keep you from acting for the good."; (5) "[d]o not act on the basis of feelings of aversion except to avoid some real evil other than the tension of enduring those feelings."; (6) "[d]o not seek to satisfy emotional desires for their own sake but only as part of the pursuit or attainment of some intelligible good"; (7) "[d]o not choose and act for the sake of the experience of participating in a good in preference to the reality of doing so."; and (8) [d]o not let the attraction exercised by one instance of a basic human good lead you, in pursuing it, to act against another instance of a basic human good"). 1 GERMAIN G. GRISEZ, *THE WAY OF THE LORD JESUS: CHRISTIAN MORAL PRINCIPLES* 205–28 (1983) [hereinafter *PRINCIPLES*] (mentioning modes of responsibility). Grisez discusses other modes of responsibility in *PRINCIPLES*: (1) "[o]ne should not be deterred by felt inertia from acting for intelligible goods"; (2) "[o]ne should not be pressed by enthusiasm for impatience to act individualistically for intelligible goods"; (3) "[o]ne should not choose to satisfy an emotional desire except as part of one's pursuit and/or attainment of an intelligible good other than the satisfaction of the desire itself"; (4) "[o]ne should not choose to act out of an emotional aversion except as part of one's avoidance of some intelligible evil other than the inner tension experienced in enduring that aversion"; (5) "[o]ne should not, in response to different feelings toward different persons, willingly proceed with a preference for anyone unless the preference is required by intelligible goods themselves"; (6) "[o]ne should not choose on the basis of emotions which bear upon empirical aspects of intelligible goods (or bads) in a way which interferes with a more perfect sharing in the good or avoidance of the bad"; (7) [o]ne should not be moved by hostility to freely accept or choose the destruction, damaging, or impeding of any intelligible human good"; and (8) "[o]ne should not be moved by a stronger desire for one instance of an intelligible good to act for it by choosing to destroy, damage, or impede some other instance of an intelligible good"); LAW at 100–33 (detailing other modes of responsibility). Some of Finnis' modes of responsibility are: (1) "one must have a harmonious set of purposes or orientations . . ."; (2) "there must be no leaving out of account, or arbitrary discounting or exaggeration, of any of the basic human values"; (3) "we can add, to the second requirement of fundamental impartiality of recognition of each of the basic forms of good, a third requirement: of fundamental impartiality among the human subjects who are or may be partakers of those goods"; (4) "one must have a certain detachment from all the specific and limited projects which one undertakes"; (6) "having made one's general commitments one must not abandon them lightly . . . [and one] should be looking creatively for new and better ways of carrying out one's commitments . . ."; (6) "one [should] bring about good in the world (in one's own life and the lives of others) by actions that are efficient for their (reasonable) purpose(s)"; (7) "one should not choose to do any act which *of itself does nothing but* damage or impede a realization or participation of any one or more of the basic forms of human good"; (8) "favour[] and foster[] the common good of one's communities"; and (9) "one should not do what one judges or thinks or 'feels' all-in-all should not be done." ETHICS at 75 (describing other modes of responsibility). Finnis also states these modes of responsibility: (1) "have a harmonious set of orientations, purposes[,] and commitments; (2) "do not leave out of account, or arbitrarily discount or exaggerate, any of the basic human goods; (3) "do not leave out of account, or arbitrarily discount or exaggerate, the goodness of other people's participation in human goods"; (4) "do not attribute to any particular project the overriding and unconditional significance which only a basic human good and a general commitment can claim"; (5) "pursue one's general commitments with creativity and do not abandon them lightly; (6) "do not waste your opportunities by using needlessly inefficient methods, and do not overlook the foreseeable bad consequences of your choices"; (7) "do not choose directly against any basic human good"; (8) "foster the common good of your communities; (9) "do not act . . . against your best judgment about the implications for your own action of these requirements of practical reasonableness and the moral principles they generate or justify").

<sup>24</sup> LAW at 108.

should not, in response to different feelings toward different persons, willingly proceed with a preference for anyone unless the preference is required by intelligible goods themselves."<sup>25</sup> Consider also Finnis': "do not leave out of account, or arbitrarily discount or exaggerate, the goodness of other people's participation in human good."<sup>26</sup>

The Golden Rule does not preclude "reasonable self-preference." For "it is through *my* self-determination and self-realizing participation in the basic goods that I can do what reasonableness suggests and requires, *viz.* favour and realize the forms of human good indicated in the first principles of practical reason."<sup>27</sup> The goods of knowledge, play, aesthetic experience, religion, or friendship give one unlimited license to prefer some persons to others. But respect for the basic human goods channels our preferences and renders at least some of them non-arbitrary. So one "has no general responsibility to give the well-being of other people as much care and concern as one gives one's own; the good of others is as really good as one's own good, but is not one's primary responsibility, and to give one's own good priority is not, as such, to violate the requirement of impartiality."<sup>28</sup> Thus, there may be "reasonable discrimination in favour of myself, my family, my group(s) . . . ."<sup>29</sup> Respect for the basic human goods themselves may require discrimination between persons—in the interests of friendship, say, or play. Also, "an individual acts most appropriately for the common good . . . by performing . . . contractual undertakings, and fulfilling . . . other responsibilities, to ascertained individuals. Fulfilling one's particular obligations . . . is necessary if one is to respect and favour the common good . . . simply because the common good *is* the good of individuals, living together and depending upon one another in ways that favour the well-being of each."<sup>30</sup>

[The Golden Rule] by no means excludes all forms and corresponding feelings of preference for oneself and those who are near and dear (for example, parental responsibility for, and consequent prioritizing of, their own children). It excludes, rather, all those forms of preference which are motivated only by desires, aversions, or hostilities that do not correspond to intelligible aspects of the real reasons for action, the

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<sup>25</sup> PRINCIPLES at 220.

<sup>26</sup> ETHICS at 75.

<sup>27</sup> LAW at 107.

<sup>28</sup> *Id.* at 304.

<sup>29</sup> *Id.* at 108.

<sup>30</sup> *Id.* at 305.

basic human goods instantiated in the lives of other human beings as in the lives of oneself or those close to one's heart.<sup>31</sup>

An imaginary, "impartially benevolent 'spectator' would condemn some but not all forms of self-preference, and some but not all forms of competition . . . ."<sup>32</sup> At the same time, however, the Golden Rule offers "a pungent critique of selfishness, special pleading, double standards, hypocrisy, indifference to the good of others whom one could easily help . . . , and all the other manifold forms of egoistic and group bias."<sup>33</sup>

The Golden Rule is a *subjective* test. That is, its application requires the agent to ask what *she*, personally, would and would not find acceptable: "to apply the Golden Rule, one must know what burdens one considers *too great* to accept. This knowledge, constituting a pre-moral commensuration, cannot be a commensuration by reason."<sup>34</sup> One will simply need to rely on one's preferences here. When one does, one will not be engaged in "a rational and objective commensuration of goods and bads." However, "once established," a subjective commensuration based on one's preferences "enables one to measure one's options by a rational and objective standard of interpersonal impartiality."<sup>35</sup> Not everyone might regard a certain cost as too great to bear in particular circumstances. However, if *I* thus regard it, I cannot rationally impose it on others in those circumstances.

Is it fair to impose on others the risks inherent in driving at more than 10 mph . . . ? Yes, in our community, since our community has . . . *decided* to treat those risks and harms as *not too great*. Have we a rational critique of a community which decided to limit road traffic to 10 mph and to accept all the economic and other costs of that decision? . . . No, we have no rational critique of such a community . . . . [T]he decision to permit road traffic to proceed faster than 10 mph . . . was rationally underdetermined.

But we do have a rational critique of someone who drives at 60 mph but who, when struck by someone driving 45 mph complains that the speed is per se negligent . . . . And, in general, we have a rational critique of those who accept the benefits of this and other communal decisions but reject the correlative burdens as they bear on them and those in whom they feel interested.<sup>36</sup>

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<sup>31</sup> John Finnis, *Commensuration and Public Reason*, in INCOMMENSURABILITY, INCOMPARABILITY AND PRACTICAL REASON 227 (Ruth Chang ed., 1997) [hereinafter *Commensuration*].

<sup>32</sup> *Law* at 108.

<sup>33</sup> *Id.* at 107.

<sup>34</sup> *Commensuration* at 227.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 228.

While making sense of their view of impartiality is most significant for understanding the NCNLs' conception of the DRD, another principle of practical reason is particularly relevant as well—one which (in Finnis' formulation) enjoins both detachment and commitment. On the one hand, we ought not to absolutize our projects, so that they may be pursued at the expense of others' legitimate interests, or so that our sense of identity and self-worth stands or falls with their success or failure. On the other hand, however, we ought to be loath to abandon our commitments, not only to others but also to ourselves. To treat one's commitments lightly "would mean, in the extreme case, that one would fail ever to really participate in any of the basic values."<sup>37</sup>

### *B. The New Classical Natural Law Theory and Property Rights*

Property rights, for the NCNLs, are social conventions. They root their justification of these rights in two kinds of considerations. First, private property rights safeguard individual autonomy.<sup>38</sup> Second, such rights foster the efficient and creative use of "natural resources, and the capital resources and consumer durables derivable therefrom."<sup>39</sup> People's ownership of property ensures that someone in particular will be responsible for the management of particular things, and "the prospect of having something of their own motivates people to work, to invent, and thus to create wealth."<sup>40</sup> The rights created by a fair property system serve the appropriate purpose of giving "the private owner freedom to expend his own creativity, inventiveness, and undeflected care and attention upon the goods in question, to give him security in enjoying them or investing or developing them, and to afford him the opportunity of exchanging them for some alternative item(s) of property seeming to him more suitable to his life-plan."<sup>41</sup> Thus, the just function of a private property system "is to give the owner first use and enjoyment of it and its fruits (including rents and profits), for it is this

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<sup>37</sup> LAW at 110.

<sup>38</sup> Cf. 2 GERMAIN G. GRISEZ, *THE WAY OF THE LORD JESUS, LIVING A CHRISTIAN LIFE* 794–95 (1993) [hereinafter *LIVING*] (discussing the Vatican II's teachings on private property, including the necessity of some control over material things to achieve appropriate autonomy).

<sup>39</sup> LAW at 170.

<sup>40</sup> *LIVING* at 794.

<sup>41</sup> LAW at 172.

availability that enhances his reasonable autonomy and stimulates his productivity and care."<sup>42</sup>

While some system of private property will be morally required in many, perhaps most, circumstances, this is not because any particular property rights are pre-political and certainly not because any such rights are absolute. Rather, a system of property rights is justified to the extent that it serves the common good and may be limited to the extent that it does not.<sup>43</sup>

Distributive justice is a characteristic of actions rather than of states of affairs; individual actors, and not only the state, must respect norms of distributive justice. This does not mean that they are expected unilaterally to bring about just end-states. However, that they must acknowledge the just claims of others and just limits on their own rights. Thus, they will have good reason to support a system of private property rights, within limits, to accept it as legitimate, to take as their own the underlying reasons which make such a system reasonable, and to accept as appropriate the rights it confers on themselves as well as on others. At the same time, they will recognize that the system cannot necessarily be fine-tuned enough to address all questions of distributive justice. Thus, they must acknowledge that they will not, therefore, be able to conform their conduct to the norms of distributive justice simply by following the rules of the private property system that obtains in their society, even if those rules are themselves just.

Thus, Grisez rejects "the individualistic notion that, having earned money or come by it in some other legitimate way, people may keep it for themselves or do with it as they please," opting instead for the "more reasonable view that . . . possessing wealth entails the responsibility to see that it is used fairly to meet human needs . . ."<sup>44</sup> Similarly, Finnis maintains that "[t]he private owner of a natural resource of capital good has a duty in justice to put it to productive use or, if he lacks the further resources required to do so, to dispose of it to someone willing and able to do so."<sup>45</sup> He notes, too, that justice further precludes unproductive speculation, the hoarding of capital assets, the failure to maintain valuable assets, and the creation of monopolies and oligopolies, among other practices that preclude the fulfillment of the legitimate purposes of a private property regime.<sup>46</sup>

<sup>42</sup> *Id.* at 173.

<sup>43</sup> *Cf.* Gary Chartier, *Urban Redevelopment and Land Reform: Theorizing Eminent Domain after Kelo*, 11 *LEGAL THEORY* 363 (2005) (outlining an overall account of property rights indebted to, but differing significantly from, that advanced by Finnis).

<sup>44</sup> 3 GERMAIN G. GRISEZ, *THE WAY OF THE LORD JESUS: DIFFICULT MORAL QUESTIONS* 504 (1997) [hereinafter *QUESTIONS*].

<sup>45</sup> *LAW* at 172.

<sup>46</sup> *Id.* at 172–73.

As a result, Finnis judges that "beyond a reasonable measure and degree of such use for his and his dependants' or co-owners' needs, . . . [a property owner] holds the remainder of his property and its fruits as part . . . of the common stock."<sup>47</sup> Thus, "[f]rom this point, the owner has, in justice, duties not altogether unlike those of a trustee in English law." The owner may fulfill these duties "by investing his surplus in production of more goods for later distribution and consumption; by providing gainful employment to people looking for work; by grants or loans for hospitals, schools, cultural centres, orphanages, etc., or directly for the relief of the poor." In cases in which owners cannot or will not do this, the state "may rightly help them to perform them by devising and implementing schemes of distribution."<sup>48</sup> It is clear though, by implication, that the failure of the authorities to act does not absolve individuals of responsibility for acting in distributively just ways when they are able to do so.

### C. Distributive Justice and the Golden Rule

For the NCNLs, distributive justice is a characteristic of just actions, not of states of affairs. There is no algorithm that will determine definitively what actions will count as distributively just in a given situation. Several factors are relevant though, including *need*,<sup>49</sup> *function*,<sup>50</sup> *capacity*,<sup>51</sup> *deserts and contributions* (or *merit*),<sup>52</sup> and the *creation or anticipation and acceptance of avoidable risks*.<sup>53</sup>

We may reasonably see these criteria as reflecting the requirement of fairness embodied in the Golden Rule, sometimes in tandem with one or more of the basic goods. Thus, need, function, capacity, and risk acceptance can all reasonably be defended as norms of distribution in light of the Golden Rule. The use of deserts and contributions can be defended in this way as well, though the good of friendship, among others, will be relevant here as well. Thus, Grisez notes that "merit, need, and ability to contribute" are criteria which are "all . . . reducible to the Golden Rule."<sup>54</sup> Promises,

<sup>47</sup> *Id.* at 173.

<sup>48</sup> *Id.*

<sup>49</sup> *Need* here appears to mean something rather narrower than *genuine need*, as that is used elsewhere by the NCNLs. *Id.* at 174.

<sup>50</sup> That is, filling a particular societal or institutional role (firefighter, say, or surgeon). *Id.* at 175.

<sup>51</sup> That is, the ability to use something. Finnis' example is that flutes should go to flautists, not, say, trombonists. *Id.*

<sup>52</sup> That is, the extent or value to others of one's efforts. *Id.*

<sup>53</sup> *Id.* at 174–75.

<sup>54</sup> LIVING at 328.



contracts, and relationships of dependence will also acquire some of their moral force from the Golden Rule. The Golden Rule will provide additional support for a range of distributional criteria to the extent that they will play a valuable role at the systemic level in ensuring the efficient production and distribution of goods and services.

It is also relevant to the moral status of commitments: the making of commitments must itself be governed by the Golden Rule; otherwise, one could simply eliminate many or most of the obligations of distributive justice one might otherwise need to fulfill simply by making commitments of various sorts. Once made, however, a reasonable commitment clearly does affect one's distributional responsibilities. Keeping commitments to oneself and to others is a matter of respect for the good of self-integration, and keeping commitments to others is a requirement of fairness, and so of the Golden Rule, as well as of respect for the norm requiring not only detachment but commitment.

In light of a reasonable personal (*e.g.*, vocational, relational, educational) commitment I have made, it may be perfectly reasonable for me to treat, and, indeed, it may be patently unreasonable for me to fail to treat, certain basic values or certain possible instantiations of a single basic value as superior to others in their directive force (for me). Choosing in harmony with one's past reasonable commitments, and, thus, establishing or maintaining one's personal integrity . . . constitutes an important moral reason which often guides our choices between rationally grounded options.<sup>55</sup>

Actions fulfilling reasonable commitments responsive to the basic goods can be distributively just even though they do not treat all possible beneficiaries of one's actions equally.

#### *D. The New Classical Natural Law Theory and the Singer-Unger Thesis*

Finnis rejects what he takes to be a mischievous development in much recent moralizing, the notion that "everyone of us is responsible for everyone else in every way."<sup>56</sup> This notion, he observes, leads to the conclusion that, because "each person counts for one and only one," everyone must be "morally bound to devote his wealth and energy (which he might otherwise have devoted to the interests of himself, his 'dependants,' his own local and political communities, etc.) to the interests of the most

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<sup>55</sup> ROBERT P. GEORGE, IN DEFENSE OF NATURAL LAW 94 (1999) [hereinafter DEFENSE].

<sup>56</sup> LAW at 176.

disadvantaged persons whom he can find anywhere in the world, up to the point where his (marginal) sacrifice of wealth and energy would render himself and his 'dependants' worse off than those most disadvantaged persons. Any other use of one's wealth and energy is, on this view, simply unjust."<sup>57</sup>

He challenges this notion on two grounds. To the extent that it depends on consequentialist foundations, it should be rejected because consequentialism is itself incoherent and insupportable. The incommensurability of basic goods (both the goods as *categories* and individual *instances* of these goods), and the resultant non-viability of consequentialist moral reasoning, rules out any attempt to ground a Singer-Unger version of a DRD in a requirement that we optimize or maximize the good.

He also maintains that the principle that "each person counts for one and only one" "is not reasonable as a principle for the practical deliberations of anyone."<sup>58</sup> The specific duties of distributive justice which anyone has "depends essentially on what responsibilities he has, whether by virtue of his own voluntary commitments . . . or by virtue of his past or present receipt of benefits from another . . . , or by virtue of the dependence of others upon him . . . , or by virtue of a network of relationships of actual and potential interdependencies . . . ." <sup>59</sup> Thus, in fact, he maintains, "[o]f everyone it is true that, because of his promises, and/or his parenthood, and/or his debts of gratitude, and/or his relations of interdependence with or assumption of authority in relation to ascertained persons or communities, he cannot reasonably give equal 'weight,' or equal concern, to the interests of every person anywhere whose interests he could ascertain and affect."<sup>60</sup> Similarly, George underscores the NCNLT's support for the common-sense conviction

that one ordinarily has no moral duty to forgo one's ordinary pursuits, including playing golf, to devote oneself to life saving or to joining famine relief projects and other worthy lifesaving endeavors in far off places. Although he may very well have a moral duty to contribute money or goods in kind to the effort, and, perhaps, to pray for its success, a professional golfer who lives in Scotland does not violate the

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<sup>57</sup> *Id.* at 177.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 175.

<sup>60</sup> *Id.* at 177.

Golden Rule (or any moral norm) when he declines to abandon his career in order to, say, join the relief effort in Bangladesh.<sup>61</sup>

It is not the case that subsistence needs always have a first claim on one's resources: "For example, meeting in moderate ways the religious, moral, and cultural needs of one's own children takes priority over feeding someone else's, even if the latter are starving; parents are not free to be merciful at their children's expense."<sup>62</sup> Indeed, satisfying various types of needs "contributes in incommensurable ways to the well-being and fulfillment of persons," making the choice to meet any genuine need "the willing of at least some person's good . . . and the meeting of any one sort of genuine need is not in and of itself better and more loving than the meeting of another."<sup>63</sup> "We must make choices, opting for certain areas of concentration in preference to others, and doing so precisely as our particular contribution to the common life of commitment to human goods which we share with those with whom we live in community."<sup>64</sup>

Thus, "cultural centres" are appropriate recipients of one's surplus just as are the poor and charities serving them. Similarly,

[e]ven if the money you could donate to . . . [a development NGO] would save the lives of people who otherwise would die, you will not . . . [support a college] *at the cost of those lives* by giving the money to the college instead. You neither will have willed those people to die—for example, by choosing to kill them as a means to some other end—nor judged their lives of less worth than the benefits of . . . [the gift to the college]. You only will have reluctantly accepted their deaths as a side effect of promoting the other good. And, provided you can choose that other good fairly, you need not be unreasonable in choosing—not as better, but simply as the irreplaceable good it is.<sup>65</sup>

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<sup>61</sup> DEFENSE at 98. If one need not devote one's time exclusively to relief efforts, it does not seem plausible that one would need to devote one's resources to such efforts, either. George goes on: "Of course, the absence of a moral duty to abandon golf to go to Bangladesh does not entail the presence of a moral duty *not* to give up the good of playing golf in order to help save famine victims in Bangladesh. It may turn out that a choice either way is not only rationally grounded (and, therefore, not strictly arbitrary) but morally permissible (i.e., not excluded by any moral norm.)" *Id.* George observes that "[d]epending on the circumstances—in particular, on any special duties he might have as a father, husband, colleague, valuable participant in worthy local causes, etc.—we might commend (and even recommend) his going to Bangladesh as a supererogatory act." *Id.* at 101 n.22.

<sup>62</sup> QUESTIONS at 438.

<sup>63</sup> *Id.*

<sup>64</sup> MORALITY at 236.

<sup>65</sup> QUESTIONS at 438 (italics supplied).

Special ties to the college, the fact that a gift might memorialize a dead spouse, the fact that one's children may attend the college, and the fact that one might obtain a seat on the college's board of trustees as a result of the gift all might give one good reason to give to the college rather than the NGO,<sup>66</sup> and so could render one's choice to do so fair—consistent with the Golden Rule. While it will not, because it cannot, be determined by an incoherent injunction to maximize net good in the world, a DRD consistent with the NCNLT will be shaped and constrained by the norms of distributive justice.<sup>67</sup>

### *E. Conclusion*

The NCNLT focuses on reasonable participation in basic human goods—participation normed by modes of responsibility including the Golden Rule. The Golden Rule mandates fairness, but not a self-alienating impartiality. It grounds personal property rights, but at the same time justifies significant limits on those rights. Implicit in the Rule are norms of distributive justice, including need, function, capacity, merit, and risk acceptance. The Golden Rule and these criteria, together with the NCNLTs' understanding of basic goods and their resultant rejection of consequentialism provide the basis for the NCNLTs' rejection of the Singer-Unger thesis. For the NCNLTs, this thesis is mistaken because it implies a consequentialist duty to maximize the good and because it ignores the specific distributional responsibilities and options rooted in a satisfactory account of distributive justice. In Part III, I provide an account of a DRD elaborated in the context of an analysis of the new classical natural theory's understanding of distributive justice.

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<sup>66</sup> *Id.* at 439.

<sup>67</sup> On these norms, see LAW at 174–75 (stating that there are no "precise yardsticks" for assessing distribution). Although there are no "precise yardsticks," Finnis states that several criteria are important factors in weighing the question of just distribution: The primary criterion involves determining who in society needs the distribution for basic human needs; the second criterion involves function, and determining what "need[s] [are] relative not directly to basic human good but to roles and responsibilities in the community"; the third criterion is capacity, relative to both roles in communal enterprises and to opportunities for individual advancement; the fourth criterion is "deserts and contributions"; the fifth criterion is whether some parties have created or foreseen and accepted avoidable risks versus those who have neither created the risks "nor had the opportunity of foreseeing or of avoiding or insuring against them"; and the final criterion is determining what practical reasonableness requires of particular people in their dealings with other people, which can vary largely depend on several other factors.

### *III. Beneficence in the New Classical Natural Law Theory*

The NCNLs argue that we have a substantial duty of beneficence. We have no consequentialist duty to maximize the good (the injunction to do so is, recall, nonsense). However, we hold in trust, for the common good, the portion of our wealth which is not required to meet our needs. There is no obligation to target all of one's contributions to the worst-off. One does wrong, however, if one hoards wealth rather than using it in some way for the common good.

If the NCNLs' understanding of beneficence does provide a reasonably determinate account of an individual DRD, then it will, by implication, offer a reasonable basis for a morally defensible use of public resources to support aid to less developed countries. In Part III, I explore this understanding. The NCNLs' account of distributive justice explains why their theory does *not* require acceptance of the Singer-Unger thesis. Questions remain about just what their theory *does* require though.<sup>68</sup> I begin by noting specific casuistic judgments they seem inclined to make about individual consumption decisions. I go on to seek a plausible rationale for these judgments in light of their various observations about justice in distribution. I suggest that their approach is promising, but that it is not altogether clear how to operationalize their criteria in the needed way.

#### *A. Contours of the New Classical Natural Lawyers' Conception of Need*

For the NCNLs, need determines how much we may consume. It sets the maximum beyond which any expenditures of our resources must be justified by their contribution to the public good. "[B]eyond a reasonable measure and degree of . . . use for his dependants' or co-owners' needs, . . . [a property owner] holds the remainder of his property and its fruits as part (in justice if not in law) of the common stock."<sup>69</sup> What we do not need, therefore, we hold as a public trust.

Some examples drawn from the NCNLs' own comments on these matters offer a clearer sense of the contours of their conception of need.

- A vacation in the mountains or at the seashore would be appropriate, even if one at "a posh resort in the South

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<sup>68</sup> Finnis observes that "the problem of assessing the extent of one's responsibilities for the welfare of persons in other political communities . . . is one of the most difficult of all practical problems; and its resolution, by each of us, is constantly threatened by the pull of unreasonable self-preference, group bias, and lukewarmness about human good." *Id.* at 177.

<sup>69</sup> *Id.* at 173.

Pacific" that cost ten times as much as one of these would not be.<sup>70</sup> A skiing vacation is evidently, at least in principle, unproblematic.<sup>71</sup>

- An overly costly wedding will be an affront to social justice.<sup>72</sup> But a marriage celebration is worth spending money on, even if a "family's wedding celebrations . . . [need] not meet the material standards set by families financially better off than . . . [its own] or whose sense of values may be distorted."<sup>73</sup> A celebration can be valuable insofar as it honors parents and children, helps to bond family members, and serves, perhaps, to cement a marriage. Expenditure levels should be guided by consideration of these needs.
- Art should be privately funded;<sup>74</sup> and there is nothing in Grisez's comments on this topic to suggest that it should be privately purchased only for display in museums. Even if he does think this about high art, though he does not say so, he evidently regards the development of the modern novel as a worthwhile occurrence;<sup>75</sup> the novel can be a viable art form only if privately purchased, and novels are likely to be written only if novelists do something with their time other than working to make money they can give to others.
- Being a professional golfer seems to be a perfectly appropriate activity,<sup>76</sup> even though one's function will essentially be to provide entertainment to others.

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<sup>70</sup> See QUESTIONS at 808 (adding that: "Simplicity and self-denial indicate that one of the less costly alternatives is to be preferred").

<sup>71</sup> See DEFENSE at 94, 100 n.14 (comparing ski vacation packages, and stating that a ski vacation package that does not exceed the basic minimal cost of such package is acceptable).

<sup>72</sup> See LIVING at 750–51 (discussing how weddings can sometimes exemplify consumerism rather than serving the essential goods of marriage).

<sup>73</sup> See QUESTIONS at 176 (providing a helpful citation to a 1996 book by Denise and Alan Fields called *Bridal Bargains: Secrets to Throwing a Fantastic Wedding on a Realistic Budget*, which offers suggestions for reducing wedding costs).

<sup>74</sup> Cf. QUESTIONS at 839–44 (examining the question of whether morality should limit public funding of the arts, and discussing the NEA grants, in particular").

<sup>75</sup> See MORALITY at 196 ("[T]he greatest steps forward in the arts occur on those rare occasions when a whole new art form—for example, the modern novel—is elaborated and becomes available . . .").

<sup>76</sup> See DEFENSE at 95 (comparing and contrasting the dilemma of choosing from one of two options, both of which have intrinsic value. The first option is saving a child from drowning, referred to as the 'life' value, and the second option is to forego the rescue and continue one's golf game, also called the 'play' value. "In choosing between options in which competing basic values are involved, identify,

- Buying a turkey for Thanksgiving dinner is acceptable, but doing so with the expectation that one will ask for one's money back under a strict interpretation of a store's guarantee might be, thought not unfair, avaricious.<sup>77</sup>
- Computers can evidently be reasonably purchased.<sup>78</sup>
- Cosmetics can serve a useful purpose and using them doesn't seem to be in principle objectionable.<sup>79</sup>
- Regularly patronizing a high-end restaurant that features fine wines is immoral.<sup>80</sup> But it is evidently not the case that there are *no* occasions when patronizing such a restaurant would be wrong.<sup>81</sup>
- Even if establishments *devoted* to the consumption of *fine* wine may be morally troubling, there is nothing wrong with the production or consumption of wine, *per se*.<sup>82</sup>
- Gambling can be "chosen for a good reason and engaged in virtuously . . . ." <sup>83</sup>

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and choose the option which preserves or advances the weightier value." This implies that, at least in some circumstances, choosing golfing is acceptable).

<sup>77</sup> See QUESTIONS at 588 ("Even if taking advantage of the guarantee did not cheat the merchant, supposing you acted out of avarice what you did was incompatible with your responsibility as a participant in the business—along with its owners, employees, and so on—to cooperate for its common good.").

<sup>78</sup> See LIVING at 822 (addressing the materialist concerns over the purchase of computer equipment). Computer equipment is often purchased for the materialistic reasons, not because it can fulfill a positive function. Further, many people buy computer equipment that they do not know, nor do they learn, how to use. These concerns may be overcome by making informed purchases and by learning to use the equipment so that the purchase does not go to waste.

<sup>79</sup> See QUESTIONS at 265 ("Though makeup sometimes is a sign of vanity, its judicious use serves legitimate purposes other than trying to hide the signs of aging.").

<sup>80</sup> "Friends say [Robert P.] George is as comfortable in a three-star Paris restaurant as he is fishing in the Canadian wilderness . . ." Anne Morse, *Conservative Heavyweight: The Remarkable Mind of Robert P. George*, CRISIS, Sept. 2003, at 36–42, available at [http://www.catholiceducation.org/articles/catholic\\_stories/cs0051.html](http://www.catholiceducation.org/articles/catholic_stories/cs0051.html) (last visited Jan. 31, 2006). Perhaps George and Grisez simply disagree about the ethics of dining. Perhaps George frequents such establishments no more frequently than Grisez's analysis suggests is appropriate.

<sup>81</sup> See QUESTIONS at 490–95. (addressing the question of whether attractive people may be preferred for certain jobs and in doing so, stating "You describe your restaurant as an expensive one patronized by the affluent who, very likely, spend a good deal there on luxurious foods and fine wines. In operating your business, you must promote and thereby intend that sort of consumption. Can you honestly judge that all of it, or at least enough of it to make your business profitable, is morally justifiable? If not, you intend what is unjustifiable, and you need to repent and change the character of your business . . ."). Notice that Grisez, while he may come close to doing so, does not say the high-end restaurant should be shut down. If operating a restaurant entails promoting it, and promoting it is legitimate only if patronizing it is, then clearly patronizing restaurants in general is not morally troubling, even if high-end restaurants are morally problematic.

<sup>82</sup> Cf. QUESTIONS at 603 ("People who need not and do not intend the abuse of alcohol, however, may continue to promote and profit from its use, provided they do what they reasonably can to prevent and discourage abuse.").

- It is "a mistaken assumption that all recreational activity is a luxury."<sup>84</sup> And "everyone needs some recreation, and activities that really serve that purpose also serve other interests, such as gaining knowledge, having experiences valuable for their own sake, and exercising various skills." Further, money "spent traveling in less prosperous places also . . . [contributes to] the local economy and so, in a small way, help[s] to alleviate poverty, especially if one patronizes locally owned and operated businesses."<sup>85</sup>
- "[M]otion pictures and television" are "delightful in various ways,"<sup>86</sup> and there is nothing to suggest that people should not consume movies and watch television programs—something that obviously costs money—provided they employ critical judgment (which will vary with the age of the viewer).<sup>87</sup>
- Non-human animals purportedly have no rights, and thus are clearly not on a par with humans,<sup>88</sup> but it nonetheless may be appropriate for veterinarians to provide them with services.<sup>89</sup>

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<sup>83</sup> LIVING at 818–20; QUESTIONS at 839 (noting the possibility that some "people of modest means" might be able "rightly [to] gamble in casinos," while observing that "[t]he state justly refuses to facilitate, and even inhibit, many good things when that serves the common good," and thus implying that casino gambling could be a good thing for some of the people to whom he refers); *but cf.* QUESTIONS at 837–39 (arguing that legislators should not support the legalization of casino gambling when stating "[m]y contribution to the case against legalizing and licensing casino gambling is to argue that any legislator who supports it to gain tax revenue and/or attract tourists intends—and so is morally responsible for—immoral gambling.").

<sup>84</sup> QUESTIONS at 427.

<sup>85</sup> QUESTIONS at 427.

<sup>86</sup> LIVING at 709.

<sup>87</sup> See LIVING at 709 (stressing the active, not passive, role parents should play in regulating their child's exposure to motion pictures and television).

<sup>88</sup> See LIVING at 771–82 (explaining the misguided philosophical norm suggesting that animals have co-equal rights to human beings). *Cf.* STEPHEN R. L. CLARK, *THE MORAL STATUS OF ANIMALS* (1977) (explaining that "[a] burning cat is as agonized as any burning baby. Even where we do have reason to impute a lesser pain, yet pain is painful"). Also valuable are PETER SINGER, *ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS* (2d ed. 2002); TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* (1983); MARK ROWLANDS, *ANIMALS LIKE US* (2003); DANIEL A. DOMBROWSKI, *HARTSHORNE AND THE METAPHYSICS OF ANIMAL RIGHTS* (1988); JOHN L. HILL, *THE CASE FOR VEGETARIANISM: PHILOSOPHY FOR A SMALL PLANET* (1996); STEVE F. SAPONTZIS, *MORALS, REASONS, AND ANIMALS* (1987); STEPHEN R. L. CLARK, *ANIMALS AND THEIR MORAL STANDING* (1998).

<sup>89</sup> See QUESTIONS at 120–22 (providing further insight via a discussion of whether one should intervene when parents mistreatment their children).



- Purchasing "toys and games which will promote activities that benefit children"<sup>90</sup> is evidently an appropriate use of resources.
- Scholarly work in philosophy is a perfectly acceptable use for one's gifts,<sup>91</sup> even if this fails to meet anyone's subsistence needs.<sup>92</sup>
- Selling jewelry is evidently a morally appropriate activity, which must mean that promoting the sale of jewelry is appropriate—which must mean, in turn, that the purchase of jewelry is morally appropriate.<sup>93</sup>
- Sports teams deserve some support—at least for their community-building function<sup>94</sup>—which will obviously mean, in practical terms, providing them with financial support.
- Taking a pleasure cruise is an unjustified, and thus immoral, activity for which one should make restitution.<sup>95</sup>
- Though a face-lift would not be morally acceptable simply to conceal the effects of aging, and would be especially troubling because of its great cost, it might be justifiable if it helped to facilitate a marriage or aided a person in securing a job.<sup>96</sup>
- Travel and photography are, in principle, perfectly acceptable recreations on which to spend money.<sup>97</sup>

<sup>90</sup> LIVING at 708.

<sup>91</sup> See QUESTIONS at 29–33 (discussing whether a man should set out to be both a scholar and a priest).

<sup>92</sup> Who is to support the life of the scholar? Perhaps the scholar herself could pursue a life of scholarship while only her subsistence needs were being met. However, in a group in which everyone was occupied only in meeting basic needs, no one would be in a position to provide financial support for scholarly activity.

<sup>93</sup> See QUESTIONS at 623–26 (examining a broader question of whether someone, when buying used goods, may take advantage of the sellers' ignorance).

<sup>94</sup> Watching a sporting event involves the good of aesthetic experience as well as the good of friendship—and perhaps also the good of play, a fact Finnis and Grisez would not dispute.

<sup>95</sup> See QUESTIONS at 447–53 (evaluating the moral norms one should follow in tipping, and stating "[t]herefore, without presuming to criticize your Caribbean cruise, I suggest you examine your conscience about it.").

<sup>96</sup> See QUESTIONS at 265 (providing that even in this case, the face-lift would be morally acceptable only if necessary, and explaining that, since it would involve "surrendering to cultural pressures and reinforcing the biases that underlie them," the face-lift would never be merely optional). Cf. LIVING at 541–43 (discussing the balance of bodily integrity and health).

<sup>97</sup> See QUESTIONS at 427 (explaining *inter alia* that "For example, you might visit places in this country and abroad where you could gain firsthand experience of human misery, capture its images on film, and thus gather material to enclose in your letters or illustrate talks and/or articles intended to raise others' social consciousness.").

- While booking some night-club acts may be morally wrong, there's nothing wrong, in principle, with operating a night-club.<sup>98</sup> Entertainment serves legitimate purposes—presumably needs, given the nonjudgmental way Grisez discusses this topic—for its consumers: it "help[s] them to relax, to celebrate, to communicate with one another, and so strengthen[s] them and their relationships, and should send them back to their other responsibilities . . . more ready to fulfill them."<sup>99</sup>

*B. A Genuine Need as an Intelligible Good in Which One Reasonably Participates*

According to Grisez, *genuine* needs are ones which are "marked out by the basic human goods . . . . So *genuine need* refers not only to the basic necessities but to the less obvious yet real needs for religious, moral, and cultural goods."<sup>100</sup> Thus, "*genuine need* refers to more than the conditions for bare survival and professional expenses; it embraces everything to be used in living a morally good life, and so includes such things as a good education for . . . children, decent recreation, and appropriate gifts to relatives and friends . . . ."<sup>101</sup> "What *genuine* excludes are mere objects of emotional desire and anything that would be obtained, used, or enjoyed sinfully."<sup>102</sup> This suggests, then, that any authentic, intelligible good in which one participates reasonably will count as, in some broad sense, a need.<sup>103</sup> I suggest that reasonableness will be a function of (1) the

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<sup>98</sup> See QUESTIONS at 612 ("As the owner of the place, you have every right, not only morally but legally, to decide what you will and will not book; you are responsible for the tone of your place and have the right to be selective.")

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 436. Cf. LIVING at 801 (defining "genuine need" to include something more than that which is necessary for survival).

<sup>101</sup> *Id.* at 808.

<sup>102</sup> *Id.* at 436. Cf. LIVING at 801 (defining "genuine" to exclude goods that are procured or used sinfully).

<sup>103</sup> JOHN FINNIS, AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY, 191–93 (1998) [hereinafter AQUINAS]. Explicating the views of Aquinas, Finnis suggests a twofold categorization of need: basic needs common to all persons, and needs specific to one's social role or function. As long as role or function is understood broadly, to include not only one's occupation but also one's informal roles—as friend, say—this approach seems to make better sense of Finnis' position. The threshold past which one would be required to redistribute one's wealth, then, would be the threshold past which not only basic but also functionally related needs had been met. It remains difficult, though, to square this with everything Finnis says. Obviously, there is no meaningful sense in which it is strictly necessary to attend a salon concert by select musicians, which Finnis seems to think could be a reasonable target of expenditure (see

authenticity of the good in question (because an authentic good is inherently valuable, one has reason to pursue such a good that extends beyond "mere emotional desire"); (2) the consistency of one's pursuit of the good with the Golden Rule and other moral norms; and (3) one's commitments and vocation (consistency with the relevant norms, along with fidelity to one's commitments and vocation, would ordinarily be sufficient to ensure that one would not obtain, use, or enjoy the relevant good wrongly).

### 1. *The Authenticity of the Good in Question*

A good in which one seeks to participate must be authentic—one of the basic human goods. By contrast, an act designed to foster participation in an *illusory* good would not qualify as one in pursuit of a genuine need.

It is, of course, open to question what will count as an illusory good. While the NCNLs judge life and bodily well-being, speculative knowledge, practical reasonableness, self-integration, play, friendship, religion, and aesthetic experience to be authentic goods, they regard sensory pleasure and entertainment as lacking inherent value. This seems to me to be unduly restrictive.

The NCNLs are surely right that it would be irrational to understand friendship, say, as a device for producing a discriminable pleasurable sensation.<sup>104</sup> To the extent that there are pleasurable sensations associated with friendship, aesthetic experience, or any of the other basic goods the NCNLs identify, these sensations will be epiphenomenal—consequences of one's apprehension of real or apparent goods, not explanations or sources of these goods' value. To say that the basic goods are basic is to say that their value is not a function of something else, including pleasure. It does not follow that pleasurable sensations are not themselves good, however. Just because it is a mistake to treat friendship as if it were a means to pleasurable sensations—rather than realizing that, when we speak of the "pleasure of friendship" or of "taking pleasure in friendship," we're using talk of pleasure to signal our recognition of friendship's inherent worth—we need not conclude that pleasure lacks independent value. *Physical pleasure* seems to

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below, Part III, Sec. C). If it is not necessary that anyone do so though, then will wealth spent to make such concerts, and attendance at them, possible be mis-spent on Finnis' view? Obviously, no single instance of aesthetic experience will be necessary. The question, however, is whether a whole class of experiences is necessary? Could not the select musicians simply perform in large public settings, or make their work available on recordings? Perhaps Finnis' own view represents an advance here over Aquinas.'

<sup>104</sup> Cf. ROBERT C. SOLOMON, *ABOUT LOVE: REINVENTING ROMANCE FOR OUR TIME* (1988) (noting, on Aristotelian grounds similar to those defended by the NCNLs, that love is not a means of producing such pleasurable sensations as those often accompanying it, but that these feelings are, instead, characteristic accompaniments of love).

me (though I will not argue the case against the NCNLs here) to be an inherently valuable good, basic in much the same way aesthetic experience, speculative knowledge, or self-integration might be inherently valuable. This means that the pleasure of good food, sexual pleasure, the pleasure of smooth sheets or a deep massage, are all inherently valuable and can reasonably be sought for their own sake, not merely as means to some other end or by-products of the pursuit of some other goal.

The same is true of *entertainment*. Entertainment is an inherently subjective good in much the way that aesthetic experience is. That is to say, both, like pleasure, involve ineliminable reference to someone's consciously participating in them. I can participate in the good of life and bodily well-being without knowing it—when I am asleep, say, or comatose. I cannot have an aesthetic experience without being aware that I am doing so though—I wouldn't be having an experience at all. Entertainment is subjective in a comparable way.

Much of what we think of as entertainment will involve other goods. There will certainly be aesthetic qualities to an athletic performance; perhaps the spectators might be said in some sense to be participating in the good of play by supporting and cheering for their favored teams; watching sporting events is often a bonding experience for friends. However, it seems ultimately as if these analyses fail to capture what is phenomenologically the case regarding experiences of entertainment. If I watch a film, not to learn about a foreign culture, not to appreciate the director's art, not to provide an occasion for relaxed engagement with my partner, but simply to enjoy laugh-out-loud jokes or to relish the triumph of good over evil, or to enter an imaginatively conceived world, what I seek is not reducible to anything else but entertainment. There are different sorts of entertainment, and the entertaining is often mixed with other goods. It seems though, as if I am seeking something specifiable independently of these goods, that it is a coherent possibility to pursue entertainment for its own sake, and so to understand it as an inherent good.

For the NCNLs, physical pleasure is not a good—it is, at best, supervenient or epiphenomenal on other goods—and seeking it as an end in itself is self-mutilating. The same is likely true of entertainment (understood as I have viewed it here), since in both cases, for the NCNLs, one would be seeking subjective experience directly, in a way that turned the body into an instrument for the benefit of the conscious self. I will not attempt here to

explain why I find these counter-intuitive claims unpersuasive.<sup>105</sup> I note only, and obviously, that they *are* counter-intuitive—most people do, I think, regard physical pleasure and entertainment as worth pursuing for their own sake—and that rejecting them could meaningfully expand the range of goods someone might directly pursue with good reason, and thus the range of needs recognized by the NCNLs. Of course, recognizing this would not mean accepting all instances of the pursuit of physical pleasure or entertainment as appropriate—other moral norms, particularly those concerned with fairness and efficiency, would be crucially relevant.

In any case, a reconstructive critique of the NCNLs' specific conclusions regarding consumption would not stand or fall with judgments about the inherent worth of physical pleasure and entertainment: most consumption decisions do not need to be explained or justified with reference to pleasure or entertainment, not least because many of the consumption decisions people might make in pursuit of pleasure or entertainment are also made, at the same time, in view of other goods the NCNLs do regard as intelligible. Even if some consumption choices would be justifiable only if pleasure or entertainment were intelligible goods, enough other such choices are obviously explicable with reference to what the NCNLs themselves would regard as genuine needs.

## 2. Consistency with the Golden Rule and Other Moral Norms

The only expenditures ruled out in principle by the NCNLT will be those that involve attempted participation in illusory goods or the inefficient pursuit of real goods, or that are intentionally made in the interests of injustice. The fact that one is pursuing an authentic good does not entitle one to ignore other moral norms.<sup>106</sup> A pair of earrings may be a very suitable birthday gift for one's wife, but one has no right for this reason to steal it.<sup>107</sup> It may be morally appropriate to purchase a glass of wine, but not if one is an

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<sup>105</sup> For a first pass at a discussion of the NCNLs' position with a focus specifically on sexual pleasure, see Gary Chartier, Comment, *Natural Law, Same-Sex Marriage, and the Politics of Virtue*, 48 UCLA L. REV. 1593, 1605–09 (2001).

<sup>106</sup> Grisez observes that goods acquired, used, or enjoyed sinfully are not needed. See QUESTIONS at 436 ("So, *genuine needs* refers not only to the basic necessities but to the less obvious yet real needs for religious, moral, and cultural goods. What *genuine* excludes are mere objects of emotional desire and anything that would be obtained, used, or enjoyed sinfully."). Cf. LIVING at 801 (describing how obtaining goods sinfully negates the genuine need).

<sup>107</sup> Grisez treats the moral acceptability of one's pursuit or enjoyment of the relevant good as an aspect of its genuineness. For the sake of analytical precision, I have distinguished this characteristic of reasonableness from the feature of genuineness.

alcoholic and taking another drink will restart one's pattern of addiction. One must consider the other modes of responsibility.

In particular, one should assess the aptness of an expenditure by asking about its fairness in accordance with the Golden Rule. This need not mean evaluating each individual expenditure. Rather, the NCNLs seem plausibly to suppose, the Golden Rule may be applied to a *package* of consumption decisions, taken as a whole. Thus, one may fairly trade off some expenditures against others.<sup>108</sup>

All of the principles of practical reason endorsed by the NCNLs may be relevant at various points to decisions about consumption, and it is surely appropriate to ask about the consistency of an action or policy with the Golden Rule as such. However, several—further specifying the Golden Rule's mandate of fairness—are particularly relevant. The Golden Rule requires that one help others when one can easily do so, and it embodies norms of distributive justice that bind individual actors. It requires that we participate in authentic goods efficiently. It might also be thought to justify conferring benefits on oneself when doing so also benefits others, and to permit one to incentivize oneself to earn income that can be used, in part, to benefit others by spending some of what one makes on oneself.

*a. A General Duty of Aid*

Finnis dismisses as unreasonable, and so immoral, "indifference to the good of others whom one could easily help."<sup>109</sup> George is clear that a golfer confronted with a drowning child "has a moral obligation to interrupt his game to save the child."<sup>110</sup> The Golden Rule as interpreted—reasonably—by the NCNLs clearly includes a duty to assist others. This duty is not, to be sure, unlimited: none of us wishes to be simply a component of the universal satisfaction system. None of us wishes to be devoured by the needs of others. Thus we would tend not to regard as arbitrary a specification of the Golden Rule that precluded nepotism and special pleading, and required moderate beneficence, but did not require us to devote the bulk of our time and energy to improving the general good. This is a point recognized by other moral theories that employ versions of the

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<sup>108</sup> See QUESTIONS at 425–28 (discussing whether a retiree may accept a job to get extra money for optional expenditures, and stating that "[i]n judging how much one may spend on recreational activities, one must consider others' needs as well as one's own, and apply the Golden Rule.").

<sup>109</sup> LAW at 107.

<sup>110</sup> DEFENSE at 95.

Golden Rule, or one of its cousins. They characteristically spell out the duty of aid in a way that tends to agree, at least in this way, with the NCNLs' evident understanding of this implication of the Golden Rule's non-arbitrariness requirement.<sup>111</sup>

*b. Distributive Justice*

The Golden Rule is the ground of the NCNLs' criteria of distributive justice. It generates several specific criteria for just distribution: need, function, capacity, deserts and contributions (or merit), and the creation or anticipation and acceptance of avoidable risks.

I believe it makes the most sense to assume that, for the NCNLs, one may reasonably employ *all* of these criteria to determine what resources one holds in trust for the public good and what resources one may use for oneself. It is hard to be certain, given that the NCNLs' list begins with need, and the NCNLs maintain that one holds in trust what one does not need. It might seem as if, with respect to oneself, these other criteria of distribution are simply irrelevant, or only arise until the public trust threshold has been reached. Thus, *I* might be required to distribute to others in a way that showed respect for capacity, function, and so forth. However, any recipient already enjoying "the fundamental component of the human good" would be required to treat anything she received from me which was not required for her to do so as held in trust for the public good, and so, often, to redistribute it to others. Deserts and contributions, capacity, function, the acceptance of risk—none would matter very much.

The dilemma may be resolved if we assume that, as it appears on this list of criteria, *need* point to what is *basic* or *essential* in a narrower sense—perhaps what is needed for subsistence. By contrast, we could hold, a genuine need is any good in which one participates reasonably. The primary test of reasonableness will be fairness. Fairness will be determined by the application of the Golden Rule. In addition to a general test of consistency between one's treatment of different persons (including oneself), the Golden Rule includes—it is given specificity by—the various criteria of distributive justice. Thus, the NCNLs could note the distributional significance of *all* of the criteria of distributive justice they believe can be derived from the Golden Rule.

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<sup>111</sup> Cf. T. M. SCANLON, WHAT WE OWE TO EACH OTHER 224 (1998) (addressing the morality of what we owe to each other and how a plurality of values helps to determine how we justify what is owed); ONORA O'NEILL, TOWARDS JUSTICE AND VIRTUE: A CONSTRUCTIVE ACCOUNT OF PRACTICAL REASON 196–200 (1996) (discussing the necessary contextual and selective nature of the social good of care and concern for others).

In particular, it would also make sense for them to emphasize deserts and contributions and the acceptance of risk (as, for instance, by an investor). Perhaps, then, one might be reasonably entitled to consume (some) resources which it is distributively just for one to possess because of one's deserts and contributions or one's acceptance of certain risks. There will obviously be limits: one will not deserve just whatever the market happens to provide; but the test of reasonableness here will have to do with appropriate reward for contribution or compensation for risk, rather than with need.

This approach would be appealing insofar as it would take into account all of Finnis' criteria for distributive justice. It would avoid the potentially anomalous situation in which deserts and contributions, say, might require me to allocate resources to someone else, even though she herself would be precluded from making personal use of them. *Each* of the norms of distributive justice would help to impose limits: there would still be a point after which wealth would be held in trust. *All* of the criteria implicit in Golden Rule would be relevant to determining what could as reasonable pursuit of genuine needs, however.

In addition to the distributional criteria generated by the Golden Rule itself, the basic human goods will also qualify the impartiality required by the Rule. The Golden Rule might require donation to a development NGO rather than to a college "all other things being equal." In the case Grisez considers though, it can be plausibly argued that "[o]ther things are not equal."<sup>112</sup> The special relationship between the potential donor and the college—which matters because acting in light of it would be to participate in, and further the participation of others in, a variety of intelligible human goods—would help, on Grisez's view, to make a donation to the college reasonable. It would block the claim that possible beneficiaries of the NGO gift were being treated unfairly were the money given to the college. It would leave open the option of choosing either the NGO or the college as the recipient of the donor's gift.

#### a. *Efficiency*

Grisez recognizes, plausibly enough, that genuine needs can be met in a variety of ways: "It usually is possible to meet a genuine need more and less conveniently and pleasantly." Given the empirical fact of other people's

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<sup>112</sup> See QUESTIONS at 438–39 (concluding "[t]herefore, on the assumptions explained previously, you could rightly choose to donate the money for the new auditorium, just as you certainly also could rightly carry out your tentative plan of donate [the money] to Catholic Relief Services").



needs, the basic principle of fairness embodied in the Golden Rule suggests that less rather than more costly alternatives "that would meet the same need about as well" should "be preferred."<sup>113</sup> After all, when goods are pursued inefficiently, resources and time that could be used for the common good are wasted; others may reasonably object that they could have benefited had one acted with greater efficiency.

c. *Consumption in the Service of the Public Weal[th?]*

Some consumption decisions and some legitimate ways of fulfilling a reasonably understood duty to use one's resources for the public good may overlap. Perhaps this overlap could justify some consumption decisions that might otherwise be indefensible from the perspective of the NCNLT.

While, as Finnis notes, one can fulfill the duty to make appropriate use of resources beyond the public trust threshold by providing "grants or loans for hospitals, schools, cultural centres, orphanages, etc., or directly for the relief of the poor," one can also do so by "investing . . . [one's] surplus in [the] production of more goods for later distribution and consumption; [or] by providing gainful employment to people looking for work,"<sup>114</sup> (especially?) given that "wage labourers are presumptively among the poor to whom distribution of . . . [one's surplus] is owed in justice."<sup>115</sup>

An investment will, one may hope, yield a return of one sort or another. But will not this, too, count as part of one's surplus, and thus as ripe for redistribution? The bulk of the return on one's investment will be apt for reinvestment, not for consumption. So the option of fulfilling one's duties in distributive justice in this way, while it offers an alternative to donating to charity, does not limit one's responsibility to contribute to the public good.<sup>116</sup>

Providing employment presents more interesting issues. For one would have to ask both whether one could reasonably fulfill one's duty in distributive justice here only by employing the very needy, and, more importantly, whether one would need to fulfill one's duty by providing direct rather than indirect employment. I think it is clear that the NCNLs believe, plausibly enough, that the Golden Rule entails a bias in favor of aiding the

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<sup>113</sup> *Id.* at 808.

<sup>114</sup> LAW at 173.

<sup>115</sup> AQUINAS at 194 n.44. It is not clear whether one fulfills one's public responsibilities only by providing employment for the poor; given that a grant to a cultural center might serve multiple sectors of the population, it is unclear why one would be required to do so when providing employment. Note that Aquinas seems to be making a more restrictive claim than Finnis, by suggesting that it is the poor, rather than the public, to whom one's surplus is owed.

<sup>116</sup> The assumption, here, is of course that the investment *does* somehow foster the public good. Cf. QUESTIONS at 502–07 (evaluating whether one may invest in morally tainted businesses).

needy. If one does not have the opportunity to provide employment for the needy with one's surplus, however, does this mean that one is precluded from providing employment at all, and must therefore donate one's surplus to charity.

It would not be unreasonable to argue that one would need to do so, were it not for the fact that subsistence needs do not automatically outrank others for the NCNLs. To be sure, "the Golden Rule requires that, other things being equal, one use surplus resources in ways that more clearly and certainly will meet genuine needs of deserving people in a moderate way." It is the clarity and certainty requirements though, not the nature of the needs in question, that leads Grisez to conclude that, "other things being equal," one should donate to an NGO rather than to a college.<sup>117</sup>

These requirements will certainly limit one's provision of employment. All other things being equal, for instance, it might preclude providing employment to those whose needs are already capable of being met satisfactorily—as a means of fulfilling one's duty to make good use of one's surplus.<sup>118</sup>

The same would seem to be true with respect to the *indirect* provision of employment. Many routine consumption decisions do contribute indirectly but significantly to the provision of employment for people, including people with limited resources. Patronizing a restaurant that features fair labor practices, for instance, may well help to ensure the employment of low-wage members of its staff. This will be less true of some consumption decisions, of course: if one wants to justify a purchase from an enormous retail chain, it may be harder to appeal to the consequences of one's choice for the economic conditions of employees. The impact will be more diffuse, and one cannot be as certain that it will occur at all. Whether one may see purchasing from this chain as justified because of its effects on local employment will depend on the extent to which one must target one's provision of employment on the most needy, the extent to which one may reasonably provide employment indirectly as well as directly, and the extent to which patronizing a given business is likely to facilitate employment.

It is clear that the clarity and certainty requirements impose some limitations on attempts to fulfill one's duties of beneficence by creating

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<sup>117</sup> See *id.* at 438 (engaging a case involving specifics that raise real, even if not decisive, doubts about donating to the college, and thus perhaps, not arguing that all credible and deserving NGOs merit our support before all credible and deserving colleges, all other things being equal).

<sup>118</sup> Even then, however, particular intelligible goods might be at stake in ways that would make it fair for one to use one's surplus in this way.

employment through expenditures for consumption. One might, for instance, believe that one contributes sufficiently to job-creation and maintenance through the expenditures one already makes in fulfillment of genuine needs. This, in turn, will mean that giving directly to charities of whatever sort will likely be a preferred option on the NCNL view. It is hard to see that the NCNLs could, in principle, rule out indirect contributions to employment as ways of fulfilling one's duty of beneficence, however.

*d. Consumption as Stimulus to Productive Use of Resources*

The Golden Rule might allow some expenditures on the basis that the permissibility of such expenditures could create incentives for the spender's productive use of resources. Recall that the second of Finnis' twofold justifications for a system of private property is that "natural resources, and the capital resources and consumer durables derivable therefrom, are more productively exploited and more carefully maintained by private enterprise, management, husbandry, and housekeeping than by the 'officials' . . . of public enterprises."<sup>119</sup> Also, the "availability . . . [of private property] stimulates . . . [the private owner's] productivity and care."<sup>120</sup> In part this will doubtless be simply because a private owner will, or may, identify more fully with something that is uniquely her own, and care for it accordingly. It is clear though, that Finnis recognizes that this will often be because the private owner will realize benefits from her ownership. Finnis notes that "*if* the active members of the community were more detached from considerations of private advantage . . . then common ownership and enterprise *would* be more productive of benefits for all."<sup>121</sup> But he plausibly suggests that it is most reasonable to begin with the characteristics of people as we find them. The fact that I am able to consume is a valuable contributor—even if only one contributor—to my productivity, which benefits the public. In principle, then, someone might reason as follows: *I know myself well, and I am confident that, if I am unable to spend money on a certain amount of consumption, I will not be as productive; I will actually be more productive, and spend more—either through taxes or through*

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<sup>119</sup> LAW at 170.

<sup>120</sup> *Id.* at 173. Cf. AQUINAS at 190 (noting "the incentive-based advantages which make ownership useful and necessary").

<sup>121</sup> LAW at 170.

*charitable contributions—on various good causes if I know I am free to spend more of my income (even if a smaller percentage) on consumption as I earn more of what I make on consumption.<sup>122</sup> It would be better if I were not motivated this way. However, since I am, I need to take this into account when deciding how much I can consume.*

It is not clear to what extent this analysis can or should reasonably figure in the deliberations of individual actors. There is doubtless some place for this kind of reasoning in one's moral deliberation, and in the crafting of public policy. It seems obvious, however, that thinking in this way will often serve, if unchecked by other principles, as a license for self-indulgence. So this kind of reasoning cannot play a *central* role in determining people's redistributive responsibilities.

*e. Applying the Golden Rule*

The NCNLs are clear that the Golden Rule does not yield precise answers. This is, indeed, an appealing feature of their position: they recognize that a measure of flexibility is unavoidable. Thus, Grisez maintains that "what one needs to live decently and meet one's responsibilities is not rigidly fixed but somewhat elastic; very often, someone with enough to make do could have considerably more without having an obvious surplus or considerably less without suffering a serious deficiency"; thus "the limit defining the superfluous remains elastic, and allows what is reasonably considered necessary at one moment to become available the next to meet someone's unanticipated need."<sup>123</sup> Similarly, for Finnis, "the level of resources which is just for owners to regard as needed . . . is rather indeterminate; in any given case much could doubtless be added, or subtracted, leaving one still within this zone, in which owners have the prior right to consume their own property." He emphasizes that "the true measure of one's needs is . . . the bona fide judgment of a practical reasonableness

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<sup>122</sup> Cf. THINKING at 145–168 (discussing the possible utility in Western societies of egalitarianism-based policies for wealth redistribution, but warns against relying on any egalitarianism argument based on intuition).

<sup>123</sup> LIVING at 806. Grisez here expounds the view of Aquinas. Cf. AQUINAS at 193 ("Of course, the level of resources which it is just for owners to regard as needed and not *superflua* is rather indeterminate; in any given case much could doubtless be added, or subtracted, leaving one still within this zone, in which owners have the prior right to consume their own property.").

which includes, as always," what could effectively be described as appropriate attention to the Golden Rule." Judgments about one's duties in distributive justice will include concern about multiple dimensions of responsibility, including responsibility to those who are near and dear but also responsibility to strangers. "The incommensurability of such dimensions defies resolution by any general rule, "with the result that, though the relevant decisions can genuinely be in accordance with reason "reason's 'mean' here is a zone with vague boundaries rather than a point . . . ." <sup>124</sup>

All of this is plausible and realistic, sensitive to the complexity of moral decision-making and the unattainability of precision in many moral matters. However, the problem with the application of the Golden Rule to questions of justice in consumption is not just that the Rule does not yield *precise* answers, but that it is not altogether evident how to use it *at all* to resolve some problems in distributive justice. Grisez urges people to "apply the Golden Rule."<sup>125</sup> What does this mean in a multi-person situation though? It is not simply a matter of treating each person as an equally deserving recipient of one's generosity. The Rule itself entails norms of distributive justice that preclude treating all claims equally. And it treats as reasonable departures from impartiality and equality when concern for specific human goods renders them so. It is not clear, then, how much guidance the requirement of fairness provides for our consumption choices.

Thus, Grisez maintains that "in some cases people ought to use more than ten percent of their take-home pay to meet . . . responsibilities [to support church ministries], especially the responsibility to assist the poor."<sup>126</sup> Wealthy parishioners should contribute considerably more than less well-off persons to support the activities of a local diocese. However, this does not mean that they are all required to spend no more than poorer parishioners spend on themselves. One might choose to evaluate consumption decisions one by one, or class by class. Alternatively, one might simply decide to donate a specified percentage of one's income to good causes, and reevaluate one's consumption decisions only if, on the one hand, something unexpected makes one judge one should give less or, on the other, an individual consumption decisions seems dubious. If one takes the latter, probably more reasonable option, one would need to ask how to set the relevant level.

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<sup>124</sup> Cf. AQUINAS at 193–94 (footnotes omitted) (arguing that the commensuration of responsibility should be judged by a reasonable standard rather than by a hard rule).

<sup>125</sup> See LIVING at 811–14 (stating that the Golden Rule may be applied when determining what duty is owed to others).

<sup>126</sup> See QUESTIONS at 66 (maintaining further "[t]hat is true not only of the very wealthy but even of many less affluent people, at stages in their lives when financial resources significantly exceed current and reasonably predictable needs.").

Grisez commends a successful middle-class couple comprising a certified public accountant and a real-estate agent that gives away 30% of its pre-tax income,<sup>127</sup> and a lottery winner who will be retaining \$250,000 (equivalent to perhaps \$300,000 in today's dollars) of pre-tax income each year over the next twenty years after giving an equivalent amount to charity.<sup>128</sup> There is no obvious way of assessing these choices though.

It is hard not to see some of the NCNLs' casuistic applications of the Golden Rule to questions of consumption as arbitrary. The efficiency requirement can certainly be employed in good faith, and the prohibition on the pursuit of illusory goods, or of real goods with harmful intentions, will certainly rule out many consumption decisions. However, when we ask specifically about the *fairness* of individual consumption decisions, or even classes of decisions, practical reason seems to leave many options open. If Finnis is right that there is a zone of reasonableness here, it seems to be a very extensive one.

### 3. *Commitments and Vocations*

Commitments and vocations might be thought to further limit the moral reach of impartiality. Commitments to others should ordinarily be respected on pain of unfairness; so the issue of commitment in this sense is already addressed by the NCNLs when they note that the distributional criteria implicit in the Golden Rule includes respect for special relationships. Keeping commitments though, not only to specific projects but to life-plans, is also a matter of respecting the good of self-integration, so commitments are independently relevant to one's choices in distributive justice. If there are vocations from God, as the NCNLs seem to believe, these will potentially also have quite substantial effects as well on one's distributional choices.

Finnis is thoroughly critical of the "secret, often unconscious legalism" of consequentialism, of "its assumption that there is a uniquely correct moral answer (or specifiable set of correct moral answers) to all genuine moral problems."<sup>129</sup> The NCNL view contrasts starkly with Singer's consequentialism in virtue of the range of morally appropriate options it is

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<sup>127</sup> See QUESTIONS at 428–34 (evaluating the question whether "charitable giving [must] involve an immediate personal relationship" and stating in reference to the instant givers that few people donate as large a percentage of their income as they do to charity, but probably many who are similarly sincere, though perhaps not so generous, have wondered about the question posed).

<sup>128</sup> See *id.* at 434 (explaining what even though the lottery winner is concerned about the tax implication of possible donations, the winner still really cares about the well-being of those in need).

<sup>129</sup> ETHICS at 93.

prepared to acknowledge. *Freely chosen* commitments—to ourselves as well as to others—and life-plans will likely determine, or help to determine, one's responsibilities, and in this way will affect one's responsibilities in distributive justice. Of course, one should select—and, as needed, modify—a life-plan in accordance with the various norms of practical reason the NCNLs identify, and then judge questions regarding property, wealth, and consumption in light of this life plan. The principles of practical reason would preclude life-plans that entailed inappropriate expenditures. One will still have innumerable choices, however—both *of* and *within* life-plans.

Of course, our commitments will rightly shape our subsequent choices. Coherence of character and directionality of life-plan, are plausibly seen as goods worth affirming, goods that provide shape to our choices. Commitments may affect our consumption choices; but they are not typically so over-arching that everything one does can or should be subsumed under some commitment or cluster of commitments. Unless they directly concern consumption, they may have little direct impact on consumption choices. So there will still be an enormous range of options for those who make responsible commitments within the constraints of practical reasonableness (including the Golden Rule).

The notion of commitment, not just to a specific project or program, but to a *life-plan* does provide some shape to individual consumption decisions. Life-plans (and vocations, if there are any) are highly individual though, a fact which, again, makes them relatively unavailable as bases for policy judgments. To be sure, however, public policy will rightly take into account the possibility that reasonable personal life-plans will differ dramatically, and leave open opportunities for people to pursue such plans freely. This, in turn, will mean the implementation of a DRD at the public policy level in a way that leaves people free to pursue alternate reasonable life-plans.

To be sure, this assumes, as Finnis' language suggests, that we *do* have vast choices among life-plans. Grisez, however, suggests that a *vocation* from God—a call to do or be something in particular, which could limit one's choices substantially—provides valuable guidance for each person's consumption decisions.<sup>130</sup> Appropriate expenditures are those *needed* to fulfill one's vocation.

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<sup>130</sup> Grisez develops his notion of vocation at greater length in GERMAIN GRISEZ & RUSSELL SHAW, *PERSONAL VOCATION: GOD CALLS EVERYONE BY NAME* (2003). Of course, other philosophers, both religious and secular, have explored the idea of vocation as well. See, e.g., LAWRENCE A. BLUM, *MORAL PERCEPTION AND PARTICULARITY* 104–10, 118–19 (1992) (defining vocation as a calling or as a term describing what one "ought" to be); KEITH WARD, *ETHICS AND CHRISTIANITY* 142–47 (1970) (discussing the various ways of interpreting vocation, for example, a vocation may be viewed as a

A vocation might constrain one's choices in a variety of ways, and while there will be multiple ways of fulfilling a vocation, it may rein in one's choices, and so one's consumption decisions, significantly. It is one thing if one must simply show that a consumption decision is consistent with a general norm of fairness. It is quite another if one must justify every such decision as *needed to fulfill a vocation*.

It is not clear that a constraining sense of vocation like this is altogether consistent with the spirit of the NCNLs' position. Certainly, it is difficult to see how such a conception of vocation is consistent with Finnis' reminder that "the glory of God may . . . be manifested in *any* of the many aspects of human flourishing" and that "love of God may . . . thus take, and be expressed in, any of the inexhaustibly many life-plans which conform to the requirements" of practical reason.<sup>131</sup>

A reasonable understanding of vocation is likely to leave many options open. Discussing the appropriateness of face-lift surgery,<sup>132</sup> Grisez maintains that such surgery may be necessary to a person's vocation because it might facilitate a marriage or the acquisition of a job. The marriage will be suitable, *ex hypothesi*, if marrying is a vocational obligation. When one asks whether one may rightly spend the money required for a face-lift, then, one will need to ask both whether one has a vocational responsibility to marry and whether a face-lift is needed to fulfill this responsibility. One can hardly *guarantee* that a face-lift will be a necessary condition of a new marriage or job, however. There is no way of knowing for certain that a given job or marriage would not have been possible absent a face-lift. Nor, it seems to me, will one ordinarily be able to maintain that just *this* job or just *this* marriage is itself vocationally required. Even if one has a vocation to marriage, it will not follow that one is vocationally obligated to enter *this* marriage. Our vocations, if there are any, generally leave us on a long leash.

There is a further problem here. Vocations do not trump other moral responsibilities; God cannot give someone a vocation to behave unfairly. The Golden Rule would still apply. For Grisez, a vocation is not imposed arbitrarily by God. Rather, a vocational call is heard through one's

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personal or nonpersonal expression of self); ADAMS, GOODS at 299–303 (1999) (describing vocation as something other than what one does for a living, but rather what one is called to be in life).

<sup>131</sup> LAW at 113.

<sup>132</sup> Grisez discusses the financial implications of such surgery in his treatment of the general issue of cosmetic surgery; see QUESTIONS at 262–66 (concluding that "only those whose personal vocation requires it are justified in having a face-lift" and then adding that, indifferent to vocational concerns, face-lifts are expensive and "[p]erhaps this money should be used to meet some of your own or your dependents' current or predicatable needs").



circumstances, temperament, and other relevant personal and situational characteristics. Suppose, then, that Pat has a vocation to marry and judges that a face-lift is necessary to fulfill this vocation. Chris' circumstances and personal characteristics are, we may conclude, relevantly similar to Pat's. Presumably, then, this means that an application of the Golden Rule would lead one would to judge that Chris was entitled—indeed, required—to spend money on a face-lift, even if one was unsure of Chris' person's vocation. One would thus be committed, I think, to the judgment that Chris would be acting in conformity with the Golden Rule when deciding to obtain a face-lift. For, if it is fair for Pat to get the face-lift, then it seems as if it is fair for Chris to do so as well.

If the Golden Rule permits Chris to reason in this way, however, then it seems as if the Rule will permit anyone similarly situated, anyone with the same sorts of personal circumstances and characteristics, to reason in this way. Thus it is unclear what extra work the idea of vocation is doing here. It would seem as if God were behaving arbitrarily were some people with traits and conditions relevantly similar to Pats to receive divine vocations when others did not. Since Grisez rejects divine command theories of morality, we can reasonably conclude that he rejects divine command theories of vocation. So either the Golden Rule permits all similarly situated persons to reason in roughly the way Chris does—noting their own similarities with others believed to have vocations, and identifying their responsibilities with the responsibilities of these others, *mutatis mutandis*—or it does not. If it does, it seems as if appeals to actions in pursuit of intelligible human goods will almost always obviate appeals to vocation. On the other hand, if it does not, it seems as if vocations will impose arbitrary constraints on people's choices, something that raises questions about the moral credibility of the notion of vocation.

In any case, the kinds of circumstances that give rise to judgments about vocation—personal circumstances and traits—are evidently relevant, along with one's commitments, to one's obligations in distributive justice. Even someone who does not have a sense of vocation—perhaps her religious beliefs do not allow for this idea to be instantiated—can still note the kinds of circumstances, traits and commitments that might figure in a vocation, in the shaping of a life-plan, and reasonably take these into account when determining what consumption decisions are appropriate.

Specific commitments and vocations will entail particular responsibilities and opportunities. Given the value of preserving commitments and, perhaps, following vocations, we will have additional reasons to regard certain consumables as needs. Thus, commitments and

vocations can evidently make it appropriate to spend resources on oneself, on particular other persons, or on causes that might not otherwise have a claim on one. A commitment or vocation to being a musician, say (apart from any commitment to an employer), might entail the purchase of the best appropriate instrument for one to use. In short, commitments and vocations further qualify the already relatively weak impartiality requirement embodied in the Golden Rule.

Commitments and vocations will provide no particular support for some consumption choices—a flashy sports car is not needed to fulfill one's vocation as a surgeon—though it would not follow that such choices might not be acceptable on other grounds. Commitments and vocations might provide strong positive reasons *against* some consumption choices—a fundraiser for a development NGO might be under a special obligation to avoid creating the fear that gifts to the NGO were being wasted on lavish dinners for its staff members. However, commitments and, if there are any, vocations will add to the mix of moral factors relevant to the assessment of consumption choices.

#### 4. Conclusion

The NCNLs offer an account of justice in consumption that is implicitly complex and which features a variety of applicable criteria. At its center is a relatively expansive conception of *need*, with the understanding that I am pursuing a genuine need when I reasonably participate in an intelligible human good.

Due to the relevance of the Golden Rule's own distributive criteria, because of the rightful place given in our deliberations to the basic human goods, and potentially because of the relevance of vocations, it seems, that the NCNL will not require more than a moderate version of a general duty of aid unless no genuine human good is at stake. When the NCNLs suggest that limits on consumption are appropriate, these are not driven by the sense, as with Singer and Unger, that a failure to support anti-poverty programs makes one responsible for any ills such programs fail to prevent, but might have prevented had one's contribution been received. This would be just the sort of consequentialist reasoning the NCNLs reject. The Golden Rule does not require that everyone be an equal object of the agent's active concern, nor does it lead to the equation of acts and omissions. The NCNLs' view that distributive justice requires the redistribution of surplus wealth is not a consequence of the fact that such redistribution could benefit the worst-off.

For recall Finnis' observation that allocation of surplus resources to "cultural centres" would be appropriate. The NCNLs' arguments against particular consumption choices will not be egalitarian or consequentialist, even if they do presuppose a general duty to provide aid to others. Rather, the issue with respect to any consumption choice will be the inherent unreasonableness of purchasing goods or services that are not genuine needs. This, in turn, will depend on whether a given purchase involves participation in an authentic good and whether one's pursuit of that good is efficient, fair, and consistent with one's vocation and commitments.

Thus, Grisez agrees that the (substantial) portion of a windfall lottery winning which the winner proposes to give away could reasonably be given to an NGO, to a college, or to both.<sup>133</sup> His out-and-out rejection of some consumption choices—regularly dining at high-end restaurants, taking pleasure cruises, vacationing at posh South Pacific resorts—is best understood as a consequence of the view that such choices (a) do not involve the pursuit of genuine goods or (b) involve the pursuit of such goods in inefficient ways—because less costly choices could achieve more or less the same (legitimate) ends. The pleasure cruise might be thought not to meet any genuine needs—not to qualify as participation in any intelligible human good. The high-end dinner might be thought to involve participation in one or more goods in which one could participate without meaningful loss at significantly lower cost. Even were everyone in the entire world to enjoy the standard of living available to contemporary residents of Norway and Sweden, the NCNLs would, I think, still object to consumption decisions that did not meet genuine needs. They would still likely argue that private owners were responsible for redistributing their surplus in ways that might foster the public good.

### C. *An Example: Fine Wines and Salon Concerts*

Finnis implicitly treats some expenditures on fine wines and salon concerts as acceptable on his account of distributive justice. It is not altogether clear how he reaches the conclusion that they are acceptable, but examining it in light of the criteria of justice in distribution he elaborates will help to clarify these criteria and to suggest how he might approach the question of justifying or criticizing a given consumption choice.

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<sup>133</sup> See QUESTIONS at 434–39 (evaluating the possible uses of a man's ten-million-dollar, lottery jackpot, including the idea that the money is given to a college "not for an auditorium" but instead for programs that educate and develop service-minded, college graduates).

1. *Finnis' Implicit Legitimation of (Some) Fine Wines and Salon Concerts*

Finnis emphasizes that "what is unjust about large disparities of wealth in a community is not the inequality as such but the fact that (as the inequality suggests) the rich have failed to redistribute that portion of their wealth which could be better used by others for the realization of basic values in their own lives."<sup>134</sup> So far, it might seem, despite the overt concern with "*large* disparities," that Finnis thinks the new classical natural law view requires individuals to redistribute their wealth up to the point at which everyone's basic needs are met.<sup>135</sup> However, this does not seem to be quite what he understands his view to imply.

If redistribution means no more than that *more* beer is going to be consumed morosely before television sets by the relatively many, and *less* fine wine consumed by the relatively few at salon concerts by select musicians, then it can scarcely be said to be a demand of justice. But if redistribution means that, at the expense of the wine, etc., more people can be preserved from (non-self-inflicted) illness, educated to the point where genuine self-direction becomes possible for them, defended against the enemies of justice, etc., then such redistribution is a requirement of justice.<sup>136</sup>

Since distributive justice is a duty of individuals, which the state may help them to fulfill, rather than simply a duty of the political community, it is unlikely that Finnis means in this passage that state redistribution might leave some resources for the wine, the concerts, and the musicians, even though individuals themselves would have a duty to part with the money required to fund these things. Rather, the redistribution in the interests of education, culture, and defense to which Finnis refers would first and foremost *be* the duty of individuals, even if it might be effected through redistributive schemes organized by the state. In any case, Finnis does not suggest that the redistribution required to ensure that these needs are met will entail the *absence* of fine wines, salon concerts, or select musicians. Absent a system of public provision vastly superior to the one currently in

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<sup>134</sup> LAW at 174.

<sup>135</sup> Though note that "basic values" here means the same as "basic goods," and so includes not just the rudiments of human existence but also includes, for instance, speculative knowledge and aesthetic experience.

<sup>136</sup> LAW at 174 (emphasis added).

place, needs for healthcare, education, security, and so forth will persist; even in well-ordered societies, there will be gaps and deficiencies—unmet needs. Nonetheless, the NCNLT evidently does not entail that wine and the concerts be foresworn until these needs are met. There will be *less* wine, *fewer* concerts, but not *none*.

## 2. *Using the NCNLTs' Criteria to Assess the Wine and Concerts*

How, then, using the NCNLTs' criteria, might we determine whether, and, if so, when spending money on a salon concert like this might be appropriate?

### a. *The Authenticity of the Goods at Issue*

The salon concert Finnis describes will offer, at minimum, the opportunity to participate in the authentic good of aesthetic experience. There is no question then, that the relevant good is genuine. It may also provide opportunities to participate in other authentic goods, including friendship (it may serve as an occasion for connecting friends), and speculative knowledge (perhaps one is curious about the aptness of performances that purport to employ authentic instruments and techniques). Money spent on the concert will involve participation in one or more authentic goods, which will, in virtue of their authenticity, have crossed the first hurdle they must surmount to count as genuine needs.

### b. *Consistency with the Golden Rule*

If there is a general duty of aid, it follows from the Golden Rule. Specific norms of distributive justice obtain to the extent, largely, that they are derivable from the Rule (basic goods like friendship may be relevant here, as well). The requirement of efficiency follows, in large part, from the Rule. Arguments for the legitimacy of particular instances of consumption based on various kinds of public benefits (including the incentivization of the consumer) will make sense to the extent that they flow from the Rule. So the most pressing question for anyone attempting to operationalize the NCNLT will be just how much guidance the Golden Rule actually offers.

The envisioned salon concert itself does not pose an obvious difficulty with reference to the Golden Rule or the other relevant moral criteria. There is nothing generally unfair about performing or listening to music, though one could doubtless create a detailed scenario in which this

was the case. The question, then, would be whether a DRD precluded expenditures on such events as unfair. It appears that a general duty of aid could leave resources available to support such concerts; supporting them could be consistent with the requirement that one participate in authentic goods efficiently; supporting them could be a means of usefully redistributing one's resources to others; and one might leave oneself free to support such concerts because one's freedom to do so could help to incentivize one to be productive—and so have more to give others.

*i. The general duty of aid.*

Giving consistently and significantly to good causes at the moderate level envisioned in connection with a general duty of aid like that referred to by Finnis and George does not eliminate the resources needed to fund some salon concerts. Since giving in this way will reduce one's discretionary income by a meaningful amount, it will, of course, entail a reduction in the number of such concerts one might reasonably pay to attend than if one did not give to good causes. It will, however, leave resources available for cultural activities. One will need to evaluate one's overall consumption patterns, and not simply particular choices in isolation. One will then have to inquire whether one is pursuing the genuine needs in question fairly, applying the Golden Rule in a fairly general way.

*ii. Specific norms of distributive justice.*

The appropriateness of expenditures on salon concerts will further be affected by the criteria for distributive justice implicit in the Golden Rule. The principle that deserts and contributions should be rewarded might justify some discretionary expenditures on oneself. Special responsibilities to friends or to the concert venue might be distributionally relevant—or, of course, to channel expenditures in other directions. Absent special responsibilities, the NCNLs' principles of distributive justice probably need not be thought to rule out expenditures on the concerts: some expenditures on such events, absent extravagant expenditures elsewhere, could be fair.

*iii. Efficiency.*

It is reasonable to ask here whether an expensive salon concert would, in fact, represent an efficient participation in the good of aesthetic

experience. Might not a (less expensive) mass public concert provide a similar experience? What about a recorded concert? Here, there can be no general answer. In some cases, the experience will not be the same because it is fundamentally social—attending the concert is a meaningful experience to be shared with friends. This is likely to be superior to the experience of sitting in one's living room with the same friends listening to a CD; the aesthetics of the experience may add to the intimate bond with one's friends in a way that distinguishes the experience from attendance at a mass concert. The acoustics of the salon environment may also enhance the sound quality of the performance. Further, the opportunity to meet and talk with the musicians may add significantly to the experience. One might, then, judge in good faith that for these reasons the salon concert was not a less efficient way of participating in the same general way in the good of aesthetic experience as a mass public concert or a "concert" in one's living room. However, there is no guarantee that this would be the case. It is perfectly possible that one's decision to go to the event rather than enjoying a performance at home might be motivated simply by the desire to see and be seen. One's desire to engage in conspicuous consumption would not give one any reason to pay to attend the concert.

*iv. Public benefit through consumption.*

The second-order effects of sponsoring and attending salon concerts might be morally relevant here as well. Perhaps it is reasonable to assume that the occurrence of such concerts will have a positive cultural spillover effect. If no one attended such concerts, the argument might run, less first-rate music would be performed and fewer select musicians would be trained. The overall availability of good music would be reduced. Thus persons with less money, unable to attend salon concerts, would themselves be adversely affected by the unavailability—in larger public settings or by way of recordings—of music that might otherwise be accessible to them.

Of course, one might argue that those able to afford such concerts should be expected to contribute to the support of more accessible public performances. If they can afford these concerts, they can certainly afford to support performers and performances in ways that would facilitate wider access to good music more directly. A defender of the concerts might respond that small concerts are vital if unknown performers are to develop the skill and reputation needed to make them effective contributors to the aesthetic experiences of larger publics. Perhaps these smaller concerts would, of necessity, be more expensive because each member of a smaller

audience would need to pay more for a concert if appearing at the concert were to be financially viable for the musicians involved. All this is relatively speculative though. The cost of the concert, even if legitimate, does not explain the legitimacy of expenditures on the fine wine, which Finnis seems to grant.

Of course, by supporting a salon concert, one is doing more than simply feeding the wider culture: one is impacting the lives of particular persons. One is doubtless providing employment for the musicians, for the salon staff, and for others as a result of one's paid attendance at such an event. However, little of the money generated by the attendance fees for the concert will likely contribute to the well-being of many members of the salon staff, and perhaps even of the musicians.

Helping to fund the salon concert is certainly a matter of fostering the common good, and not simply a matter of purely private consumption. How relevant this will be to determining whether consumption choices that would otherwise be distributively unjust would be permissible will depend on a careful Golden Rule analysis.

v. *Stimulating one's own productivity.*

Perhaps the Golden Rule might leave people free to consume some resources—by, for instance, organizing and attending salon concerts by select musicians—in ways that might be locally inefficient but globally efficient. The freedom to consume in this way might spur people to greater productivity. However, again, it is unclear to what extent it could be reasonable to make such considerations central in deliberations about one's own consumption choices.

c. *Commitments and Vocations*

Commitments and vocations, in the sense in which Grisez and Finnis discuss them (emphasizing their open-endedness and generality), are unlikely in general to determine whether one should or should not pay to attend a salon concert featuring performances by select musicians. It is possible, of course, that one might make a commitment to a particular occupation or relationship that might make attendance at such events especially important (as a means of fulfilling occupational responsibilities or solidifying a relationship) or inappropriate (perhaps because one's vocation involves



expressive opposition to conspicuous consumption). Such cases are likely to be rare though.

*d. The Moral Status of Salon Concerts*

The NCNLT does not make it easy to determine whether—and, if so, why—it is reasonable to spend money on Finnis’ salon concerts. They certainly seem to meet genuine needs, and they are probably not *as such* inconsistent with the Golden Rule. A plausible general duty of aid would certainly leave resources available for such concerts, as would, perhaps, distributive justice as understood by the NCNLT. Less clear is whether the envisioned concert would be an efficient pursuit of the relevant goods. Individual commitments and vocations might make staging or attending the concert especially appropriate or especially inappropriate. They might be justified in part because of the employment they provide directly and indirectly, and the fact that they contribute indirectly to making something of value available to the wider public. It is hard to see that, in general, one could justify much in the way of expenditure on such events on the grounds that one would be less productive if unable to consume salon concerts—while psychologically apt up to a point, this kind of reasoning seems prone to abuse. Attending Finnis’ concerts is probably consistent with the Golden Rule, and certainly could be consistent with the requirements imposed by at least some people’s commitments and vocations. Whether this is so will depend largely on how we understand and apply the Golden Rule.

*D. Conclusion*

The NCNLTs offer a range of casuistic judgments about consumption. While the rationales for these judgments are not always clear, what is clear is that they believe their theoretical position grounds a commitment to moderation and a rejection of extravagance as unfair. Their understanding of consumption reflects what I interpret as three related requirements: that our consumption choices involve the pursuit of authentic goods; that our participation in these goods be fair, and so in accordance with the Golden Rule (and thus be, among other things, efficient); and that we adhere appropriately to our commitments and, if there are any, our vocations. The application of these criteria leaves questions on the table regarding the appropriateness of particular choices—as, for instances, the choice to pay to attend one of Finnis’ salon concerts. In particular, the NCNLT gives little guidance regarding the employment of the Golden Rule to identify conduct

as fair or unfair in specific cases. It is clear, however, that their arguments would likely ground a meaningful duty to give away resources to serve the common good—in fulfillment of both a general duty of aid and a duty to give away resources to which one lacked entitlement in distributive justice.

#### IV. Conclusion

The NCNLs are intensely morally serious. They oppose nuclear deterrence and capital punishment<sup>137</sup> as well as abortion. And they clearly recognize that duties to care for the vulnerable do not stop at national borders. Indeed, international justice is clearly a mandate of the NCNLT. Indeed, it is so clear that, while he is the most politically conservative of the NCNLs, Robert P. George has committed himself to the proposition that the establishment of some kind of world government is a morally important goal.<sup>138</sup>

It is not surprising, then, that the NCNLT would ground a significant DRD. The theory does not entail the conclusion (what sort of plausible theory would?) that everyone should contribute an identical, specifiable percentage of her income to international relief and development efforts, or that one employ the same algorithm to determine how much one should give.<sup>139</sup> It does entail, however, that one has a responsibility to give a significant portion of one's wealth to serve the common good—either personally or through the tax system.

For the NCNLs, the Golden Rule entails a clear responsibility to provide assistance to those whom one could easily help. This is a requirement that governs all of our actions, but it clearly allows considerable flexibility. What counts as the easy provision of assistance will obviously

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<sup>137</sup> Finnis defends capital punishment in *Fundamentals of Ethics* but rejects it as illicit in his more recent study of Aquinas. Compare ETHICS at 130, 135 (reasoning that, though capital punishment is not required, it "need not be regarded as doing evil that good may come of it"), with AQUINAS at 279–84, 293 (describing Aquinas' rejection of the defense of capital punishment that "it need not involve the intent precisely to kill as a means or as an end" and acknowledging Finnis' new-found agreement with that reasoning).

<sup>138</sup> See DEFENSE at 228–45 (emphasizing that a "world government . . . [should be] limited in the scope of its just authority by the principle of subsidiarity, and . . . that such [a] government must refrain from displacing national governments . . . or interfering with the exercise of their authority in matters within their competence."). George also states, however, that "the tradition of natural law theorizing does not suppose that a nation may justly fail to submit to the jurisdiction of a just world government which has been, or is being, created in accordance with basically just procedures." *Id.* at 241. Grisez seems to take a similar view, see LIVING at 868–69.

<sup>139</sup> Cf. LIAM MURPHY, MORAL DEMANDS IN NON-IDEAL THEORY (2000) (discussing the moral demands of individuals and society under the principle of beneficence).

vary from person to person and from situation to situation. A reasonable interpretation of this implication of the Golden Rule seems to suggest that most people in the developed world have some duty to contribute resources in ways that will benefit the common good, and this will often mean fulfilling a DRD, in particular.

The NCNLs clearly want to argue for more than this though. There is a significant duty of beneficence that extends beyond the provision of minimal aid (or else, alternatively, which specifies the meaning of minimal aid in a highly robust fashion). For the NCNLs are clear that one is obligated to give away wealth that is not being used, or to be used, in reasonable pursuit of intelligible human goods.

This alone may not rule out many consumption choices (even if one takes the NCNLs' somewhat restrictive view of what counts as an intelligible human good). The NCNLs' view entails further limitations on consumption decisions though. Most importantly, basic goods must be pursued efficiently. Someone who is not committed to being a collector<sup>140</sup> might reasonably buy a *print* of a painting—thus furthering one's participation, and the participation of others, in the good of aesthetic experience. If there are multiple print sizes, one might reasonably ask whether one could reasonably be thought to want a version of the print that was, say, twenty percent higher and wider than one might otherwise purchase because of any meaningful aesthetic value. If one did not, one would not be justified in buying it, even if doing so might further participation in an intelligible human good. Or suppose one frequents a coffee house as a comfortable place in which to write and think, or to socialize. If one goes there out of force of habit, when one needs neither to write and think nor to socialize, then one will either need another reason to patronize it in this instance, or one will not be acting out of genuine need.

The Golden Rule will constrain redistributive duties in another way. The general norms of distributive justice will make it obligatory to respect certain claims of particular others or of groups potentially affected by one's actions. One will be obligated to respect these norms before fulfilling any more general duties of beneficence. Similarly, the claims of other human goods will constrain one's duties of beneficence. As was clear in Grisez's discussion of the choice between donating to a college and an NGO, the demands of fairness are shaped by intelligible goods. The existence of intelligible goods—singled by factors including pre-existing special relationships and the opportunity to honor a deceased spouse—can give one

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<sup>140</sup> Some people evidently can and should be collectors. Cf. QUESTIONS at 839–44 (asking the question: "Should morality limit public funding of the arts?").

an intelligible reason for not treating all of the potential beneficiaries of one's actions as equals. In addition, prior commitments will constrain one's choices. Adhering those commitments will render needful expenditures that might not otherwise be so. Finally, the duty of beneficence need not be fulfilled by giving to charities (whether or not ones that focus on meeting the most pressing of human needs). It might be fulfilled through investments or through the provision of employment, in ways that might substitute for or simultaneously constitute consumption decisions.

The aptness of all this will depend primarily on how effectively and sensitively we can understand and apply the Golden Rule. The NCNLs make particular, casuistic judgments about fairness. They acknowledge how relatively imprecise the Rule's requirement of fairness can be though. The viability of the NCNLT as a source of meaningful moral guidance regarding consumption is a function of our ability to determine responsibly what we ourselves would and would not find acceptable were we to trade places with others affected by our choices—once we have taken into account the other implications of the Golden Rule and the implications, if any, of our commitments and vocations, as well as the genuineness of the goods in question.

This is no easy task. The greatest weakness of the NCNLs' account of the morality of consumption is arguably their failure to explain how to apply the Golden Rule in a meaningful way. However, it does seem clear the NCNLT will not require anything like the self-oblation required, in theory, by the Singer-Unger view. It nonetheless entails significant commitments by most people in the developed world to providing financial support for poverty relief efforts (or other endeavors designed to foster the common good). The NCNLT does not, *per se*, require a particular allocation of this wealth. Indeed, it leaves open a wide range of options. For a use of the public's redistributive authority to foster relief and development efforts to be just, however, it is not necessary that this use be the *only* one consistent with justice. If a redistributive scheme benefiting relief and development efforts is democratically legitimate, it will count as one way of implementing a more general duty of redistribution required by the NCNLT.

Some proponents of a DRD may not regard this as sufficient. For, they will ask, what if the state makes otherwise appropriate use of its redistributive authority, but choose to support only charities that promote cultural enrichment? What if it employs this authority simply to benefit those who are already well-off? Is there any basis on which the state's action in this case could be characterized as unjust?

I believe the NCNLs would say that it could and should be. For while any particular individual might without committing injustice choose to devote much or all of her surplus to cultural enrichment, the same would not be true of the state. The individual and collective cases are not analogous. First, negatively, while individual identities and commitments may channel private resources into purely cultural channels, the state has no identity, has made and could make no commitments, precluding concern for poor. Certainly this would be particularly true with respect to the poor within its borders, who are, of course, members of the community for which it is responsible. The state's identity could hardly preclude care for its own constituents. Second, positively, the Golden Rule would rule out as unfair both disregard for the domestic poor and for neighbors beyond the state's borders. Just as the Golden Rule requires individuals to assist those who can be easily helped, it similarly binds states. It will also, of course, condemn as unjust, and thus to be renounced, those international legal, political, and economic structures that create and perpetuate poverty. The NCNLT has no commitment to a naïve view in accordance with which the challenge of global poverty confronts societies the disparities in whose material conditions are exclusively or primarily accidental.

In the absence of a global government, this will obviously be the responsibility of individual states.<sup>141</sup> However, as George emphasizes, the NCNLT makes the creation of an appropriate system of global governance morally desirable and the exercise of just authority by such a system just. Global poverty will often be a global problem. A global solution will include a fairer distribution of burdens. The global structures and rules, which can be more readily and fairly altered by a world government than by individual nations, can have substantial positive and negative consequences for global poverty. Thus, global poverty will be a key focus of a global government if one exists.<sup>142</sup>

The NCNLT provides a comprehensive framework within which questions about individual and collective responsibility for responding to the awful spectacle of global deprivation can be addressed. By elaborating a systematic understanding of justice in the acquisition and distribution of property and the provision of assistance to others, it simultaneously mandates individual and collective assistance (among other appropriate remedies) and cabins individual duties of aid within reasonable limits. Thus, it provides an

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<sup>141</sup> George notes the natural law tradition's emphasis on "the obligation of states to cooperate to solve common problems and provide assistance to one another." DEFENSE at 244 n.32.

<sup>142</sup> Cf. Gary Chartier, *Peoples or Persons? Revising Rawls on Global Justice*, 27 B.C. INT'L & COMP. L. REV. 1 (2004) (examining John Rawls' account of global distributive justice).

attractive and morally credible setting within which a DRD effectuated by way of public policy can be clarified and defended.

