ALL THE FREEDOM YOU CAN WANT: THE PURPORTED COLLAPSE OF THE PROBLEM OF FREE WILL

EDWARD C. LYONS*

INTRODUCTION

Reflections on free choice and determinism constitute a recurring, if rarified, sphere of legal reasoning. From a practical perspective, debate concerning human responsibility inevitably surfaces in connection with legislative and judicial adoption of the insanity defense,[1] and, to a lesser extent, in decisions involving duress and necessity.[2] In addition, although at an even more abstract level, debate about human freedom plays a role in every theoretical account of moral and legal culpability.

Controversy, of course, swirls around the perennially vexing question of the propriety of punishing human persons for conduct that they are unable to avoid. Drawing upon conditions similar, if not identical, to those traditionally associated with attribution of moral fault, persons subject to such necessitating causal constraints generally are not considered responsible in the

* Associate Professor of Law, Ave Maria School of Law; B.A. University of San Francisco; J.D., Notre Dame Law School; M.A., Ph.D., University of St. Thomas (Philosophy).

1 The existence of alternative legal tests of sanity and insanity illustrates the complexity of the debate. A number of jurisdictions have supplemented the standard rule requiring simply the ability to know the difference between wrong and right by also providing a defense where the defendant may have such knowledge but was still "unable to adhere to the right" as a result of irresistible impulse. *U.S. v. Kunak*, 17 C.M.R. 346, 359-60 (1954). The necessary conditions of both knowledge *and* the possibility of conforming or not conforming one's action to such knowledge are reflected in the Modern Penal Code's formulation of the insanity defense: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct *or* to conform his conduct to the requirements of law." MODEL PENAL CODE § 4.01 (1962) (emphasis added).

2 For a discussion of responsibility relating to the affirmative defenses of duress and necessity, *see* MODEL PENAL CODE §§ 2.09, 3.02.

requisite sense for their conduct; and, thus, they are not held culpable for its consequences.[3]

Such a position presupposes the common, but not uncontroverted view, that alternative possibilities of conduct exist for human actors in most circumstances; in other words, that responsibility for conduct requires that human persons have free choice about what they do. The controversy, of course, stems from the fact that according to physical, behavioral, or psychological deterministic accounts of human behavior—such a demand is an impossibility.[4]

The standard argument asserts that free choice cannot exist because determinism, as a property of laws governing the cosmos, excludes such a possibility. This contingent factual claim, however, has always been problematic. Contemporary discussions—no doubt aware of this disputed factual premise—draw upon a more novel, and arguably more devastating critique: free will must be rejected because its very conception is incoherent.

Rather than assuming the existence of determinism and attempting to show its incompatibility with free will, this argument begins with consideration of the idea of free choice and concludes that, if it is to have any sense at all, it must be compatible with determinism. A. J. Ayer outlined the argument as follows:

> But now we must ask how it is that I come to make my choice. Either it is an accident that I choose to act as I do or it is not. If it is an accident, then it is merely a matter of chance that I did not choose otherwise; and if it is merely a matter of chance that I did not choose otherwise, it is surely irrational to hold me morally responsible for choosing as I did. But if it is not an accident that I choose to do one thing rather than another, then presumably there is some causal

[3] *See supra* notes 1-2.

[4] As one legal commentator describes it:

> Our bodies and mental states, which are products of our genetic makeup and our past experiences, explain why we do what we do. But we want to attribute freedom and voluntariness only to individual agents who are architects of their own actions. And if we are not responsible for our genetic makeup and past experiences, how can we be responsible for our actions? How can we act voluntarily? We cannot.

Ronald J. Allen, *Miranda's Hollow Core*, 100 NW. U. L. REV. 71, 77-78 (2006).

> explanation of my choice: [sic] and in that case we are led back to determinism.[5]

Obviously, no single treatment of the free will problem could address all its nuances. This Article more modestly offers one possible approach to the question. Part I elaborates in more detail the view that the traditional conception of free choice is incoherent and, thus, inevitably undermines the very responsibility it is asserted to constitute; Part II considers the resulting effort to develop a model of human freedom compatible with determinism; and Part III, drawing upon the prior discussions, describes—in terms of classical action theory—a conception of free choice justifying *personal* moral and legal responsibility that avoids both the incoherence of 'uncaused freedom' as well as the shortcomings of determinism.

I. FREEDOM AIN'T WORTH NOTHIN' BUT IT'S FREE[6]

A. Responsibility: The Dilemma of Determinism and Autonomy

An actor's moral responsibility for conduct, on traditional theory, is understood to be founded upon an *intentional* model of choice. It conceives of human action as a process of self-determination brought about through one's beliefs and desires.[7]

5 A. J. AYER, *Freedom and Necessity*, *in* PHILOSOPHICAL ESSAYS 275 (Macmillan & Co. Ltd. 1965).

6 *Cf.* KRIS KRISTOFFERSON, ME & BOBBY MCGEE (Monument Records 1970), *available at* http://www.elyrics.net/read/k/kris-kristofferson-lyrics/me-and-bobby-mcgee-lyrics.html (last visited Mar. 14, 2007) (serenading "[f]reedom's just another word for nothin' left to lose and nothin' ain't worth nothin' but it's free").

7 As Sanford Kadish describes this traditional view:

> [C]riminal liability is not governed solely by the social purposes of punishment. It is governed as well by the moral justification of punishing people for both their conduct and the results of their conduct. Indeed, criminal liability is best understood as responding primarily to considerations of the latter kind . . . .
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> . . . .
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> Central among the beliefs that underlie the criminal law is the distinction between nature and will, between the physical world and the world of voluntary human action. Events in the physical world follow one another with an inevitability, or natural necessity, that is conspicuously absent from our view of voluntary human actions. . . . Thus, the conception of causation appropriate to physical events is out of place in the human realm.
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> . . . .
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> . . . Human actions stand on an entirely different footing. . . . Except in special circumstances, he [an agent] possesses volition through which he is free to choose his actions. He may be influenced in his choices, but influences do not work like wind upon a straw . . . . [H]is actions are his and his alone, not those of his genes or

For this reason, such actions are thought to be attributed in a special manner to an actor's *personal* agency and, therefore, dissimilar to effects brought about through deterministic physical causation.

Yet, based on the very same claim, determinists argue that moral responsibility *cannot* be founded upon a model of choice so understood. In their view, by rejecting the deterministic quality of the causality underlying moral choices, the traditional view would *ipso facto* render choice random and irrational, or, as Ayer phrased it, "accidental." If beliefs and desires do not *cause* choices, then choices cannot be attributed to the agent in the sense required for attribution of personal responsibility.

One philosopher, Don Locke, suggests that this dilemma reflects opposing intuitions of the nature of 'freedom.' The failure to distinguish between these intuitions, Locke argues, confuses discussions about the conditions necessary for moral responsibility. He refers to one relevant sense of freedom as 'caused freedom' and the other as 'uncaused freedom.'

In the first sense, freedom entails the ability to act in accord with one's beliefs and desires in a non-coerced, albeit deterministic manner.[8] The second sense of freedom proposes that an agent could have uncategorically acted differently from the way in which he did act. On this second understanding of freedom, Locke asserts that such actions cannot be understood as being 'caused' at all.

> his rearing, because if he had so desired he could have chosen to do otherwise. This is the perception that underlies the conception of responsibility[.]

Sanford H. Kadish, *Complicity, Cause and Blame: A Study in the Interpretation of Doctrine*, 73 CAL. L. REV. 323, 326-27, 30 (1985); *see* Edward C. Lyons, *In Incognito-The Principle of Double Effect in American Constitutional Law*, 57 FLA. L. REV. 469, 493, 497-98 (discussing the nature of intentional conduct and personal responsibility).

8

> Soft determinism is the position that free will and determinism are compatible inasmuch as 'free' means 'uncoerced,' not 'uncaused.' This position on the controversy is . . . widely held by English speaking philosophers. Among those who have articulated and defended it are Hobbes, Locke, Hume, Mill, Moore, Ayer, and Nowell-Smith. Compatibilists in the present century often have defended their position by proposing an analysis of 'could have done otherwise' which is consistent with saying it of someone whose act is imputable to him although it is caused.

JOSEPH M. BOYLE, GERMAIN GRISEZ, OLAF TOLLEFSEN, FREE CHOICE: A SELF-REFERENTIAL ARGUMENT 105 (Univ. of Notre Dame Press 1976). Boyle et al. note a succinct expression of compatibilism presented seventy-five years before Hobbes by Michel du Bay in his *De Libero Hominis Arbitrio Eiusque Potestate* (Louvain 1563): "What comes about voluntarily comes about freely even if it comes about necessarily." *See id.* at 105 n.1, 195.

B. 'Caused Freedom' and the Ability to Do Otherwise

In elaborating these notions, Locke explains that an agent who acts freely in a 'caused' sense must be understood to cause his actions by virtue of self-determining intentions. Any other *causal* explanation of action would depend upon the implausible proposition that "intentional" actions could be caused by something *other* than reasons and wants.[9]

By 'causality' in this context, Locke has in mind the standard sense: "(a) every event has a sufficient cause; (b) at any given time, given the past, only one future is possible; (c) given knowledge of all antecedent conditions and all laws of nature, an agent could predict at any given time the precise subsequent history of the universe."[10] On this understanding of 'causality,' every effect is predetermined by its cause(s),[11] and a 'same cause, same effect' relation exists such that given a particular state of the world all prior and subsequent events obtain unavoidably.

Of course, the notion of deterministic causation employed in this conception of freedom does not exclude reference to the efficacy of cognitive and deliberative psychological states. A proper understanding of *rational* causal theories recognizes that the influence of reasons and desires can be just as deterministic as non-rational 'physical' forces. As Alasdair MacIntyre described this view of causal efficacy:

[9] As Locke proposes:

> Now if an action is free in the sense that . . . he acts as he does *only because* he is willing, then . . . there need be no incompatibility between an action's being free, in these senses, and its having a cause. Indeed these accounts fit naturally, as they are meant to, with the self-determinist conception of free action as action determined by the agent's wants and volitions.

Don Locke, *Three Concepts of Free Action: I*, *in* MORAL RESPONSIBILITY 97, 112 (John Martin Fischer ed., Cornell Univ. Press 1986).

[10] Bernard Berofsky, *Determinism*, *in* THE CAMBRIDGE DICTIONARY OF PHILOSOPHY 198 (Robert Audi ed., Cambridge Univ. Press 1995).

[11] The notion of "causality" discussed here limits itself to the conception of scientific causality understood in a deterministic sense. Contemporary models of scientific causality, however, are not limited to this broad generalization. Some modern physical theories propose statistical laws governing the probability of what are thought to be inherently indeterminate events. As Kenneth Friedman states, "[d]eductibility of the occurrence of the event entails the determinism of these universal laws, as probabilistic laws would allow at most the deductibility of the probability of the occurrence of the event." Kenneth S. Friedman, *Analysis of Causality in Terms of Determinism*, *in* 89 MIND 544 (Oxford Univ. Press 1980). An example of such laws is found in the theory of quantum mechanics. Quantum mechanics proposes that the future locations of subatomic particles are indeterminate and random although they behave with a predictability that can be described by statistical laws.

> Behaviour is rational . . . if, and only if, it can be influenced, or inhibited by the adducing of some logically relevant consideration. . . . For if giving a man more or better information or suggesting a new argument to him is a both necessary and sufficient condition for, as we say, changing his mind, then we exclude, for this occasion at least, the possibility of other sufficient conditions. . . . Thus to show that behaviour is rational is enough to show that it is not causally determined in the sense of being the effect of a set of sufficient conditions operating independently of the agent's deliberation or possibility of deliberation.[12]

Traditional moral theory must also reject such notions of rational causation as an appropriate model for moral choice. Envisioning antecedent psychological occurrences as 'determining events' or 'causes' of human choice inevitably entails an 'intellectual' determinism that eliminates the possibility of autonomous efficacy. If one's 'reasons' antecedent to a choice constitute necessary and sufficient conditions of that choice, then the possibility of choosing otherwise vanishes in the face of those conditions. A 'cause,' in this sense, provides a *sufficient* explanation for the subsequent effect. As a natural corollary, if an agent is *caused* to choose a particular way, he could not have chosen otherwise; and therefore, it is inappropriate to praise or blame him for that choice.[13]

1. The Bait and Switch

In response to this traditional objection, Locke notes that some proponents of determinism ('caused freedom') offer an explanation of one sense in which the agent *conditionally* could have acted otherwise. It is, for example, undeniable that *if* the agent had possessed different reasons he would have acted otherwise. J.S. Mill offers an example:

[12] A. C. MacIntyre, *Determinism*, 66 MIND 28, 34-5 (1957).

[13] MacIntyre explains:

> The discovery of causal explanations for our actions, preferences and decisions shows that we could not have done other than we have done, that responsibility is an illusion and the moral life as traditionally conceived a charade. It makes praise and blame irrelevant, except in so far as we discover these to be causally effective, and while the moral judgments of agents might therefore retain some point, those of spectators and critics would be pointless.

Id. at 29.

> Take any alternative: say to murder or not to murder. I am told, that if I elect to murder, I am conscious that I could have elected to abstain: but am I conscious that I could have abstained if my aversion to the crime, and my dread of its consequences, had been weaker than the temptation? If I elect to abstain: in what sense am I conscious that I could have elected to commit the crime. . . . When we think of ourselves hypothetically as having acted otherwise than we did, we always suppose a difference in the antecedents: we picture ourselves as having known something that we did not know, or not known something that we did know. [14]

The view, however, that 'an agent could act differently if he had different reasons,' that is, if and only if distinct logically relevant considerations had been brought forward, does not undermine a deterministic causal theory, but is entirely consistent with it.

The proposal of such counterfactual interpretations of 'could have done otherwise' then are insufficient to rebut traditional objections. It is generally conceded that causal theories of intentional action are *not* compatible with the view that the agent had any real option to act differently. As Locke remarks, "if all human behaviour is caused, then we are never able to do other than what we do do, though it may often be true that we are able to act otherwise if we want to."[15] As numerous scholars have observed, this form of argument is more than anything else a 'bait and switch.' As MacIntyre notes: "protagonists of this view . . . are forced to do violence to ordinary linguistic usage in order to uphold their case."[16]

C. 'Uncaused Freedom' and the Ability to Do Otherwise

Recognizing the inability of a purely conjectural sense of "could have done otherwise" to account for free action "in any full and important sense," Locke considers the meaning of "could have done otherwise" entailed by more "substantive" notions of

14 J.S. MILL, AN EXAMINATION OF SIR WILLIAM HAMILTON'S PHILOSOPHY, *reprinted in* FREE WILL 60 (Sidney Morgenbesser and James Walsh ed., Engelwood Cliffs, 1962).

15 Locke, *supra* note 9, at 112.

16 MacIntyre, *supra* note 12, at 33.

freedom.[17] He believes that such a conception requires changing the 'could' to 'can' and asserting that 'can' is not to be understood conditionally:

> [T]he 'can' in question is to be interpreted categorically, as asserting that the agent actually was able, at the time and on the occasion in question. To say that he acted freely is not merely to say that there are some circumstances in which he could have acted differently; it is to say that he could actually have acted differently, there and then. . . . [T]he 'can' in question is not to be analysed wholly hypothetically, in terms of what the agent would do in different circumstances, . . . because that analysis makes nonsense of the claim that he could have acted differently in these very circumstances. For . . . this is to say that he would have acted differently in different circumstances in these circumstances, which means either that he would have acted differently in different circumstances—which is not equivalent to the claim that he could have acted differently in *these* circumstances—or means nothing very clear at all.[18]

In order to account for the possibility of asserting that an actor 'can act otherwise,' Locke argues that it is necessary to posit a different sort of freedom, namely, 'uncaused freedom.'[19] Elaborating on this concept, Locke explains that in order for a person 'unhypothetically' to be able to act differently from the way he acted, an agent's action must simply be uncaused.

> [I]f an action is free in the sense that the agent can act differently from the way in which he actually does act, then it follows that nothing causes him to act as he does. . . .[O]n any understanding of causation, if circumstances *C* are such as to cause *E* to occur, then the non-occurrence of *E* given *C* is an empirical impossibility. . . . Causal possibility is, after all, a prime form of empirical possibility. Thus a free action, in the sense of one where the agent is able to act

[17] Locke, *supra* note 9, at 111 (describing ability of agent's conditional performance to act differently than he wants to).

[18] *Id.* at 107.

[19] *Id.* at 110 (asserting there is nothing causing agent's actions where he can act differently than he does).

> differently, will have to be one which lacks a determining cause.[20]

Positing some act of the agent, *E*, in reference to which it could be hypothesized that the agent could instead unconditionally perform some alternative act, *E'*, and assuming *E* and *E'* are incompatible actions,[21] then the agent's *E-ing* cannot be understood as 'caused' act at all. This is so because on a causal model, antecedent states of the world (both internal and external to the agent) entail a static set of effects: If *E* is *caused*, *E must* unavoidably obtain. If either *E or E'* could unconditionally occur, then neither *E* nor *E'* could be caused.

1. Too Much Freedom

The difficulty, however, raised by a conception of choice as 'uncaused' action, is that even if it were a metaphysical possibility, it appears even less likely than a deterministic model to provide an adequate explanation of personal responsibility. Given the absence of a causal connection between the agent and the action, no meaningful basis remains for attributing the action *to* the agent in any significant sense. Such actions would be *too free*. As one legal commentator expresses it: "[c]hoices that ultimately are a consequence of random fluctuations . . . do not embody any notion of free will worthy of respect . . . or bear any relationship at all to what passes in legal discourse for free will (which involves identity, autonomy, agency, and so on)."[22] If uncaused choice is the only sort of action about which it could be claimed that a person really could have acted differently, nothing remains in that action to justify its being attributed to the actor in any meaningful sense.

Susan Wolf adopts this exact line of critique when she asserts that the traditional conception of autonomy eliminates the possibility of a moral agent. Responding to the traditional "incompatibilist" position (i.e., the view that freedom necessary

[20] *Id. See generally* Ted Honderich, *Causes and Causal Circumstances as Necessitating*, *in* 78 PROCEEDINGS OF THE ARISTOTELIAN SOCIETY 63-86 (Compton Press Ltd. 1977-78) (noting discussions of causality from which Locke appears to have formulated his theory).

[21] That is, it is a logical impossibility for the agent to perform both actions at the same time.

[22] Allen, *supra* note 4, at 77.

for personal responsibility cannot be reconciled with determinism), Wolf argues:

> [N]o standard incompatibilist views about the conditions of moral responsibility can be right, for, according to these views, an agent is free only if he is the sort of agent whose actions are not causally determined at all. . . . The agent would be, in the words, though not in the spirit, of Sartre, "condemned to be free"—he could not both be free and realize a moral ideal.[23]

Free or autonomous choice, for Wolf, would imply an ability of an agent to make 'radical' choices—radical because their occurrence could only be explained by asserting that *nothing* determines the choice: "[T]his ability to make radical choices is," she explains, "opaque. Since a radical choice must be made on *no basis* and involves the exercise of no faculty, there can be no explanation of why or how the agent chooses to make the radical choices she does."[24] To be truly autonomous, an agent must choose without reference to any determinate basis. If antecedent reasons or desires caused choice, then choice could no longer be autonomous; it would be determined by antecedent, psychological causal conditions.

As Don Locke summarizes this view: a person accepting the notion of 'uncaused' freedom and rejecting the adequacy of 'caused' freedom to account for personal responsibility must believe that "if an action is free in the sense that the agent can act differently from the way in which he actually does act, then it follows that nothing causes him to act as he does.[25]

On similar grounds, Peter Westen has recently argued, in the context of legal analysis, that any attempt to capture a successful explanation of free choice is inevitably doomed to failure.[26] He asserts that the "problem" of free choice is simply a 'false problem' that human actors have unnecessarily created for themselves. It is a false problem because it attempts to provide

[23] Susan Wolf, *Asymmetrical Freedom*, 77.3 J. PHIL. 151, 162 (1980).

[24] SUSAN WOLF, FREEDOM WITHIN REASON 54 (Oxford Univ. Press 1990) (emphasis added) [hereinafter FREEDOM WITHIN REASON].

[25] Locke, *supra* note 9, at 110.

[26] *See generally* Peter Westen, *Getting the Fly Out of the Bottle: The False Problem of Free Will and Determinism*, 8 BUFF. CRIM. L. REV. 599 (2005).

an explanation for that which, in its very conception, excludes the possibility of being explained. Westen observes:

> The supposed problem of free will and determinism is as false as the question, "What is the expanding universe expanding into?" It is a problem that we have created for ourselves by posing questions in terms that are inconsistent with the presuppositions that we must necessarily invoke in addressing them.
>
> The proper response to a false problem is not to wrestle with it but to escape it. The proper response to free will and determinism is to recognize that nothing can possibly come of it and, hence, that nothing can possibly turn on it. Just stop thinking about it. Just think about something else![27]

2. A Different Kind of Causality

Before concluding her analysis of free choice, Wolf raises for consideration one final relation between reason, autonomy and choice that she appears to have overlooked,[28] that is, the view that reason *can* provide a basis for personal responsibility and moral value, but that in order to do so, practical reason must be much different than generally conceived of by determinists like herself and others. Such a view, according to Wolf, would require that the exercise of reason be understood to constitute a particular sort of autonomy; as she describes it, "this ability itself requires at least a kind of radical autonomy. That is . . . the possession of true rationality requires a kind of agency incompatible with ordinary sorts of physical and psychological determination."[29] Wolf, however, offers no further reflections about this alternative account of practical rationality. Sidestepping further consideration of its possibility, she notes simply that "the idea remains an interesting one, which I have not fully or directly explored."[30]

Returning to her rejection of the traditional conception of moral and legal culpability as rooted in personal autonomy, Wolf

[27] *Id.* at 652.
[28] *See* FREEDOM WITHIN REASON *supra* note 24.
[29] *Id.* at 62.
[30] *Id.*

concedes that she has exhausted arguments supporting the view that moral responsibility requires autonomy.[31] In view of the inability of that concept to resolve the problem of free will, Wolf concludes that the only option is to explain choice bearing personal responsibility on deterministic lines. For those who would refuse to accept this determinist resolution, Wolf asserts, the only satisfactory concept of a 'person' would implausibly require "being a prime mover unmoved, whose deepest self is itself neither random *nor* externally determined, but is rather determined *by* itself – who is, in other words, self-created."[32]

II. I STILL HAVEN'T FOUND WHAT I'M LOOKING FOR[33]

A. Rejection of the Principle of Alternate Possibilities

Adopting the view that no notion of 'uncaused autonomy' could account for a meaningful sense in which persons could be responsible for their actions, many theorists redouble their efforts to show how responsibility can be reconciled with determinism.

Harry G. Frankfurt is a leading proponent of this view. His defense of this "compatibilist" position (i.e., moral responsibility is *compatible* with determinism) is found in the context of his rejection of "the principle of alternate possibilities."[34] "This principle states that a person is morally responsible for what he has done only if he could have done otherwise. . . . It has generally seemed so overwhelmingly plausible that some philosophers have even characterized it as an *a priori* truth."[35]

[31] *Id.* at 61 (explaining, "I have exhausted all the reasons I can think of for believing that responsibility requires not just the ability to act in accordance with Reason but also the ability to act against it, for believing, that is, that responsibility requires not just rationality but (radical) autonomy.").

[32] Susan Wolf, *Sanity and the Metaphysics of Responsibility*, *in* RESPONSIBILITY, CHARACTER, AND THE EMOTIONS, NEW ESSAYS IN MORAL PSYCHOLOGY 46, 52 (Ferdinand Schoeman ed., Cambridge Univ. Press 1988) (1987) [hereinafter *Sanity*].

[33] U2, *I Still Haven't Found What I'm Looking For*, *on* THE JOSHUA TREE (Island Records 1987), *available at* http://www.atu2.com/lyrics/songinfo.src?SID=56 (last visited Mar. 15, 2007).

[34] Harry G. Frankfurt, *Alternate Possibilities and Moral Responsibility*, 66 J. PHIL 828 (1969), *reprinted in* MORAL RESPONSIBILITY 143, *supra* note 9 [hereinafter *Alternate Possibilities*].

[35] *Id.*

Frankfurt, however, denies that the unavoidability of action precludes an agent's being responsible for it, and he asserts that traditional conceptions of personal responsibility err in believing that responsibility is precluded by unavoidability. "This, then, is why the principle of alternate possibilities is mistaken. It asserts that a person bears no moral responsibility—that is, he is to be excused—for having performed an action if there were circumstances that made it impossible for him to avoid performing it."[36]

In Frankfurt's view, the fact that an agent may be determined to perform some action will often be irrelevant in assessing moral responsibility.[37] For, although conditions might exist that would cause an agent to perform an action *even if he did not want to*, it might be the case that he wanted to.[38] In such circumstances, even if an agent could not act otherwise, it does not follow that he performs the action *simply* because he could not do otherwise.

Frankfurt notes different senses of "being unable to do otherwise." In once case, the statement, "I was unable to do otherwise" functions as an *excuse*, that is, it absolves one from responsibility. By means of the statement, the actor intends to stress that in no way did the actor want to do what he or she did.

> We understand the person who offers the excuse to mean that he did what he did *only because* he was unable to do otherwise or *only because* he had to do it. And we understand him to mean, more particularly,

[36] *Id.* at 151.

[37] Frankfurt states:

> The circumstances that made it impossible for him to do otherwise could have been subtracted from the situation without affecting what happened or why it happened in any way. Whatever it was that actually led the person to do what he did, or that make him do it, would have led him to do it or made him do it even if it had been possible for him to do something else instead.
>
> . . . When a fact is in this way irrelevant to the problem of accounting for a person's action it seems quite gratuitous to assign it any weight in the assessment of his moral responsibility.

Alternate Possibilities, *supra* note 34, at 150-51.

[38] "[T]here may be circumstances that constitute sufficient conditions for a certain action to be performed by someone and that therefore make it impossible for the person to do otherwise, but that does not actually impel the person to act or in any way produce his action." *Id.* at 144.

Frankfurt suggests the case of an evil scientist monitoring the thoughts of a person the scientist wants to act in a certain manner. Only if that person fails to act in the manner desired by the scientist will the scientist intervene, and cause him to perform that act. *See* Harry G. Frankfurt, *Three Concepts: II*, *in* MORAL RESPONSIBILITY 113, 119, *supra* note 9 [hereinafter *Three Concepts: II*].

> that when he did what he did it was not because that was what he really wanted to do.[39]

This does not, however, entail the conclusion that when an agent *does* do what he really wants to do, that he could have done otherwise.[40] Even if one assumes that all actions are determined, it may still be possible that an actor might really want to do what he is determined to do and sometimes not. In other words, there may be something about 'doing what one really wants to do' that renders objections about its determined nature irrelevant.

Frankfurt acknowledges, nonetheless, that his position would remain unresponsive to traditional concerns if it failed to refine the causal account of what *does* explain an agent performing the action 'he wanted to.' For, on simplistic causal explanations of an agent 'wanting' to perform an action, he concedes that 'wanting' can *only* be understood as occurring because the agent could not avoid it.[41] In such scenarios, no basis appears to exist for asserting that an agent could ever act in a way he does not want to act; accordingly, the agent could be understood to want things *only* because he could not avoid it.

1. Frankfurt's Notion of Freedom

The success of Frankfurt's attempt to resolve anti-determinist objections thus turns upon his technical understanding of what it

39 *Alternate Possibilities*, *supra* note 34, at 152.

40 Frankfurt elaborates:

> The following may all be true: there were circumstances that made it impossible for a person to avoid doing something; these circumstances actually played a role in bringing it about that he did it, so that it is correct to say that he did it because he could not have done otherwise; the person really wanted to do what he did; he did it because it was what he really wanted to do, so that it is not correct to say that he did what he did only because he could not have done otherwise. Under these conditions, the person may well be morally responsible for what he has done.

Id.

41 Frankfurt adds:

> For if it was causally determined that a person perform a certain action, then it will be true that the person performed it because of those causal determinants. And if the fact that it was causally determined that a person perform a certain action means that the person could not have done otherwise, as philosophers who argue for the incompatibility thesis characteristically suppose, then the fact that it was causally determined that a person perform a certain action will mean that the person performed it because he could not have done otherwise.

Id. at 151-52.

means for an agent 'to do what he really wants to do.'[42] For Frankfurt this concept functions both as a definition of free will as well as the distinguishing characteristic of the volitional apparatus of human persons.

In his view, human persons differ from non-personal entities in that, in addition to having competing *basic* desires to perform actions or to want various objects (termed "first-order desires"), persons have the added ability to reflect upon and evaluate first-order desires. Frankfurt refers to these reflexive evaluations as "second-order desires."[43] By virtue of second-order desires, human persons, in turn, form 'second-order volitions' through which they specify which first-order desire they want to be their 'effective first-order desire,' or, as Frankfurt defines it, one's 'will.'[44] It is in reference to humans acting according to second-order *volitions* that Frankfurt speaks of human agents doing what they really want: "Someone does what he *really wants* to do only when he acts in accordance with a pertinent higher-order volition."[45] What distinguishes an entity with second-order volitions from an entity lacking them, then, is that the former is *personally* involved in what his will is, that is, only a *person* has a view about which first-order desire becomes effective.

Entities lacking second-order reflexive perspectives or evaluations of their basic, first-order desires are referred to by Frankfurt as 'wantons.'[46] Wantons may have a multiplicity of

[42] Harry G. Frankfurt, *Freedom of the Will and the Concept of a Person*, *reprinted in* MORAL RESPONSIBILITY 65, 67, *supra* note 9 [hereinafter *Concept of a Person*].

[43] Frankfurt believes that:

> Besides wanting and choosing and being moved *to do* this or that, men may also want to have (or not to have) certain desires and motives. They are capable of wanting to be different, in their preferences and purposes, from what they are. Many animals appear to have the capacity for what I shall call "first-order desires" or "desires of the first order," which are simply desires to do or not to do one thing or another. No animal other than man, however, appears to have the capacity for reflective self-evaluation that is manifested in the formation of second-order desires.

Id.

[44] Frankfurt reserves the notion of "will" for a first-order desire that is "an *effective* desire—one that moves (or will or would move) a person all the way to action." *Id.* at 68.

[45] Harry Frankfurt, *Identification and Wholeheartedness*, *in* RESPONSIBILITY, CHARACTER, AND THE EMOTIONS, NEW ESSAYS IN MORAL PSYCHOLOGY 27, 34, *supra* note 32 [hereinafter *Wholeheartedness*].

[46] Frankfurt describing "wantons":

> The essential characteristic of a wanton is that he does not care about his will. His desires move him to do certain things, without its being true of him either that he wants to be moved by those desires or that he prefers to be moved by other desires . . . . What distinguishes a rational wanton from other rational

desires that struggle with one another before any one of them spurs the entity to action. Yet, a wanton, though experiencing consciously the struggle between first-order desires and its resolution, has no (higher-level) *preference* as to which first-order desire effectively motivates to action; the wanton has no preference about his 'will'.

Based on this analysis, Frankfurt asserts that it is only a person, i.e., an entity with second-order volitions, that "is not only free to do what he wants to do; he is also free to want what he wants to want."[47] In contrasting the significance of this freedom compared to the unhindered freedom to act according to a first-order desire, Frankfurt remarks, "[i]t seems to me that [a person] has, in that case, all the freedom it is possible to desire or to conceive. There are other good things in life, and he may not possess some of them. But there is nothing in the way of freedom that he lacks."[48]

Higher-level motivations, and particularly the resolution of second-order desires into volitions, are essentially personal in nature. First-order desires are given by nature and arise passively with little effort on the part of the agent as such, while formation of evaluative judgments (i.e., second-order desires) and definitive identification with one or other first-order desire (i.e., second-order volition) requires a reflexive activity of the agent:

> The pertinent desire is no longer in any way external to him. It is not a desire he "has" merely as a subject in whose history it happens to occur . . . . It comes to be a desire that is incorporated into himself by virtue of the fact that he has it *by his own will*.[49]

> agents is that he is not concerned with the desirability of his desires themselves. He ignores the question of what his will is to be. Not only does he pursue whatever course of action he is most strongly inclined to pursue, but he does not care which of his inclinations is the strongest.

Concept of a Person, *supra* note 42, at 71.

47 *Id.* at 77. And adding in pertinent part:

> More precisely, it means, that he is free to will what he wants to will, or to have the will he wants. Just as the question about the freedom of an agent's action has to do with whether it is the action he wants to perform, so the question about the freedom of his will has to do with whether it is the will he wants to have.

Id. at 75.

48 *Id.* at 77.

49 *Wholeheartedness*, *supra* note 45, at 38.

Assessing this conception of freedom, Frankfurt points out that it satisfies a number of criteria believed necessary for any adequate theory of the will. First, it explains why humans are correct in not attributing free will to other types of entities; only entities with second-order desires are capable of this. Second, it explains why freedom of will is desirable, for inasmuch as human persons have second-order volitions, conformity of the will (i.e., an effective first-order desire) with those volitions is experienced as a *sui generis* fulfillment of a higher-level desire, while the non-fulfillment of second order volitions is experienced as a unique frustration.[50]

Raising a third point, Frankfurt considers whether his theory of free will satisfies the conditions of moral responsibility some assert can be satisfied only by an ability to act otherwise. Frankfurt reiterates his belief that the ability to choose alternatively is irrelevant to the question of moral responsibility:

> In my view . . . the relation between moral responsibility and the freedom of the will has been very widely misunderstood.
>
> . . . For the assumption that a person is morally responsible for what he has done does not entail that the person was in a position to have *whatever* will he wanted.[51]

Thus, moral responsibility depends not upon whether a person *could* have acted differently, but simply on whether the person *really wanted* to perform the action that he did. Even if all human processes and actions are systematically determined, personal responsibility for conduct obtains whenever a person's second-order volition corresponds to his efficacious first-order desire.[52] If that condition is satisfied, it is irrelevant whether the person could have acted differently: "It is in securing the conformity of his will to his second-order volitions, then, that a person exercises freedom of the will."[53]

50 *Id.*
51 *Concept of a Person*, *supra* note 42, at 78-79 (emphasis added).
52 *Id.* at 67.
53 *Id.* at 75.

> Even supposing that he could have done otherwise, he would not have done otherwise; and even supposing that he could have had a different will, he would not have wanted his will to differ from what is was. Moreover since the will that moved him when he acted was his will because he wanted it to be, he cannot claim that his will was forced upon him or that he was a passive bystander to its constitution. Under these conditions, it is quite irrelevant to the evaluation of his moral responsibility to inquire whether the alternatives that he opted against were actually available to him.[54]

A person would then be doing what he wants to want to be doing, and willing what he wants to be willing. In such a case, Frankfurt concludes, the attribution of moral responsibility does not depend upon an ability to do otherwise.

2. Critique of Frankfurt's View

a. The Complexity of Human Choice

Frankfurt's view unquestionably offers a nuanced account of free will which, despite its latent difficulties, proves useful for understanding conditions necessary for the possibility of personal choice.

By positing differing orders of motivational factors, Frankfurt's system provides a foundation for more accurately describing the complexity experienced in human deliberation and choice. While some desires are experienced as first-order, that is, basic desires for objects or actions, other desires arise from reflexive, introspective evaluations about those first-order desires.[55] These higher-order evaluations, in turn, have their own specific motivational and experiential character.

[54] *Id.* at 79.

[55] Frankfurt explains his view:

> The notion of reflexivity seems to me much more fundamental and indispensable, in dealing with the phenomena at hand, than that of a hierarchy. On the other hand, it is not clear to me that adequate provision can be made for reflexivity without resorting to the notion of a hierarchical ordering. While articulating volitional life in terms of a hierarchy of desires does seem a bit contrived, the alternatives . . . strike me as worse: more obscure, no less fanciful, and (I suspect) requiring a resort to hierarchy in the end themselves.

Wholeheartedness, *supra* note 45, at 34 n.7.

Frankfurt's account also recognizes that deliberation is not simply a process of quietly picking from among one's second-order desires. Deliberation is characterized by the conscious interaction of a variety of motivational factors of different orders, some of which are passively experienced or "given," and others the agent more actively participates in constituting. Successful acts of free will, under any description, require performative skills and perfections guaranteeing appropriate management of the various human capacities involved in a single human choice.[56]

This complex account also provides Frankfurt with the means to distinguish a number of different "types" of human action: free, unfree, wanton, reflexive, first-order choice, second-order choice, and so on. First-order actions in accord with second-order volitions are free not simply because the person performing the action 'wants' at some basic level to perform it, but because the agent is carrying out the action he 'wants to want' to perform. This cannot be said of actions determined solely at the level of first-order desire, when either no second-order volition has been formed, or when the agent's effective first-order desires are not in conformity with second-order volitions. Such actions are not acts of *free* will.

In sum, Frankfurt's view is valuable because it provides a relatively precise, rational account of what distinguishes intentional, *free* human action from human acts which are neither intentional nor free. More unrefined versions of determinism, for example, posit freedom simply as constituted by unfettered internal motivation, and fail to offer any nuanced criteria by which the introspective complexity of choice can be accounted for. Even pre-theoretical intuition suggests, however, that some distinctions must be made between 'free' and 'unfree' actions. Cases of action based on mania, intoxication, or fits of passion are common instances of action that would fit into this morally unfree category of conduct. Further, Frankfurt's view provides a model for understanding the difference between human persons and non-personal entities that do not share that same complex of faculties.

56 For further discussion of the broader framework of human choice and performative skills, *see infra* note 168.

Frankfurt's model, then, should be considered among the more refined accounts of intentional action. While it is true on any conceptualization of intentional conduct that belief and desire account for action, this description standing alone gives no indication of the variety of hierarchical relations and conflicts which can exist among the cognitive and motivational factors influencing human choice. By isolating differences in varying conditions of the evaluative and motivational state of human persons, Frankfurt is able to develop a relatively thick theory of human action.

b. Determinism by Any Other Name

Nonetheless, while Frankfurt proposes interesting and important insights into the complexity of practical reasoning and choice connected with personal reflexivity, his position in the end fails to counter traditional objections. While Frankfurt believes he has located a meaningful resolution to the free will problem in the distinction between 'persons' and 'wantons,'—as constituted through the difference between first-order desires and second-order volitions—this distinction does not bear the weight he assigns to it.

Despite his considerable jockeying, Frankfurt's theory cannot avoid the most basic objection of the anti-determinist. In particular, it has not demonstrated how a meaningful sense of choice is preserved if one's second-order volitions *themselves* result from processes that are causally determined. Frankfurt himself concedes the possibility of such an anomaly: "[i]t seems *conceivable* that it should be causally determined that a person is free to want what he wants to want. If this is conceivable, then it might be causally determined that a person enjoys a free-will."[57]

But, if what Frankfurt allows is 'conceivable' actually obtains, then the reflexive 'self-determination' or 'self-constitution' brought about through second-order volitions is causally *predetermined* into the psychological life of the person, and the agent contributes nothing original. The very process of resolving one's second-order desires into second-order volitions would itself be causally determined, and no reason would exist to ascribe to that "mechanical" stage of the process the peculiarly personalist

57 *Concept of a Person*, *supra* note 42, at 80 (emphasis added).

implications that Frankfurt attempts to derive.[58] 'Person' in this context, would describe a mere functional or structural nexus, albeit a self-conscious one, between preceding causal influences and the determination of various levels of subjective motivations.

While Frankfurt may have stumbled upon an interesting complexity of the process by which motivations causally work themselves out into action, nothing about his system allows the person to 'constitute' himself or herself in anything other than a trivial sense. While persons may be more complex than wantons, it would be a complexity that lacks ethical significance. As it is true that wantons have no interest in what they want, persons would have no interest in what they want to want.

This ultimate failure to undermine traditional objections can be brought into clearer focus by considering the exact sense in which Frankfurt understands his position to be 'compatibilist.' This term is misleading if understood in the Kantian sense of a compatibility between freedom and nature. Kant's compatibilist account, resolving the third antimony of reason set out in the *Critique of Pure Reason*, requires that each human act can and should be viewed *both* as a product of inexorable laws of antecedent causality of nature and, *from a different perspective*, as the result of spontaneous freedom operating independently of nature—as a completely unconditioned condition, autonomous and not antecedently determined.[59]

[58] *See* Gary Watson, *Free Agency*, 72.8 J. PHIL. 205, 218 (1975) challenging Frankfurt's position:

> We wanted to know what prevents wantonness with regard to one's higher-order volitions. What gives these volitions any special relation to "oneself"? It is unhelpful to answer that one makes a "decisive commitment," where this just means that an interminable ascent to higher orders is not going to be permitted . . . .
>
> . . . It does not tell us why or how a particular want can have, among all of a person's "desires," the special property of being peculiarly his 'own.'

Id.

[59] Kant's view depends, of course, upon his limitation of speculative reason to *appearances*, thus opening up the possibility of a distinctly spontaneous noumenal reality remaining available to practical reason as posited in "das Ding an sich," the 'thing in itself.' He explains:

> Morality does not, indeed, require that freedom should be understood, but only that it should not contradict itself, and so should at least allow of being thought, and that as thus thought, it should place no obstacle in the way of a free act (viewed in another relation) likewise conforming to the mechanism of nature. The doctrine of morality and the doctrine of nature may each, therefore, make good its position. This, however, is only possible in so far as criticism has previously established our unavoidable ignorance of things in themselves, and has limited all that we can theoretically *know* to appearances.

For Kant, then, moral responsibility entails a notion of autonomy that cannot be identified with or reduced to determinism. His sense of 'compatibility' does not *collapse* one concept into the other, but demands that the human conduct be viewed from *different perspectives* as free and as determined.

Frankfurt, on the contrary, proposes that moral responsibility is not merely *compatible* with determinism in Kant's sense, but that moral responsibility can itself be a form of determinism. As long as a person "wants what he wants to want" it makes no difference if the person is determined causally to this condition or not. In fact, Frankfurt's view is not, strictly speaking, really a 'compatibilism' at all, but a matter of definition. Moral freedom need not be *coordinated* with determinism because moral freedom properly understood just *is* (a form of) determinism.

In the end, no matter how many successive layers of desire may be posited, deterministic resolution of choice is incapable of generating any irreducible sense of efficacy attributable to the *person*, and, therefore, is incapable of grounding meaningful responsibility in the person.[60] Robert Nozick, reflecting on deterministic positions similar to Frankfurt's, appropriately

> . . . [T]he assumption . . . [of] *freedom* . . . is not permissible unless at the same time speculative reason be deprived of its pretensions to transcendent insight. For in order to arrive at such insight [speculative reason] must make use of principles which, in fact, extend only to objects of possible experience, and which, if also applied to what cannot be a possible experience, always really change this into an appearance, thus rendering all *practical extension* of pure reason impossible. I have therefore found it necessary to deny *knowledge*, in order to make room for *faith*. ["Ich musste also das Wissen aufheben, um zum Glauben Platz zu bekommen . . . ."].

IMMANUEL KANT, CRITIQUE OF PURE REASON 28-29 (Norman Kemp Smith trans., St. Martin's Press 1968) (1929). For a survey of Kant's attempts to reconcile the relation between the two standpoints of freedom and nature*, see, e.g.*, John R. Silber, *The Ethical Significance of Kant's Religion*, *in* RELIGION WITHIN THE LIMITS OF REASON ALONE, at xcvii-ciii (Theodore Greene and Hoyt Hudson trans., Harper Torchbooks 1960).

60 Consider Frederick Ferré's comment, just as applicable to Frankfurt's effort as it is to simpler models of motivational chains:

> It follows from philosophical determinism that every event in each human life is the necessary outcome of prior conditions themselves previously determined by others and so on *ad infinitum* . . . .
>
> (1) It is always *artificial*, given a deterministic metaphysic, to isolate any particular earlier link in an unbroken causal chain as more essentially "the cause" of a later event in the chain than any other, or combination of others. . . .
>
> (2) This being so, it is always *arbitrary* to direct our moral assessments to persons. Why, in the nature of things as the determinist sees them, should the proximate point in the world line of the universe at which a person forms a minor part be singled out for special attention?

Frederick Ferré, *Self-Determinism*, 10.3 AM. PHIL. Q. 165, 173 (1973).

notes their inability—no matter how complex—to adequately account for personal responsibility:

> It will be pointed out that we are not extremely simple input-output devices, much internal processing takes place, involving feedback loops and other delightful "software"; however, does that not make us merely more complicated puppets, but puppets nonetheless? True, much of these causes occur "inside" us—is it better to be a hand puppet than a marionette?[61]

III. FREEDOM AT POINT ZERO[62]

The preceding discussions have attempted to explicate the principal contours of the dilemma that surfaces when one attempts to understand personal responsibility on either a deterministic or an autonomous model. As one legal scholar has described this puzzle:

> [The problem of free will] arises when people seize upon determinism's success in accounting for the behavior of physical bodies . . . and ponder how it might apply to . . . intentional agents; *and* it arises when people seize upon what they believe must be the alternative to determinism, i.e., free will, and try to explain it.[63]

As formulated by models of 'caused freedom,' choice results from an entirely deterministic psychological matrix, and the result, as expected, conforms to those determined antecedent conditions; similarly, theories of 'uncaused freedom,' by positing the coming about of events entirely independent of causal conditions, results in a conception of free choice that loses any meaningful connection with the agent's intentional activities. Thus, in one way or another, each of these options undermines human responsibility.

In view of this impasse, Susan Wolf's suggestion of a possible alternative understanding of practical reason—one that she

61 ROBERT NOZICK, PHILOSOPHICAL EXPLANATIONS 310 (Harvard Univ. Press 1981).

62 JEFFERSON STARSHIP, *Freedom at Point Zero*, *on* FREEDOM AT POINT ZERO (RCA 1979), *available at* http://www.lyricsfind.com/j/jefferson-starship/87761.html (last visited Mar. 16, 2007).

63 *See* Westen, *supra* note 26, at 603 (emphasis added).

raises for consideration but summarily abandons—takes on special significance. As she described it, such a theory of practical reasoning would "itself require[] . . . a kind of radical autonomy. . . . [T]rue rationality requires a kind of agency *incompatible* with ordinary sorts of physical and psychological determination."[64]

A. Autonomous Rationality—A Different Sort of Causality

The preceding reflections suggest that the problem of free will can be resolved, if at all, only by an explanatory account of the role of reasons and desires in free choice that avoids two extremes. On the one hand, these factors cannot be understood to function as *antecedent sufficient* causes of choice; and at the same time, they cannot be understood to be so completely unrelated to the determination of choice, that it is rendered essentially random and irrational, unconnected with the intentional and affective life of a human person. Reasons and desires, then, must have *some* explanatory function with respect to free choice but not too much.

A positive account of free choice, then, must invalidate Peter Westen's assertion that 'the problem of free choice' inevitably collapses upon itself by being framed in terms that negate the possibility of its resolution.[65] A positive account of free choice must establish that it is not a 'false problem' precisely by showing its coherence, or more succinctly stated, by solving it.

In broad strokes, the remainder of this Article attempts to satisfy this demand through a detailed exposition of free choice as understood by Thomas Aquinas. Reliance on Aquinas for this purpose, though perhaps unexpected in some circles, is appropriate because he constitutes, at least arguably, the leading historical defender of the traditional conception of free choice as a condition for personal responsibility.[66]

64 FREEDOM WITHIN REASON, *supra* note 24, at 62 (emphasis added).

65 *See* Westen, *supra* note 26, at 652 (concluding "[t]he proper response to a false problem is not to wrestle with it but to escape it").

66 Thomas' most complete treatment of practical reason, will, and its proper acts is found in the his SUMMA THEOLOGIAE, (Benzinger Bros. 1947-8) (Fathers of English Dominican Province trans.) [hereinafter SUMMA THEO.] (All translations from the Latin in subsequent texts, however, are the author's unless otherwise indicated.). The breadth of analysis found there presumably represents, consistent with its relatively late dating in the life of Aquinas, his final and most mature thought. For this reason, the following

Responding, for example, to a position similar in broad strokes to Frankfurt's, i.e., that human choice can be necessitated but not in an unnatural, coercive manner that would be contrary to what the person really wants to do,[67] Thomas responds:

> [T]his opinion . . . does away with praise and blame in human actions. For there is no praise or blame in doing necessarily what one cannot avoid. . . . Not only . . . is it contrary to the faith, but it undermines all moral philosophy. If there is not something in us that is free, but instead we are necessarily moved to willing things, then deliberation, exhortation, precepts, punishment, and praise and blame, that is, all the things moral philosophy concerns itself with, are undermined.[68]

B. The Acts of Will

Aquinas's account of free choice, like Frankfurt's, depends upon a nuanced elaboration of intellectual and appetitive acts. In the course of articulating his conception of human action, Thomas describes a variety of 'moments' constitutive of personal choice.[69]

discussion will rely primarily upon Thomas' analysis of the will offered in that work and pass over almost entirely the controversial question of whether Aquinas' such a view reflects any substantive change when compared to his earlier writings. *See generally* Daniel Westberg, *Did Aquinas Change His Mind About the Will?*, 11 THE THOMIST 41 (1994).

67 This position has been attributed to late 13th century Latin Averroists in Paris, among whom were included Siger of Brabant and Boethius of Dacia. For historical discussion of the controversy see John F. Wippel, *The Condemnations of 1270 and 1277 at Paris*, *Journal of Medieval and Renaissance Studies* (1977) at 169-201, and JAMES WEISHEIPL, FRIAR THOMAS D'AQUINO: HIS LIFE, THOUGHT & WORKS, (Catholic University of America, 1974) at 272-80.

68 "Haec autem opinio . . . tollit enim rationem meriti et demeriti in humanis actibus. Non enim videtur esse meritorium vel demeritorium quod aliquis sic ex necessitate agit quod vitare non possit. . . . Non solum contrariatur fidei, sed subvertit omnia principia philosophiae moralis. Si enim non sit liberum aliquid in nobis, sed ex necessitate movemur ad volendum, tollitur deliberatio, exhortatio, praeceptum et punitio, et laus et vituperium, circa quae moralis Philosophia consistit." ST. THOMAS AQUINAS, ON EVIL ("DE MALO") q. 6, corp. (Jean Oesterle trans., Univ. of Notre Dame Press 1989) [hereinafter DE MALO].

69 Aquinas's distinction between the acts of the will is most properly understood not so much as a series of metaphysically distinct acts, but rather as illustrating logically distinguishable aspects of volition. Alan Donagan suggests that the distinction of the acts is recognized most clearly not by introspection but by the failure of action at various points of progress. *See* Alan Donagan, *Thomas Aquinas on Human Action*, *in* THE CAMBRIDGE HISTORY OF LATER MEDIEVAL PHILOSOPHY 654, 654 (N. Kretzmann, A. Kenny

The following discussion commences, then, with consideration of the three most fundamental modes in which Aquinas understands the will to incline or "gravitate" toward objects: '*voluntas*,' '*intentio*,' and '*electio*.'[70] This unavoidably technical analysis provides the necessary framework for subsequent articulation of Aquinas' full account of the possibility and nature of free choice.

1. *Voluntas* or Will

Thomas notes that the term '*voluntas*' can be understood to refer either to the will itself as a faculty, potency, or power (*potentia*), or it can refer to a particular act of that faculty.[71] (As, for example, the term 'vision' can refer either to the faculty of sight itself or to a particular act of seeing, 'a vision'). When 'voluntas' designates 'the will' as a faculty, the term 'object of the will' designates things that can be the focus of the will as 'ends' (*fines*) or as 'means,' that is, 'things directed to an end' (*ea quae sunt ad finem*).[72]

The distinction between an 'end' and a 'means' arises out of a difference in the functional way that the will is attracted to each. 'Ends' are understood to be objects of the will in the most proper sense because they alone are willed directly, i.e., they are attractive as goods in themselves. 'Means,' however, are 'goods' only insofar as they are instrumental or conducive to some *other* object, that is, an end. 'Means' then are willed *as 'good'* only because they are attractive as *conducive* to some end.[73] While

& J. Pinborg eds., 1982). For Aquinas' full discussion see SUMMA THEO., *supra* note 66, at I-II, q. 8-17.

70 For survey treatments of Aquinas' theory of the will acts, *see* Donagan, *supra* note 69, at 642-54; *see also* RALPH MACINERNY, AQUINAS ON HUMAN ACTION: A THEORY OF PRACTICE 51-74 (Catholic Univ. of Am. Press 1992); David M. Gallagher, Thomas Aquinas on the Causes of Human Choice 169-77 (1988) (unpublished Ph.D. dissertation, Catholic Univ. of Am., 1988); David M. Gallagher, *Thomas Aquinas on the Will as Rational Appetite*, 29 J. HIST. PHIL. 559, 559-84 (1991); Marianne Miller Childress, *Efficient Causality in Human Actions*, 28 THE MODERN SCHOOLMAN, 191-222 (1950-51).

71 SUMMA THEO., *supra* note 66, at I-II, q. 8, a. 2. "'Will' refers sometimes to the faculty itself by which we will, and sometimes to an act of 'will' itself." ("[V]oluntas quandoque dicitur ipsa potentia qua volumus; quandoque autem ipse voluntatis actus."). Similar usage exists in English insofar as one can speak of the will as a faculty, and also inquire about "what someone's will is"?

72 For further discussion of the distinction between 'ends' and 'means' in relation to human choice, *see, e.g.*, Lyons, *supra* note 7, at 500-03.

73 SUMMA THEO., *supra* note 66, at I-II, q. 5, a. 2. "That which is in itself good and willed is the "end." Hence "will" is most properly spoken of in relation to the end. Means, however, are not good or willed in themselves, but in relation to the end. Whence, the

both ends and means share in the notion of being attractive to the will, they do so under differing rationales.[74]

In support of this distinction, Aquinas calls to mind the common experience of being drawn to appreciate the desirability of some object without, however, engaging in a consideration of how one might obtain it. On the other hand, persons do not experience themselves willing something as instrumental or useful without actually having some other object in mind as an end.[75]

Based on this distinction, Thomas proposes that the meaning of '*voluntas*,' when designating an *act* of the will, refers to its most proper act as inclining to an object directly as an 'end' and not derivatively as a 'means.'[76] Accordingly, '*voluntas*' refers to a basic inclination of the will to an object simply or per se, insofar as the object is, in one way or another, intrinsically appealing.

2. *Intentio* or Intention

In contrast to this simple act of the will inclining to an 'end' denoted by '*voluntas*,' Thomas employs the term '*intentio*' or 'intention' to refer to a more complex mode of the will's actuality. 'Intention' designates not only an interest or inclination to an attractive end, but includes also the notion of an active

"will" is not moved to a means, except insofar as it it moved to the end. Accordingly, what is willed *in* the means is the end" (emphasis added). ("Id autem quod est propter se bonum et volitum, est finis. Unde *voluntas* proprie est ipsius finis. Ea vero quae sunt ad finem, non sunt bona vel volita propter seipsa, sed ex ordine ad finem. Unde *voluntas* in ea non fertur, nisi quatenus fertur in finem: unde hoc ipsum quod in eis vult, est finis").

74 *Id.* at I-II, q. 8, a. 2. "The notion of good, which is the object of the power of the will, is found not only in an end, but also in means." ("Ratio autem boni, quod est obiectum potentiae voluntatis, invenitur non solum in fine, sed etiam in his quae sunt ad finem").

75 *Id.* at I-II, q. 8, a. 3. "An end is willed for its own sake, but a means, insofar as it is such, is not willed except for the end; Thus, it is clear that the will can be moved to the end without being moved to a means; but with respect to means, insofar as they are such, the will cannot be moved, unless it be moved to the end itself." ("[C]um finis sit secundum se volitus, id autem quod est ad finem, inquantum huiusmodi, non sit volitum nisi propter finem; manifestum est quod *voluntas* potest ferri in finem sine hoc quod feratur in ea quae sunt ad finem; sed in ea quae sunt ad finem, inquantum huiusmodi, non potest ferri, nisi feratur in ipsum finem").

76 *Id.* at I-II, q. 8, a. 2. "If we speak about the will according to its proper act, we properly refer only to an end. For every act named with respect to its faculty is so named with respect to the most basic act of that faculty; as 'intellection' refers to the basic act of the intellect. But the basic act of a faculty refers to that which is *in itself* the object of the power." (Si autem loquamur de voluntate secundum quod nominat proprie actum, sic proprie loquendo, est finis tantum. Omnis enim actus denominatus a potentia, nominat simplicem actum illius potentiae: sicut intelligere nominat simplicem actum intellectus. Simplex autem actus potentiae est in id quod est secundum se obiectum potentiae").

inclination to acquire that end through some means.[77] Intention, then, includes all the dynamism of the will implied by '*voluntas*' and more; it envisions the will as being animated not only by an inclination to a desired end, but also with the added inclination to attain that good through some instrumental means.

This added notion of a volitional commitment to bring about an end *through means*, however, does not require positing two separate, distinct acts of willing. For, as Aquinas explains, the very inclination of the will toward an end itself accounts for an inclination to a means. Thus, intention is perhaps best understood as a more intensive and extensive mode of '*voluntas*,' that is, willing-an-end-*through-means*.[78] *Intentio* then designates a conception of 'willing' an object grasped as an end with special focus on the extension of that inclination to *other* objects or *other* actions rationally grasped as instrumental to the intended end.

In this context, Aquinas clarifies that intentions do not bear only upon means instrumental to the attainment of a single, final *ultimate* end. Rather, intermediate means themselves can become the subject of intentions, if they too must be brought about by other instrumentalities. In such a case, intention must be exercised with respect to those intermediate means understood as intermediate 'ends.'[79] This insight provides

77 *Id.* at I-II, q. 12, a. 1, ad 3. "The will does not order, but tends to some object according to the order of reason. Hence, 'intention' designates an act of the will, *presupposing* an ordination of reason ordering something to the end." ("[V]oluntas quidem non ordinat, sed tamem in aliquid tendit secundum ordinem rationis. Unde hoc nomen *intentio* nominat actum voluntatis, praesupposita ordinatione rationis ordinantis aliquid in finem").

78 *Id.* at I-II, q. 12, a. 4, ad 3. "The motion of the will moved to the end, insofar as the end is acquired by means, is called 'intention.'" ("Motus autem voluntatis qui fertur in finem, secundum quod acquiritur per ea quae sunt ad finem, vocatur *intentio*").

79 *Id.* at I-II, q. 12, a. 2:

> Intention refers to an end as a terminus of the motion of the will. In motions, however, "terminus" can be understood in two ways: in one way, as the ultimate terminus, in which the will is satisfied, the end of its entire motion; in another way, terminus can be understood as a midpoint, which constitutes the beginning of one part of the motion, and the end or terminus of another. Just as in that motion by which one moves from A to C by means of B, C is a final terminus, but B also is a terminus, but not a final one. And therefore there can be an intention of either. Hence, intention is always of an end, but not necessarily always of the ultimate end. ([I]ntentio respicit finem secundum quod est terminus motus voluntatis. In motu autem potest accipi terminus dupliciter: uno modo, ipse terminus ultimus, in quo quiescitur, qui est terminus totius motus; alio modo, aliquod medium, quod est principium unius partis motus, et finis vel terminus alterius. Sicut in motu quo itur de A in C per B, C est terminus ultimus, B autem est terminus, sed non ultimus. Et

Thomas with a useful model for cascading sequences of ends-means relations; such a model unifies *all* subordinated 'objects' of an intended end under a single intention, and yet, simultaneously accounts for how an agent possesses rational and volitional power to order each segment of that volitional chain.

3. *Electio* or 'Choice'

Electio, or 'choice,' is employed by Thomas to refer to an actuality of the will not simply as inclining to an end as to be acquired through some means, but, more specifically, as the activity of will actually fixing the *particular* means to be employed in attaining that end. *Electio* thus differs from *intentio*, as Thomas understands it, because intention refers to a mere inclination of the will to an end as to be acquired *by some yet to be determined means*; whereas *electio* refers to that act of will *selecting out from various instrumental options the specific object* by which one attempts to attain that end.[80] As Aquinas observes, "a sign of which is . . . the fact that an agent can intend the end before the means have been determined, which is proper to choice."[81]

Just as *means* become intelligible only by virtue of an antecedent intention for an *end;* so too choice presupposes an intention for an end. Unless an actor had a preceding inclination to attain an end through *some* means, he would have no basis for moving himself to the process of determining and selecting any particular one. Choice, thus always occurs within the context of a broader and preexisting '*intentional*' inclination to acquire an end through *some* means.

In considering more specifically the nature of the *selection* proper to choice, Thomas notes, however, that not just *any* selection of a particular instrumental object involved in attaining an end counts as a choice. For if so, *electio* could be attributed to

utriusque potest esse intentio. Unde etsi semper sit finis, non tamen oportet quod semper sit ultimi finis.)

80 *Id.* at I-II, q. 12, a. 4, ad 3. "Thus, that act by which the will tends to something propsed by reason, being ordained to an end by reason, is materially an act of the will, but formally an act of reason." ("Sic igitur inquantum motus voluntatis fertur in id quod est ad finem, prout ordinantur ad finem, est electio. Motus autem volutatis qui fertur in finem, secundum quod acquiritur per ea quae sunt ad finem, vocatur intentio").

81 *Id.* at I-II, q. 12, a. 4, ad 3. "Cuius signum est quod intentio finis esse potest, etiam nondum determinatis his quae sunt ad finem, quorum est electio."

a lion's stalking one kind of prey instead of another, or to a bird's snatching one kind of grass as food instead of another.[82] For Aquinas, choice refers to a particular mode of appetitive inclination. It tends toward one object *rather* than another, that is, *as consciously preferred over others.* In other words, election denotes an intrinsically conscious preferential selection of an object *from out of a set of possible objects*, all of which have been judged, in one way or another, as attractive means rationally ordered to a desired end.

In the examples from natural science, the desires of brute animals are determined to uniform particular objects by instinct; hence there is no choice in the full sense. In the case of human actions, however, the preference of one alternative over another is not always determined by instinct or nature but depends upon the exercise of a discretionary activity selecting one possible object from among others.[83]

Drawing upon Aristotle's view,[84] Thomas describes 'choice as 'desiring intellect' (*appetitivus intellectus*) or 'intellective desire' (*appetitus intellectivus*). He intends thereby to capture the unity

[82] *Id.* at I-II, q. 13, a. 2, obj. 2. "But brute animals take one thing instead of another." ("Sed bruta animalia accipiunt aliquid prae aliis").

[83] Aquinas states:

> Since choice is a preference of one with respect to another, it is necessary that choice be exercised with respect to a multiplicity of objects which could be chosen. Therefore in those situations where the means are determined to one, choice does not occur. But there is a difference between sense appetite and the will . . . because sense appetite is determined by the order of nature to one determinate object. But the will, while being determined to something general by nature, namely the good, is indeterminately related to particular goods. And hence it is proper to the will *to choose*." "[C]um electio sit praeacceptio unius respectu alterius, necesse est quod electio sit respectu plurium quae eligi possunt. Et ideo in his quae sunt penitus determinata ad unum, electio locum non habet. Est autem differentia inter appetitum sensitivum et voluntatem, quia . . . appetitus sensitivus est determinatus ad unum aliquid particulare secundum ordinem naturae; *voluntas* autem est quidem secundum naturae ordinem, determinata ad unum commune, quod est bonum, sed indeterminate se habet respectu particularium bonorum. Et ideo proprie voluntatis est eligere.

Id. at I-II, q. 13, a. 2.

[84] Aristotle's conception of choice is elaborated most fully in Book VI, 2, of the *Nichomachean Ethics*. Aristotle explains that choice is a particular form of "desiring thought" or "thinking desire" which must be supported and directed by preceding acts of intellect and moral dispositions.

'Choice' is defined as the desire of deliberated means: "Choice will be deliberate desire of things in our power." ARISTOTLE, NICOMACHEAN ETHICS III, 3, 1113a11 (H. Rackham trans., Harvard Univ. Press 1975) (1926). But this deliberative process can only be carried out in virtue of possibilities conducive to one's *wish* for the end. And wish or end in turn is constituted by virtue of particular moral characters. *Cf. id.* at III, 4.

of rational and volitional characteristics present in acts of willing. Willing represents not just a blind reaching out to objects that appeal at a sensitive level of pleasure or pain, but moves toward objects precisely insofar as they are grasped as rationally pleasing, i.e., *intelligibly* good in some way.

Elaborating upon the interpenetration of intellect and will present in choice,[85] Thomas proposes that when two principles concur to produce a single result, one of those principles functions as the formal element, and the other as the material element.[86] Noting that the act of '*voluntas*' requires a preceding intellectual grasp of something constituting its formal 'end-object,' Thomas proposes that *electio*, though "materially" an act of the will, directly bears on some cognitively grasped good as its formal 'means-object.'[87]

Analyzing more deeply this formal rationality in choice, Thomas states that choice *follows* a judgment or 'sentence' of reason:[88] "Choice follows the sentence or judgment, which is as it were a conclusion of a practical syllogism. Hence that falls under choice, which is related to practical syllogisms as a conclusion."[89]

85 SUMMA THEO., *supra* note 66, at I-II, q. 13, a. 1. "In the concept of choice is implied something pertaining to reason or intellect, and something pertaining to the will." ("[I]n nomine electionis importatur aliquid pertinens ad rationem sive intellectum, et aliquid pertinens ad voluntatem.")

86 The contrast between the 'formal' and 'material' aspects refers back to the example provided by Aristotle of a discussion of the unity of the shape given a piece of wax (the formal element) and the substrate that provides the foundation for receiving and being "formed" (the material element). *See, e.g.*, ARISTOTLE, DE ANIMA III (D. W. Hamlyn trans., Clarendon Press 1993) (1968).

87 Yet, though directed toward this object rationally grasped as a means, *electio* remains "substantially" and "materially" an act of the will because it principally includes reference to *appetitive motion* toward a rationally ordered means. SUMMA THEO., *supra* note 66, at I-II, q. 13, a. 1. "Thus, that act by which the will tends to something propsed by reason, being ordained to an end by reason, is materially an act of the will, but formally an act of reason." ("Sic igitur ille actus quo voluntas tendit in aliquid quod proponitur ut bonum, ex eo quod per rationem est ordinatum ad finem, materialiter quidem est voluntatis, formaliter autem rationis.")

88 *Id.* at I-II, q. 13, a. 1, ad 2. "It should be said that the conclusion of the syllogism found in practical matters pertains to reason and is referred to as a 'sentence' or 'judgment,' which choice follows. Thus, such a conclusion can be understood to pertain to choice, insofar as a choice follows it." ("Dicendum quod conclusio etiam syllogismi qui fit in operabilibus, ad rationem pertinet et dicitur *sententia* vel *iudicium*, quam sequitur electio. Et ab hoc ipsa conclusio pertinere videtur ad electionem, tanquam ad consequens."

89 *Id.* at I-II, q. 13, a. 3. "Electio consequitur sententiam vel iudicium, quod est sicut conclusio syllogismi operativi. Unde illud cadit sub electione, quod se habet ut conclusio in syllogismo operabilium."

Relying again on Aristotle,[90] Aquinas here employs a comparison between practical reasoning (reasoning about action), and syllogistic, deductive reasoning. He observes, "reason directs human action by two sorts of knowlege: according to universal and particular knowledge. Thus, a person considering practical action employs a type of syllogism whose conclusion is judgment or choice or action."[91]

Aquinas illustrates this model with the following example: an actor possesses a 'universal' general belief that "[n]o fornication is to be committed," yet, he is presented with a situation in which there is a temptation to act contrary to that belief.[92] Whether the actor does so, according to Aquinas, depends in some way upon the particular premise the actor brings to bear in his practical deliberations, that is, how he experientially grasps the particular

[90] Aristotle explicitly treats of how action or movement follows thought. He does so by analogizing how conclusions are reached by theoretical reasoning to how actions are reached by practical reasoning:

> But how is it that thought is sometimes followed by action, sometimes not; sometimes by movement, sometimes not? What happens seems parallel to the case of thinking and inferring about the immovable objects. There the end is the truth seen (for, when one thinks the two propositions, one thinks and puts together the conclusion), but here the two propositions result in a conclusion which is an action—for example, whenever one thinks that every man ought to walk, and that one is a man oneself, straightway one walks; or that, in this case, no man should walk, one is a man: straightway one remains at rest. And one so acts in the two cases provided there is nothing to compel or prevent.

DE MOTU ANIMALIUM, VII, 701a5-16. Commenting on this text, David Wiggins explains Aristotle's conception of the practical syllogism in the following manner: "Practical syllogisms offer explanations of actions. These explanations . . . reconstruct the reasons an agent himself has for his action. They usually comprise a major and minor premise. The first or major premise mentions something of which there could be a desire (*orexis*) transmissible to some practical conclusion (that is, a desire convertible via some available minor premise into action). The second or minor premise details a circumstance pertaining to the feasibility in the particular situation of what must be done if the claim of the major premise is to be heeded. . . . What matters for present purposes is that agents can see in the truth of the minor premise a way of ministering to some concern to which the major affords expression, and that their seeing this explains what they do." DAVID WIGGINS, *Weakness of Will, Commensurability and the Objects of Deliberation and Desire*, *in* NEEDS. VALUES, TRUTH: ESSAYS IN THE PHILOSOPHY OF VALUE 239, 248 (Clarendon Press, 3d. ed. 1998) (1987).

For more extended discussion of Aristotle's use of the "practical" syllogism, *see* D.J. Allan, *The Practical Syllogism*, *in* AUTOUR D'ARISTOTE 325-40 (Publications Universitaires de Louvain 1955); TAKATURA ANDO, ARISTOTLE'S THEORY OF PRACTICAL COGNITION 214-65 (3d ed. 1971); and Martha Craven Nussbaum, *Aristotle's 'De Motu Animalium'*, text, translation, and interpretative essays, (Princeton Univ. Press, 1978) 174-75, 187, 190, 207.

[91] SUMMA THEO., *supra* note 66, at I-II, q. 76, a. 1. "Considerandum est autem quod ratio secundum duplicem scientiam est humanorum actuum directiva: scilicet secundum scientiam univeralem, et particularem. Conferens enim de agendis, utitur quodam syllogismo cuius conclusio est iudicium seu electio vel operatio."

[92] *Id.* at I-II, q. 77, a. 2, ad 4.

concrete circumstances before him. As long as the actor judges the particular act before him as, 'this act is fornication,' the actor stands by the appropriate 'conclusion' about what to do, that is, 'this act of fornication is not to be committed.'[93] If, however, the actor instead judges the particular occasion before him as an instance of a different value, as for example, 'this act is pleasurable,' then nothing prevents the actor from choosing in conformity with the judgment that 'this pleasurable act is to be pursued.'[94]

The difficulty raised by the 'practical syllogism' analogy, however, is that it fails to resolve the question of how the actor is related to the possibility of drawing these different "conclusions" and how he can remain free if choice must 'follow' one 'sentence' of reason (similar to its usage in legal contexts) or another. In fact, suggesting that choice follows practical reason as conclusions follow premises in syllogistic reasoning suggests a deterministic view of practical reason and choice.

Cognizant of this difficulty, Aquinas considers the objection that if choice follows reason, choice cannot be free because conclusions of reason follow necessarily from premises.[95] Responding, Thomas states that conclusions of *practical* reasoning bear on contingent events which *might* be brought about by action. He observes without further elaboration, "[b]ut in such matters, conclusions are not derived from absolutely necessary principles but only conditionally necessary principles, as for example, 'if he runs, he moves.'"[96]

Aquinas's response, however, is unclear. From one perspective, rather than resolving the objection, it could be read to confirm it. If choice is contingent upon judgments, and choices could be different if the conclusion reached by reason had been different, then an agent could only hypothetically choose

93 *Id.* (concluding "no fornication is to be committed."—*"nullam fornicationem esse committendam*").

94 *Id.* (concluding "pleasure is to be pursued"—*"delectationem esse sectandam"*).

95 *Id* .at I-II, q. 13, a. 6, obj. 2. "Choice follows the judgment of reason about things to be done. But reason judges with necessity in view of necessary premisses. Therefore, it appears that choice also follows necessarily." ("[E]lectio consequitur iudicium rationis de agendis. Sed ratio ex necessiate iudicat de aliquibus, propter necessitatem praemissarum. Ergo videtur quod etiam electio ex necessitatae sequatur").

96 *Id.* at I-II, q. 13, a. 6, ad 2. "Dicendum quod sententia sive iudicium rationis de rebus agendis est circa contingentia, quae a nobis fieri possunt: in quibus conclusiones non ex necessitate sequuntur ex principiis necessariis absoluta necessitate, sed necessariis solum ex conditione, ut, *si currit, movetur*." (internal quotations ommitted).

otherwise, that is, *if and only if* the agent had drawn some *other* practical conclusion. But since conclusions on a syllogistic model follow with necessity from premises, this interpretation, as explained,[97] entails a psychological determinism ultimately excluding any real notion of free choice.[98] If choice is determined by judgments of reason in this way, Aquinas's position would offer an account of free choice differing little from that "bait and switch" counterfactual sense rejected above in discussion of 'caused freedom.'[99]

On the other hand, Thomas may have something else in mind when he suggests that the very *premises* of practical reason are only conditionally necessary. Resolution of this ambiguous response, in fact, demands further consideration of Aquinas's understanding of the nature of practical 'deliberation' or '*consilium*.' Although explicitly turning to discuss this intellectual activity only *after* his treatment of election, Aquinas is clear that practical reasoning *precedes election.*[100]

The question of free choice, as an act of *rational* appetite, then, ultimately leads Thomas to focus upon those cognitive conditions upon which choice depends. Only in these discussions does Aquinas finally clarify what it means for him to speak of choice 'following' ('*sequitur*' or '*consequitur*') judgments of reason, and how freedom of choice is possible because judgments are only "conditionally necessary." And in so doing, Thomas recognizes that accounting for the possibility of free choice in a strong sense demands a unique theory of practical rationality, i.e., it requires development of a "radical" theory of practical reason, in which

97 *See supra* notes 12-13 and accompanying text (determining "responsibility is an illusion and the moral life as traditionally conceived a charade").

98 As Ronald Allen has recently described this view in the context of Fifth Amendment Miranda Rights:

> If choices are made for reasons, those reasons determine the choices, and thus a choice is free only if the reasons are not themselves determined. Reasons, in turn, are either held for prior reasons or not. And so on in an infinite regress. If the regress leads back to nowhere but prior reasons, then obviously our choices are determined by those prior reasons.

Allen, *supra* note 4, 76-77. If every choice is determined by a preceding judgment of reason, then there is no free choice about what the judgment of reason will be, for that choice would be predetermined by reason, Thus, no choice would be free, but always intellectually determined by a preceding judgment, etc., *ad infinitum.*

99 *See supra* Part I(B)(1) ('caused freedom' advocates offer "explanation of at least one sense that the agent conditionally could have acted otherwise").

100 SUMMA THEO., *supra* note 66, at I-II, q. 14. "Of Counsel, Which Precedes Choice." For further discussion of Aquinas's odd reverse ordering *see infra* note 146.

alone—as was suggested by Susan Wolf—any valid model of human autonomy would have to be grounded.

C. The Relation between Acts of Intellect and Acts of Will

In response to the objection that the human will is necessitated to its choices by judgments of reason, Thomas takes up for consideration the relations that exist between various types of intellectual acts and corresponding will acts. Although in his *Summa Theologiae* analysis, he addresses first the acts of will already discussed—'voluntas,' 'intentio,' and 'electio'—in the course of these considerations he frequently references various intellectual acts presupposed by these acts of will.

In fact, from his very earliest discussions, Aquinas affirms that *every* volitional act *must* be preceded by some intellectual operation, "[e]very act of will is preceded by some act of intellect, though a particular act of will may be prior to some particular act of the intellect."[101] Summarizing his general view on the relation between cognitional and volitional acts, Thomas states, "[i]n the order of things to be done, it is first necessary to assume an apprehension of the end, then an appetite of the end; then it is necessary to assume deliberation concerning the means to the end, and then the appetite of things conducive to the end."[102]

In view of the will's character as rational appetite, it is impossible for Aquinas to envision any volitional act lacking an object presented by reason. This, however, in no way implies that volition is to be identified with or reduced to a form of intellection. While every will-act must have some cognitive 'formality,' that formality alone does not exhaust the concept of willing. Volition, in its various forms, refers not simply to a cognitional activity, but primarily to an agent's inclination to a rationally grasped good.

1. Exercise and Specification of Volitional Acts

In developing further his understanding of the mutual dependency of intellect and will in volition, Thomas explains

[101] *Id.* at I-II, q. 4, a. 4, ad 2. "[O]mnis actus voluntatis praeceditur ab aliquo actu intellectus: aliquis tamen actus voluntatis est prior quam aliquis actus intellectus."

[102] *Id.* at I-II, q. 15, a. 3. "In ordine autem agibilium, primo quidem oportet sumere apprehensionem finis; deinde appetitum finis; deinde consilium de his quae sunt ad finem; deinde appetitum eorum quae sunt ad finem."

various senses in which the will can be understood to move from merely potential to active inclination. Taking up the question of whether the intellect moves the will to its operation,[103]—a question obviously relevant to the understanding of how choice 'follows' reason—Thomas introduces a pivotal distinction between the *exercise* and *specification* of acts. [104]

Illustrating this distinction with reference to the 'power' of sight, Aquinas states that the visual power may be understood to be *exercised* depending simply upon whether a person is 'seeing' or 'not seeing', that is, upon whether or not a person's visual sense is activated or not. At the same time, 'sight' may also be understood to be in potentiality ("in potency") to its being exercised with respect to one *specific* formality or another, that is, it may 'see' one colored object rather than another; as for example, seeing a blue sky differs from seeing a starry sky. 'Seeing,' then, is understood by Thomas to be a unified cognitive activity. It is constituted through the concurrence of two actualities: one imparted by the agent (insofar as it is the agent's faculty of sight which is active), and the other imparted by the object (insofar as one colored object rather than another *formally* specifies the exercise of the faculty).

For Aquinas, every act of a human cognitive or appetitive faculty demands this synthesis of a subjective (material) and objective (formal) element, and only when taken together, do they provide a sufficient explanation for the occurrence of the action.[105] The first sense of potentiality, the exercise, refers primarily to the *agent's* contribution by means of the activity of the subject's faculty; the second sense of potentiality refers especially to the object 'determining' or 'specifying' the *formal*

103 *Id.* at I-II, q. 9, a. 1. "Of That Which Moves the Will." *Id.*

104 *Id.* at I-II, q. 9, a. 1. "A power of the soul can be understood to be in potency to different things in two ways: in one way, insofar as it is active or not active; in another, insofar as it is active in one way or another." ("Dupliciter autem aliqua vis animae invenitur esse in potentia ad diversa: uno modo, quantum ad agere et non agere; alio modo, quantum ad agere hoc vel illud").

105 Aquinas, for example, describes the process of knowledge as arising from a synthetic unity between the intellect and the intelligible formalities of things known: "With respect to the human intellect, the similitude the thing understood is different from the substance of the intellectual power itself and functions as its form; thus out of the intellect itself and the similitude there arises a single whole, namely, the intellect actually understanding." ST. THOMAS AQUINAS, IN II SENTENTIARUM, d. 3, q., 3, a. 1, co. [hereinafter IN II SENT] ("In intellectu vero humano similitudo rei intellectae est aliud a substantia intellectus, et est sicut forma ejus; unde ex intellectu et similitudine rei efficitur unum completum, quod est intellectus in actu intelligens").

character of that activity, that is, the content or *object* of the exercised act. [106]

The will, similar to any other 'power' or 'faculty' of a human agent, must also be understood to be in potency or 'able to be moved' from two different perspectives: first, with respect to its *exercise* (insofar as it is or is not inclining toward some object); and, second, with respect to its *specification* (insofar as it inclines toward one object or another). For Thomas, however, this *specification* of the will's exercise always requires a cognitive apprehension of a good as its object; just as one cannot 'see' without seeing something, so too one cannot 'will' without willing something rationally understood as good.[107]

2. The Will's Self-Motion

Like all actions subject to deliberate human control, however, movements of faculties involve an actor moving himself or herself to the exercise of that faculty, as for example a person moves himself to think about one topic rather than another, or to look at one object rather than another. With respect to the will, Thomas proposes generally that the 'exercise' of will acts, for instance intentions or choices, requires that the will move itself to these actions; that is, a person must volitionally move himself to intend and choose.

In connection with this point, Aquinas clarifies how a power can be understood to move itself without raising a bootstrapping problem suggested by the idea of a something moving itself.[108] Relating this issue back to the distinction between 'intention' and 'choice,' Thomas explains that the will is able to move itself *in one respect*, for example, to a choice, only because the will is

106 SUMMA THEO., *supra* note 66, at I-II, q. 9, a. 1. "The object moves, determining the act, in the mode of a formal principle, by which in natural things an action is specified." ("[O]biectum movet, determinando actum, ad modum principii formalis, a quo in rebus naturalibus actio specificatur").

107 *Id.* at I-II, q. 13, a.1. Hence, Aquinas' description of election as involving "materially" an act of will, but "formally" an act of intellect. *See supra* note 87.

108 *Id.* at I-II, q. 9, a. 3, obj. 1. "Everything in motion, insofar as it is such, is in act; but insofar as it is being "moved," however, it is in potency, for 'motion is the act of a thing in potency, insofar as it is such.' But such a thing is not in potency and act with respect to the same thing. Therefore nothing moves itself. Neither, therefore, can the will move itself." ("Omne enim movens, inquantum huiusmodi, est in actu, quod autem movetur, est in potentia, nam *motus est actus existentis in potentia inquantum huiusmodi*. Sed non est idem in potentia et in actu respectu eiusdem. Ergo nihil movet seipsum. Neque ergo *voluntas* seipsam movere potest").

already actualized *in another respect,* for example, intending an end. The will, then, is already *in act* insofar as it is inclined to an end by intention, but it is still *in potency* with respect to willing a *means* to that end. Accordingly, the will's self-movement to the 'exercise' of a choice is made possible precisely through the preexisting dynamism imparted to the will through its intention of an end, and thus involves no incoherent contradiction.[109]

Of course, the initial intention, as an exercise of will, must itself have a specifying object. As Aquinas argues, agents can move themselves to action only by virtue of a preceding motion toward some end or object.[110] Relying on the distinction between the exercise and the specification of will acts, Thomas observes that whenever the will moves itself to an act, as for instance when it moves itself from an intention to a choice, it also requires a specifying object for that new movement.

Delving more deeply into analysis of the transition from intention to choice, Aquinas points out that an actor cannot transition directly from one to the other. Prior to choosing a means, the will, by virtue of the intended end, first must move the *intellect* to its operation, i.e., to deliberate or take counsel about what rational means may be available for choice.[111] Without the will's movement of the intellect, directing the mind

[109] *Id.* at I-II, q. 9, a. 3, ad 1. "It should be said that it is not in the same respect that the will 'moves' and 'is moved.' Hence, the will is not in act and in potency in the same way. But insofar as it actively wills an end, it moves itself from potency to act with respect to the means, that is, so as to actually will them." ("Dicendum quod *voluntas* non secundum idem movet et movetur. Unde nec secundum idem est in actu et in potentia. Sed inquantum actu vult finem, reducit se de potentia in actum respectu eorum quae sunt ad finem, ut scilicet actu ea velit.") *See* AQUINAS, DE MALO, *supra* note 68, q. 6, corp: "Nor does it follow the the will is both in potency and act in the same way. . . . Rather, by actually willing one thing, a man moves himself to actually willing something else." ("Nec propter hoc sequitur quod *voluntas* secundum idem sit in potentia et in actu. . . . [P]er hoc quod homo aliquid vult in actu, movet se ad volendum aliquid aliud in actu").

[110] *Id.* at I-II, q. 9, a. 4. "Everything that is sometimes in act and sometimes in potency needs to be moved by a moving thing. It is obvious, however, that the will sometimes begins to will something that is did not will before. It is necessary, therefore, that something moves it to this act of willing. And therefore . . . it moves itself, insofar as by willing an end, it moves itself to willing means to the end. ("Omne enim quod quandoque est agens in actu et quandoque in potentia, indiget moveri ab aliquo movente. Manifestum est autem quod *voluntas* incipit velle aliquid, cum hoc prius non vellet. Necesse est ergo quod ab aliquo moveatur ad volendum. Et quidem . . . ipsa movet seipsam, inquantum per hoc quod vult finem, reducit seipsam ad volendum ea quae sunt ad finem").

[111] *Id.* "But this cannot occur without intervening acts of counsel." ("Hoc autem non potest facere nisi consilio mediante").

to take counsel about means, no objects could be conceived that provides a specification for an act of choice.

Providing an example from medicine, Thomas notes that only when a sick person intends health as an end does she begin to deliberate about various means by which health might be achieved. In turn, only once deliberation hits upon various possible means to health, such as treatment by a physician or the taking of a potion, can the will move itself to the exercise of choosing from among these possibilities.[112] Thus, intention of an end accounts for *both* the will's movement of the intellect (*reasoning* about the means) and the will's subsequent self-movement to choice (*selecting* a means).

D. The Root of Freedom is in Reason[113]

1. The Problem of Infinite Regress

A difficulty, however, raised by this preceding discussion, and which Aquinas is well aware of, is the potentially infinite regression suggested by the relation between the acts of intellect and will. As explained above, Aquinas argues that the will, as a 'rational' appetite, requires for its exercise the presence of a cognitively grasped good that provides the specifying object of that exercise. If, however, in order to grasp a cognitive good, the intellect always requires a *prior* motion of the will moving the intellect to that act of thinking, then the process becomes incoherent. As Aquinas describes the problem: "[w]e can will

112 *Id.* "When someone wants to be healed, he begins to think about how this can be brought about, and by such deliberation he arrives at the fact that he can be healed by a doctor, and then wills this. " ("[C]um enim aliquis vult sanari, incipit cogitare quomodo hoc consequi possit, et per talem cogitationem pervenit ad hoc quod potest sanari per medicum, et hoc vult"); *see* DE MALO, *supra* note 68, at q. 6. PROLOGUS, corpus: "Just as by means of willing health, a person moves himself to ingest a potion: from the willing of health, he deliberates about things conducive to health, and once having determined that, wills to take the potion. Therefore, deliberation precedes the willing of the the potion's ingestion, which deliberation itself arises by the will of one willing to deliberate." ("Sicut per hoc quod vult sanitatem, movet se ad volendum sumere potionem: ex hoc quod vult sanitatem, incipit consiliari de his quae conferunt ad sanitatem: et tandem determinato consilio vult accipere potionem. Sic ergo voluntatem accipiendi potionem praecedit consilium, quod quidem procedit ex voluntate volentis consiliari").

113 "The root of all freedom is constituted in reason. Hence insofar a thing is related to reason, so is it related to free choice." ST. THOMAS AQUINAS, ON TRUTH ("QUAESTIONES DISPUTATAE DE VERITATE") q. 24. a. 2. (Fathers of English Dominican Province trans.) [hereinafter DE VERIT]. "[T]otius libertatis radix est in ratione constituta. Unde secundum quod aliquid se habet ad rationem, sic se habet ad liberum arbitrium."

nothing unless it be understood. But, if in order to understand, the will must move the intellect to an act of understanding, it is necessary that this act of will itself be preceded by some act of understanding, and that understanding in turn by some prior act of willing, and so on *ad infinitum*."[114] If every motion of intellect requires a preceding motion of will, and if every act of will requires a preceding motion of intellect, there could be no will or intellectual acts at all.[115]

2. The First Cognition of Practical Reason

In response to this regress problem, Thomas proposes that while every act of will must be preceded by some intellectual apprehension of good, not every intellectual apprehension of good requires the will's preceding movement of the intellect.[116] The possibility of infinite regress is resolved, according to Thomas, because all human volitional acts are ultimately traceable to some first, fundamental cognitive act of understanding that requires no movement of the intellect by the will.[117]

Thomas, at various times in the body of his writings, refers to this original practical knowledge presupposing no movement of the will as '*synderesis*.' In his *Commentary on the Sentences,* for example, he notes that *all motion* must begin from some unmoved mover. Analyzing the process of reasoning as a type of motion, (e.g., the movement from premises to conclusions) Thomas concludes that both in theoretical and practical reasoning, there must be some first, inchoate cognition that

114 SUMMA THEO., *supra* note 66, at I, q. 82, a. 4, obj. 3. "Nihil velle possumus nisi sit intellectum. Si igitur ad intelligendum movet *voluntas* volendo intelligere, oportebit quod etiam illud velle praecedat aliud intelligere, et illud intelligere aliud velle, et sic in infinitum: quod est impossibile. Non ergo movet intellectum."

115 *Id.* at I-II, q. 17, a. 1. This mutual influence of will and intellect and the possibility of each being preceded by an act of the other is described by Thomas as follows: "Acts of will and reason can refer to each other, insofar as reason can reason about willing, and the will can will to reason: thus an act of will can be preceded by an act of reason and the opposite." ("Actus voluntatis et rationis supra se invicem possunt ferri, prout scilicet ratio ratiocinatur de volendo, et *voluntas* vult ratiocinari: contingit actum voluntatis praeveniri ab actu rationis, et e converso").

116 *See supra* notes 101-102 and accompanying text.

117 SUMMA THEO., *supra* note 66, at I, q. 82, a. 4, obj. 3. "It must be said that this cannot proceed to infinity, but stops at the intellect in the first instance. For it is necessary that an apprehension precede every motion of the will; but a motion of the will does not precede every apprehension." ("Dicendum quod non oportet procedere in infinitum, sed statur in intellectu sicut in primo. Omnem enim voluntatis motum necesse est quod praecedat apprehensio: sed non omnem apprehensionem praecedit motus voluntatis").

provides a foundation for all subsequent intellectual acts. These primal cognitions, then, cannot themselves be the product of discursive investigation. (Such a view would inevitably require positing preceding acts of will moving the intellect to arrive at *those* results.) Instead, such basic forms of knowledge must in some way be immediately accessible to the human intellect and not the result of discursive reasoning.[118]

Discussing this knowledge with respect to practical reasoning, Aquinas states: "As 'being' is the first thing that falls under apprehension absolutely, so 'good' is the first thing that falls ['*cadit*'] under apprehension of practical reason, which is directed to actions."[119]

Here, Aquinas's utilization of the term '*cadit*' or 'falls' is not accidental. It emphasizes the spontaneity with which the apprehension of 'good' is engendered in the mind and the absence of any need for preceding acts of will that 'move' the intellect to attain that cognition. The first starting point of practical reasoning, that is, reasoning about what to do, then, begins with an intuitive notion of 'good,' attained spontaneously or naturally and without discursive activity. Thomas reiterates this stating that such understanding results immediately in the human mind from the natural light of reason itself: "Synderesis . . . is in a

118 "I respond that just as in the case of natural things, every motion must begin with some unmoved mover . . . and so too in the process of reasoning because reason has a certain variation and in is a type of motion insofar as conclusions are drawn from premises. Hence it is necessary that every act of reasoning proceed from some knowledge, which knowledge must have a certain uniformity and stability, and cannot result from discursive investigation but is immediately offered to the intellect." IN II SENT., *supra* note 105, d. 24, q., 2, a. 3. ("Respondeo dicendum, quod, sicut est de motu rerum naturalium, quod omnis motus ab immobili movente procedit,. . . ita etiam oportet quod sit in processu rationis; cum enim ratio varitatem quamdam habeat, et quodammodo mobilis sit, secundum quod principia in conclusiones deducit . . . oportet quod omnis ratione ab aliqua cognitione procedat, quae uniformitatem et quietem quamdam habeat: quod non fit per discursum investigationis, sed subito intellectui offertur"). "Hence in human nature . . . there must be a knowledge of truth without inquisition in both speculative and practical matters, and indeed this cognition must be the priciple of all knowledge that follows, whether speculative or practical . . . . Accordingly this knowledge must be found in the human person naturally, and the person knows by it as if it were a "nursery" of all subsequent knowledge." DE VERIT, *supra* note 113, at q. 16, a. 1 ("Unde et in natura humana . . . oportet esse cognitionem veritatis sine inquisitione et in speculativis et in practicis; et hanc quidem cognitionem oportet esse principium totius cognitionis sequentis, sive speculativae sive practicae, cum principia oporteat esse stabiliora et certioria. Unde et hanc cognitionem oportet homini naturaliter inesse, cum hoc quidem cognoscat quasi quoddam seminarium totius cognitionis sequentis"); *see* SUMMA THEO., *supra* note 66, at I, q. 79, a. 12.

119 SUMMA THEO., *supra* note 66, at I-II, q. 94, a. 2. "Sicut autem ens est primum quod cadit in apprehensione simpliciter, ita bonum est primum quod cadit in apprehensione practicae rationis, quae ordinatur ad opus . . . . ,"

certain manner innately present in our minds and results from the very light of the . . . intellect."[120]

3. The 'Universal Good'

Of course, such considerations offer little in terms of explaining the functional significance of this first cognition of 'good.' Here Aquinas' intended meaning is aided by consideration of an analogy he provides elsewhere with respect the roll played by the forms of '*factibilia*' or 'things that can be made' in the arts and crafts.

Considering the manner in which artists are able to create a wide variety of objects through their conception of a single exemplar, Aquinas observes that the intellectual concept of a 'wooden chest' or a 'house' made use of by an artist can be instantiated in almost limitless variety. This is possible, he argues, because the general conceptions in the artist's mind are not subject to specific determinations beyond their most general formal characteristics. Hence, there is nothing in the content of exemplars that limits the artist to creating "any particular concrete object or to any particular concrete mode of that object's existence."[121] An artist, can build a house or not, and if he builds a house, he can build one of any sort, size, shape and out of any material he or she wishes.[122]

Analogously, Aquinas envisions the first conception of 'good,' innately present in the human mind, as a 'model' for all subsequent reasoning about good. Drawing out this analogy, Aquinas proposes that the first object of the practical intellect, as the rational principle underlying *all* human choices, cannot be indeterminate simply with respect to some particular or individuating characteristics. The indeterminacy of this innate notion of good must embrace the full range of all possible objects that might be grasped as good *in any way*.

120 IN II SENT, *supra* note 105, at d. 24, q. 2, a. 3. ("[S]ynderesis . . . est quodammodo innatus menti nostrae ex ipso lumine intellectus").

121 *See* DE VERIT, *supra* note 113, at q. 23, a. 1.

122 DE MALO, *supra* note 68, at q. 6. "[I]f an architect conceives the form of a house universally, under which houses of different shapes are comprised, his will can be inclined to build a house that is square or circular or of some other shape." ("Sicut si artifex concipiat formam domus in universali sub qua comprehenduntur diversae figurae domus, potest voluntas eius inclinari ad hoc quod faciat domum quadratam vel rotundam, vel alterius figurae").

Reiterating his understanding of rational 'good' as primarily characterized by the notion *end*,[123] Thomas holds that this first cognition of practical reasoning is an intuitive apprehension of a *universal* conception of being as 'good' or 'perfective of another as end,' (*universale bonum*) open to every subsequent rational grasp of particular goods: "[O]perations of human persons tend to any type of good because good is understood universally; hence in whatever degree goodness unfolds itself, so too extends human understanding, and consequently, the will."[124]

4. The Universal Good as the Primary Object of Will

Corresponding to this original, innate grasp of 'universal good' by intellect, Thomas posits a primary inclination of will "informed" and specified by this conception. As he repeatedly states: the most fundamental object of the will is the universal good: "[e]very intellectual being is related to the universal good, which it can apprehend and which is the object of the will."[125] Again, "[h]uman appetite, which is the will, is of the universal good."[126]

This, of course, is not surprising since by 'will' Aquinas understands precisely that mode of desire attracted to objects as *rationally* good. The will is the 'rational appetite' because it is ordered to and inclines toward good-intellectually-apprehended,

123 DE VERIT, *supra* note 113, at q. 21, a. 2. ("The notion of good consists in being perfective of another as an end. Everything that is found to have this notion of an end, has also the notion of good." ("Ratio boni in hoc consistat quod aliquid sit perfectivum alterius per modum finis, omne id quod invenitur habet rationem finis, habet et rationem boni"); *see supra* notes 61-69 and accompanying text for a discussion of 'voluntas' or 'willing' as primarily directed to an end.

124 "Tendit autem operatio hominis in quodcumque bonum, quia universale bonum est quod homo desiderat, cum per intellectum universale bonum apprehendat: unde ad quemcumque gradum se porrigit bonum, aliqualiter extenditur operatio intellectus humani, et per consequens voluntatis." ST THOMAS AQUINAS, COMP. THEO. BK II, ch. 9. "The intellect apprehends good according to the universal notion of good." ("Nam intellectus apprehendit bonum secundum universalem rationem boni"). ARISTOTLE, IN LIBROS DE ANIMA II ET III Lect. 14, no. 10 (D. W. Hamlyn trans., Clarendon Press 1993).

125 SUMMA THEO., *supra* note 66, at I, q. 63, a.4. "Quaelibet natura intellectualis habet ordinem in bonum universale, quod potest apprehendere, et quod est obiectum voluntatis."

126 *Id.* at I-II, q. 2, a. 7 "Appetitus autem humanus, qui est *voluntas*, est boni universalis." *See id.* at I-II, q. 1, a. 2, ad 3: "The object of the will is the end and good in universal." ("[O]biectum voluntatis est finis et bonum in universali"). *Id.* at I-II, q. 2, a. 7 ("Appetitus autem humanus, qui est *voluntas*, est boni universalis"); *id.* at I-II, q. 2, a. 8 ("Obiectum autem voluntatis, quae est appetitus humanus, est universale bonum"); DE MALO, *supra* note 68, at q. 8, a. 3 ("Appetitus ergo rationalis, qui est voluntas, habet pro propria ratione obiecti bonum universale").

that is, the will finds objects attractive only insofar as they can be grasped as rationally perfecting or fulfilling something. This joint *apprehension of* and *inclination to* the *bonum universale* is captured by Aquinas in his articulation of the first principle of practical reason: "Good is to be done and pursued and evil avoided."[127]

This conception of universal good and the natural inclination to it, however, cannot itself be the object of a free choice. For, in Aquinas's view human persons have no choice about these first indeterminate orientations of the intellect and will. Thus, Aquinas's resolution of the free will problem inevitably depends upon his account of the transition from these innate, necessary operations of intellect and will to concrete choices of determinate goods.

5. Willing Other Goods

Explaining the transition from willing good universally (*bonum universale*) to willing particular goods, Aquinas observes that the will's inclination to 'good universally' does not limit it to inclining only toward objects that perfect the will *itself*. Rather, just as the first conception of 'good' provides a basis for an intellectual grasp of all particular 'goods' in limitless variety, so too, the will's inclination to *bonum universale* endows it with an indeterminate dynamism capable of being directed to *all* objects so understood.

Of particular importance in this context, however, are certain classes of goods corresponding to inclinations of the various powers and faculties forming an intrinsic part of human persons' constitution.[128] Thomas asserts that in light of the universal conception of good, practical reason necessarily grasps the general objects of these inclinations as perfective "ends." He explains that, "[b]ecause 'good' has the notion of end, and evil the notion of its contrary, everything toward which man has a natural inclination, and thus which is grasped as perfective,

[127] SUMMA THEO., *supra* note 66, at I-II, q. 94, a. 2. "Bonum est faciendum et prosequendum, et malum vitandum."

[128] For example, inclinations to pursue sense knowledge, nutrition, reproduction, community, intellectual knowledge, etc. *See, e.g.*, *id.* at I-II, q. 94., a.2.

reason "naturally" apprehends as a good and consequently to be pursued, while opposites are grasped as evils to be avoided." [129]

As a result, additional principles guiding human practical reason come to be constituted. These intermediate principles prescribe more specific, but not entirely determinate, general goods or ends to which persons are naturally attracted:

> Just as 'good' is the first thing that falls in the apprehension of practical reason, . . . therefore the first principle in practical reason is the first precept of law, that is, that good is to be done and pursued and evil avoided. And upon this is based all the other precepts . . . i.e., those things are to be pursued or avoided . . . which practical reason naturally apprehends as being human goods. Because good has the character of an end and evil a contrary character, hence everything a human person has a natural inclination for, reason grasps as goods, and consequently as to be pursued by action.[130]

It is, in fact, these general principles of practical reason that comprise, for Aquinas, the principles of the 'natural law." They constitute the very starting points for rational deliberation about how to fulfill one's capacities and needs as a human person, and in turn, provide the foundation for determining all more specific norms governing human choice. As Thomas states, "[i]t is from

[129] *Id.* at I-II, q. 94, a.2. "Quia vero bonum habet rationem finis, malum autem rationem contrarii, inde est quod omnia illa ad quae homo habet natural inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opera prosequenda, et contraria eorum ut mala et vitanda." *See id.* at I-II, q. 10, a.1. "The principle of voluntary motions must be something willed naturally. This is the the good in general . . . . But by the 'will' we will not only those things that pertain to the will itself, but also things which pertain to the other individual faculties and the whole person. Hence a person naturally wills not only the object of the will itself but all objects which correspond to the other human faculties. . . and which are all understood to fall under the object of the will as particular instances of 'goods.'" ("[P]rincipium motuum voluntariorum oportet esse aliquid naturaliter volitum. Hoc autem est bonum in communi, in quod *voluntas* naturaliter tendit . . . . Non enim per voluntatem appetimus solum ea quae pertinent ad potentiam voluntatis; sed etiam ea quae pertinent ad singulas potentias, et ad totum hominem. Unde naturaliter homo vult non solum obiectum voluntatis, sed etiam alia quae conveniunt aliis potentiis . . . quae respiciunt consistentiam naturalem; quae omnia comprehenduntur sub obiecto voluntatis, sicut quaedam particularia bona").

[130] *Id.* at I-II, q. 94, a. 2. "Sicut autem . . . bonum est primum quod cadit in apprehensione practicae rationis . . . . [I]deo primum principium in ratione practica est . . . primum praeceptum legis, quod bonum est faciendum et prosequendum, et malum vitandum. Et super hoc fundantur omnia alia praecepta . . . ut scilicet omnia illa facienda vel vitanda pertineant ad praecepta . . . quae ratio practica naturaliter apprehendit esse bona humana."

the precepts of natural law, as if from general and indemonstrable premises, that human reason must proceed to determining matters more particularly. And these particular dispositions, discovered by human reason, are called human laws . . . ."[131]

Principles of "natural law" are most properly understood, then, not as a set of abstractly deduced prohibitions, but as spontaneously engendered general principles guiding practical reason to choose instantiations of those basic types of goods that fulfill human capacities and needs.[132] As Thomas describes this, "[h]uman reason itself is not the measure of all things; but by means of principles impressed upon reason from nature, which are the general rules and measures of the acts that are to be done by man, natural reason is the measure of those acts (though reason itself is not the measure of those things from nature themselves.)"[133]

In sum, taking the '*principium*' or principle of practical reason precisely in its etymological sense as 'a beginning,' Thomas

131 *Id.* at I-II, q. 91, a. 3. "[E]x praeceptis legis naturalis, quasi ex quibusdam principiis communibus et indemonstrabilibus, necesse est quod ratio humana procedat ad aliqua magis particulariter disponenda. Et istae particulares dispositiones adinventae secundum rationem humanam, dicuntur leges humanae, servatis aliis conditionibus quae pertinent ad rationem legis."

132 Aquinas states that the obligation of law arises from its promulgation and application to human persons. "A rule and measure is imposed by being applied to those things which are ruled and measured. Hence, for law to obtain the power of obligation, which is proper to law, it is necessary that it be applied to the human persons who are to be ruled by it." ("Regula autem et mensura imponitur per hoc quod applicatur his quae regulantur et mensurantur. Unde ad hoc quod lex virtutem obligandi obtineat, quod est proprium legis, oportet quod applicetur hominibus qui secundum eam regulari debent"). *Id.* at I-II, q. 90, a. 4.

The principles of practical reason under consideration, however, direct human agents *generally* to the most basic human goods. This is so, according to Aquinas, because they are "impressed upon reason from nature" and are "general rules and measures of all acts that are to be done by man." *See infra* note 133 and accompanying text. Because, however, human persons are not the "measure of those things themselves that are from nature," these general inclinations inherent in a human person's constitution are unavoidably grasped as *necessarily* perfective. *Id.* Accordingly, these "unavoidable" general prescriptions of practical reason, by which human persons seek fulfillment in basic human goods, are experienced by man as "obligations" and in that sense form a type of "law."

133 *Id.* at I-II, 91, 3, ad 2. "Ratio humana secundum se non est regula rerum, sed principia ei naturaliter indita, sunt quaedam regulae generales et mensurae omnium eorum quae sunt per hominem agenda, quorum ratio naturalis est regula et mensura, licet non sit mensura eorum quae sunt a natura."

These basic principles then are the fundamental principles that make the choice of human goods possible at all; they provide the human mind with the possibility of grasping such objects as perfective in the first place and thus as ends that can be rationally appreciated.

proposes that the primary actualities of intellect and will make possible all subsequent perceptions of particular goods and exercises of will. By means of the intellect's universal conception of good and the will's natural inclination to it, a human person is endowed with a dynamism sufficient to know and will any type of goodness, including one's own perfection, as well as the perfection of other things, insofar as they can be intelligibly related to other objects as ends or perfections.[134] As Aquinas states: "In those beings having 'will,' every faculty and habitual actuality is brought to good action by means of the will; for the will has as its object 'good taken universally,' under which are contained all particular goods, and for the sake of which those faculties and habits operate."[135]

E. The Meaning of Autonomy

Having concluded this broadbased elaboration of Aquinas's account of human willing, it is finally possible to consider its relation to the general problem of free will developed in prior discussions.

1. Free Judgment

For Aquinas, the root of human freedom ultimately traces back to the indeterminacy of practical reason's conception of 'universal good,' and the will's foundational inclination to that same, indeterminate *universal* good. Because of the will's inclination (attraction to) the indeterminate *bonum universale*, not only is the will able to take interest in all particular goods, but, at the same, time, no particular object—which reflects only a restricted, limited instantiation of goodness—can necessitate the will's inclination to it. As Aquinas elucidates this point, "[t]he will is not able to incline to anything except insofar as it is seen as good.

134 *See* Vernon J. Bourke, *Human Tendencies, Will and Freedom*, *in* L'HOMME ET SON DESTIN, 79-81 (Nauwelaerts ed., Louvain 1960); *cf.* G. Verbeke, *Le Dévelopment de la Vie Volitive D'après Saint Thomas*, *in* REVUE PHILOSOPHIQUE DE 56 (LOUVAIN ed., 1958).

135 DE MALO, *supra* note 68, at q. 1, a. 5. ("Manifestum est autem quod in habentibus voluntatem, per actum voluntatis quaelibet potentia et habitus in bonum actum reducitur; quia voluntas habet pro obiecto universale bonum, sub quo continentur omnia particularia bona, propter quae operantur potentiae et habitus quaecumque").

But because good is manifold [*multiplex*], the will is therefore not determined to one thing."[136]

Discussion of the exemplars in the minds of artisans is again useful for illustrating how 'intellectually understood objects' cannot function as objects determining the movement of appetite. Contemplating the possibility of building a "house," i.e., a dwelling fit for human habitation, an artisan may appreciate the appealing qualities and usefulness of many different architectural styles and structures. Each in its own way could be understood to satisfy diverse aesthetic, social, and environmental demands. Accordingly, none of the conceived structures would necessitate an artisan's choice to build one rather than the other, or even to build any house at all. Because of the very indeterminacy of the conception, it compels no choice.

For Thomas, this indeterminacy of universal forms constitutes the condition for intellectual and volitional freedom. As he explains: "the form intellectually grasped is universal, under which many can be comprehended. Since acts are concerned with singulars, among which there is none that is equal to the potentiality of the universal, the inclination of the will remains indeterminately related to many."[137]

Any particular, limited conception of a concrete good, then, represents only one of myriad possibilities that can be grasped as "good" in light of the *bonum universale*. Hence, nothing in the understanding of a particularized instance of good corresponds even remotely to the fullness of the conception of *bonum universale* itself, and accordingly, falls short of corresponding to will's necessary attraction to the universal good. Given the limited nature of every particular good when contrasted with the universal notions of good possessed by practical reason, no single judgment of a particular good can necessitate the will.[138]

136 SUMMA THEO., *supra* note 66, at I, q. 82, a. 2, ad 1. "Dicendum quod *voluntas* in nihil potest tendere nisi sub ratione boni. Sed quia bonum est multiplex, propter hoc non ex necessitate determinatur ad unum."

137 DE MALO, *supra* note 68, at q. 6: "Forma intellecta est universalis sub qua multa possunt comprehendi; unde cum actus sint in singularibus, in quibus nullum est quod adaequet potentiam universalis, remanet inclinatio voluntatis indeterminate se habens ad multa."

138 "For Aquinas, then, the intellect's work is not sufficient to determine the will's choice." Patrick Lee, *The Relation between Intellect and Will in Free Choice according to Aquinas and Scotus*, 49 THE THOMIST 321, 336 (1985).

Of course, consistent with this argument, Aquinas affirms that if an object could be presented that was good in every way conceivable—that is, an actual object corresponding to the conception of *bonum universale*—it would necessitate the will to choose it.[139] Any particular concrete good available to human persons in this life, however, falls short of such goodness. While specific goods may, in one way or another, be rationally attractive to the agent, it is always possible for the agent to focus on some aspect of that good that is lacking and hence not choose it: "In all particular goods, it is possible to consider the notion of a particular good, and the absence of a particular good (which has the notion of an evil); in this way, everyone of these types of goods can be apprehended as worthy of choice or to be avoided."[140]

By specifying the exercise of one's will toward particular ends in view of the ultimate conception of *bonum universale*, the will possesses the actuality necessary to move itself to deliberation concerning a multiplicity of possible objects in which the *ratio* of good might be found. In the course of deliberating, the agent is able to appreciate a variety of objects which in unique manners instantiate the conception of 'good.' And by virtue of the intellectual reflection upon one's acts, the agent is able to evaluate opposing practical judgments, weighing and comparing the alternative good offered by each. As Aquinas summarizes this view:

> I respond that the are some things that that do not act from any judgment, but act and are moved by another, as an arrow is moved to its target by an archer. Some things, however, do indeed act from judgment, but not

139 [B]ecause the absence of any good has the ratio of not good, therefore that good alone which is perfect and lacks nothing, is of such a character that the will cannot not will it: . . . All other particular goods, in as much as they lack some good, can be taken as not good. And in reference to this consideration they can be repudiated and refused by the will, which can be directed to the same thing according to different considerations. SUMMA THEO., *supra* note 66, at I-II, q. 10, a. 2. "Et quia defectus cuiuscumque boni habet rationem non boni, ideo illud solum bonum quod est perfectum et cui nihil deficit, est tale bonum quod *voluntas* non potest non velle: . . . Alia autem quaelibet particularia bona, inquantum deficiunt ab aliquo bono, possunt accipi ut non bona: et secundum hanc considerationem, possunt repudiari vel approbari a voluntate, quae potest in idem ferri secundum diversas considerationes."

140 *See id.* at I-II, q. 13, a. 6. "[I]n omnibus particularibus bonis potest considerare rationem boni alicuius, et defectum alicuius boni, quod habet rationem mali: et secundum hoc potest unumquodque huisumodi bonorum apprehendere ut eligibile, vel fugibile.") *Cf. id.* at I-II, q. 10, a. 2. & q. 13, a. 6, ad. 3; DE MALO, *supra* note 68, at q. 6, ad 7.

> free judgment; as irrational animals, for the sheep flees the wolf from a certain type of judgment by which it judges that the wolf is a threat to it. This judgment, however, is not free but derived from nature. Only a being having intellect can act from free judgment, insofar as it understands the universal conception of good, by which it is able to judge that this thing or that is good. Hence where there is intellectual understanding, there is free judgment.[141]

2. Free Choice

Thus, no particular good that human persons may contemplate, nor any particularized standard of value employed in judging one object better than another, can ever be anything other than an imperfect approximation of the universal conception of good. Given the matrix of imperfect rational goods available to the will in the concrete world, the exercise of a choice cannot be causally explained simply by appeal to the formation of a practical judgment. Regardless of what judgments the intellect forms, none compels the will to choose according to it, for none corresponds to the fullness of that conception of 'good' toward which alone the will necessarily inclines.

Accordingly, for Aquinas, the specification of choice through judgments about good cannot *cause* choice efficiently or necessarily.[142] It is the inability of the mind to discover in any

[141] *Id.* at I, q. 59, a. 3. "Respondeo dicendum quod quaedam sunt quae non agunt ex aliquo arbitrio, sed quasi ab aliis acta et mota, sicut sagitta a sagittante movetur ad finem. Quaedam vero agunt quodam arbitrio, sed non libero, sicut animalia irrationalia, ovis enim fugit lupum ex quodam iudicio, quo existimat eum sibi noxium; sed hoc iudicium non est sibi liberum, sed a natura inditum. Sed solum id quod habet intellectum, potest agere iudicio libero, inquantum cognoscit universalem rationem boni, ex qua potest iudicare hoc vel illud esse bonum. Unde ubicumque est intellectus, est liberum arbitrium."

[142] As Mary T. Clark restates this position:

> It is this indeterminacy on the part of the "good apprehended by the practical reason" that prevents it from exercising anything other than formal causality, which in the last work of St. Thomas on this subject is described as a mere presence of an object in the practical reason. But in the metaphysical thought of St. Thomas, formal causality is destitute of actuality or power without the act of *esse* given by the efficient cause. The will is the efficient cause of the act of choice that has power over the formal cause, because the will can move or not move itself and can command all other faculties, including the practical reason.
>
> And so we see that although the will is specified by the object presented by the practical reason, and so the reason can be said to move the intellect in the order of specification, there is a very real sense in which the will moves itself in

single object the fullness of *universale bonum* that opens the possibility of freedom: "The root of all freedom is constituted in reason."[143] By means of this indeterminacy, the will is free, first, to direct reason to consider a multiplicity of possible goods and, second, to choose according to whichever judgment of practical reason it prefers.

In sum, a choice made under these conditions constitutes a strong conception of freedom; it proposes that a sufficient causal explanation of choice is found only in a particular type of self-motion of the will, that is, a *free* self-motion of the will to one good rather than another. This choice is indeed made possible only by virtue of a prior intention, but that intention, rather than determining choice, opens up multiple possibilities for the specification of its exercise. Faced with these alternative means to some intended end, the will must freely determine which 'judgment' or 'conclusion' of deliberation to bring before itself (by moving the intellect to that consideration), and to choose in accordance with it, thus constituting one judgment of good rather than another as the specification of its choice.[144] As Aquinas succinctly states:

> The potency of the will, in itself is indifferently related to many things. But that the will determinately exercises this act rather than that act is not determined by anything else, but by the will itself. . . .

> the order of exercise. . . . This gives the will mastery over its own *specification* with regard to means.

Mary T. Clark, *Willing Freely According to Thomas Aquinas*, *in* A STRAIGHT PATH: STUDIES IN MEDIEVAL PHILOSOPHY AND CULTURE 49, 52-53 (Ruth Link-Salinger ed., Catholic Univ. Press 1988).

143 DE VERIT, *supra* note 113, q. 24. a. 2. "[T]otius libertatis radix est in ratione constituta."

144 Patrick Lee notes the tendency to misconstrue the role of intellect as an *efficiently* determining factor of action:

> A very incautious dictum tossed about has been, "The intellect specifies the will . . . . The common resort of the mutual causality of intellect and will does not answer the problem raised by this passage. The problem is this: if the intellect specifies that this object rather than that be willed, then the choice is not free but intellectually determined. If the objection is stated in precisely this way, I think it can be answered only by denying the antecedent. Yet Thomists have often been loath to deny it, for fear of falling into 'voluntarism.'

Lee, *supra* note 136, at 321.

> And therefore, the most proper act of the will is said to be from the will itself.[145]

Ultimately it remains up to the person himself through his will, and nothing else, to determine which limited good he will take as the object of practical reason and choice.

3. 'Following' Reason

Accordingly, when Thomas speaks of choice 'following' ('*sequitur*' or '*consequitur*') reason, he cannot be understood to assert that any particular rational grasp of good *necessarily* or *efficiently causes* choice. Rather, he means that choice comes *after* counsel and judgment, and that they function as necessary, but not sufficient, conditions for the exercise of *electio*.[146] Choice "follows" reason because choice presupposes some intelligible formal good functioning as its specification.

This non-causal understanding of the manner in which choice 'follows' reason is confirmed by Aquinas's analogy of choice to the exercise of the power of vision.[147] It is, after all, striking that

[145] IN II SENT, *supra* note 105, d. 39, a. 1. "Ipsa enim potentia voluntatis, quantum in se est, indifferens est ad plura; sed quod determinate exeat in hunc actum vel in illum non est ab alio determinante, sed ab ipsa voluntate. . . . Et ideo propriissime actus voluntatis a voluntate esse dicitur."

[146] J.M. Ramírez, O.P., notes the strange ordering of questions in *Summae Theologiae*, I-II: "The ordering of these questions in St. Thomas is problematic. He states, 'counsel precedes choice, therefore choice is to be considered first, and counsel second, as if he were to say, because counsel comes before choice, choice should be treated before counsel and counsel after choice. A preposterous ordering." ("Mirabilis videtur ratio ordinem harum quaestiones apud S. Thomam; ait enim: «Electionem *praecedit* consilium; primo *ergo* considerandum de electione; secundo, de consilio », ac si diceret: quia consilium est ante electionem, ideo agendum est de electione ante consilium et de consilio post electionem. Ordo praeposterus"). J. M. RAMIREZ, IV OPERA OMNIA: IN I-II SUMMAE THEOLOGIAE DIVI THOMAE EXPOSITIO QQ. VI-XXI 322 (Victorius Rodriguez ed., Instituto de Filosofia «Luis Vives» 1972).

Ramírez attempts to resolve this apparent absurdity by arguing that Aquinas is interested in presenting an analysis of human action not strictly from a sequential psychological point of view but, in keeping with the general moral purpose of the *Summae Theologiae*, I-II, from the psychological order in *relation to the moral order*. Since deliberation is ordered to choice and choice is ordered to the end, and is essentially voluntary, it is proper for Aquinas to consider choice first. *Id.* at 322-24.

Ramírez's interpretation is consistent with the interpretation of Aquinas adopted in this study. By postponing his analysis of counsel or deliberation until after his analysis of choice, Aquinas emphasize, in a manner easily overlooked on a reverse ordering, that the manner in which choice "follows" deliberation is not to be understood according to a efficient necessitation. In fact, as argued below, choice itself causes or constitutes the final judgment itself. The absence of a necessary relation between judgment and choice is clearly indicated by Aquinas when he states that the conclusion of the syllogism is itself "a judgment *or* choice *or* action," thus identifying all three in a concrete choice. *Supra* note 91 and accompanying text.

[147] *See supra* Part III.C.1.

Aquinas should make use of the analogy of sight at all. Vision is a *cognitive* power, while will is an *appetitive* power. On reflection, however, the parallel suggests that Aquinas employs the analogy to stress the agent's free control over the faculty of will. Just as a person is able freely to direct both the exercise and specification of sight to any colored object he chooses, so too, a person is able freely to direct, by and in choice, the exercise and specification of his or her will to any object understood as rationally good.

At this juncture it is also possible to resolve the question raised above concerning the objection that choice is necessitated because it follows conclusions of "practical" syllogisms.[148] In response to this objection, Thomas had stated enigmatically that judgments of practical reason bear on contingent events which *might* be brought about by our action, stating, "[b]ut in such matters, conclusions are not derived from absolutely necessary principles but only conditionally necessary principles, as for example, if he runs, he moves."[149]

Based on the preceding considerations, his meaning becomes evident. The relationship between intended ends and means in situations open to alternative courses of conduct is dissimilar to scientific reasoning which permits only one possible conclusion. In practical matters, with respect to a single intended end (major premise), multiple means may be available (minor premises), thus opening up the possibility of multiple final practical conclusions or judgments concerning how the end is to be attained.[150] As, for example, an intention to improve one's health can be accomplished in more than just one way, thus creating the possibility of multiple practical judgments that might freely be adopted in pursuit of that end.

Aquinas's point is that the *necessity* of any practical conclusion informing a choice exists only by supposition. As is clear from his general account of will, other than the first indeterminate movements of the intellect and will to the universal good, no judgment of practical good necessarily specifies the will or its exercise. Because of this, the necessity of any particular

148 *See supra* note 100 and accompanying text.

149 *See supra* notes 95-96 and accompanying text.

150 For discussion of the applicability of syllogistic models of thought to practical reasoning, *see supra* note 90.

judgment specifying choice obtains only if one *assumes* that the actor freely chooses according to that judgment rather than another. The necessity of such judgments informing those choices is then said to be *conditionally* or suppositionally necessary. As Aquinas clarifies, even though a person may be free to sit, run, or walk; *on the supposition or assumed condition* that "a person runs," it is indeed conditionally necessary that the person "moves". While it is not necessary that a person run—*if* he runs—it follows necessarily that he moves.

Similarly, though choice is not antecedently determined to "follow" one possible 'conclusion' or another, if one freely chooses one way or another, it is necessary that that choice be specified by its own judgment. The necessity of such a judgment is then 'conditioned' upon the supposition that the will has drawn up that self-specifying judgment by choice. By the very same self-motion, then, the will both exercises and specifies choice. This view is reflected, for example, in texts where Aquinas speaks of judgment, choice, and action as being in a certain sense identified: "Thus, a person considering practical action uses a type of syllogism whose conclusion is a judgment or choice or action."[151]

4. Aquinas and Voluntarism

The preceding elaboration of Aquinas's theory of choice naturally lies open to accusations of arbitrary voluntarism, insofar as, in the end, the only *sufficient* causal factor accounting for choosing one way or another is the freedom of the will itself. Some argue that this account renders choice arbitrary or irrational, for it explicitly fails to provide a sufficient rational explanation for why the person chooses in accord with one practical judgment *rather* than another, when both options were equally available for choice.

An appropriate response to this objection requires more detailed consideration of the exact sort of *voluntarism* or arbitrariness alleged. As one author has described the accusation of voluntarism:

151 SUMMA THEO., *supra* note 66, at I-II, q. 76, a. 1. "Conferens enim de agendis, utitur quodam syllogismo cuius conclusio est iudicium seu electio vel operatio."

> The intellectualist account pictures the will having to follow what the intellect concludes; the voluntarist account says that the will is free to decide on an action no matter what the intellect comes up with.[152]

The notion of voluntarism implicit in this statement echoes Susan Wolf's rejection of autonomy. As she argued, autonomy involves the actor in making decisions on "no basis."[153] Voluntarism understood in this sense implies a complete autonomy of will enabling it to choose objects *apart from* or *contrary to* judgments of reason.

The interpretation of Aquinas offered here, of course, is not susceptible to accusations of this sort of arbitrariness or irrationality. All acts of will are dominated and mediated by reference to rational good. As illustrated above, the very first principle inclining the agent to make use of the volitional 'power' at all is an orientation to indeterminate rational good. Further, both in the particular end intended and means chosen, there must always be a rational basis providing the formal objective of the will's inclination.

The will, then, is inherently and necessarily ordered toward seeking good as rationally conceived. In choice, the very *possibility* of the will choosing one object *rather* another arises only because reason itself grasps alternatives as 'rationally' good, and so constitutes the very basis of their 'desirability.'[154] As Aquinas's analogy between vision and volition illustrates, just as sight cannot be understood without reference to colored objects, so too willing cannot be understood without reference to rational good.

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[152] Daniel Westberg, *Did Aquinas Change His Mind About the Will?*, 11 THE THOMIST 41, 51 (1994).

[153] *See* FREEDOM WITHIN REASON, *supra* note 24, at 54 (providing "this ability to make radical choices is . . . opaque. Since a radical choice must be made on *no basis*, and involves the exercise of no faculty, there can be no explanation of why or how the agent chooses to make the radical choices she does") (emphasis added).

[154] As some philosophers restate this:

> The point is that whatever is willed is willed according to *some* order of reason. Whatever is willed is willed because one has grasped through reason some goodness in the object, either as good in itself or as having an order to something good in itself. . . . The will determines itself to will this or that particular object, even though the order of each particular object to the end, and hence its ability to attract the will, is provided by reason or intellect.

BOYLE ET. AL., *supra* note 8, at 335-36.

In short, in choice the will can direct the intellect toward consideration of one good rather than others and so choose freely, but it is always the intellect and not the will that grasps the character of the goodness in question and presents it before the will for choice. The notion that the will can direct itself "no matter what the intellect comes up with" plays no part in Aquinas's theory.

At the same time, it must be conceded that Aquinas's position does suggest a delineated indeterminate autonomy of the will. For insofar as reason alone, though providing a necessary condition for choice, does not necessitate the will to exercise its choice of any specific rational good, no "*sufficient* reason" explains why an agent chooses one good *over* another. As argued, it is Aquinas's view that the specification of choice—ultimately generated out of the indeterminism of the 'universal good'—requires positing that it is the freedom of the will itself and *nothing else* that sufficiently explains an agent selecting which particular rational good he or she prefers, "But that the will determinately exercises this act rather than that act is not determined by anything else, but by the will itself."[155]

The unique goodness of the object chosen, of course, to some extent explains an agent's choice; it offers an intelligibility for the choice not offered in the alternative(s). By way of illustration, in deciding between apples and oranges, one might respond to a question about why one chooses an apple rather than an orange precisely by referring to the qualities in the apple, i.e., it is in a unique way "juicy, sweet, and red." If one were to ask, however, for a sufficient rational explanation for why one prefers these qualities to the "tangy, acidic sweetness" of an orange, that is, "why do you prefer apples to oranges?"—no answer can usually be offered, other than to repeat that one just prefers one taste to the other. Choice is explained by appeal to the specific goodness of the chosen option that is not offered by the others. This, however, does not explain, by means of an exhaustive or "sufficient reason" why the actor freely chooses one form of rational goodness rather than another.

The answer to such questions can be found only by appeal to the agent's exercise of freedom. The agent chooses this object

[155] *See supra* note 145 and accompanying text.

rather than another because the person wants that sort of good more than he wants another sort of rational good. And for this, as Thomas states, there is no sufficient explanation other than the very choice the actor makes. While the decision to choose this way rather than that cannot fully be explained by a reason, it can be explained by appealing to the agent's efficacy in preferring one type of good over a different good. Thus, the agent and the agent alone, is responsible for free choice.

While this interpretation may remain unsatisfactory to anyone who demands a sufficient explanation for choice, it appears to be the only explanation which can preserve personal and moral responsibility. For, any theory proposing that a judgment of reason can sufficiently explain the exercise and specification of choice inescapably faces the impossible task of showing how choice could still be free.

The unacceptable deterministic consequence of attributing sufficient causality to reasons clarifies that in order to be actually and unconditionally able to do otherwise, that is, to be free in a substantial sense, an agent's choice cannot be fully determined by reason. Only by preserving some sense in which the agent himself, and nothing else, definitively determines choice can the possibility of a *sui generis* mode of personal causality be explained that justifies attribution of personal responsibility.

The account of free choice offered here, then, hinges upon an ability of the agent to determine himself *without* a sufficient reason, but not without any reason or against reason. While no sufficient reason explains why the will inclines to this specifying rational object *rather* than another, appeal can be made to the person's freedom of will and to the specific good chosen.

This account appears to provide the only adequate explanation that preserves the possibility of human agents freely and rationally choosing one way or another. Noting a relevant distinction between a sufficient explanation and a rationally adequate explanation, Richard Sorabji comments:

> [E]xplanation is relative to the kind of question that needs to be answered. When someone asks for an explanation, he often (not always) has a contrast in mind. He may want one thing explained *in face of* another. . . . The questioner may want us to explain

> why an electron hit the trigger, in face of the fact that this amount of material, exposed for this amount of time, would not always irradiate a similarly placed mechanism. If this is the question, there is no answer. On the other hand, the questioner may want us to explain why an electron hit the trigger, in face of the fact that in other rooms, and in this room at other times, levels of radiation are normally zero. In that case, it is a perfectly good explanation to point out that the radioactive material was left out on the bench. . . . It distorts the situation to say that there is no explanation of why an electron hit the trigger. It is only in relation to *certain* questions that an explanation is unavailable.
>
> . . .
>
> . . . But then ought we to expect that there will be an explanation available corresponding to every contrast that we care to choose?[156]

To the question of why an electron is in one location *rather* than another, no answer is possible. If, however, an explanation is sought for how an electron could be located in one or other particular place, when it is not located at that same place at other times, quantum mechanics does provide an answer to that.

To the extent that Thomas' account provides a *rational* framework for human willing, any direct parallel between the apparently complete randomness of quantum mechanics and human choice appears inapt.[157] Sorabji's comments are apropos, however, inasmuch as they suggest that the lack of a sufficient answer to one question (i.e., '*why* does the will freely choose one object rather than another), does not undermine the adequacy of a rational answer to a different question (i.e., '*how* can the will freely choose one object rather than another.')

156 RICHARD SORABJI, NECESSITY, CAUSE, AND BLAME: PERSPECTIVES ON ARISTOTLES'S THEORY 29-31 (1980).

157 It is difficult to understand how random events could ever suffice to account for *moral* freedom and responsibility. As one philosopher states this view, "although there is strong empirical evidence that nature is at bottom indeterministic, it is not so clear that indeterminism of the right sort [for freedom of action] can be generated via a direct function from quantum indeterminacy." Timothy O'Connor, *Emergent Properties*, 31.2 AM. PHIL. Q. 91, 100 (1994); *see supra* note 11.

Confusion about the difference between these questions is responsible in large part for the claim that freedom entails incoherency. Responding, for example, to legal scholar Peter Westen's[158] argument that the problem of free will collapses upon itself because there is no sense at all in which free choice can be coherently conceived of,[159] the preceding account suggests an alternative view—one that does not beg the question by assuming that the only rational explanation demands a completely sufficient, i.e., deterministic, explanation. Theories of free choice such as Aquinas's offer an account of causation which, though not able to explain a choice *completely*, provide an appropriately loose causal account to overcome objections of incoherence, randomness and unintelligibility.

While avoiding the weaknesses of purely causal accounts of free choice that inevitably churn out deterministic results, Aquinas's account proposes a hybrid model of causality and indeterminacy, appealing at times to notions of efficient causality and at other times to causal indeterminacy without reducing the explanation to either extreme.

The inability to offer a sufficient explanation of free choice does not, then, detract from its adequacy. Rather an 'incomplete' rational explanation is demanded in order to preserve a theory of freedom of choice. In particular, Aquinas's conception of free choice accounts for how "reasons" possess explanatory efficacy, but not as antecedent *sufficient* causes of choice. At the same time, his account avoids the alternative implication that choice depends upon conditions so entirely irrational and random as to sever all meaningful connection with human actors.

As correctly noted by philosophers like Ayer and Mill,[160] choices are differentiated from one another precisely by their differing rational specification. If an actor chooses one way, his choice is necessarily informed by a differing rational content than that which would inform the choice of an actor choosing otherwise. These philosophers failed to realize, however, that such specification does not require determinism. For every choice, even a free choice, must necessarily have a rational formality defining its character. As Aquinas clarifies, this

158 *See supra* note 24 and accompanying text.
159 *Id.*
160 *See supra* notes 5 and 14.

"necessity" is not antecedently imposed, but is itself a result of the process of choosing freely. For Thomas, it is by the very exercise of a free choice that a person determines which judgment of reason shall specify it, not a judgment of reason predetermining which choice shall be exercised.

CONCLUSION

Modern theories of choice reject strong conceptions of freedom because they believe that the notion of autonomy entailed by these theories leaves no plausible room for attributing responsibility to the actor. As a result, such theorists fall back upon deterministic accounts of freedom to justify personal responsibility. Choice, as described on deterministic models, at least has no difficulty associating an agent causally with his conduct.

As has been shown, however, such 'caused' freedom, provides no meaningful sense in which it remains up to the agent to "want what he wants to want."[161] No matter how many 'loops' or complexities may be introduced, if the unfolding of self-determining choices ultimately traces back to sufficient causes antecedent to an agent's choice, then action cannot be attributed to the agent in any sense constitutive of true personal responsibility. While such agents may play a functional role in their own self-determination, it would be a role that carries with it no basis for blame or praise.

On an alternative model of free choice, proposed by Thomas Aquinas, the very exercise of practical reason in deliberation and choice requires a certain kind of autonomy. By virtue of the indeterminate initial states of human cognitional and volitional faculties, persons are able to grasp and be attracted to multiple, alternative conceptions of good. This lack of determination, in turn, creates the possibility of persons selecting for themselves which particular conception of good shall inform their practical thinking and to which they shall commit themselves by choice.

In short, these basic orientations of the human mind and will suggest a kind of autonomous model of reasoning that Susan Wolf had raised for consideration but dismissed. In connection

[161] *See supra* note 47 and accompanying text.

with Wolf's rejection of autonomy and retreat into determinism, she noted in passing that such a conception of free choice would demand a concept of a 'person' viewed as "a prime mover unmoved, whose deepest self is itself neither random *nor* externally determined, but is rather determined *by* itself − who is, in other words, self-created."[162] In fact, it is not uncommon in scholarly discussion to see strong conceptions of free choice dismissed precisely because they implausibly call for some unconditional 'divine-like' quality to be attributed to human persons.[163]

While Wolf, for this very reason, denies autonomy as an appropriate model for choice, Thomas consciously embraces this insight:

> Because . . . man is made in the image of God inasmuch as there is signified by the term 'image' being intellectual, and endowed with free will and self-active . . . it remains for us to consider His image, i.e., man, insofar as he is the principle of his acts, having free choice and power over his deeds.[164]

Affirmations that human persons reflect in this way an image of the divine are, of course, not unknown in philosophical and religious circles. Yet, even in these contexts, discussions often blithely treat its justification—*the having of an intellect and will*—as if it were simply a matter of checking off nominal traits shared by divine and human persons. In fact, it is Thomas's understanding of precisely what it *means* to have an intellect and will, that is, of the *remarkable* nature of these faculties, that explains why having them makes one, in very fact, *god-like*.

162 *Sanity*, *supra* note 30, at 52.

163 Daniel C. Dennett, for example, suggests that the main concerns about the problem of free choice arise from a human aspiration to be the origin of our deliberations and choices as persons exercising "absolute agenthood" − to be a perfect, God-like self-creator. DANIEL C. DENNET, ELBOW ROOM: THE VARIETIES OF FREE WILL WORTH WANTING 83-85 (1984). Similarly, Roderick Chisholm in discussing agent causation speaks of agents as in the Aristotelian sense of "prime movers unmoved." Roderick Chisholm, *Human Freedom and the Self, in* FREE WILL 26, 28-32 (Gary Watson ed., Oxford Univ. Press 2003).

164 SUMMA THEO., *supra* note 66, at I-II, PROLOGUS "Quia, sicut Damascenus dicit, homo factus ad imaginem Dei dicitur secundum quod per imaginem significatur *intellectuale et arbitrio liberum et per se potestativum* . . . restat us consideremus de eius imagine, idest de homine, secundum quod et ipse est suorum operum principium, quasi liberum arbitrium habens et suorum operum potestatum."

The possibility of free choice requires a radical understanding of the mind and will as faculties that inherently orient the person to a conception of indeterminate *unlimited* goodness. And only in this insight can Thomas's parallel between divine being and human persons become fully comprehensible.

Specifically, Aquinas understands a parallel to exist, first, between God's necessary knowing and willing of his own infinite, unbounded goodness, and that inchoate, intuitive inclination to 'universal good' known and willed by human persons. Just as God necessarily wills his infinite fullness-of-being and goodness, so too human persons necessarily know and love the conception of unlimited goodness constituted naturally by practical reason.

Similarly, as in God the love of his own infinite goodness cannot be adequately captured by any single determinate, and thus, limited creation, and thus any creation by God requires a free choice on his part to bring it about;[165] so too, human persons' original 'love' of the 'universal good' necessitates no choice, but rather, through the natural inclination to infinite good, human persons must freely determine themselves to specific choices. Thus both in the case of divine choice and human choice, it is the unlimited character of the first principles of action that account for the possibility of freedom.[166]

Thomas, of course, concedes that in a metaphysical sense, one's deepest self must be determined by causes outside of oneself; human nature is not entitatively self-creating. Rather than eliminating freedom, however, this initial entitative determination of the human person to know and seek indeterminate 'universal good' provides the foundation for free action.[167] Based on these basic inclinations to the good, human

[165] Since divine nature is not determinate being, but contains in itself the total perfection of all being, it is not possible for it to act by the necessity of nature . . . . Therefore, God does not act by the necessity of nature, but determinate effects proceed from his infinite nature by means of the determination of his will and intellect. ("Cum igitur esse divinum non sit determinatum, sed contineat in se totam perfectionem essendi, non potest esse quod agat per necessitatem naturae, ... Non igitur agit per necessitatem naturae sed effectus determinati ab infinita ipsius perfectione procedunt secundum determinationem voluntatis et intellectus ipsius"). *Id.* at I, q. 19, a. 4.

[166] For further discussion of this analogy *see* Laura L. Garcia, *Divine Freedom and Creation*, 42 PHIL. Q. 191, 199 (1992).

[167] Having an initial state determined by outside causes, but in such a way as to be constituted in some way precisely as 'undetermined,' that is, in the way proper to human intellect and will, does not for Aquinas introduce a determinism into subsequent activity depriving the actor of the freedom necessary for personal responsibility. As he states:

persons are induced to exercise self-actualization through specific *free* choices and actions. In contrast, then, to an absolute and, therefore, incoherent sense of being a *causa sui*, a 'cause of oneself,' Aquinas posits a qualified sense of self-creation; human persons 'create' themselves morally and ethically by what they do with that indeterminacy.[168]

While Aquinas's account of autonomy may indeed imply something 'divine-like' about human persons, this does not inevitably entail incoherence. Rather, in contrast to the diminished sense of determined freedom acceptable to some, it suggests the possibility of another type of freedom, the kind of freedom through which—in the words but not spirit of

> That which is moved by another is coerced if it moves contrary to its natural inclination; if however a thing is moved by another who imparts to it its proper inclination, this is not considered coercion. . . . Thus God . . . does not coerce the will, because he gives it its proper inclination. . . . To move voluntarily is to move by means of one's own initiative, that is, by an intrinsic principle; that intrinsic principle itself, however, can be caused by an extrinsic principle, and thus to move oneself does not contradict the notion of being moved by another. ("quod illud quod movetur ab altero dicitur cogi, si moveatur contra inclinationem propriam, sed si moveatur ab alio quod sibi dat propriam inclinationem, non dicitur cogi; . . . . Sic igitur Deus, . . . non cogit ipsam, quia dat ei eius propriam inclinationem. . . . . Quod moveri voluntarie est moveri ex se, idest a principio intrinseco, sed illud principium intrinsecum potest esse ab alio principio extrinseco. Et sic moveri ex se non repugnat ei quod movetur ab alio.")

SUMMA THEO., *supra* note 66, at I, 105, a. 4, ad 4 and ad 5.

168 A substantive account of the specific norms guiding and directing human self-determination plays a constitutive and essential role in almost every moral theory, and does so in Aquinas's as well. Unfortunately, this topic exceeds the scope of analysis possible here. For an valuable introduction to the topic *see generally* Martin Rhonheimer, *The Cognitive Structure of the Natural Law and the Truth of Subjectivity*, 67 THE THOMIST 1 (2003).

Additionally, any appropriate theory of free choice must include consideration of the role that dispositions play in forming cognitive and affective perceptions of particular 'goods' constituted through various forms of conduct and concrete objects. For Aquinas, the role of such dispostional habits (understood as virtues and vices) plays a large part in his moral and action theory. As he notes: "according to the Philosopher [Aristotle], 'as a person is disposed, so does the end appear to him,' . . . . Accordingly, if there is a habit or disposition that is not natural, but subject to the choice of the will—as for example something *can be judged by habit or passion* as good or bad in this particular case—it does not move the will necessarily." ([S]ecundum Philosophum, qualis unusquisque est, talis finis videtur ei. . . . Si autem sit talis dispositio quae non sit naturalis, sed subiacens voluntati, puta, cum aliquid disponitur per habitum vel passionem ad hoc quod sibi videatur aliquid vel bonum vel malum in hoc particulari, non ex necessitate movetur voluntas.")

While the preceding Article has focused more on Aquinas's most fundamental account of of free choice, this should not be taken to imply that free choice is not intimately affected by dispositional states of the human person. For further discussion of the essential role experience plays in forming an individual's dispositional and particular grasp of good and its relation to choice, especially in a political context, *see generally* Edward C. Lyons, *Reason's Freedom and the Dialectic of Ordered Liberty,* __ CLEV. ST. L. REV. __ (2007)(forthcoming).

Frankfurt—a person truly could "want what he wants to want."[169] It would in reality be 'all the freedom it is possible to desire or conceive.'[170]

169 *See supra* notes 43-47 and accompanying text (discussing Frankfurt's theories).
170 *See supra* note 48 and accompanying text.