MACINTYRE'S PROBLEM OF ARISTOTELIAN ENTELCHY AND WINTER'S NOTION OF THE TRANSFORMATIVE POTENTIAL OF LAW[1]

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In Alasdair MacIntyre's view, the collapse of morality is not a mere modern event but the culmination of a very long decline. The most serious event in this demise was the Enlightenments's rejection of Aristotelian science, for without the metaphysical framework within which the project of Western ethics has been developed and given its meaning, morality has become fragmented and seems to be based only upon arbitrarily chosen principles. Deprived of an objective grounding in metaphysics or theology, ethics appears doomed to emotivism.

Steven Winter, in his work on legal objectivity, suggests a replacement for abstract, universal objectivity as grounding. He claims that much of legal *theory* of adjudication needs to be revised in light of current cognitive models of its *actual practice.* He contends that recent studies point toward a more *metaphorical* structure of thought than has been generally recognized. In this metaphorical structure Winter sees the potential for transforming our conception of law such that, beyond *preserving* our way of life, law can actively contribute to the *realization* of the way we *envision* our lives.

I want to use Winter's transformative notion of law as a model from which to construct a replacement for Aristotelian metaphysical entelechy as it functions within the framework of Aristotelian ethics. My claim is that, even in the absense of a pre-given natural entelechy, it is both possible and fruitful to utilize the general structure of Aristotelian ethics. However, before this project can be further elucidated, it will be necessary to have a clearer view of what MacIntyre sees as the problem, from whence that problem arises, how Winter sees metaphorical reasoning as the solution to the problem of *legal* objectivity, and how this solution might be translated into the realm of *moral* objectivity as well.

In *After Virtue* (hereafter cited as *A V*),[2] MacIntyre argues that the confusion of contemporary morality results from the collapse of the cultural context that provided the basis for the original ethical framework of which we are the heirs. Further, he contends, the Enlightenment rejection of Aristotelian science and metaphysics has left will as the only possible ground of ethics.

Central to MacIntyre's argument is Aristotle's threefold metaphysical scheme in which we are given a picture of: 1) who the human creature *is,* 2) who the human has the *potential* to be, and 3) *how* to move from the original state to the actualized one. The original state, the "human-nature-as-it-happens-to-be," is intended to describe the human condition in its raw state, while the actualized condition, the "human-nature-as-it-could-be-if-it-realized-its-*telos*," presents a view of human nature fulfilled, of human life flourishing. Thus, for Aristotle, ethics has a clear function: we strive to *become* what by nature we are *supposed* to be, and we do this because human beings, as all other natural beings, develop this way, according to our given natures.

Crucial to understanding MacIntyre's view of the role that ethics plays in this system is understanding that, although humans have a *telos* (an "end" or "goal"), for Aristotle this *telos* cannot be realized outside of the bounds of human community; human cultivation is a necessary factor for the realization of the human *telos.*[3]

Given this framework—that human beings in their raw state cannot attain the true condition for which they are intended without the cultivation or intervention of human culture—the role of ethics is readily understood as the *art* of that cultivation.[4] Ethics becomes the training, the education by which one goes from the untutored state of nature to the cultivated state of one's *true* nature. Thus, for MacIntyre, "Ethics is the science which . . . [enables people] to understand how they make the transition from the former state to the latter" (*AV* 52).

If ethics is the path or the link between the two human conditions, it is so only in light of a teleology. This teleology,

this account of what it means to be human, provides an objective standard of what it takes to be a *good* human. Indeed, within the Aristotelian tradition, normative evaluation is only intelligible given a picture of the *purpose* or *function* of a thing. Thus, personal preference cannot be the ultimate arbiter of morality because, given this *telos*, it is possible to make factual, truth-functional judgments about ethics.

The very close connection between the three parts of the structure—the two conditions of humanity and the ethics of getting from the given to the fulfilled—reveals Aristotelian ethics and metaphysics as a fairly unified world view. Like the sound of one hand clapping, the notion of "as is" can only be intelligible against an "ought to be" or a "could be." Similarly, an isolated view of "changing" is incomprehensible. MacIntyre notes that "Each of the three elements of the scheme . . . requires reference to the other two if its status and function are to be intelligible" (*AV* 53). As long as the system stayed intact, Aristotelian metaphysics provided the ground for ethics in a coherent and cohesive framework.

However, that system did not stay intact. MacIntyre claims that the Enlightenment redefined the concept of reason such that it was no longer able to "comprehend essences or transitions from potentiality to act" (*AV* 54) as is required within a teleological scheme. Reason is thus impoverished, becoming mere calculation or reckoning: "In the realm of practice therefore it can speak only of means," and yet "About ends it must be silent" (*AV* 54).

The inability of reason to deliberate about ends (the most important of which is the human *telos*)radically alters the structure of ethics. As MacIntyre clearly puts it:

> Since the whole point of ethics—both as a theoretical and a practical discipline—is to enable man to pass from his present state to his true end, the elimination of any notion of essential human nature and with it the abandonment of any notion of a *telos* leaves behind a moral scheme composed of two remaining elements whose relationship

becomes quite unclear. (*AV* 54)

We are left with a moral structure that gives a picture of human-nature-as-it-happens-to-be and an ethics that exhorts us to change—but without any unified view of *what* we are to become or *why* we ought become it.

If Aristotle's ethical structure is to have any hope of renewed success, it needs to be regrounded. If this task proves impossible, then MacIntyre feels that a rational basis for ethics fails and we are left with modern emotivism and, more particularly, with Nietzsche's irrational individualism. MacIntyre recognizes that "The problems of modern moral theory emerge clearly as the product of the failure of the Enlightenment project" (*AV* 62), and he makes a very strong case for the desirability of finding a new foundation for Aristotelian ethics. He says:

> Aristotelianism is *philosphically* speaking the most powerful of pre-modern modes of moral thought. If a pre-modern view of morals and politics is to be vindicated against modernity, it will be in *something like* Aristotelian terms or not at all. (*AV* 118)

With this thought and at this point I leave MacIntyre's assessment of the collapse of "the moral scheme which was the historical ancestor" of modern Western ethics (*AV* 52) to pick up Winter's thoughts on legal objectivity. This rather abrupt transition does not indicate that I abandon modern morality to go down in flames, but instead I look in a somewhat unlikely direction for the cavalry to come charging to the rescue.

In *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law* (hereafter cited as *TN*),[5] Steven Winter questions the notion of objective adjudication. While many judges *believe* that they only objectively determine whether a given case falls within the boundaries of a pre-given and already defined law, Winter notes their actual arguments show their decisions to be primarily based in a more

metaphorical thought structure than in an objective one. To Winter, such findings seem consonant with recent cognitive models of categorization and help to explain how our understanding of law is both based on our historical situation and is capable of, and subject to, alteration. In this ability to change, Winter sees the transformative potential of law, that is, the possibility of creating laws that go beyond addressing the human situation as it *is* to the actualization of who we *want* to be.

Winter holds that the legal process is frequently misconceived as an objectivist project. In this view, which he calls legal objectivism, the law is said to set out clearly delineated categories and absolute principles which utilize fixed, univocal concepts. Adjudication is thus primarily a matter of deciding whether a given case falls within one of the categories, according to the set concepts of each category.

Winter argues that this picture is not consonant with our own theories of concept structure and reasoning and, further, that judges do not actually proceed in this way. Instead, they tend to engage in a process of reasoning that is more metaphorical and involves the creation and utilization of idealized cognitive models (ICMs).

Winter illustrates the structure of these models by showing how we unite the notions "buy," "sell," "credit," and "cost" into a unified picture of the activities of commercial transaction (*TN* 48). Yet, there is no *single* feature that serves as *the essential mark* of this or any other ICM; each feature of the model, Winter maintains, can "individually evoke an entire picture or model" because the ICM is "a sort of holistic, standardized account" (*TN* 48). ICMs thus present a prototypical structure which some cases will "fit" better than others.

The ICMs that legal reasoning utilizes involve radial concepts that exhibit prototype effect in much the same way as do the notions of a "lie" or color categorization.[6] For example, even in the absence of a *single* and *canonical* shade of blue against which all other colors can be judged 'blue' or 'not blue,' it is still possible to make judgments about blueness because

color categorization is a radial structure; that is, we judge a color 'blue,' not against one fixed, standard shade of blue, but against a *range* of blues, *all* of which count as blue. At the same time, we judge some of these colors as more or less blue until, at the far end of the range of what we count as blue, we begin to name colors such as 'blue-green' and eventually only 'green' and no long 'blue.' Such concepts as colors are not grounded in an objective and timeless reality external to human knowers, but instead they derive their meaning from the way in which we vest them with meaning—socially, culturally, and historically. Winter discovers what he calls "the surprisingly imaginative, non-objectivist basis of most human categorization" (*TN* 32).

On a deeper level than the cultural-historical, Winter also locates meaning foundation in the very fact of human physical embodiment. Utilizing the work of Lakoff and Johnson, he argues that the up-down correlates "relative to human body orientation" are extended to "conceptualize a wide variety of non-physical states" (*TN* 38). While such orientation is not relative to us *qua* individuals, it is clearly relative to us *qua embodied human beings* and thus is not "purely" objective.

Winter shows that the lack of a purely objective ground does not force this project into a purely relativist or subjectivist basis either. We share the same embodiment and historical period, and frequently the same or similar culture as well, which precludes an "anything goes" relativism. Winter notes that "Because we have the same biology, we have much more in common than the relativist supposes" (*TN* 36).[7]

Winter makes no ahistorical claims for ICMs and is, unlike the objectivist, spared the task of constructing a model that will not become outdated and the problem of accounting for the way in which we know our model to be the correct one. He can explain both the origins and the alterations of our cognitive models by manifesting their sociohistorical foundations.

Winter's approach incorporates the stable foundation of objectivism, as well as the malleability of relativism and subjectivism, allowing him to extend ICMs to other domains and to account for changes within the models themselves. He says that such concepts are, therefore, meaningful because they

arise out of our lived experience and extendible because they are imaginative idealizations (*TN* 122).

The value of such a model is that, in understanding it to be both a creation of and a tool for human life, we can begin to utilize such models more self-consciously. Winter claims this flexible and extendible aspect of ICMs provides law with a tremendous potential for transforming our lives and our culture. That is, by recognizing how we contribute to the formation of concepts (which in turn help determine us), we can more directly contribute to the kind of life and world in which we *want* to live.

Picking up again the threads of MacIntyre's argument and weaving them together with strands from Winter's, I would like to argue for the possibility of replacing Aristotelian natural entelechy with a notion of a *constructed* teleology along the lines of Winter's notion of transformative law. Because one aspect of the failure of the Enlightenment project is the attempt to find an objectivist basis for moral law, some implications of Winter's work with human laws will be readily apparent.

Like legal reasoning, moral reasoning is also most often taken to proceed by the process of bringing an act within the perimeters of pre-given objective categories. Our faculty of *objective judgment* is thus regarded as the most crucial to our ability to make successful moral judgments. If Winter is correct in claiming that legal concepts are instead largely metaphorically structured, moral reasoning must be an *imaginatively* structured activity as well, involving concepts that are radically organized prototypical constructs. The ICMs we utilize in moral reasoning must arise, as do legal models, from our lived experience. As with legal models, we can in turn construct and employ models that promote our shared interests and address our moral needs and concerns. To do this, we must recognize our "participation in the creation of our *nomos*" (*TN* 123). By seeing that we are part of our own moral context, we can make use of "our relative freedom of action" (*TN* 123) and recognize that living creates opportunities to change the very experiences that ground meaning for us. In Winter's words, we can begin "to create new meaning motivated

by committed experience and, thus, to engender new . . . ICMs" (*TN* 123).

If Winter is correct and if moral reasoning is imaginatively structured as well, our moral project is not to be only one of trying to conform to a set and given moral stucture; we must instead recognize the *transformative* power of the *actual* process by which moral reasoning proceeds. We must, on this view, not only discover who we are or what ends we ought to pursue; rather, we must imaginatively project ourselves into the future and reflect on who we *want* to be and what ends would be *best* for us to pursue in order to open up new possibilities for ourselves, both individually and socially.

Perhaps the best explanation of a morality consonant with recent cognitive theories is Winter's own description of the transformative potential of law. He calls this vision of law:

> a bridge in normative space connecting [our understanding of] the "world-that-is " . . . with our projections of alternate "worlds-that-might-be" . . . . In this theory, law . . . *is* the bridge—the committed social behavior which constitutes the way a group of people will attempt to get from here to there. Law connects "reality" to alternity constituting a new reality with a bridge built out of committed social behavior. (*TN* 124)

This new picture of how law can function provides a framework within which we can construct a new picture of how morality can function, one which provides the potential to actualize our own hopes for ourselves for the future.

It is easy to recognize in this description of law close parallels to MacIntyre's description of the three features of Aristotelian ethics. Just as Winter sees law as a path from "what-is" to "what-could-be," ethics could resume a similar position in a revised scheme of an Aristotelian-type ethics. The metaphorically structured, on-going process of transformative law suggests a very similar replacement of Aristotle's metaphysically-based entelechy with a transformative notion

of morality.

A transformative notion of morality can be understood as a new type of teleology, one whose purposes and functions are not pre-given by God or nature or design, but rather develop and are constructed through the very process and activity of living within a community. In this view, a constructed teleology would consist in the purposes and goals in which we find ourselves engaged, with the added aspect of the self-awareness of our part in that process. Within a constructed teleology we would recognize our own participation in the creation of our *ethos* (to paraphrase Winter).

In addition to the implementation of our vision of ourselves, the open-endedness of this structure will allow for the evolution of that vision as our understanding of ourselves and our goals changes. Such evolution is not possible (theoretically speaking) from the perspective of natural teleolgy; pre-given designs lack both the motivation and the means by which to change.

This sort of a *telos* would change as our problems and our solutions change, as our needs and desires change, and as our image and definition of ourselves change. We *already* engage in various on-going activities of world-making, including many personal and political processes of defining who we are. We proclaim ourselves to be a democracy or Americans, and yet *these categories have radically changed* in our history, both as a nation and as individuals. Rather than despairing at the mutable, unstable character of our own categories, we might instead look with expectancy at their flexible character. We could make our *de facto* process of ethical meaning-formation a *self-reflective* one by recognizing that we do have, and in fact utilize, the power to "make" our worlds.

Central to this notion must be the understanding that we cannot simply create meaning *ex nihilo.* We are already situated within a context—an historical era, a cultural history, an economic condition, and so one—that presents us with both predetermined and emergent meanings. This precludes the possibility of radical relativism because we are constrained from "making" *just any sort* of a world at all; what world(s)

we do fashion are in relation, in reaction, and in reference to the worlds in which we are already engaged.

The more fluid and transmutable features of a constructed teleology provide it with a powerful transformative potential. Because there can be no absolutist guarantees that our own picture of ourselves at any one time is a good one, that is, is one that provides potential for human flourishing and possibility,[8] we need to leave our views open to critique from those of our community who are not provided with the same potential and possibility and from those whom we have yet to recognize *as* members of our community but whom we someday might regard as such. We must regard a new teleology as our best understanding of ourselves *so far* and *by our best lights.*

Just as the transformative potential of law provides the opportunity to go beyond the maintenance and preservation of our legal world to the instantiation of hopes for and visions of ourselves for the future, the transformative potential of a constructed teleology could provide a theoretical and practical basis for a similar move within the realm of our moral world. Winter's legal work may thereby provide a basis for the restoration of Aristotelian ethics, even in the face of the demise of the Aristotelian metaphysical framework.

NOTES

[1]I wish to thank Mark Johnson and Thomas Alexander for their generous help and scholarship.

[2]Alasdair MacIntyre, *After Virtue,* 2nd ed. (Notre Dame: U of Notre Dame P, 1984). Hereafter cited as *AV.*

[3]This presents a clear and vivid contrast to Rousseau's "noble savage," whose finest condition is outside of the stifling and corrupting influences of society.

[4]See Martha Nussbaum, *The Fragility of Goodness* (Cambridge: Harvard UP, 1987) 1-3, for an excellent

analysis of common Greek methaphorical usages of "human life is a plant" imagery.

[5]Steven L. Winter, *Transcendental Nonsense, Metaphoric Reasoning, and the Cognitive Stakes for Law*, unpublished paper. Hereafter cited as *TN*.

[6]See Winter's discussions in *TN* 33-37, 49-52.

[7]Winter also claims that Berlin and Kay's studies of "focal" colors "undermine the purely relativist position" (*TN* 36).

[8]Note that the revision of an Aristotelian-type ethics could restore a more factual function-relative notion of evaluation along with it.