

Incommensurability, Incomparability and Prudence

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At the core of the New Natural Law theory is a thesis of the rational incommensurability or incomparability of various forms of value. As in much of the NNL tradition, there is both a real element of truth in this claim and a substantial danger of overstatement and imbalance. And, as is also typical of much NNL thought, the thesis of value incommensurability is both striking in its boldness and elusive in its subtlety.

In what follows, I will first attempt to clarify what exactly is meant by the “incommensurability of value” in the NNL literature (section 1). Then, in section 2, I will examine and criticize the arguments in favor of the thesis, followed in section 3 by a critique of the various ways in which NNL theorists attempt to ameliorate or transcend the incommensurability they posit. I offer in section 4 two broadly Thomistic accounts of ways in which values of different kinds can be weighed or compared in terms of their inherent choice-worthiness, contrary to the NNL’s strong incomparability thesis. I conclude, in section 5, with some reflections on the proper place of prudence or *phronesis* in an Aristotelian account of value.

1. What's the issue: conceptions of incommensurability and incomparability

The NNL theorists (John Finnis, Germaine Grisez, Joseph Boyle, Christopher Tollefson and their collaborators) prefer to use the term ‘incommensurability’, emphasizing the fact that there is no single quantifiably measurable stuff (like pleasure or pain) at the root of all value judgments. I have no desire to challenge this most fundamental claim of the NNL theorists, sharing their antipathy toward any Benthamite reductionism. However, it is clear that the NNL theorists intend to make a much stronger claim: namely, that there is no rational and objective basis of comparison of distinct forms of value in virtue of their inherent worthiness for choice. The content of this claim depends on how many ‘forms’ of incomparable value there are. At the very least, there are as many forms as there are ‘basic goods’, which the NNL have enumerated as

seven or eight: life and health, play, knowledge, aesthetic experience, friendship, religion (harmony with God), practical reasonableness, and, most recently, marriage.

About these basic goods, Grisez, Finnis and Boyle assert: "No basic good considered precisely as such can be meaningfully said to be better than another."¹ Thus, when an agent is confronted by a pair of alternatives, each of which is better than the other with respect to one of two distinct basic goods (say, play and harmony with God), there can be no rational basis for supposing that one alternative is better than the other, if the only basis for comparison pertains to a some difference in the intrinsic and objective goodness of the two alternatives. One could not, for example, argue that concrete alternative A is better than B on the grounds that A would provide more of the higher or weightier basic than B would. The NNL theorists reject any such hierarchy. As Robert George put it:

"The incommensurability thesis states that basic values and their particular instantiations as they figure in options for choice cannot be weighed and measured in accordance with an objective standard of comparison."²

John Finnis goes even further. For Finnis, this kind of objective incomparability is not limited to inter-type comparisons, comparisons across types of basic goods. Even within a single basic good, such as aesthetic appreciation, many different kinds of instantiations of this same type of basic good are mutually incomparable in the same way:

"There is incommensurability also between choosable instantiations of one and the same basic good. For instance, what makes vacationing at the beach appealing and what makes vacationing

¹ G. Grisez, J. Finnis and J. Boyle, "Practical Principles, Moral Truth and Ultimate Ends," *American Journal of Jurisprudence* 99 (1987): 99-151, at 110.

² George, Robert P., "Does the 'Incommensurability Thesis' Imperil Common Sense Moral Judgments?" in *In Defense of the Natural Law*, Robert P. George, ed., (Oxford: Oxford University Press, 1999), 92-101, at 93.

in the mountains appealing -- such alternatives are incommensurable in the sense that each possibility has some intelligible appeal not found in what makes the other appealing.”³

The strength or scope of Finnis’s claim depends on how many relevant sub-types of good there are – for example, how many different forms of mutually incomparable forms of vacationing exist. Presumably, we are meant to suppose that the number of relevant sub-types is very great indeed, perhaps infinitely so. The principle seems to be this: if there are two sub-types of a basic good, and there is no objectively definable scale to which both can be reduced, of such a kind that it is precisely a state that is maximum with respect to that scale that is preferred as such, then instantiations of the two sub-types are mutually incomparable. Comparability is thus limited to a relatively small number of cases, namely, those in some form of a basic good is being pursued whose intensity is perfectly correlated, as a matter of a priori necessity, with some objectively determinate quantity. There may, for example, be a fairly determinate and objective scale of musical proficiency within a given tradition, like progressive jazz or Baroque chamber music, of such a kind that those who are well-versed in the tradition find their aesthetic appreciation of each instantiation of a performance in that tradition perfectly correlates, as a matter of necessity, with the scale of proficiency. However, such a situation will be the exception rather than the rule. Incomparabilities will be nearly ubiquitous.

The>NNL thesis must be contrasted with a much weaker one: the simple denial of the existence of objective comparability between *all* pairs of instantiations of value. This weaker thesis (which I endorse) is compatible with a great deal of inter-type and intra-type comparability: it consists simply in denying that there is a total or linear ordering of all options. This weaker thesis was articulated by Isaiah Berlin in his essay, “Two Concepts of Liberty”, when he asserted that “human goals are many, *not all* of them comparable,” denying that “*all* values can be graded on

³ John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), p. 423; see also p. 467, and John Finnis, “Concluding Reflections,” *Cleveland State Law Review* 38 (1990): 231-350, at 235.

a single scale.”⁴ Let’s call this weaker claim the thesis of “Limited Comparability of Values”. In contrast, the NNL theorists are committed to the thesis of Unlimited Incomparability of Values.

I must concede that the NNL thesis of Unlimited Incomparability of Values does not entail that alternatives maximizing different values are never rankable *in any way*. NNL theorists insist that such value-incomparable alternatives can be rationally ranked in terms that are subjective or extrinsic. In fact, they recognize four cases of rational preference in such cases. There are two forms of subjective ranking: by feelings of attraction and by prior commitments. It is rational for me to choose one of two incomparable options (say, classical music over jazz) if I feel a greater attraction to that one or if I believe that I will feel greater satisfaction as a result of it, or if choosing that option accords better with some prior, arbitrary, and personal commitment that I have made to pursue a life of a certain kind, e.g., the life of an aficionado of classical music rather than jazz. In addition, there are two objective but extrinsic bases for comparison. First, one option might involve the violation of a moral norm. In such cases, it is rational to prefer the other. Second, it may be that the instantiation of one value depends on, as a matter of natural, causal necessity, the instantiation of the other. For example, it is rational to prefer the extension of one’s life over a momentary aesthetic satisfaction, if future instances of aesthetic value depend (as a matter of fact) on one’s survival. However, none of these exceptions compromise in any way the total incomparability of distinct values as such. According to the NNL theory, any two distinct forms of good are rationally and objectively incomparable in respect of their intrinsic value or choice-worthiness as components of the good life.

I must sort out three additional issues in order to pinpoint precisely the meaning of the NNL’s Unlimited Incomparability thesis. First (in section 1a), I will distinguish between measurement and comparison (cardinal and ordinal measures). Second, I distinguish in 1b between abstract and concrete (or situated) comparisons. Finally, in section 1c I will turn to the distinction between grounding and revealed comparative relations.

⁴ Isaiah Berlin, *Four Essays on Liberty* (New York: Oxford University Press, 1969), p. 171 (emphasis mine).

a. Measurement vs. comparison: cardinal and ordinal relations

Economics and formal decision theory distinguishes between two kinds of ordering relations: mere comparison (ordinal ranking) and measurement (cardinal ranking). In the case of a comparison or *ordinal* ranking, all that is required for total comparability is that, for any pair of options, the law of trichotomy holds: either the first is objectively better than the second, or the second better than the first, or the two are of equal value. If an option is equal to or better than a second, we say that it is ‘weakly preferable’ to the second; if it is simply better than the second, we say that it is ‘strongly preferable’. In addition, in a total ordinal ranking the weak preference relation must be reflexive (every option is equal in value to itself) and both the weak and strong preference relations must be transitive: if A is preferred to B, and B to C, then A must be preferred to C. However, an ordinal ranking need provide no answer to the question of *how much* better one option is than another, even when one is objectively better.

Consequently, ordinal rankings of options leave room for rational indeterminacy whenever risk or uncertainty is involved. If an agent faces a choice between enjoying value B with certainty or entering a “lottery” (either literally or figuratively) offering value A with probability r and value C with probability $1 - r$, with value A objectively better than B and B objectively better than C, the ordinal ranking will not by itself provide any answer to question of which option is preferable, since it provides no information about whether the difference between B and A is greater than the difference between B and C, and a fortiori no information about how much greater one difference is than the other.

In order to provide a basis for making comparisons of *expected* value, we must suppose there to be a relation of cardinal measures of value. A cardinal ordering would enable us to map each value onto a real number, with both the unit of measurement and the point of origin (the value corresponding to zero) being merely conventional, but the ratios between any two differences in value being objective and non-conventional. We can then compute the value (on the same scale) of any lottery of pure outcomes, by simply multiplying the pure value of each possible outcome

by the probability of that outcome. In other words, the value of a chancy action is the probability-weighted value of each of its possible outcomes.⁵

Every cardinal measure defines a complete ordinal ranking, since the law of trichotomy applies to the real numbers. However, the converse entailment does not hold: ordinal rankings can exist in the absence of cardinal measures. Thus, the thesis of the total cardinal measurability of value is strictly stronger (in logical content) than the thesis of total ordinal ranking. Consequently, the denial of ordinal ranking (incomparability) is stronger than the denial of cardinal measure (incommensurability).

Since Finnis and other NNL theorists prefer the term ‘incommensurability’ for their thesis, one might suppose that their focus is on merely denying the existence of an objective cardinal measure of value. Indeed, as we shall see, NNL defenders take the thesis of ‘incommensurability’ to be decisive as an objection to any form of consequentialism. Given that nearly all of our choices involve a distribution of probabilities across a range of possible outcomes, consequentialism does require an assignment of expected utility to the various options available for choice, and thus it does indeed presuppose the existence of a total, cardinal measure of value. In addition, the denial of a universal, cardinal scale of value seems eminently reasonable. As Isaiah Berlin put it, the assumption of a single cardinal scale of value seems to

⁵ There are also rankings that are intermediate between the ordinal and cardinal cases. For example, such an intermediate relation might permit not only all pure (non-chancy) outcomes to be ordered, but also all the differences between any pair of outcomes. This still falls short of a full cardinal measure, since we cannot say how much greater one difference is than another. Nonetheless, it would constrain certain choices between lotteries: where the greater difference corresponds to the greater probability, one decides on the basis of that difference rather than the other. That is, if choosing between two actions (X and Y), if every situation in which taking Y would be preferred to taking X can be matched by a situation of equal or greater probability in which the superiority of taking X over Y would be greater than that of Y over X in the original case, then one must prefer X to Y.

reduce the use of practical reason to something to be done on a slide-rule (or, to use a more contemporary analogy, with a calculator app).

However, it is clear (as the quotations from Finnis and George above indicate) that NNL theorists intend to deny the existence of *both* ordinal and cardinal comparisons. For this reason, the term ‘incomparability’ and ‘incomparabilism’ are more appropriate.

b. Abstract vs. concrete comparisons.

In asking whether any two ‘values’ or ‘goods’ can be compared, we must clarify whether the terms of comparison are supposed to be values considered abstractly (like friendship, the appreciation of beauty, or enjoying a game of chess) or values as realized in concrete, historically situated options (like developing this friendship now through a walk in this park). The abstract form of comparison could be defined in terms of the concrete, in one of several ways:

Bare comparison in abstracto: A is barely preferable to B *in abstracto* iff in every choice situation in which A and B are the only relevant considerations of value, the rational choice is the action maximizing A.

Strong comparison in abstracto: A is strongly preferable to B *in abstracto* iff in every choice in which options differ in value only in respect of degree of A and B, the rational choice is the action maximizing A.

Strong comparison is a stronger relation, since it quantifies over a wider range of cases. For Bare Comparison, we need only consider those cases in which the options are valuable only with respect to their instantiation of A and B. For Strong Comparison, we also consider options that are valuable in other respects, so long as the two options are equal in respect of all values other than A and B.

It seems very unlikely that strong comparison *in abstracto* forms a linear ordering. The relative importance of two values can depend on the presence/absence of other values (as G. E. Moore observed). Thus, bare comparison is more likely of the two to constitute a total ordinal ranking.

There are also abstract comparisons involving specific degrees of discrete values. Here is the bare version of specific comparison:

Bare specific comparison *in abstracto*. Degree x of value A is barely preferable to degree y of value B iff in every choice in which A and B are the only values in consideration, an option yielding degree x of value A and a zero degree of value B is always preferable to an option yielding degree y of value B and a zero degree of value A .

Bare specific comparison is strictly weaker than bare generic comparison: bare generic comparison *in abstracto* of the values A and B entails bare specific comparison of any degree of value A with any degree of value B . Hence, it is bare specific comparison *in abstracto* that provides the best case for a linear ordering.

It does not seem possible to define concrete comparability in terms of abstract comparisons, whether bare or strong, generic or specific. Here, for example, is a failed attempt to do so:

Comparison *in concreto*. Option x is preferable *in concreto* to option y if and only if (i) for every value B such that y offers B to a greater degree than x does, there is some value A such that x offers A to a greater degree than y does, and A is barely preferable *in abstracto* to B , and (ii) there is some value C such that x offers C to a greater degree than y does, and there is no value D such that y offers D to a greater degree than x does, and D is barely preferable *in abstracto* to C .

In fact, as G. E. Moore recognized,⁶ a concrete option x might be objectively preferable to y , even though none of the conflicting values in play are comparable *in abstracto*, either barely or

⁶ Moore, G. E., *Principia Ethica* (Cambridge: Cambridge University Press, 1903).

strongly, specifically or generically. It might be the total package of values realized in x that is superior to the package in y, in such a way that this difference in value is not reducible to the relative ranking of any two values realized in the two packages.

Claims about limited comparability concerning abstract comparisons are logically independent of the corresponding claims about concrete comparisons. Suppose, for example, that we have only limited comparability *in concreto*. It could still be the case that any two values are comparable *in abstracto*, so long as the cases of concrete incomparability involve conflicts between three or more distinct values. Conversely, if we have only limited comparability *in abstracto*, this would provide no bar to the total comparability of all concrete options.

In the case of the stronger theses of unlimited incomparability, we do have a logical entailment: unlimited incomparability *in concreto* entails unlimited incomparability *in abstracto*, since the latter can be defined in terms of concrete comparisons in relevant cases. However, the converse entailment does not hold: unlimited incomparability *in abstracto* is consistent with limited comparability of concrete options.

Finnis and the other NNL theorists have been primarily concerned to advance a thesis of *concrete* incomparability. It is concrete incomparability that is needed to secure freedom of will and to provide the argument against consequentialism. Nonetheless, they have rarely, if ever, highlighted the distinction between concrete and abstract comparisons, and many of their arguments pertain only to the weaker thesis of unlimited incomparability in abstracto.

Even the weakest thesis of unlimited generic incomparability *in abstracto* is vulnerable to plausible counter-examples, as I will argue below (in section 4). For example, it seems that the value of harmony with God's will and the honoring of God's name is strongly and generically preferable in abstracto to all other values.

c. Revealed vs. grounding comparative relations

On the question of incomparability or incommensurability, we should distinguish two issues: unique representability and groundedness. For example, it is one thing to claim that the values of all options are uniquely *representable* (up to linear transformation) by a set of cardinal numbers. It is another thing to claim that the rationality of each choice is *grounded in* the cardinal measures of those values, plus a rational requirement of maximizing expected value (so measured). The first claim has been defended by decision theorists (going back to Leonard Savage and Frank Ramsey) by appeal to the so-called “Dutch Book theorems”.⁷ An agent whose choices are not uniquely representable as maximizing the expectation of some real-value-outputting utility function can enter into mutually incoherent, self-defeating combinations of choices (of the ‘heads-I-win, tails-you-lose’ sort). Agents whose choices are (ex post facto) so representable, in contrast, are immune to such incoherencies.

In contrast, there seems to be little or no reason for the second, more metaphysical claim – it is not supported by decision theory, epistemology, or phenomenology. To claim that the rationality of choice is grounded in differences in some measure of value is to claim to have discovered (a posteriori) some hidden essence of rationality. At this stage, to make such a claim would be to appeal hopefully to merely projected discoveries of the cognitive science of the future. This would be speculative at best and probably in conflict with the plausible claim that we cannot gain exhaustive knowledge of the human good from an entirely objective, third-person viewpoint.

In addition, arguments from pragmatic coherency, including appeals to the Dutch Book theorems, cannot establish the existence of a single, rationally prescribed weighting of options. Rather, these pragmatic arguments merely imply the practical necessity of *adopting* (either individually and corporately) *some* rationally permissible weighting of other.⁸ Since the New

⁷ Ramsey, F. P., “Truth and Probability,” In *The Foundations of Mathematics and Other Logical Essays: Collected Papers of F. P. Ramsey*, ed. R. B. Braithwaite (London: Routledge & Kegan Paul, 1931); Savage, Leonard J., *The Foundations of Statistics* (New York: John Wiley, 1954); Jeffrey, Richard C., *The Logic of Decision* (Chicago: University of Chicago Press, 1983).

⁸ See Bas van Fraassen, “Belief and the Will,” *Journal of Philosophy* 81 (1984):235-254.

Natural Law theory explicitly permits agents to adopt such private scales, the Ramsey-Savage arguments have no purchase against it.

However, as we have seen, the NNL theory goes far beyond a mere denial of cardinal measurability of value: they also want to embrace a thesis of unlimited ordinal incomparability among discrete forms of value. One who wishes, as I do, to deny such a claim must make some relatively modest proposals about the metaphysical grounding of objective value comparisons. These metaphysical proposals need not go so far as G. E. Moore's view, according to which there is a single, univocal property of goodness that is present, with a greater or lesser intensity, in each specific ensemble of relevant factors. I will instead appeal in section 4 to some version of the Aristotelian concept of analogy: although different forms of goodness are realized in different cases, these different forms bear enough of an analogy to one another as to ground objective relations of better-than or of-greater-value-than in those cases.

2. Arguments for Unlimited Incomparability

In this section, I will consider five arguments in favor of unlimited concrete incomparability, four of which have some presence in the NNL literature; the fifth, an appeal to Arrow's Impossibility Theorem, is my own suggestion. While all have some merit, none of them succeed in supporting the strong thesis of unlimited incomparability.

a. UI Needed as a way of Refuting Consequentialism or Proportionalism

NNL theorists embrace the unlimited incomparability thesis as part of a master argument against consequentialist or proportionalist ethics. For example, Finnis argues thus:

“In short, no determinate meaning can be found for the term ‘good’ that would allow any commensurating and calculus of good to be made in order to settle those basic questions of practical

reason which we call ‘moral’ questions. Hence, as I said, the consequentialist methodological injunction to maximize net good is senseless...”⁹

There is, of course, the danger of indulging in the fallacy of negating the antecedent. Consequentialism does indeed entail unlimited comparability, even commensurability. However, the denial of consequentialism does not entail incommensurability, much less the very strong thesis of unlimited concrete incomparability.

There are many other good reasons for rejecting consequentialism, independent of unlimited incomparability: the inherent plausibility of deontic constraints, Rawls’s appeal to the distinctness of persons, and Bernard Williams’s reflections on personal integrity.¹⁰ It is the consequentialist who faces the steep burden of proof here: why should we think that having or being aimed at the best consequences is sufficient to make an intentional action free from all moral fault? In the years since the pioneering work in the New Natural Law theory by Finnis and Grisez, consequentialism has faded (for independent reasons) among ethicists and no longer constitutes the principal challenger to the revival of natural law theory. Hence, there is much less reason to take on the burden of strong incomparability theses.

b. The Epistemology and Phenomenology of Value Comparisons

NNL theorists appeal to the supposed self-evidence of the inherent value of the eight or nine categories of ‘basic good’. These truths are supposed to be self-evident to anyone who adopts a ‘practical’ point of view. In a similar vein, the final line of defense for incomparability theses of various kinds could be a similar appeal to self-evidence. Just as we perceive immediately the

⁹ Finnis, John, *Natural Law and Natural Rights*, 2nd edition (Oxford, Clarendon Press, 2011), p. 114.

¹⁰ John Rawls, *A Theory of Justice*, revised edition (Cambridge, Mass.: Belknap Press, 1999); Bernard Williams, *Moral Luck* (Cambridge: Cambridge University Press, 1981); Bernard Williams and J. C. C. Smart, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973).

goodness of the various basic categories, we could also so perceive their incomparability. If friendship and aesthetic enjoyment are grasped as good in themselves and not by virtue of their participating or containing some more fundamental form of good, then it might seem senseless to suppose that one could (even in some specific and concrete instantiation) count as objectively better than the other.

However, such an appeal to self-evidence is a two-edged sword. The defender of limited incomparability can with at least equal plausibility claim that it is self-evident to any rational agent that certain concrete instantiations of a value are objectively superior (in respect of their choice-worthiness) to certain concrete instantiations of other and discrete values. For example, it would seem that any agent with a rational and uncorrupted mind would perceive immediately the greater value of preserving the life of a young, innocent human being to some trivial instance of play or aesthetic enjoyment. This immediate presentation to practical reason of greater weight or value need not bring with it any reduction of the two values to some common denominator.

c. An Aristotelian Appeal to the Plurality of Ways of Being Good

In the *Nicomachean Ethics*, Book I chapter 6, Aristotle objects to the Platonic theory of the univocity of the good. Aristotle argues that ‘good’ is used in as many ways as the word ‘is’ is, which he had argued (in the *Metaphysics* Gamma, 1003b5) is ‘said in many ways’. There can be good substances (a good man), good qualities (health), good quantities (an adequate and moderate diet), good places (a location with a favorable climate), and good relations. In addition, value is studied by distinct sciences, with different fundamental principles, like medicine and military strategy. More to the point, Aristotle argues that there are multiple things good in and for themselves, such as honor, wisdom and pleasure, none of which can be reduced to a single value.

In response to the challenge of explaining why we call these disparate things ‘good’, Aristotle appeals to a principle of analogy: sight and intelligence are both good, since they each bear the same relation to different things (the body in the case of sight, the soul in the case of intelligence). This appeal to analogy provides the Aristotelian with a basis for objective

comparisons across value-types, since the ontological superiority of the soul over the body would ground a superiority of intelligence over sight. Hence, the Aristotelian acceptance of plurality of values does not in fact lend support to the unlimited incomparability thesis, as I will argue in section 4.

d. Unlimited Incomparability Needed for Libertarian (Incompatibilist) Free Will.

In *Free Choice: A Self-Referential Argument*, Boyle, Grisez and Olaf Tollefsen argue that the incomparability of distinct values is an essential precondition of genuine free will.¹¹ More recently, Robert Kane made essentially the same claim in *The Significance of Free Will*.¹² The argument involves two steps. First, one must assume some version of the Principle of Alternative Possibilities: if S is free in circumstances C, then there must be at least two alternative actions, A and B, such that it is possible that S do A in C, and also possible that S do B in C. The circumstances C are supposed to include everything that might incline or influence S in any way, including the apparent values of the two alternatives.

The second step of the argument assumes a principle of the intelligibility of possible choices: for it to be possible for S to do A rather than B in C, it must be the case that S's choice of A over B is rationally intelligible. If, however, there were an objective and rational superiority of B over A as the two alternatives are conceived and understood by S in C, then it would be unintelligible for S to choose A nonetheless. Hence, in every case of genuinely free action, there must be two alternatives neither of which is rationally and objectively better to the other (as understood by the agent in the actual circumstances). Since it is obviously false that all such alternatives are exactly equal in value, there must be widespread incomparability of value.

Here is the way in which Boyle et al. describe the process of free choice:

¹¹ Boyle Jr., Joseph M., Grisez, Germain, and Tollefsen, Olaf, *Free Choice: A Self-Referential Argument* (Notre Dame: University of Notre Dame Press, 1976).

¹² Kane, Robert, *The Significance of Free Will* (Oxford: Oxford University Press, 1996), pp. 199-209.

“In the experience of making a choice,... a person confronts purposes which are not commensurable. Prior to the choice, one lacks an order of priorities sufficient to establish one alternative as preferable to the other [I]n choosing, the person who makes a choice also experiences himself setting a criterion, making commensurable what was not commensurable.”¹³

They also appeal to the authority of St. Thomas, asserting a link between Aquinas’s notion of finite or limited goods and the NNL thesis of unlimited concrete incomparability:

“Thomas Aquinas's argument for free choice is based upon a distinction between man's ultimate good and the goodness inherent in any alternatives between which a person can choose. Any particular purpose embodies only a limited goodness, which can never appeal to every aspect of the human personality. Thus, for Aquinas, the goods between which human persons choose are incommensurable in themselves.”¹⁴

First, note that even if the argument from free choice were otherwise flawless, it would not establish the thesis of *unlimited* incomparability of values. At most, it establishes that values are incomparable in some cases, namely, those cases in which free choice is possible. To reach a conclusion as strong as unlimited incomparability, we would have to add yet another assumption: namely, that free choice is possible whenever there are two alternatives, neither of which is superior to the other in all forms of value. However, many defenders of free will (including Robert Kane), defend a thesis of restricted freedom, according to which only a few crucial and life-shaping choices are truly free. On this view, most of our every day choices are in fact unfree, determined by our character or by the evident superiority of one option over its competitors. According to Kane, one is responsible for those unfree choices, so long as they flow from one’s character and one is ultimately responsible for having the character one does (as a consequence of a sufficient number of genuinely free choices one made in the past).

¹³ *Free Choice*, p. 175.

¹⁴ *Ibid.*, p. 179.

A thesis of restricted does come at a cost. If genuine freedom occurs only in a few exceptional cases, then the defender of free will loses the appeal to common sense and to the phenomenology of everyday choosings. However, even if Kane is wrong, and the scope of free choice is much wider than he supposes, it is far from obvious that its scope is as wide as would be required by thesis of unlimited incomparability. To falsify unlimited incomparability, all that is required is that there be a few possible cases of rationally constrained choice between instantiations of different forms of value.

There is a second serious gap in the argument from free choice: the gap between the incomparability of two options as understood by the agent in the circumstances, and their incomparability simpliciter. Suppose that an agent's freedom is to some extent a function of his ignorance of the objective superiority of one option over the others. On this alternative view, an agent who had fully knowledge of all cases of value superiority would have a significantly smaller field of possible free choices, as compared to a more ignorant agent. This could enable us to posit a wide field of genuinely free choices, given our ignorance about many objective value comparisons, while affirming the existence of such objective comparisons in a larger number of cases.

Thirdly, if there is no cardinal measure of value, then every choice involving risk will also involve incomparability. That would include most everyday choices: one must always decide when to end reflection and deliberation, a choice necessarily involving risk. Indeed, one could argue that an element of risk is involved in all choices, since we always face a choice between acting on the basis of the deliberation accomplished so far and deferring action in order to engage in still more deliberation. The second-order action of stopping one's deliberation about the first-order choice always involves an element of risk, since there is always some chance that further deliberation would reveal relevant considerations not yet taken into account. Boyle et al. recognize the importance of this process of meta-deliberation:

“A person engaged in deliberation feels he can go on deliberating or can stop. After a time reflection no longer yields any additional considerations. One finds himself reviewing the same ground. Still, further reflection might turn up something new. So one can continue to reflect. If

choice is not urgent, one can set aside the deliberation with a view to considering the matter later when some further factors might come into view.”¹⁵

Thus, even if all concrete instantiations of value were objectively comparable (by way of a total ordinal ranking), so long as the values at stake in the decision of whether or not to continue deliberating are not subject to an exhaustive *cardinal* measure, then the concrete alternatives of stopping or continuing deliberation would be universally incomparable, enabling free choice to be a ubiquitous phenomenon.

Finally, one could locate the fulcrum of freedom at a different point in the process. In the second step of the free choice argument, it was assumed that an agent who is capable of choosing otherwise can intelligibly choose the alternative option while conceiving of the two options in the exactly same way as he does in the actual world. However, we could think of free choice as instead involving the agent’s capacity for *conceiving* of the two alternatives in ways different than he actually does. On this view, an agent freely chose A over B, not because he conceived of them as having non-comparable values, but because he could have conceived of A and B in such a way that it would have been B, rather than A, that would have appeared better to him. When A and B have many different facets of value (perhaps a potentially infinite number of facets), then the agent can influence the apparent value of each option by focusing his attention on some rather than others of these facets. When I choose wrongly, I can be morally responsible for doing so, as long as I had the capacity to recognize the superiority of the unchosen option, and I could have been reasonably expected to have exercised that capacity in this case.

This location of the contingency of the will in the practical intellect and not in the choice per se seems to fit what Aquinas says about the contingency of the will in the Summa I-II:

“If, on the other hand, the will is offered an object that is not good from every point of view, it will not tend to it of necessity. And since lack of any good whatever, is a non-good, consequently, that good alone which is perfect and lacking in nothing, is such a good that the

¹⁵ *Ibid.*, p. 19.

will cannot not-will it: and this is Happiness. Whereas any other particular goods, in so far as they are lacking in some good, can be regarded as non-goods: and from this point of view, they can be set aside or approved by the will, which can tend to one and the same thing from various points of view.... The intellect is moved, of necessity, by an object which is such as to be always and necessarily true: but not by that which may be either true or false -- viz. by that which is contingent: as we have said of the good.”¹⁶

e. Arrow's Impossibility Theorem

Kenneth Arrow's Impossibility Theorem demonstrated that there exists no social choice function that meets five plausible constraints. This theorem could be applied to the question of the objective comparability of values. Let the 'voters' be the discrete goods or values: a value A 'votes' for an option x over y just in case option x provides a greater degree of A than y does. The thesis of the total comparability of value would correspond to the claim that there exists a choice function that ranks options in terms of their objective preferability. Arrow proved that there is no global rule for trading one value-dimension for another that satisfies all of the following constraints:

- (1) Non-dictatorship. There is more than one value-dimension that makes a difference in at least one case.
- (2) Pareto optimality. One option is preferred to another if it is superior on some dimension of value and at least equal in all dimensions.
- (3) Completeness of domain. The function is defined for all mathematically possible combinations of magnitudes of discrete goods.
- (4) Independence of irrelevant alternatives. Whether one option is preferred to another depends only on which values are realized to a greater or lesser degree on each option and does not depend on *how much* greater either is on any discrete dimension of value.
- (5) Finite number of discrete goods. The number of discrete goods or dimensions of value is finite.

¹⁶ Thomas Aquinas, *Summa Theologica* I-II, q10 a2.

However, there is plenty of room for the comparabilist to avoid this result. Conditions (1) and (2) are unexceptionable, but the other three could be challenged. As NNL theorists admit, there are combinations of the basic goods that are impossible because of metaphysical inter-dependencies (contradicting condition 3). Anyone who embraces even a modest degree of cardinal commensuration between goods (for example, the intermediate position in which there is a linear ranking of value-differences discussed in footnote 5 above) can reject condition (4). Finally, there might well be an infinite number of goods, and Arrow's result does not extend to the infinite-voter case (as proved by Kirman and Sondermann).¹⁷

Finally, the Arrow impossibility theorem is at best an argument for limited comparability, not for unlimited incomparability. It establishes the impossibility of a total ranking of options, not for the non-existence of any ranking between instantiations of two discrete values.

3. Internal Problems with NNL Account of Subjective Ranking of Incomparables

The NNL collaborators have embraced several strategies for ameliorating the incomparability of value: appeals to subjective feelings, to personal commitments, and to the value of 'integral fulfillment'. Each of the first two is deeply problematic, and all three fail to blunt in any way the grip of objective incomparability, leaving the NNL theory without an adequate account of either rationality or integrity.

a. How can feelings commensurate?

The NNL theorists claim that we can appeal to our feelings in order to ground rational decisions in the face of value incommensurability. For example, the application of the Golden Rule demands a ranking of outcomes, so that I can sensibly ask whether I am imposing a burden on

¹⁷ A. Kirman, A and D. Sondermann, "Arrow's theorem, many agents, and invisible dictators," *Journal of Economic Theory* 5 (1972): 267.

another that is no greater than I would be willing to bear, were the tables turned. Finnis puts it thus:

“[The Golden Rule’s] concrete application in personal life presupposes a kind of commensuration of benefits and burdens which reason is impotent to commensurate. For, to apply the Golden Rule, one must know what burdens one considers *too great* to accept. And this knowledge, constituting a pre-moral commensuration, cannot be a commensuration by reason. Therefore, it can only be by one's intuitive awareness, one's discernment of one's own differentiated *feelings* toward various goods and bars as concretely remembered, experienced, or imagined.”¹⁸

The first problem with this answer is that acting in response to mere feelings isn't an intelligible purpose for a rational agent to pursue. Feelings guide us only as evidence of some real reason for action: that we feel like doing something is *prima facie* evidence that it would be good for us to do it (here and now). Similarly, pleasure and enjoyment are indicators of real welfare, not valuable in and of themselves. However, if unlimited incomparability were true, then any difference in desirability or pleasure would be illusory, and so no basis for rational choice.

Even if this is wrong, and it is intelligible to act on the basis of mere feelings alone, the appeal to feelings will fail to provide any commensuration between otherwise incomparable options. At best, my feelings of desire or satisfaction merely add further goods to the picture, each objectively incomparable to the others already in play, and even incomparable with each other. For example, should I choose the option I feel most attracted to now, or the one that I anticipate will provide the greatest pleasure, or the one that I anticipate will result in the least intense feeling of regret? Each of these factors could pull in a different direction from any of the others.

b. How can personal commitments commensurate?

¹⁸ John Finnis, “Commensuration and public reason,” in *Incommensurability, Comparability and Practical Reason*, Ruth Chang, ed. (Cambridge, Mass.: Harvard University Press, 1997), pp. 215-33, at 227.

Finnis argues that personal commitments can provide a rational basis for commensurating incomparable values:

“Where a person or a society has created a personal or social hierarchy of practical norms and orientations, through reasonable choice of commitments, one can in many cases reasonably measure the benefits and disadvantages of alternatives.”¹⁹

However, prior commitments that I’ve made cannot bind my present choice. The present will cannot bind its own future acts. Finnis admits that I can always decide to suspend or cancel a prior commitment:

“Of course, each one of us can reasonably choose to treat one or some of the values as of more importance in one’s own life... [O]ne may change one’s priorities... this ranking is no doubt partly shifting and partly stable, but is in any case essential if we are to act at all to some purpose.”²⁰

Similarly, Boyle et al. argue that all choices create personal commitments that provide a basis for enduring value commensuration:

“[I]n choosing the person who makes a choice also experiences himself setting a criterion, making commensurable what was not commensurable. A person experiences his endorsement of other necessary conditions for this choice; he experiences setting a priority which will stand unless he alters it by a subsequent choice.”²¹

However, the force of this commitment is entirely nullified by that crucial final clause: “unless he alters it by a subsequent choice.” There is no binding moral requirement that one fulfill one’s

¹⁹ Finnis, *Natural Law and Natural Rights*, 2nd edition (2011), p. 111.

²⁰ *Ibid.*, p. 93.

²¹ Boyle et al, *Free Choice* (1976), p. 175.

standing intentions -- one can always legitimately change one's mind. Therefore, NNL theory results in the kind of diachronic incoherency that Kierkegaard described in *The Sickness Unto Death* as the “despair of not being a self.”²²

Consequently, the value of personal consistency or integrity is merely another good to consider, one incomparable with the others. Thus, it cannot act as a final court of appeal. Merely adding one more good (incomparable with the others) is of no help in directing the will uniquely.

In contrast, those who (like me) embrace the weaker thesis of limited comparability of values can argue that personal integrity is a good of objectively greater weight than those of the goods being subordinated to the standing commitment. We can explain the rationality of maintaining personal integrity. NNL theorists, in contrast, cannot. Thus, Finnis and Robert George are wrong in claiming that (in accordance to the NNL thesis of unlimited incommensurability) prior commitments can make certain choices “irrational.”²³

c. The value of ‘integral human fulfillment’

Finnis speaks of the importance of the value of ‘integral human fulfillment’ in fashioning a good life. For instance, Finnis talks of being guided by the various goods collectively:

“Reason, then seeks a more complete -- one may say, integral -- directiveness, the directiveness not of each first practical principle taken on its own but of all taken together. That is to say, it is

²² Soren Kierkegaard, *The Sickness Unto Death*, Walter Lowrie, trans. (Princeton: Princeton University Press, 1951).

²³ Finnis (1990), “Concluding Reflections,” p. 239; Robert P. George, “Does the ‘Incommensurability Thesis’ Imperil Common Sense Moral Judgments?” in *In Defense of the Natural Law* (Oxford: Oxford University Press, 1999), pp. 92-101, at 94.

obviously desirable to make all of one's choices, actions, states of mind, and feelings harmonize with all the first practical principles taken integrally, i.e., in their combined guiding force."²⁴

This appeal to integration of the various values is incompatible with the unlimited incomparability of values in concreto. A rational requirement that we seek 'integral fulfillment' would make it rationally obligatory that one sacrifice some basic values for the sake of a great balance or integration of one's life as a whole. This would mean the loss of the>NNL's simple argument against consequentialism, since it implies that there are morally significant choices in which reason directs us to one package of basic goods over another, precisely on the grounds of its greater overall value, not as a result of prior commitments, feelings, or deontic moral constraints.

In embracing integration and balance, Finnis chooses truth over consistency. As Charles Taylor has put it, "The intuition of the diversity of goods needs to be balanced with the unity of life."²⁵ All value is subject to a law of diminishing return: the tenth hour of play in a day is of much lesser value than the first hour of work, and vice versa. The ideal of balance makes many concrete options between discrete values comparable -- although not necessarily all. The value of integral fulfillment supports the thesis of limited comparability, not unlimited incomparability.

4. Grounding Abstract Comparisons

In this section, I offer two accounts of the metaphysical basis for objective comparisons of value between discrete goods. Strictly speaking, this section is unnecessary. It is the>NNL theorists who bear the burden of proof for establishing the thesis of the unlimited incomparability of value, a burden that (as I have argued above) they have failed to carry. It would be reasonable to believe in limited comparability, even if we had no plausible account of the metaphysical

²⁴ John Finnis, *Aquinas: Moral, Political, and Legal Theory* (New York: Oxford University Press, 1998), pp. 108-9.

²⁵ Charles Taylor, "Leading a Life," in *Incommensurability, Comparability and Practical Reason*, Ruth Chang, ed. (1997), pp. 170-83, at 183.

grounding for these objective comparisons. Nonetheless, I will try to sketch some possible accounts of this grounding.

a. Superiority by relative perfection (subsumption)

The NNL theorists admit that we can make comparisons between instantiations of the same form of the good. Some instantiations of a good are perfect or nearly perfect instantiations of the type, and others are marginal, bordering on non-existence. These standards of perfection and nullity enable cross-type comparisons: a near-perfect instantiation of one good is objectively preferable to a marginal instantiation of another good, *ceteris paribus*.²⁶ These standards enable us to distinguish between cases of ‘moderate’ and ‘extreme’ need even when disparate values are involved: moderate need can be defined in terms of state’s being close to perfection, while extreme need stands close to nullity. Aquinas argues that the virtue of beneficence should move us to satisfy the extreme needs of our neighbors in preference to their moderate needs.²⁷

Consider three lives: (1) a life in which a person avoids all activities except those in which he excels, (2) a life that includes much excellence, but also includes a variety of mediocre and marginal activities, and (3) a life in which a person avoids all activities in which he can excel -- a life of consistent and deliberate mediocrity. Arguably, (1) and (2) are objectively incomparable (although I would suppose (2) to be superior to (1)). However, both are clearly better than (3). Excellence in any one activity of a certain level (e.g., the level of rational and natural capacities) contains virtually mere competence or mediocrity in all other activities of that same level. Hence, a life with some excellence is always better than a life without excellence, even if the latter life includes specific activities that are marginally better than the same form of activity in the former.

²⁶ Donald Reagan, “Value, Comparability and Choice,” in Chang, *Incommensurability, Comparability and Practical Reason* (1997), pp. 129-150, at 135. Joseph Raz, “Facing Up: A Reply,” *Southern California Law Review* 62(1989):1221, n. 145: “More of one thing may be better than a certain amount of another, even if less of the first is incommensurate with that amount of the other.”

²⁷ St. Thomas Aquinas, *Summa Theologica* II-II, q31 a3.

We could explain these objective comparisons metaphysically by supposing that the perfect and nearly-perfect instantiations of one good *subsume* the good of marginal instantiations of similar goods. Thus, excellence in painting subsumes the value of mediocrity in singing. We can understand subsumption in terms of virtual instantiation: one who is excellent in painting virtually instantiates marginal degrees of similar but distinct values. In other words, the relation of the excellent painter to the good of music is similar to the relation of the mediocre musician to that same value: similar enough to make the good of excellence in painting objectively preferable to mediocrity in music.

It seems plausible to suppose that as the instantiations of two discrete values approach perfection, they diverge ontologically. Minimal and mediocre instantiations of a value are somewhat undifferentiated and inchoate, while perfect instantiations are highly differentiated and defined. Consequently, the nature of cross-type incomparability when the instantiations are minimal is quite different from that when the instantiations are both perfect. Perfect instantiations of discrete value are incomparable because they are so dissimilar as to provide no basis for a common estimation. In contrast, incomparability between inchoate instantiations of different values of the same order is a consequence of a form of ontological vagueness or indeterminacy: a minimal degree of friendship is neither determinately of the same, greater or lesser value than a minimal degree of aesthetic appreciation. However, when one value is realized to a nearly perfect degree and the other to a nearly non-existent one, the indeterminacy of vagueness gives way to a clear superiority. Because one value is marginally instantiated, it is quite similar to marginal instantiations of the other value and so inferior to perfect instantiations of it.

b. Superiority by proportionality of being

It is plausible that reality is itself ordered hierarchically, with supernatural life (involving participation in the life of God) higher than natural life, the communal life of society higher than solitary existence, intellectual life higher than merely sensitive life, sensitive life higher than merely vegetable, and life itself higher than the order of non-living things. As Aristotle

recognized, there are analogies between values at different levels. The beatific vision stands to supernatural life in exactly the same way that scientific knowledge stands to the life of the natural intellect, and scientific knowledge stands to the intellect as the exercise of the senses stands to merely animal life. Consequently, we can say with confidence that the beatific vision is better than scientific knowledge, and scientific knowledge better than sensory perception.

It is the superiority of the supernatural good of charity over any natural value that licenses St. Thomas in asserting that the life of dedicated virginity is objectively superior to the married state.²⁸ Similarly, the theological virtue of charity is superior to faith, since charity provides us with God himself rather than knowledge about God, and God is higher than any created good. In the same way, prudence is superior to the moral virtues, because prudence is that by which we attain reason itself, while the moral virtues are that by which our passions participate in the rule of reason, and reason is ontologically higher than its effects.²⁹ Similarly, a community is ontologically higher than an individual, and so the natural good of a community is superior to the corresponding good of the individual:

“The common good of many is more Godlike than the good of an individual. Wherefore it is a virtuous action for a man to endanger even his own life, either for the spiritual or for the temporal common good of his country.”³⁰

5. The Role of Prudence (Phronesis) and the Moral Virtues

NNL theorists systematically underemphasize the role of the virtues. For example, in Finnis’s book on Aquinas, he focuses primarily on Aquinas’s doctrine of the natural law, a doctrine that takes up only six articles of the over 2000 in the *Summa Theologica* and that doesn’t appear at all in Aquinas’s principal work on political theory, *De Regno*. In contrast, more than a quarter of the *Summa Theologica* is devoted to virtues and vices. Finnis jumps directly from the basic goods to

²⁸ St. Thomas Aquinas, *Summa Theologica* II-II, q152 a4.

²⁹ St. Thomas Aquinas, *Summa Theologica* II-II, q23 a6.

³⁰ St. Thomas Aquinas, *Summa Theologica* II-II, q31 a3.

the natural law, while for Aquinas the virtues provide an indispensable link between the two, with human nature providing the crucial teleological background: “We study happiness by studying the virtues, and we study the virtues by studying the parts of the soul, as a physician studies health by studying the body.”³¹

In addition, Finnis distorts the central role of prudence, oddly translating it as ‘practical reasonableness’, as though Aquinas’s concept of practical wisdom were exclusively concerned with our meeting certain abstract constraints in our practical reasoning. In fact, prudence is primarily a matter of discerning which concrete instantiations of value are objectively weightier than others. This weighing function of prudence is especially clear in its role in defining the virtues of courage, moderation, and beneficence. A courageous person is one who knows when a risk is worth taking, given the good to be gained by the risky action. A moderate person is one who knows when to sacrifice the satisfaction of certain bodily needs for the sake of a higher good (as in the case of appropriate fasting). A beneficent person knows which needs of which neighbors are the weightiest and most deserving of immediate attention.

Phronesis is a matter of judgment, grounded in experience; it is not merely a matter of applying universal moral norms. Morality is not codifiable as law without remainder. There are exceptions to all the precepts of the natural law, except the most fundamental (seek good, avoid evil). As David Wiggins has put it, “The philosopher of practice must render it as unmysterious as he can how the knowledge of such a standard is not exhausted by the verbalized generalizations or precepts of either agent or theorist.”³²

³¹ St. Thomas Aquinas, *Commentary on the Nicomachean Ethics*, C. I. Litzinger, O.P., trans. (Notre Dame, Ind.: Dumb Ox Books, 1993), p. 75.

³² David Wiggins, “Incommensurability: Four Proposals,” in Chang, *Incommensurability, Comparability and Practical Reason* (1997), pp. 52-66, at 65.