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Legal Implications of G. E. Moore's Theory on Naturalistic Fallacy

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Abstract:

We want to examine the opinion that one cannot define the term "good" by referring to any term other than "good" itself, because good as a simple and non-natural quality cannot be replaced with a natural term. At the center of this belief is G. E. Moore who argues that we can only define good as good, if one is to avoid committing naturalistic fallacy. But it seems that the definition of good as good expresses a tendency towards "nihilism" - a position that promotes belief in nothing. The distinction between natural and non-natural qualities is parallel to the distinctions between "is" and "ought", norms and facts, noumena and phenomena, universals and particulars all of which tend to have brought about controversies in many areas of social discourse including morality and law. Important areas of discourse include justification for indefinability of good and duty; relating intuitionism and naturalism; distinction between law and morality; appraising legal dilemmas; and showing correlation between common sense and equity. This paper argues that although things in the world differ they nevertheless relate, thus expressing the basic principle of unity in diversity in the world. The paper serves as instructional material for the legal profession and therefore argues that understanding naturalistic fallacy will enhance legal practice and the teaching of law.

Keywords: Jurisprudence, law, naturalistic fallacy

1. Introduction

George Edward Moore explores a twofold world of reality in which discourse in one realm is not adaptable to discourse in the other realm without committing "naturalistic fallacy"- a logico-ethical doctrine which favours non naturalistic description of the word "good" in terms of itself. Moore began his interest in philosophy under the influence of "absolute idealism"- a philosophical position which equates the world with objective thought. But in the later years of the 19th century A.D. He came to break with that tradition and to espouse various kinds of realism – metaphysical, epistemological and axiological - which centered upon the possibility of relating minds to independent facts. Central to his justification for naturalistic fallacies is the belief that whenever a substantial philosophical doctrine conflicts with common sense, it is the philosophical argument that has gone astray rather than that common sense has done so. His philosophy indicated a major influence on Anglo-American philosophy in the first half of the 20th century. But since then there has been less confidence in the method of analysis with which he is identified.

We are led by Moore's moral logic to question whether or not the thoughts of David Hume, Immanuel Kant, Ludwig Wittgenstein, Bertrand Russell, Plato and Aristotle concerning the distinctions between "is" and "ought" noumena and phenomena, norms and fact, universals and particulars, as well as general and self-evident truths provide the motivation for accepting Moore's position on naturalistic fallacy. Moore's moral philosophy is an attempt to give "good" an objective status. It criticizes classical ethical theories on their definition of good in terms of natural qualities, and is incompatible with modern theories that reject the objectivity of the truth of moral propositions. Whether or not Moore's philosophy is acceptable in the context of 21st century philosophical spirit depends on how we resolve the conflict brought about by the relation between intuitionism and naturalism as the two rival theories seeking justification for their attitudes toward the acceptability of the doctrine of naturalistic fallacy side by side the claims of common sense over philosophical arguments. It is popularly assumed that the "is" and "ought" worlds refer to the same world, but Moore is not willing to see it that way. Incidentally the conflict appears to have stretched beyond Moore to adherents of various schools of thought. So out of necessity this paper becomes a translator standing at the border between the two worlds by getting the language of the "ought" world in which things are properly ordered into the language of the "is" world in which we find distortions in human beliefs and conduct. We will use the approach of the translator to show how the ideals of justice can be applied to correcting injustice in a social system. The methods adopted in carrying out this investigation are reflection, analysis and criticism.

2. What is Naturalistic Fallacy?

A fallacy is an error in reasoning. By describing fallacy, in this way, Robert Audi sees it in terms formal and informal incorrectness. Moses Oke and Akeem Amodu thus classify it as a counterfeit argument. Oke and Amodu (2006) maintain that a fallacy is an argument which lacks relationship between premise and conclusion. An instance is to argue that no person is guilty of an offence until he or she is proved to be so by a competent court of law. This assertion appeals to ignorance, because it assumes that guilt is a product of human procedure to bring about some conviction rather than the uncomfortable feeling of having done wrong and therefore

deserving the anger of others. A formal fallacy is one which violates the rule of logic, as it is the case with fallacy of four terms that violates the rule of number in Aristotelian syllogism. An informal fallacy is concerned with both relevance - as it is the case with arguing in ignorance and ambiguity (as it is the case with equivocation). Audi (1999:373) maintains that typical "fallacies have a pragmatic practical aspect relating to how argument is being used, and also a dialectical aspect, pertaining to a control of dialogue - normally an exchange between two participants in a discussion". But generally speaking, it would seem that all fallacies are *non sequitor*, which is to say that their conclusions do not follow from their premises. In law a vitiated argument most likely renders its conclusion less effective or legally acceptable. It might be the case that a legal rule is ambiguous or that the facts adduced in the premise are not relevant to establish the conclusion. Michael Nkuzi Nnam detects a certain error of relevance in the process of providing solutions to problems in legal decisions through a community of lawyers and judges deemed to be the parameter for deciding what is appropriate as reason for judging particular cases independent of the philosophical and legal constraints facing judges in deciding the acceptability of opinions. Nnam (1989) maintains that this error impinges upon relevance and a decision based on it would normally be unacceptable. According to him, the philosophical and legal constraints on the opinions of judges can be changed by such solutions. The decision in *Brown v Board of Education* is a striking example of the situation- a decision which both tested and pushed back the boundaries that forced the community of lawyers and judges to change its view by accepting something as appropriate that it would not previously have accepted.

Simon Blackburn describes "naturalistic fallacy" as the:

- Alleged fallacy, identified by Moore ..., of identifying an ethical concept with a natural concept, or description of the features of things in virtue of which they are supposed good or bad. Thus if one's standard is utilitarian, to say that some action is good will mean the very same as saying that it creates more happiness than rival actions would (1996:255).

Based on the foregoing, it might be said that Moore's doctrine of naturalistic fallacy involves a rejection of definitions of moral words in terms of factual use of language. It is concerned in part with ambiguity and in part with relevance. Its central thesis is that we cannot define non-natural terms by means of natural ones. The prospect of this thesis lies in the possibility of accepting a dualistic world view of un-identical realities which admits no interaction between them. The thesis also argues that premises in the non-natural realm cannot lead to conclusion in the natural realm; and this aspect of the doctrine has formal implications. William David Ross is one of the philosophers in the contemporary time who shares with Moore the conviction in a dual nature of the world. Ross (1930) maintains that moral discourse has some distinctive characteristics which serve to distinguish it from other forms of discourse. Accordingly, moral terms are not used in the very way that terms are employed in other spheres of human endeavour. Thus Blackburn (1996:255) maintains that this "equation of meaning is almost certainly wrong". We will agree that meaning is whatever it is that makes what would otherwise be mere sounds and inscriptions into instruments of communication and understanding. A philosophical need therefore arises to demystify this power and to relate it to what we know of ourselves. But the separatists argue that the normative use of language is as perfectly legitimate as the empirical, and this serves to direct our attention to a class of propositions which are not used as statements of empirical facts, but as guides to human conduct framed in imperatives form. This class of propositions is believed to be the subject matter of ethics, theology and jurisprudence.

Moore's distinction between natural and non-natural realities is both derived from and closely related to Hume's distinction between "is" and "ought". As Michael D. Freeman writes:

- The tendency to derive normative rules from physical or natural laws, or to analyse or define them in terms of physical qualities or phenomena, is a pervasive one. Thus many of the attempts to base positive law on an immutably established natural law governing the universe involved an attempt to link normative rules directly with what are really conjectural hypothesis of factual character ... However, in 1740, Hume pointed out the fallacy of trying, as he put it, to derive "ought" from "is", and argued that a normative statement could not be inferred from a purely factual one. So, too, the efforts to define moral norms in terms of something else, which can be ascertained or verified as a fact, such as pleasure or utility involve a similar confusion which has been stigmatized by G. E. Moore as "the naturalistic fallacy" (2001:11-12).

Freeman identifies Hume as the forerunner of Moore's theory on naturalistic fallacy. Hume's own statement on the "is - ought" dichotomy is recorded in his *Treatise of Human Nature* III, where Hume (1937:3.1) argues that it "seems altogether inconceivable that the new relation (ought) can be derived from others, which are entirely different from it". This assertion, according to Blackburn (1996), is often regarded as Hume's law. Naturalistic fallacy may therefore be described as any definition of a moral norm in terms of a verifiable fact. We can then explain it as an error in reasoning which arises either by defining non-natural concepts in terms of natural ones, ought in terms of is, noumena in terms phenomena or universal in terms of particular. It is at this point necessary to examine the logical status of moral terms such as "good" and "bad" or "right" and "wrong" together with the difficulties available to enquiry in using these moral terms in ways often used by both classical and modern ethical theorists. We can now examine the reason for Moore's conception of good as good.

3. The Logic of Goodness in Moore's Moral Philosophy

Moore begins his *Principia Ethica* by asking for the definition of "good". His questions are: what is good? And how is good to be defined? Moore (1959b) argues that he is looking for a real definition of good, which thus should state the essence of the thing denoted by the word. As Moore writes:

- A definition does indeed often mean the expressing of one word's meaning in other words. But this is not the sort of definition I am asking for. Such a definition can never be of ultimate importance in any study except lexicography. If I

wanted that kind of definition I should have to consider in the first place how people generally use the word “good”; but my business is not with its proper usage, as established by custom (1959b:1).

Moore appears here to be concerned with the essence of goodness. He is not concerned with the diverse uses of “good”. James D. Carney and Richard K. Scheer explain the notion of real definition in terms of intrinsic part of a concept. Carney and Scheer (1964) maintain that a real definition deals with intrinsic characteristics of things. Thus it would seem that Moore’s definition of good is concerned with its intrinsic rather than extrinsic nature. Moore (1959b) is not anxious to discuss whether or not he is right in thinking that words are used in a certain way rather than another. He is concerned with that object or idea which he holds right or wrong, that the word is generally used to stand for. He wants to discover the nature of that object or idea.

Moore’s doctrine of goodness is central to the problem of indefinability of value terms in ways associated with non value ones. The doctrine appears to have been derived from an established belief that values are distinguishable from facts, with a view to separating reason and experience. In classical theories, definitions of ethical terms such as “good” and “bad” are seen as attempts to answer questions about the good life for man whether as an individual or as a member of society. In fact, answers to such questions differ in the views of several thinkers. Richard Popkin and Avrom Stroll consider these theories in the thought of some classical thinkers, maintaining that Plato shares the belief that the good life for man is that of knowledge; Aristotle is of the opinion that it is a life of happiness; Epicureans or hedonists see it as a life of pleasure; cynics see it as a life of salvation; stoics see it as a life of inference; while utilitarians see it as a life based on happiness of the majority. Popkin and Avrom (1981) maintain that these thinkers try to define good in terms of natural concepts.

Moore (1959b) criticizes classical ethical theories as attempts to deduce moral percepts from theological and metaphysical or scientific premises. He maintains that such arguments are fallacious, because we cannot argue from premises of one logical type to conclusions of a different logical type. This is to say that one cannot move from what is purely descriptive to that which is purely prescriptive. He relies on Hume’s celebrated distinction between what are capable of being known to reason and those that are capable of being known to experience. Eventually Moore tries to show that classical theories involve an attempt to define moral words such as “good” and “bad”, or “right” and “wrong” in non moral terms. Such definitions may be found in descriptive statements about God and about metaphysical entities like goodness, beauty, justice or about statements concerning human nature. It seems then that we can at least in some ways appraise Moore’s distinction between natural and non-natural realities side by side with Hume’s distinction between is and ought since they aspire to explain the world in terms of a dualism without interaction.

Moore (1959b) advocates the epistemic status of goodness as a simple, unanalysable quality fortunately known by intuition. It seems to him that the good things of life are certain wholes, consisting of pleasures of aesthetic experience as well as love and friendship. This doctrine appears to have assumed success partly because of its intense concern to set out problems with unparalleled precision in order to get matters exactly right. What Moore detests about classical definitions of ethical words is the use of “good” synonymously with expressions such as “approved by God”, “conducive to the happiness of the majority” and so on. According to him, this way of analysing moral terms leaves out the essential prescriptive element in their meanings. This is why he argues that “good” is like every other moral term in being indefinable; and that “goodness” is a simple and unanalysable property. Any attempt to define a non-natural concept by means of a natural quality commits naturalistic fallacy because the proposed definition loses the moral element in the word. As Moore writes:

- If I am asked, what is good? My answer is that good is good, and that is the end of the matter. Or, if I am asked, how is good to be defined? My answer is that it cannot be defined, and that is all I have to say about it ... My point is that “good” is a simple notion; that just as you cannot, by any manner or means, explain to anyone who does not already know it, what yellow is, so you cannot explain what good is (1959b:6 - 7).

At this he points defines “good” as “good”, and tries to buttress his argument by comparing and contrasting “good” and “yellow”. Based on this approach, Moore (1959b) argues that yellow cannot be defined except ostensively – by pointing to instances of yellow objects. Yellow cannot be defined by means other than this, because it is a simple concept. Simple terms are used in the analysis of complex ones; which is to say that definitions of complex terms are built out of simple concepts. The terms “good” and “yellow” are alike in being simple and therefore indefinable. But whereas “yellow” is a natural quality, “good” is non-natural. What this means is that goodness is not a “sensible” quality as yellow is: rather, “goodness” is a quality that must be rationally discerned or intuited.

William Lawhead explains the central motivation of Moore’s moral philosophy in terms of Moore’s epistemology. Lawhead (2002) maintains that what guided Moore’s method was the conviction that fundamental concepts and linguistic meanings that express those concepts arise out of common sense and ordinary language. Moore, he says, believe that most philosophical perplexities result from the particular ways in which philosophers use terms and concepts. Moore’s philosophy of goodness derives from his rejection of idealism and consequent appeal to common sense. Idealism, we will agree, is a philosophical theory which argues that there is no reality independent of minds. The boundaries of this doctrine are not finally drawn; for the traditional Christian belief that God is a sustaining cause possessing greater reality than his creation is a form of idealism which Moore precludes from common sense knowledge. As a reaction to this philosophical tradition, Moore tries to give a general description of the entire universe by mentioning the important kinds of things that we do not absolutely know, as well as the important kinds of ways in which they are connected to one another and the justification for the reality of outer source. In the process, Moore gives primacy to common sense over philosophical argument. In his *A Defence of Common Sense*, Moore (1959a) maintains that philosophers in the past including himself expressed scepticism about the existence of sense data, but now there is no doubt as to his conviction about the reality of these phenomena. Thus in his *Proof of the External World*, Moore (1959c) describes how he comes to be aware of his body and his two hands. The awareness that his two hands are fixed to his body gives him insight into the existence of the external world. We can now see that the whole idea of Moore’s distinction between natural and non natural phenomena and the impossibility of their relatedness is

a product of his rigid attachment to the common sense view of the world. Common sense may be described as the faculty responsible for coordinating the deliveries of the different senses; which thus involves the ability to use good judgement and make sensible decisions. John Farrar and Anthony Dugdale describe common sense as the supposed view of a reasonable man. However, while referring to the dissenting view of Lord Bridge in the case of *Din v London Borough of Wandsworth*, Farrar and Dugdale (1990) maintain that common sense lacks profound philosophical analysis. Does this view render Moore's position suspect?

Moore's moral philosophy is a defence of non naturalism. In his *Ethics*, Moore (1912) criticizes utilitarianism using the open question argument, which says that something "n" is not reducible to something "non-n". Similar to Moore's open question argument is the contemporary belief that naturalism cannot capture the normativity of moral arguments. Moore stresses the conviction that the result of an action is not the test of right and wrong. He is aware that moral knowledge is not due to experience but to common sense; which thus leads him to the conclusion that moral knowledge is only possible through man's intellectual intuitions. For him, it would seem that moral claims are self-evident truth. Fortunately, Moore is not alone in taking this position. Russell (1912) maintains that self-evidence is not confined to those among general principles which are incapable of proof. It seems to Russell that where a certain number of logical principles have been admitted, the rest can be deduced from them; but the propositions deduced are often just as self-evident as those that were assumed without proof.

In all cases of general principles, particular instances, dealing with familiar things, are more evident than the general principles. In support of Moore's argument, Russell argues that the position of the law of contradiction that a thing is not both "X" and "not X" is not as self-evident as the fact that a particular rose "flower" which we see cannot be both "red" and "not red" at the same time. It is usually from particular instances that we come to grasp general principles, and only people who are concerned in dealing with abstractions may readily grasp general principles without reference to instances. Self-evident truths derived from immediate acts of sensation are referred to as truths of perception and the judgements expressing them are judgements of perception. Incidentally their actual sense data are neither true nor false. Given the detailed analysis of Moore's philosophy of goodness, it has become necessary to examine its implications for legal knowledge.

4. Implications of Moore's Moral Theory for Legal Philosophy

There are both theoretical and practical problems to consider in Moore's moral theory in relation to law. Incidentally, the attempt to take the language of the "is" world into the language of the "ought" world is reflected in:

- i conflict between two kinds of objective truth
- ii problem of indefinability of duty
- iii problem of indefinability of good
- iv distinction between natural and non-natural qualities
- v distinction between "is" and "ought"
- vi distinction between law and morality
- vii relation between common sense and equity.

The categories of the foregoing areas of controversy are not foreclosed; but we will limit our investigation to these few aspects.

Many philosophers see Moore's view both as representing and as requiring a new approach to the problems of moral philosophy. Popkin and Stroll (1981) see it as requiring an approach which looks more to analysis of language of morals than to an examination of factual statements about the notion of good, about goodness, or about human nature. However, many thinkers have now come to believe that moral statements have a peculiar logic of their own: which differentiates them from statements of theology, metaphysics or science. This position has therefore witnessed the emergence of modern theories that have come to be concerned with the status of moral claims: including subjectivism, objectivism, naturalism, intuitionism, emotivism, deontologism and consequentialism. Of these entire well known moral theories only intuitionism and naturalism share belief in objective truth of moral claims. On the one hand, subjectivism is the view that moral claims depend on human feelings about a piece of conduct rather than being objective. On the other hand, objectivism is the view that the claims of ethics are objectively true. Thus a moral claim is either true or false. Intuitionism and naturalism uphold the objective status of moral commitments in opposition to subjectivism or error theories, scepticism and relativism. Whether we are talking about intuitionism or naturalism, the central problem is to find the source of the required objectivity. Moore is an intuitionist and therefore an objectivist. Moore (1959b) explains that all subjectivist or non objectivist theories are emotivist: since they regard moral judgments as neither true nor false. He is not sceptical about the objectivity of intuitive realities. But it would seem that all modern theories are united or connected in their bid to make truth a logical part of valuation. However, modern theories appear to have provided us with different ways of understanding what it means to say that some piece of conduct is good or bad, and there appears to be no assurance that a common factor exists that can enable us provide a singular and universally acceptable definition either of the term "good" or of any other ethical term. Shall we then rest content with Moore's definition of "good" in terms of itself by simply saying "good is good"?

The attempt to answer this question leads us first to the debate between ethical naturalists and ethical intuitionists as the protagonists of objective standards for measuring human conduct in the realms of morality and law. We shall begin with the contentions of ethical naturalism. Generally ethical naturalism is another name for naturalistic objectivism. Blackburn (1996) sees ethical naturalism as the attempt to place ethical propositions and ethical thought in the natural world: a world generally believed to belong to science. Ethical naturalism is the view that the meaning of an ethical predicate is identical with that of a predicate displaying the features in virtue of which the object is good. We can see this in utilitarianism, which says that an action is good if it gives happiness. John Hermen Randall and Justus Buchler move a step further to examine the essential conditions of the phenomenon. For Randall and Buchler (1970), ethical naturalism maintains that moral judgements are reports about the presence of certain natural qualities in persons, acts

or state of affairs. These judgements could be translated into sentences not containing moral predicates such as good or bad, right or wrong. Such is to say that moral claim has or does not have certain empirically ascertainable qualities; that moral judgements are informative as well as true or false; and that the truth or falsity of any moral claim can be resolved by reference to direct empirical means. Ethical naturalists maintain that to ask for the meaning of “good” in its moral sense is to ask for a definition of that term as used by both ordinary people and ethical theorists when they frame ethical judgements. They further argue that “good” might mean conducive to further evolution of man. However, there are many senses of good; which is perhaps a way of saying that the term is contextual. Its primary sense is given as the antithesis of evil. Incidentally all other moral predicates are definable in relation to good and evil. A rather non-moral sense of good is identified with the word “poor”. There is yet another sense of good, in which it is used as the opposite of “bad”. We may then use good in its secondary sense to mean pleasurable for human beings. Thus everything else that depends on dispositions and choices of man is good or bad, right or wrong, praiseworthy or blameworthy insofar as it tends to promote or hinder the achievement of human pleasure. In any sense, the use of the term “good” point to something that we can appreciate or reject.

Let us now consider ethical intuitionism, as the philosophical school to which Moore belongs. Ethical intuitionism may also be referred to as intuitionist objectivism. Blackburn (1996) maintains that this theory identifies ethical propositions as objectively true or false and different in content from any empirical or scientific kind of judgement that is known only to the faculty of intuition. Now we observe important similarities and differences between naturalism and intuitionism. For instance, intuitionists agree with naturalists that in reality the term “good” can have both primary and secondary, as well as non moral meanings. These are good as opposed to evil, good as opposite of bad, good as opposed to poor, and good as pleasurable to man. They also agree that the most important of these senses is good in the primary moral sense, and that moral judgements are either true or false. But intuitionists disagree with naturalists on the belief that all other moral predicates are definable in terms of good in the primary sense and the fact that the truth or falsity of a moral judgement is verifiable by direct empirical means. Based on this, intuitionists believe that the concept of “duty” at least is not definable in terms of good in its primary sense. They argue that in the primary sense the term “duty” denotes a simple non-natural quality, and by virtue of this simplicity it is not definable. They are convinced that the truth or falsity of any moral claim is a function of illumination or awareness as opposed to experience. The difficulty here lies in the need to validate the universality of all human intuitions. We will agree that the three grounds on the basis of which ethical intuitionists differ from ethical naturalists are riddled with difficulties. Intuitionists believe that only complex terms can be defined in terms of simple or less complex ones. Carney and Scheer (1964) define a simple term as a primitive term which is not further reducible to any other term than itself: it is therefore the very opposite of a complex term. According to these scholars, a complex term like “daffodil” can be defined as yellow flower of the genus narcissus – by virtue of its parts. The terms involved in this definition are being yellow, being a flower, and being of the genus narcissus. Intuitionists believe that this feature of real definition is not applicable to simple qualities like good, bad, yellow, green, beauty, justice or duty.

Now can we define duty and good? Or, can we define simple terms essentially? Our preliminary answer to these questions is that we can. There is a need to extend the frontiers of real definition to accommodate 21st century findings in ethics and jurisprudence. Investigation shows that real definition is formal because it has a logical or mathematical structure. To be a “daffodil” is to be a “flower”, “red” and “of the genus narcissus”. Such is to say mathematically that $D_x = D_1 + D_2 + D_3$. We can describe “good” and “duty” in much the same way as having the characteristics G_1 , G_2 and G_3 and D_1 , D_2 and D_3 thereby capable of been described mathematically as $G_x = G_1 + G_2 + G_3$; and $D_x = D_1 + D_2 + D_3$ respectively. Of course, the analysis is not about using mnemonics. But as does symbolic logic, we can use X, Y or Z to represent any word whatever. In this way, we can further our knowledge of adapting or applying words to situations and this can help us in analysing the language of morals and law.

First, let us consider the case of “duty”, in the context of a situation which one may be under moral or legal obligation to save life. If we say for instance that a diver has a duty to save the life of a drowning man, then it might mean that failure to carry out that duty is bad conduct. This means that it is morally wrong for him to fail to do so. It seems that all the circumstances surrounding the diver and his ability to save the drowning person stand outside the diver himself, since duty makes it imperative for him to do so. Incidentally such sense of duty should imply the impossibility of harm to the diver. But, does the diver in question owe to the drowning person, society, or any other authority the obligation to save the drowning man? As an attempt to answer this question, Arthur F. Holmes defends the view that we can derive “ought” from “is” on the basis of obligation. Holmes (1971) maintains that empirical factor anything else that is for that matter can impose duties or obligation on us. Such is possible when we seek reasons to justify our existence in the world, the need for being moral and that of being good. Based on this he argues that the “ought” is self-imposed, socially imposed and divinely imposed. The self-imposed thesis defines obligation in terms of a person’s personal act of will; the socially imposed thesis reflects the social contract theory in which obligation resides in the civil society rather than the state of nation; while the divinely imposed thesis holds that we ought to do the will of God. But does it follow from these three-fold characterization of obligation that its adaptation in practice is a matter of choice? How do we decide the proper cause of action to take in a situation of conflict? Thinkers are not agreed as to the moral or legal sense of duty applicable to this sort of situation. A situation like that would normally arise out of a purely personal relationship or contract. Parents may owe their children the moral duty of care; and the situation tends to arise quite naturally and failure to act in accordance with that duty may be actionable at law. Contrary to Moore’s injunction against mutuality of relation between two worlds, we can see here that premises of one logical type are brought to bear on the conclusion of a different logical type. Apart from private duties between individuals, we may also speak of public duties between the state and its citizens. The case of *Cocks v Thanet District Council* rests on public and private law rights, and is based on the legal duties to decide on questions about intentional and unintentional homelessness. Farrar and Dugdale (1990) maintain that legislation places a duty on housing authorities such as District Councils or London Boroughs, to provide permanent housing for those deemed to

be homeless or threatened with homelessness that have a priority need for accommodation. In this case, too, it might be misleading to separate the moral and legal universes of discuss.

We may now ask, is duty indefinable? The term “duty” is generally used to mean obligation. In this way duty and obligation are used as synonyms. Blackburn (1996) provides a more philosophical interpretation of obligation as that which one must do or that which is required of one. This definition of the term carries the implication that duty is owed (due) by a person to other people or perhaps to oneself. Joseph Omoregbe believes that duties may be moral or legal. Omoregbe (1994) maintains that one can owe oneself a moral duty but one cannot owe to oneself a legal duty. Ross (1930) observes that the duty of obeying one’s country arises partly from the duty of gratitude for the benefits one has received from it and partly from the implicit promise to obey which seems to be involved in permanent residence in a country whose laws we know we are expected to obey. Duties may be universal or special. Universal duties are owed to persons or sentient beings, while special duties arise in virtue of such specific relations as being a person’s child or having made a promise to someone. Duty or obligation is central to deontological approaches in ethics, but it is also constructed in jurisprudence out of other considerations. The leading deontological system appears to be that of Kant (1948), who maintains that there are perfect and imperfect duties as well as universal and special duties. Perfect duties are those that must be performed irrespective of their circumstances, while imperfect duties may have to give way to the stringent category. Perfect duties appear to be correlative with the rights of others while imperfect duties do not seem to constitute any problem with the concept of rights including the ways in which duties may be specified. However, it may well be the case that the Kantian notion of duty is too abstract to apply to concrete situations. Kant’s restriction of moral worth to a specific concern with duty has frequently seemed to downgrade normal human virtues such as benevolence, but commentators try to discern a more humane Kant behind the stern and rigorous ethics of respect for law. However, Blackburn (1996) maintains that sometimes the concept of “duty” is used to suggest a regimented view of ethical life in which people are forced to conscript in a kind of moral army that can encourage individualistic and antagonistic view of social relations. In this case, duty implies rights or what is right; thus duty may be defined in terms of right. Thomas Hobbes appears to have been the first philosopher to shift the emphasis from natural law to natural rights, which is to say that he shifted from the duties and obligations imposed on man by law in the state of nature to the rights that man enjoys in society. According to Hobbes (1968), to say that a person has a legal duty to do something is to predict that if he fails to do it he will be by the judgement of the court be made to suffer in a certain way. From a purely legal stand point, Roger Bird defines obligation as:

- A duty: the bond of legal necessity which binds together two or more determinate individuals. It is limited to legal duties arising out of a special personal relationship existing between them, whether by reason of a contract or tort, or otherwise, e.g. debtors and creditors (1983:238).

As Bird sees it, duty imposes obligation on someone to obey a rule. It is therefore the opinion of this paper that the real definition of duty lies in its being “imposing”, being “obeyable”, and being “rule governed”. If this definition is acceptable as we suggested earlier in our mathematical analysis of real definition, then this approach may be adapted to defining simple qualities as a feature of real definition. We can then say that duty is a logically necessary act which is good to perform and bad in failing to perform it whether under morality or law.

Second let us consider the idea of defining good. Moore (1959b) uses the difference between “yellow” and “good” as the basis of justifying the distinction between experience and intuition. The criterion for doing this is rooted in the authority of sensibility. The fact is that yellow is sensible while good is non sensible. Accordingly, knowledge of their relation is not possible. Let us take the relation of universals to particulars concerning the possibility of uniting norms and facts. If we say that promise keeping is good, it is based on instances of observed behaviour relating to people keeping or not keeping promises. There are situations in which social realities possess a law-like character, in which case we should be talking about morally acceptable or legally binding promises. We can in such situations define good by referring to particular facts in the empirical world. A piece of conduct may therefore be described as good because it produces pleasure or provides knowledge. But because there appears to be no common ground on which we are to base pleasure and knowledge, we cannot look for a universally acceptable definition of “good” that will satisfy all situations of conflict in human experience. The terms “good” and “bad” are often used contextually to show the two extremes or dual components of reality. They can refer to conditions or states of affairs. There are other words or groups of words which can be used to replace them depending on the contexts in which such words apply to thought. This implies that moral goodness can have a contextual definition depending on the moral term to which goodness or badness is directed. If we are inclined to say that “good” may be defined in the primary sense as “opposed to evil”, then we are to address the question of what it is that we call evil. In order to avoid begging the question, it is suggested that any term whatever may be explained by using other words as the context demands.

There is a problem with the internalist claim that the truth or falsity of moral sentences is ascertainable by non empirical means, which reflects the widely accepted view that all our synthetic truths arise from experience. Unfortunately, the problem associated with common sense knowledge spills over to the problem of language. A mistake arises in supposing that all empirical phenomena function in the same way; and a similar error arises in assuming that all intuitive phenomena function absolutely in much the same way. The classifications of realities within these categories are too broad to justify the popular belief that similar phenomena have similar associates. This is to say that even within the same category, features of realities may not admit of similar explanations. Incidentally this is a function of logic and language. Critics charge that intuitionism merely functions as a disguise for prejudice or passion. We may tie this objection to the belief that moral propositions are objectively true or false and different in content from all other propositions. There are conflicts in moral claims of different societies and this has profound influence on the construction of legal propositions of such societies. Anthony Quinton expresses dissatisfaction over the belief that all *a priori* statements are analytic, referring to it as the analytic thesis which is meant for the purpose of convenience. To him, the thesis is self-refuting because it is neither empirical nor analytic. Quinton (1972) therefore criticizes Moore for basing conceptual truth on particular instances. His

argument is that Moore provides neither proof nor explanation for trying to show that the definition of an ethical term cannot derive from natural sources. Yet, propositions of science can be both analytic and verifiable.

Moore's definition of "good" as "good" undoubtedly involves a logico-ethical confusion: in showing a tendency towards masking the puzzles invented by that theory in order to limit ordinary uses of language. The proposition "good is good" may be true in all possible worlds. This proposition does not seem to give us any new knowledge, since both the defining expression and the defined expression are one and the same thing. It is not an attempt to assert any known law like law of nature or that of thought, or a legal rule. It is not a moral law either. Within the scope of logical reasoning this definition gives rise to equivocation, in which the defining expression divides between meanings. It is not clear on the basis of this definition whether we are talking about material or qualitative goodness, moral or non moral goodness: which thus are not used in the same or related sense. The expression "good is good" does not of itself determine the universe of discuss – natural or non-natural. Holmes (1971) maintains that the intuitionist thesis is unsatisfactory because it does not state what makes good, good or right, right. Within the scope of practical reasoning we may say that Moore's definition of "good" as "good" can share in the legal analysis of law, when we say law is law or justice is justice. To utter the sentence "law is law" may be to emphasize the ideal of legalism as a basis for rigid adherence to rules. It can have the implication of distinguishing legal and non legal norms. It can assume the interpretation that law is no respecter of persons, or that ignorance of the law is no excuse for liability under it. But these certainly would not be to define law, because they assert no more than the legal identity of a society. When we utter something like "law is law", rather than offering a definition of law we are uttering a significant claim about the letter or spirit of the law which thus distinguishes law and other regulatory principles like morality, custom, taboo or other social conventions. We may be required by that assertion to follow laid down principles, since the practical significance of that requirement lies in the social context. Andrew Efemini throws some light on this position. Efemini (1995) expresses the fact that laws of thought are part and parcel of laws of nature. These laws are not sensible things as are the behaviours of things connected with them. We will agree that since human actions are products of their thought, this becomes the logical basis for justifying the relationship between nature and society. But what Moore appears to tell us in this regard is that moral claims are self-evident truths. Following Moore, some legal positivists have come to deny the idea of self-evident legal rules. They share the belief that law cannot be defined by referring to a non-natural term like "good" or "bad". It is for this reason that natural law thinkers have argued to the effect that any law which lacks moral content is no law at all. Consequently, we can think of the possibility of a good or bad law in the moral sense. Invariable this position may be used to justify natural law as self-evident truth. A law which is repugnant to public policy would therefore be a bad or an unjust law, hence morally wrong to enforce. For instance, laws promoting prostitution and gay marriage are universally regarded as morally unacceptable; irrespective of what a few people sitting in parliament may say about it. The case of *Keeler v Superior Court*, in which a man beat up a pregnant woman until she died, is a situation pointing to the legal implications of morality. Nnam (1989) argues that if it was the woman who actually provoked the man, then it would be unfair (morally wrong) to make him fully liable for the offence.

Moore's distinction between natural and non-natural qualities upholds Hume's notorious dichotomy between "is" and "ought" in the modern time. However, we have shown the possibility of deriving "ought" from "is" in Holmes' statement on the working of obligation. Going back to the question of definition of ethical or simple terms in the ancient era of Socrates, we will agree that Hume's position is weakened by the belief that it is knowledge of particular facts that gives rise to knowledge of universals. Thus "justice" may be defined in terms of particular acts of just behaviour. We dismiss the problem of relating universals and particulars in the views of Plato (1966) and Aristotle (1947) that it is impossible to relate them. The fact that we can relate human thought to human action poses problem for the view that we need not move from premises containing moral predicates to those not containing them. One of the implications of the assertion is that we cannot move from premises containing morality to conclusions containing law - which has come to be seen as the source of an unending debate between natural lawyers and legal positivists over the distinction between "laws as it is" and "law as it ought to be". Naturalists like Aristotle argues that the obligation to obey the law lies in the purposive character of the world, while positivists like Jeremy Bentham derive their obligation to obey the law from the sovereign. Aristotle (1984) maintains that nature is teleological and therefore rules of law follow from natural necessity. Bentham (1970) maintains that law is a command issued by a sovereign to his subordinates or by a superior to his inferiors who owe him allegiance and therefore rules of law follow from human will. We may argue that justice is essential for good governance because it is the yearning of all societies of the world and one which has eluded them for so long. Justice is good; and it would follow that law is good if it is just. For many years, philosophers have been battling over the problem of using "good" in legal matters. They take Moore's distinction between natural and non-natural qualities together with Hume's distinction between "is" and "ought" as grounds for their reaction. They want to know the kind of relationship that exists between law and morality. Now we can place the aspirations of law and morality side by side in terms of their use of rules, principles, standards and concepts. Although law and morality use these tools with attitudes, we nevertheless can distinguish morality from human law in that morality lacks a formal legislature and system of courts to adjudicate on disputes. But we cannot deny the fact that law and morality are normative in so far as they are concerned with regulating human conduct. Freeman (2001) maintains that although there is an unbridgeable gap between "ought" and "is" or between norms and facts, it nevertheless does not follow that "ought" propositions occupy a special world of existence of their own distinct from physical reality. For instance, to act in accordance with a universal duty bridges the gap between "is" and "ought". Wittgenstein (1953) exposes the errors which he had shared with other thinkers in the past about the attempt by logical positivists to attribute a single function to language to which all propositions must conform in order to make sense. He argues that positivism had created an illusion by articulating the "Is – Ought" dichotomy; and this is a position which Wittgenstein's strategy has come to remove. He examines the varied uses of language and tries to demonstrate the different types of meaning available to words, with a view to invoking them to reveal the fallacy in the thinking of some realists. Wittgenstein (1953) opines that philosophical problems are simply

a matter of misuse of everyday language, and the only way out of the difficulty is to exhibit the correct use of the key terms which make up philosophical discourse. He advocates the use of the method of language game - a pattern of activities and practices associated with some particular family of linguistic expressions encouraging us to think of language in terms of a rule-governed, self-contained practice like a game. The culmination of this thought is that we should always ask for the use of a word rather than its meaning.

Hume (1973) laid the foundation of dualism for legal positivism. Positivists more often than not hold that "law as it is" entails a properly formed law in accordance with rules recognised in the society; accordingly, it is a valid law regardless of whether or not it is just by some other standard. But naturalists maintain that everything about law can be explained by methods characteristic of the physical sciences – a doctrine which opposes dualism and acceptance of numbers or concepts as nonphysical realities and acceptance of real moral duties and rights as absolute and self-standing facets of the natural order. They therefore argue that we cannot speak of law as imposing duties and conferring rights unless we see it at the same time as morally binding. They hold that law as it ought to be entails metaphysical, ethical and political undertones. The central problem confronting us now is to show the plausibility of Moore's logic of goodness side by side his doctrine of naturalistic fallacy. To establish interaction between positivism and naturalism is to establish interaction between "is" and "ought" or natural and non-natural qualities. If we say that such relationships exist, then we are confronted with the relation of implications between internalist and externalist criteria of meaning concerning the status of morality of law. If we say that such relationships do not exist, then we are confronted with implications of legalism as a doctrine seeking to distinguish between both "law as it is" and "law as it ought" to be. We are thus faced with a dilemma either way. The attempt to draw this distinction seems theoretically acceptable but practically unacceptable; for it can be shown that these dualistic conceptions of the world as put forward by Moore and Hume have led to various kinds of dilemma in legal and other spheres of social life. It may be argued that law is good when it is used as it ought to be used. The fundamental questions to ask here are four-fold: which path is the right way of attaining a good action? are our actions tailored by the value laden statements of "ought" as well as "is" driving our thought without our knowledge? why are some actions termed "is" and some "ought"? or why are there rules and regulations used to guide our actions? Questions like these show how problematic it is in reality to make a complete severity of natural and non-natural categories given a stylistic venture in the field of law and ethics.

It is possible to locate where positivism and naturalism come into harmony in the legal world. William Loutit Morison expresses the much needed relationship between the physical and the nonphysical by referring to the analogy with fire and human ideas. Morison (1958) argues that fire invariably burns the same way in both Greece and Persia, while men's ideas in these two places vary considerably at the same time. This thinker wants us to note that most of the things which are considered just by societal law are in fact hostile to nature. However, Lloyd L. Weireb believes that their interaction could be deduced at the point of comparison and contrast. Weireb (1978) thus maintains that positive law has assumed the place of laws of nature but the natural law insists that laws of nature are normative. Hence contemporary theories insist that what is properly regarded as law satisfies moral requirement. Perhaps, it would be more profound to argue that natural law is law common to all positive laws. This broaches the dichotomy between the particular and the universal.

We have already noted how Moore (1959a) argues that whenever any substantive philosophical doctrine conflicts with common sense it is the philosophical doctrine rather than common sense that has gone astray. In saying so, Moore (1959a) seems to place common sense somewhat higher than reason in the sphere of cognition. There seems to be greater conviction in our capacity for awareness of particular truths than in forming general ones. We can find a similar claim in the realm of law, where it is held that equity should prevail whenever it comes into conflict with substantive law. As Kenneth Smith and Denis J. Keenan write:

- James I, on the advice of Lord Bacon, then his Attorney General and later Lord Chancellor, gave a firm decision that where common law and equity were in conflict Equity should prevail ... Equity filled in the gaps left by the common law, and became a system of case law governed by the binding force of precedent (1979:8).

We observe here that both equitable and common law remedies are available to litigants in the same court at the same time; and we will agree at this point that both law and equity are complementary rather than contradictory. Equity has therefore lost its original senses of elasticity and appeal to conscience. The important thing is that equity does not say that the common law is wrong but merely provides solutions to legal problems in order to enhance it. We would have expected Moore to share a similar attitude by creating mutual relationship between common sense and philosophical doctrines so that their interaction may have correlation with equity and common law. This would help us in handling emergent logico-ethical problems in the social sphere. But this is not expressed by Moore as such, since it seems to him that premises in the realm of morality might not sustain any conclusion in the realm of law. But Farrar and Dugdale (1990) take the stance justified by the relation between equity and the common law when they say that judges justify their decisions on ground of common sense and logical coherence as well as fairness and justice. In this way they make room for common sense to interact with logic and morality in the process of adjudication. However, we will agree with Lawhead (2002) that Moore's persistent search for clarity and his detailed dissection and analysis of the meaning of philosophical propositions provided a model for philosophers after him. His appeal to ordinary language had great impact on the latter ages of analytic philosophy.

5. Conclusion

Moore's doctrine of naturalistic fallacy is a bold attempt to specify domains of discourse and set matters right with a view to making legitimate claims to knowledge. But the doctrine rests on an indefensible logic that stresses the dichotomy between natural and non-natural realities. This distinction is hostile to any definition of non natural phenomena by means of natural ones. Ethical terms occupy a realm quite distinct from all other terms. The relative use of "good" to reflect different aspirations of human life or knowledge

claims appears to attract universal application and significance. It can apply to any domain of enquiry whether as having to do with ethics, aesthetics, politics or law. There is no doubt then, that a word can be used to reflect differing philosophical interests. This would obviate us the need to use separate words for different phenomena. Moore's scepticism about the indefinability of "good" by reference to natural qualities has led to many difficulties in the domain of philosophical jurisprudence. It serves to restrict the relationship between law and morality. It affects both legal theory and legal practice in relation to ways of solving social problems. The distinction between "is" and "ought" implies the distinction between letter and spirit of the law. We notice a dilemma connecting the "is-ought" of law to "is-ought" of human actions when trying to adopt Moore's position. But we cannot hope to interpret the letter of the law with reckless abandon without reference to its spirit. It distinguishes "law as it is" and "law as it ought to be"; it replaces justice with legality; and regards normative propositions of law as meaningless. We are fully aware that man is a free moral agent; incidentally this perception of the reality of man involves an incontestable belief in the rationality of human existence and the world around him. Interestingly justice is needed to give human action its value either as good or as bad.

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