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Gary Chartier

Excerpt

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Introduction

This book develops an account of economic justice rooted in the natural law tradition. In it, I elaborate a particular version of natural law theory, explain how it is relevant to reflection on economic issues, and develop natural law accounts of property, distribution, and work. Then, I go on to examine how, in light of natural law theory, individual and institutional actors might respond to injustice, accident, and economic insecurity. I use natural law theory as a basis for staking positions on a number of contested issues related to economic life while also challenging alternate positions on some of these issues.

Natural law theory offers a provocative alternative to Kantian and consequentialist understandings of morals, politics, and law. It emphasizes substantive rather than formal accounts of human flourishing and a plurality of both (i) basic aspects of well being and (ii) norms of practical reasonableness. Contemporary natural law theories reflect the influence, of course, of Aristotle and Aquinas. But natural law theorists now employ the techniques and vocabulary of analytic moral and political philosophy. And, despite the theological roots of their position, their characteristic arguments are straightforwardly philosophical.¹

I draw especially in this book on the so-called “new classical natural law” (NCNL) theory,² articulated primarily in the work of Germain Grisez, John Finnis, Joseph M. Boyle, Jr., Robert P. George, and Chris Tollefsen.³ But I also take seriously the work of other natural law

¹ One exception is the discussion of vocation to which I briefly allude below in Chapter 2.

² Cf. Steven Macedo, *The New Natural Lawyers*, HARV. CRIMSON, Oct. 29, 1993, at 2. The proponents of the position prefer “new classical natural law” to “new natural law” as a label for the focus of their position. I refer to Germain Grisez, John Finnis, Joseph M. Boyle, Jr., Robert P. George, and Chris Tollefsen collectively as the new classical natural law theorists, or, clumsily, NCNLTs.

³ See JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980); JOHN FINNIS, *FUNDAMENTALS OF ETHICS* (1983); JOHN FINNIS, *AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY* (1998); GERMAIN GRISEZ, *THE WAY OF THE LORD JESUS: CHRISTIAN MORAL PRINCIPLES* (1983); JOHN M. FINNIS, JOSEPH M. BOYLE, JR., & GERMAIN G. GRISEZ, *NUCLEAR DETERRENCE, MORALITY, AND REALISM* (1987); ROBERT P. GEORGE, *IN DEFENSE OF NATURAL LAW* (2001); GERMAIN GRISEZ & RUSSELL SHAW, *BEYOND THE NEW MORALITY: THE RESPONSIBILITIES OF FREEDOM* (3rd ed. 1988); 2 GERMAIN G.

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theorists, including Mark Murphy, Alfonso Gómez-Lobo, and Timothy Chappell.⁴

While this book participates, therefore, in a sustained, ongoing scholarly conversation, I believe it is distinctive for at least two reasons. Other treatments of economic justice do not characteristically proceed from natural law premises. And recent discussions of moral, legal, and political issues in the natural law tradition have devoted less attention to economic questions than to topics related to the beginning and the end of life. In addition, of course, my conclusions differ at a variety of points, in what I hope are interesting ways, from those defended by other natural law theorists.

In Part I of the Introduction, I outline the remainder of the book, elaborating its organizational structure and summarizing its individual elements. In Part II, I introduce natural law theory, before going on to explain its conception of well being in Part III and its understanding of practical reasonableness in Part IV.⁵ My goal is not to provide a defense of natural law theory, but to explain its central components. In Part V, I contrast the natural law conception of practical reason with the standard social science model of rationality. I focus in Part VI on the maintenance of social order in accordance with natural law theory, emphasizing that communal norms, rules, and institutions are governed by the principles of practical reasonableness; that affirming the importance of social order does not entail regarding the state as essential; and that the principle of subsidiarity is a requirement of justice. I summarize my arguments in Part VII.

I The plan of the book

I begin the book by laying the foundations for a natural law account of economic justice. I develop a natural law account of property, of justice in distribution, and of work. Then, I consider the remedial application

GRISEZ, *THE WAY OF THE LORD JESUS: LIVING A CHRISTIAN LIFE* (1994); John M. Finnis, Germain G. Grisez, & Joseph M. Boyle, ‘“Direct” and “Indirect”’: *A Reply to Critics of Our Action Theory*, 65 *THOMIST* 1 (2001); Germain Grisez, Joseph M. Boyle, & John Finnis, *Practical Principles, Moral Truth, and Ultimate Ends*, 32 *AM. J. JURIS.* 99 (1987).

⁴ See MARK C. MURPHY, *NATURAL LAW AND PRACTICAL RATIONALITY* (2001); MARK C. MURPHY, *NATURAL LAW IN JURISPRUDENCE AND POLITICS* (2006); ALFONSO GÓMEZ-LOBO, *MORALITY AND THE HUMAN GOODS: AN INTRODUCTION TO NATURAL LAW ETHICS* (2002); TIMOTHY CHAPPELL, *UNDERSTANDING HUMAN GOODS: A THEORY OF ETHICS* (1995).

⁵ Natural law theorists often speak of the basic aspects of well being as *basic goods*. I use terms like *basic goods*, *fundamental aspects of well being*, and *authentic dimensions of welfare* interchangeably.

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of natural law theory to disputes regarding these same topics, focusing on circumstances which are distorted by injustice or disaster or in which economic conditions undermine freedom and security.

I seek in Chapter 1 to lay the foundation for what follows by outlining a natural law theory of *property*. I emphasize that property systems are contingent societal creations which reflect a diverse array of rationales. I briefly outline seven such rationales, devoting particular attention to the identity-constitutive function of (some instances of) property. I emphasize that property rights are, from a natural law perspective, limited rather than absolute.

In Chapter 2, I suggest that the principles of practical reasonableness generate norms of justice in *distribution*, and elaborate several such norms. I maintain that these norms help to determine what counts as fairness in pricing, and I argue that, in light of these requirements, each of us has some responsibility to use wealth to support valuable projects or to assist other people, though practical reasonableness ordinarily does not dictate which persons or projects we ought to benefit.

I advance an understanding of several normative issues related to *work* in Chapter 3. I maintain that employment at-will violates basic principles of fairness, and that actual or effective termination is just only when due process is available. I argue that employment discrimination is inconsistent with the Golden Rule. And I suggest that natural law theory requires the participatory management of firms and that it provides plausible arguments for the democratic governance of firms by workers. I recognize that natural law theory may unavoidably leave options open; so I do not suppose I have shown that all other possible workplace arrangements are unjust. I do, however, maintain that there is a substantial, if not infeasible, cumulative natural law argument for real democracy in the workplace. I defend this view against a number of objections.

In Chapter 4, I suggest that the principles of practical reasonableness can at least sometimes justify reassigning property rights to vulnerable and marginal people whose interests may receive limited protection under the current property rights regime. I emphasize that a community's decision to endorse this kind of reassignment need not commit it to permitting abusive expropriation for the benefit of developers.

I turn in Chapter 5 to the implications of the natural law account of justice in *distribution* I offered in Chapter 2 for responses to injustice, disaster, and insecurity. Though natural law theory cannot on its own

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generate detailed legal rules or communal norms, or determine the exact shape of communal institutions, I defend a basic income scheme and communal support for universal health care as reasonable, if not necessary, developments of natural law theory's norms of justice. I explore a natural law account of a duty of assistance to the global poor. And I spell out a natural law understanding of the circumstances in which justice in distribution does and does not require boycotts as ways of avoiding participation in the harm caused by trading partners.

In Chapter 6, I focus on natural law responses to conditions in which natural law principles regarding *work* are not completely respected or in which background conditions that shape work relationships have been misshaped by choices and structures inconsistent with the requirements of practical reasoning. I stress the value of collective bargaining as a second-best alternative to workplace democracy and as an option to be pursued en route to worker self-government. I suggest that fair collective bargaining can be used to ensure flexible resolution of questions related not only to compensation but also to workplace safety and work hours in investor-governed firms, and outline mechanisms for participation in the governance of such firms, by workers.⁶ And I maintain that collective bargaining can help to remedy the abuses associated with sweatshop labor by creating a minimum level of fairness in the determination of working conditions. I argue that a just system of collective bargaining would allow workers in less-developed communities to compete in the global marketplace without being, as they frequently are at present, exploited.

The models of property rights, justice in distribution, and economic democracy that I outline here are accounts of *ideal theory*: my purpose is at least to gesture at the norms, rules, and institutions of a thoroughly just community. By contrast, my discussions of such topics as poverty relief, sweatshops, worker participation in decision-making in investor-governed firms, and the reassignment of property titles are exercises in *non-ideal theory*: they concern "the justice that becomes relevant when there have been breakdowns in" justice or when market processes fail to

⁶ Obviously, there is good reason to ask how much it is really investors, rather than executive-level managers, who govern many corporations, as I note later when discussing the separation of ownership and control. I refer to "investor-governed" or "investor-dominated" firms throughout the text as a shorthand way of denoting those firms in which executives (who may themselves be investors) are selected by investors or their representatives, whether it is, in any particular case, the executives or the investors who exercise effective control. I tend here to treat sole proprietorships and partnerships in which not all workers are partners as investor-governed firms.

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provide a desired level of economic security.⁷ I would not want to imply, by engaging in reflection on issues in non-ideal theory, that I necessarily regard features of contemporary economic life which I do not directly critique, to which I do not offer clear alternatives, or which I seem to address in meliorist fashion as all necessarily compatible with justice.

Fighting poverty using direct wealth transfer or challenging workers' disfranchisement by establishing structures affording them limited opportunities to participate in the governance of investor-dominated firms are, in general, second-best options. Poverty and disempowerment are not typically accidental side-effects of otherwise benign economic relationships or inevitable economic processes. They are all too frequently consequences of the abusive employment of force and of legal and political authority to award unfair privileges to some at the expense of others: the dispossession of smallholders; the creation of professional licensing cartels, copyrights, patents, and other monopolies; the erection and maintenance of barriers to market entry that benefit powerful and established interests at the expense of the disfranchised; capitalization requirements that limit the availability of credit and allow wealthy people and institutions to extract substantial profits in return for lending money; tariffs that enhance the wealth of large corporations while harming poor producers and consumers; property rules that leave untouched the results of large-scale past (and present) expropriation by the powerful; subsidies that redirect the money of poor and working-class people toward corporate boondoggles; the essentially automatic availability of the corporate form, offering entity status and limited liability in both tort and contract;⁸ laws that impede the activities of unions; and patents that allow pharmaceutical companies to extract monopoly profits

⁷ The phrases *ideal theory* and *non-ideal theory* are familiar, of course, from the work of John Rawls; cf. NICHOLAS WOLTERSTORFF, *JUSTICE: RIGHTS AND WRONGS* at ix (2008) (spelling out a distinction between *primary* and *rectifying* justice).

⁸ Limited liability protections tend to encourage irresponsible behavior by eliminating investors' and executives' individual responsibilities for corporate misdeeds and may make it more likely that genuine victims of such misdeeds remain uncompensated. Of course people could create something amounting to entity status and limited liability for contract damages on a case-by-case contractual basis. But the automatic availability of the option of creating a corporation with predefined characteristics already reduces transaction costs and shifts the burden of opting out of standard patterns of doing business with contract partners who might, for instance, be willing to pay more to avoid dealing with an entity with limited liability. And it is not clear, in any case, how one could create limited liability in tort through private agreement; its availability seems more clearly to be another way in which the state redistributes resources through corporate law. Thanks to Kevin Carson and Stephan Kinsella for observations that have increased my understanding of these matters.

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while people go without needed drugs. The fundamental sources of poverty and powerlessness are all too frequently political.⁹ When they are intelligently planned, wealth transfers can help to address the problem of poverty at the margins. Participatory management schemes in investor-governed firms can increase the chance that workers' voices will be heard. But a wide range of structural changes is essential if ordinary people are to be economically secure and in charge of their own lives.¹⁰

Moral theory is insufficient on its own to *generate* communal norms, rules, and institutions. But a natural law account of property, distribution, and work provides a framework within which the relevant aspects of well being can be identified and norms, rules, and institutions evaluated. A thoroughgoing application of natural law analysis in tandem with relevant insights offered by economics and organizational theory would lead, I believe, to a range of structural reforms with the potential to alter the allocation of power in our communities and offer ordinary people long-term economic freedom and well being.

II The core of natural law theory

The basic elements of natural law theory are an account of well being and an account of reasonable action.

⁹ While individual aggression and abuse may be inescapable, *systemic* oppression and exclusion are contingent historical phenomena. Kevin Carson makes this point forcefully in *The Subsidy of History*, THE FREEMAN: IDEAS ON LIBERTY, June 2008, at 33; see generally PAUL BARAN & PAUL SWEEZY, MONOPOLY CAPITALISM: AN ESSAY IN THE AMERICAN ECONOMIC AND SOCIAL ORDER (1966); GEORGE BECKFORD, PERSISTENT POVERTY: DEVELOPMENT IN PLANTATION ECONOMIES OF THE THIRD WORLD (1972); GABRIEL KOLKO, CONFRONTING THE THIRD WORLD: UNITED STATES FOREIGN POLICY 1945–1980 (1988); FRANZ OPPENHEIMER, THE STATE (1914); CHERYL PAYER, THE DEBT TRAP: THE INTERNATIONAL MONETARY FUND AND THE THIRD WORLD (1974); MICHAEL PERELMAN, CLASSICAL POLITICAL ECONOMY: PRIMITIVE ACCUMULATION AND THE SOCIAL DIVISION OF LABOUR (1984); WILLIAM BLUM, KILLING HOPE: U.S. MILITARY AND CIA INTERVENTIONS SINCE WORLD WAR II (1995); MAURICE DOBB, STUDIES IN THE DEVELOPMENT OF CAPITALISM (1963); ERIC HOBBSBAWM & GEORGE RUDÉ, CAPTAIN SWING (1968); MICHAEL PERELMAN, THE INVENTION OF CAPITALISM: CLASSICAL POLITICAL ECONOMY AND THE SECRET HISTORY OF PRIMITIVE ACCUMULATION (2000); CHAKRAVARTHI RAGHAVAN, RECOLONIZATION: GATT, THE URUGUAY ROUND AND THE THIRD WORLD (1990); MARTIN SKLAR, THE CORPORATE RECONSTRUCTION OF AMERICAN CAPITALISM, 1890–1916: THE MARKET, THE LAW, AND POLITICS (1988); E. P. THOMPSON, THE MAKING OF THE ENGLISH WORKING CLASS (1963); I IMMANUEL WALLERSTEIN, THE MODERN WORLD SYSTEM (1974); WILLIAM APPLEMAN WILLIAMS, THE TRAGEDY OF AMERICAN DIPLOMACY (1959). Thanks to Kevin Carson for calling my attention to most of these texts.

¹⁰ I am appreciatively indebted here and elsewhere to Kevin Carson's fascinating analyses; see, e.g., KEVIN A. CARSON, STUDIES IN MUTUALIST POLITICAL ECONOMY (2007).

For natural law theorists, a good life is a life lived in accordance with practical reason and marked by openness to an array of basic aspects of well being, welfare, or flourishing (I use these terms interchangeably).¹¹ Welfare can be specified with reference to a range of aspects or dimensions; reasonable moral action is action open to all of these aspects or dimensions.¹²

Human participation in the various aspects of welfare is appropriate to the extent that it is consistent with a set of principles of practical reasonableness. A morally appropriate act is one that is characterized by respect for all real aspects of well being, as realized in our own lives or those of others. Thus, avoiding wrongdoing is not the goal of human life. Neither is trying (impossibly, since there is no such thing) to maximize well-being-in-general. Morality is a second-order affair, governing people's reasonable participation in basic aspects of welfare.

III Basic aspects of well being

The purpose of a reasonable human action is participation in one or more intelligible, intrinsically valuable aspects of well being. Each of these aspects is equally basic: none can be reduced to any of the others or to something else, like subjective satisfaction. Recognizing that I am bracketing a range of interesting and important questions, I suggest that it might make sense to offer a tentative list of basic aspects of welfare that looked something like this:

1. aesthetic experience
2. creativity
3. friendship and community
4. knowledge
5. life and bodily well being
6. mental health and inner peace
7. play
8. practical reasonableness
9. religion¹³

¹¹ Cf. GRISEZ, *PRINCIPLES*, *supra* note 3, at 184; John Finnis, *Commensuration and Practical Reason*, in *INCOMMENSURABILITY, INCOMPARABILITY, AND PRACTICAL REASON* 215, 225–28 (Ruth Chang ed., 1997).

¹² It is important to emphasize that an action can be open to all of the basic aspects of well being even if it does not involve *active participation* in each of these dimensions of welfare. It will be open just so long as the actor does not choose to treat any of the aspects of well being as if it were not fundamentally and inherently valuable.

¹³ See CHAPPELL, *supra* note 4, at 37–45; MURPHY, *RATIONALITY*, *supra* note 4, at 96–138; GÓMEZ-LOBO, *supra* note 4, at 6–25; GRISEZ & SHAW, *FREEDOM*, *supra*

Not everything that is valuable is necessarily a basic good. For something may sometimes be valuable but not *always* or *necessarily* so. A good example is *autonomy*. Autonomy is frequently valuable, and it facilitates participation in many of the aspects of well being. But it is arguably not always fundamentally valuable. Perhaps the same is true of, say, *self-esteem*. Certainly, the Aristotelian point that *happiness* names our satisfaction at participating in intelligible aspects of well being, rather than another good (perhaps the master good), seems entirely on-target.

In Section A, I consider several alternative ways of determining what is to count as a basic aspect of well being. In Section B, I emphasize that the basic aspects of well being, however identified, must be understood as incommensurable, non-fungible, and incapable of being reduced to any underlying substrate.

A *Identifying basic aspects of well being*

There are a number of ways in which one might seek to identify basic aspects of well being. These include direct recognition (Subsection 1); critical reflection on actual desires and on the objectives sought by people in different cultures (Subsection 2); analysis of the implications of our experiences of and judgments regarding harm, privation, and loss (Subsection 3); the acknowledgment that recognizing some objectives of action is unavoidable (Subsection 4); and the pursuit of reflective equilibrium among our various practical judgments (Subsection 5).

1 Direct recognition

Natural law theory does not depend on the existence of any peculiar faculty of “intuition”¹⁴ as the means of identifying basic aspects of welfare. But it is certainly imaginable that we might conclude that we simply *recognize* non-inferentially that some things are aspects of well being.¹⁵

2 Critical reflection on action and inclination

Alternatively, critical reflection on our own inclinations could be seen as offering us insight into the worth of what we desire.¹⁶ We might simply consider how we make decisions, and where our chains of justification seem to stop, maintaining, with Grisez, that “[o]ne can distinguish

note 3, at 77–88; GRISEZ, *PRINCIPLES*, *supra* note 3, at 121–25; FINNIS, *LAW*, *supra* note 3, at 59–99.

¹⁴ See FINNIS, *ETHICS*, *supra* note 3, at 51. ¹⁵ See GÓMEZ-LOBO, *supra* note 4, at 9–10.

¹⁶ Cf. FINNIS, *ETHICS*, *supra* note 3, at 51–52; FINNIS, *LAW*, *supra* note 3, at 51–99.

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human goods by noticing the assumptions implicit in one's practical reasoning," and observing that "deliberation quickly reaches some good which is taken to be not merely a means to an end but an aspect of personal fulfillment."¹⁷ Thus, we might equate a basic aspect of well being with whatever ends a "complete chain of explanation of an action."¹⁸ Certainly, it makes sense to see basic aspects of well being and basic reasons for action as, finally, the same thing (even if something's proving appealing to me doesn't entail that it must be good for me).¹⁹ Similarly, the treatment of various potential aspects of well being *as* final reasons for action in a range of cultures and historical epochs does not prove that they really are aspects of well being, which is, of course, an inescapably normative notion. But for some natural law theorists it may provide further, indirect, evidence of their value.²⁰

3 Critical reflection on privation

Consider a related but different approach: we can also ask, when something goes *wrong*, just how it has gone wrong – what it is that has been harmed or frustrated; we can inquire what we judge to be harms and ask what it is that they harm.²¹ Put another way, we can "come to understand what aspects of flourishing there are" by seeking "to isolate them by way of imagined malfunctions," an approach which "enables one to render explicit what is known in some implicit way."²²

4 Undeniability and self-evidence

Alternatively, one might attempt to identify basic aspects of welfare by specifying those reasons for action that "are typically either evident or self-evident goods or both" – that is, "such that no one would normally dream of denying" their status as aspects of welfare *or* "such that it is self-defeating to deny" their value.²³ One could, for instance, grant the plausibility of arguments to the effect that denying the inherent worth of, say, knowledge or practical reasonableness is self-defeating.²⁴

¹⁷ GRISEZ, PRINCIPLES, *supra* note 3, at 122. ¹⁸ CHAPPELL, *supra* note 4, at 35.

¹⁹ *Cf. id.* at 36. ²⁰ *Cf.* FINNIS, LAW, *supra* note 3, at 83–85, 97.

²¹ GRISEZ, PRINCIPLES, *supra* note 3, at 123: "One can infer the basic human goods from the privations which mutilate them."

²² MURPHY, RATIONALITY, *supra* note 4, at 40. ²³ CHAPPELL, *supra* note 4, at 36.

²⁴ *See* FINNIS, LAW, *supra* note 3, at 73–75; FINNIS, AQUINAS, *supra* note 3, at 58–61. Here and subsequently, I treat arguments offered in the latter book regarding matters of substance as Finnis's own unless he notes his disagreement with Aquinas in the text. I do not intend by doing so to imply that Finnis has substituted his own position for that of Aquinas.

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5 Reflective equilibrium

One could also simply seek reflective equilibrium among one's – perhaps ungrounded – beliefs about what is or might be worthwhile and one's critical judgments about the character of human welfare. One might begin by accepting, but then subjecting to careful scrutiny, one's beliefs that particular aspects of life are, in fact, dimensions of flourishing and fulfillment, seeking to equilibrate the deliverances of the tradition or traditions responsible for shaping one's judgments and the data of experience (moral and otherwise).²⁵

* * *

There will surely be reasonable disagreement about how to identify a basic aspect of well being and about what does and does not count as one.²⁶ But whatever the approach one employs – and there will likely be merit to more than one – it does not matter precisely for my immediate purposes just which dimensions of welfare are seen as basic. What is most important is the recognition that there are multiple, distinct aspects of flourishing and fulfillment and that they are independently valuable, not that any taxonomy of these dimensions of welfare be exhaustive or final.²⁷ Just which reasons for action are actually authentic dimensions of well being makes little difference to most of the arguments I want to advance in this book.

B Basic aspects of well being as irreducible, incommensurable, and non-fungible

The description of these aspects of well being as *basic* means that every one of them is inherently valuable; none is reducible to any other aspect or aspects of well being, or to any imagined substrate – “happiness,” say, or “pleasure.” I underscore here the irreducible, incommensurable character of basic aspects of welfare (Subsection 1); their non-reducibility to

²⁵ On the notion of reflective equilibrium, see JOHN RAWLS, *A THEORY OF JUSTICE* 18–19, 42–45 (2d ed. 1999). For an analysis and elaboration of an approach to warranting moral judgment by way of the critical appropriation of moral tradition, see CHARLES LARMORE, *THE MORALS OF MODERNITY* 55–64 (1996). DAVID McNAUGHTON, *MORAL VISION: AN INTRODUCTION TO ETHICS* 102–3 (1988) offers a provocative account of change in moral judgment in response to the data of moral experience.

²⁶ For instance, I think there is good reason to argue that *sensory pleasure* and the *imaginative immersion* we experience when caught up in a compelling narrative should be included among the basic aspects of well being. And I am inclined to think that perhaps *self-integration*, regularly included in some form on the NCNLTs' lists, should not be; see Gary Chartier, *Self-Integration as a Basic Good: A Response to Chris Tollefsen*, 52 *AM. J. JURIS.* 293 (2007).

²⁷ Thus, I agree on this point with Timothy Chappell; see CHAPPELL, *supra* note 4, at 44.