

## John Finnis – Natural Law – a quick summary



- Australian (born 1940); currently Emeritus Professor at Oxford University
- He wrote a book called *Natural Law and Natural Rights* (1980). It is one of the most important recent books on the philosophy of law. Much of what is written below is a summary of what appears in *Natural law and Natural Rights*.
- Around 700 years after Thomas Aquinas (1225-1274), Finnis returned to Aquinas' ideas and tried to reformulate a **modern theory of natural law**
- Finnis: we can't say what the law is without understanding what the purpose of law is:
  - “[T]he ...rationale of natural law theory...[is] to establish ‘what is really good for human persons’.<sup>1</sup>
- Like Aristotle before him, Finnis starts his argument by asking this question: *what constitutes a worthwhile, valuable life?*
- The answer: there are 7 “basic goods” that contribute to a fulfilling life:
  - Life
  - Knowledge
  - Play
  - Aesthetic experience
  - Sociability (friendship)
  - Practical reasonableness
  - ‘Religion’Finnis thinks that these 7 ‘basic goods’ are universal – they apply to all humans at all times. To flourish as human beings we need all of these basic goods.
- Let's look at them in more detail (see handout for even more detail):
  - **Life** = the drive for self-preservation; it includes every aspect of life which puts a human being in good shape for self-determination; it includes bodily health, freedom from pain; also the transmission of life by procreation. NOTE: in a 2011 postscript, Finnis added the institution of marriage (a man and a woman) to this category.

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<sup>1</sup> Wacks, R *Philosophy of Law – A Very Short Introduction* (Oxford University Press, 2006) 14-15

- **Knowledge** = it is desirable for its own sake – it's a good to be well-informed instead of being ignorant
- **Play** = recreation, enjoyment, fun; engaging in a performance for no other reason than the performance itself
- **Aesthetic experience** = an appreciation of beauty in art or nature;
- **Sociability (friendship)** = peace and harmony amongst men at its minimum, in its strongest form it is the flowering of full friendship. Acting in the interests of one's friends or for the sake of a friend
- **Practical reasonableness** = using one's intelligence to solve problems of deciding what to do, how to live, and shaping one's character
- **Religion** = our concern about an order of things that transcends or individual interests (not necessarily a 'religion' per se).

The second-to-last one on the list is "practical reasonableness". Finnis explains more about that. He says that there are 9 basic requirements of practical reasonableness:

1. The good of "practical reasonableness" structures the pursuit of goods generally. It shapes our participation in the other goods. It helps us to choose what to do, what projects to commit our time to.
2. A coherent plan of life.
3. No arbitrary preference amongst values.
4. No arbitrary preference amongst persons.
5. One should be both open-minded and committed to one's projects.
6. The relevance of consequences: actions should be reasonably efficient.
7. Respect for every basic value in every act.
8. The requirements of the common good – one should act to advance the interests of the community
9. Following one's conscience – we shouldn't go against our inner conscience

### **So what have we got?**

The 7 basic goods + the 9 requirements of practical reasonableness = Finnis's idea of the universal and immutable "principles of natural law". His theory, he says, accords with the basic ideas of natural law put forward by Aquinas.

### **Some points to note:**

1. He says that these 7 basic goods are not derived from anything: they are all self-evident, understood by all, and they are all equally fundamental.
2. Of course, each person can choose whether to make one (or more) more important in their own lives.
3. One of these goods is called "practical reason" – he means the type of reasoning we use to make decisions
4. He thinks that "practical reason" is universal, timeless

### **Some possible criticism:**

- a) Whose idea of "reason" does his "practical reason" include?
- b) His concept is based on Western ideas of reason – can "practical reason" even be isolated from the value system of a society? (see Davies at p90)

- c) What has historically counted as “reasonable” has reflected the values of white, European men. Differences in power have an effect on what we might count as “reasonable”.
- d) His idea that sometimes we might have to obey immoral laws (see below) might mean putting up with a tyrant just to preserve order.

### **Other points about his theory to consider:**

1. He says that unjust laws are not simply nullities. But because they go against the common good, they lose their direct moral authority to bind. So in other words, an unjust law is still a law.
2. He says that in some situations we must obey an unjust law and even comply with an unjust law to further a common good (the continued operation of the legal system). So, an unjust law might sometimes have to be complied with – it will depend on the circumstances. We cannot automatically assume that an unjust law is no law at all and need not be obeyed.

In other words....He argues that a legal system is there to further the “common good”. Therefore any disobedient act that tends to weaken the legal system as a whole may be unjustified (see discussion in Davies at 94). Surprisingly, he thinks that sometimes a law may have to be obeyed, even if it seems immoral, because disobeying it might weaken the whole system.

3. He uses some interesting examples to show that natural law is accepted, even by positivists. For example, the Nuremburg trials. Nazi war criminals were prosecuted for crimes such as “crimes against humanity” which were not crimes at the time they were committed. This, he says is an example of natural law at work. He says the tribunal applied “higher law” that exists at all times, in all places, regardless of the positive law. See his entry in the Stanford Encyclopedia at this link for more info: <http://plato.stanford.edu/entries/natural-law-theories/>

### **Learn more:**

- Go to the Wikipedia page about him and then click on some links at the bottom of the page: [http://en.wikipedia.org/wiki/John\\_Finnis](http://en.wikipedia.org/wiki/John_Finnis)
- Try these textbooks:
  - Wacks *Understanding Jurisprudence* especially pages 22-31
  - Freeman (ed) *Lloyds Introduction to Jurisprudence* especially pages 168-190
  - Davies *Asking the Law Questions* especially pages 90-94
- Try reading Professor William Long’s description here <http://www.drbilllong.com/Jurisprudence/Finnis.html>
- Or you can go to John Finnis’ staff page at Oxford University.
- He has also written an interesting chapter in the *Oxford Handbook of Jurisprudence and the Philosophy of Law* which can be downloaded for free: <http://fds.oup.com/www.oup.co.uk/pdf/0-19-927181-X.pdf>