

The Basic Good of John Finnis's New Natural Law Theory

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Abstract: *The basic good is the cornerstone of Finnis's new natural law theory, in which the basic good is self-evident, incommensurable, and non-hierarchical, and which plays a guiding role as the pre-moral domain of human behaviour. Practical reasonableness, which is the criterion by which decisions are judged to be consistent with the basic good and which guides one's inclination towards the basic good, both is a basic good and a methodology for achieving the basic good. Finnis takes a firm moral philosophical stance and constructs a new natural law theory that extrapolates from facts to values and responds to real-life ethical dilemmas. Even though Finnis's new theory of natural law still cannot escape the difficulties of Western legal dualism, his contemporary interpretation of the specific content of the basic good and the many requirements of practical reasonableness, and his attention to the clarity of concepts and the rigour of the logic of the concepts, make his exploration of natural law more scientific and profound.*

Keywords: John Finnis; Basic Good; Natural Law; Practical Reasonableness

1. Introduction

Natural law is the oldest jurisprudential thought in the West, continuing from ancient Greece to the present day. The basic dimensions of natural law theory are divided into two: the first is the division of law into natural law and positive law; the second is the belief that natural law is superior to positive law and that natural law is the root of positive law. Exploring and understanding the theoretical foundations and value grounds of law and natural law has become the mission of philosophers and jurists, guiding generations of philosophers and jurists to continuously search up and down. Finnis's new natural law theory is established on this basic way of thinking as well, and his path of constructing a theory of natural law by adopting the basic good as the cornerstone also has new revelations for us to ask about the nature of natural law, how to realise the good law and good governance, and how to solve the epistemological dilemmas of natural law [1-3].

2. Research Proposal

The main purpose of this paper is to explore the meaning of Finnis's natural law theory in solving the natural law Epistemological Dilemma. In addition, this paper also intends to criticize the shortcomings of Finnis's new natural law theory.

3. Discussion

3.1 Finnis's exposition of the basic good

Finnis argues that the good is the reason for human action and that no moral code, political or legal theory can be well understood except by those who are committed to this basic good about the intrinsic worth of the human being, to the perfection and fulfilment of the human being (Finnis, 2011). The good is the root of all ideologies and the reason for human behaviour, the most fundamental rationality. The basic good is a large, universal, and homogeneous intrinsic good. The basic good includes: life, knowledge, play, aesthetic experience, socialisation, practical reason, and religion, each of which represents a different value pursuit and connotation. Finnis's interpretation of the specifics of the basic good has changed slightly as social realities have changed. This change is mainly reflected in the articles Practical Principles, Moral Truth, and Ultimate Ends and Is Natural Law Theory with

Compatible with Limited Government. I have summarised Finnis's different interpretations of the specific meaning of the basic good in Table 1. By comparing Table 1, we can draw several conclusions: in Finnis's theory of the basic good (1) the changes in the categories of the basic good are reflected in the fact that the basic good of work and the basic good of aesthetics, respectively, become a part of the basic good of knowledge; (2) the changes in the content of the basic good, with the addition of the good of marriage; however, there are also some constants (3) it is always closely related to human behaviour, human life; (4) always with theological overtones; and (5) always insisting on the distinction between practical reason intrinsic and extrinsic. This reflects Finnis's refinement of the list of basic good with the development of society and his adherence to practical reasonableness and philosophical position on human affairs[4-7].

Table 1: The variation in the Finnis' scope and interpretation of the basic good

Natural law and Natural Rights (1980)	Practical Principles, Moral Truth, and Ultimate Ends (1987)		Is Natural Law Theory with Compatible with Limited Government (1996)
Life: health and safety.	Substantive basic good	Life: health and safety.	Life: physical life and its integral parts: health, vitality, security.
knowledge-related		Knowledge and aesthetic experience are further categories of basic goodness.	Knowledge: including aesthetic appreciation or reality
Play		Excellence in work and play.	Skilful performance at work and play
Aesthetic experience	Included in the Good of Knowledge		
Socializing (friendship): acting for the purpose, happiness of a friend.	Reflective/ Instrumental Basic Good	Friendship: various forms of harmony between individuals and groups.	Friendship or togetherness and union between human beings in all its forms and intensities. Marriage should be recognized as a unique and fundamental human good.
Practical reasonableness: (1) internally, to maintain a state of tranquility and harmony within ourselves; (2) externally, to make our behavior authentic and trustworthy. Involves freedom and rationality, integrity and authenticity.		Practical reasonableness: when human choice and judgment are in conflict (1) how to maintain inner peace; (2) harmony between human judgment, choice and performance.	Practical reasonableness (practical reasonableness): the harmony between one's feelings and judgments (internal integrity), and between one's judgments and actions (truthfulness).
"Religion": the ordering of the means to achieve the ends between the aforementioned basic good.		Make peace with God, or the gods, or some atheistic but transhuman meaning and value.	The widest reasonableness of all that is real, including meaning and value

The characteristics of the basic good in Finnis's new theory of natural law can be summarised in five ways: the basic good belongs to the pre-moral sphere, the basic good is self-evident, the basic good is incommensurable with each other, there is no hierarchy among the basic good, and the basic good is a necessary ingredient for the realisation of man's self-improvement. Finnis' definition of the basic good also expresses the role of the basic good - the justification of behaviour. Human behaviour at this point can be summarised as - actions initiated by reason and guided by the will (Pfandorf, 2009).

3.2 The character of the basic good

Finnis considers the basic good to be self-evident, incommensurable, and unprovable. It has been argued that Finnis's unprovable presupposition of the basic good makes Finnis's theory of natural law a natural law without nature (Weinreb, 1987). This is established from the perspective of classical natural law because the disproof of the basic good goes against the bedrock position of human nature in the whole theory of natural law. But it is in response to positivist questions about the metaphysical roots of natural law and the legitimacy of deriving legal rules (ought) from human nature (is) that Finnis proposes the presupposition that the basic good is self-evident. Moreover, he does not completely abandon the original status of human nature, he just stops making it the root of natural law. Finnis confronts the positivist challenge to the problem of the conflation of fact and value in natural law and proposes his own solution - the disproof of the basic good [8-12].

In addition to self-evidentness, Finnis argues that because the basic good is incommensurable, it is again non-hierarchical. Every value belongs equally self-evidently to the form of the good; and no value can be reduced analytically to an aspect of any other value, or a tool for pursuing other values, and again, when we focus on the pursuit of a particular value, it should be rationally assumed to be the most important. So there is no objective hierarchical order among the basic good.

3.3 Practical reasonableness: a methodology for realising the basic good

The basic good constitutes the fundamental aspect of a happy human life, and they are all worth pursuing and achieving. Our deep involvement in one of them requires essentially total commitment, but because life is short and human capacity is limited, we must make choices. Practical reasonableness

realises its own good by guiding one's participation in the basic good, the practice of commitment, the formulation of plans and their implementation. The principles that express the general ends of human life do not acquire what would nowadays be called a 'moral' force until they are brought to bear upon definite ranges of project, disposition, or action, or upon particular projects, dispositions, or actions(Finnis,2011).

3.4 Practical reasonableness transforms natural law into positive law

According to Finnis, the theory of natural law is characterised by the following four features:(1) The theory of natural law attempts to extract the human good as the primary principle of practical reason. In this way, it understands the nature of things and the reasons for human choices. (2) Natural law theories argue that moral judgements about rights and duties require the involvement of higher principles. The primary principle of natural law, rather than inclination (human nature), is the fundamental human good understood as the rationality of action. (3) The theory of natural law is a holistic principle that guides behaviour in a particular way. For it is guided by the coordinating, integrating function of the basic good for behaviour. (4) Natural law theory asserts that human societies and their formative concepts should be best understood in a universal way without illusion. From this summary, in Finnis's new theory of natural law, natural law is composed and realised in terms of practical reasonableness. In the realm of practice, both personal and social reasonableness is the embodiment of directive reasonableness, which points to aspects of human perfection. This characteristic is one of the reasons that allow natural law to be transformed into positive law through practical reasonableness[13-18].

Natural law, formulated through practical reasoning and analysis of norms, rules and laws, like the principles of natural law, has moral authority in the context of good people and virtuous environments. It is more justified and rational than other norms established directly by legal authority. Natural law formed from basic good has a certain normativity, as does knowledge, and through practical rationality, the normativity of natural law conceptually is transformed into normativity that can be enforced in positive law. Some basic good is indeed rational, such as love, but these rationalities remain 'irrational' if they remain at the level of intelligibility, to be determined by reason, and are not sifted out of the alternative good that can be exemplified by every person and concretised into the committed duties of particular persons. They are not authoritative because they cannot be materialised as guidelines for people's actions. The natural law, which is composed of good elements, does not naturally become a rational choice for human beings, but needs to be concretised by the legal authority into obligations for particular persons in order to be truly rational, and then to be transformed into positive law, which actually influences human behaviour.

4. Conclusion

4.1 Contribution of Finnis's theory of the basic good

The foundation of Finnis's new natural law theory is the theory of basic good, which runs throughout his new natural law theory. Finnis's justification of natural law through the basic good not only inspires us to think further about the ethical foundations and value roots of natural law and law, but also broadens the path to understanding the inner spirit, philosophy and purpose of natural law and law. In addition to this, Finnis's explanations of basic good and practical reasonableness can be used as a criterion for determining whether the law is good or not, pushing the law to keep on developing for the better, and ultimately achieving the goal of good law and good governance.

4.2 Deficiencies in Finnis's theory of the basic good

In the first instance, Finnis' explanation of the basic good is unclear (Hongjun Gao & Xiaoli Zhao, 2015).The basic good as defined by Finnis is only one of many. But since people are in different lives, they naturally have different experiences of what happiness and perfection entail. The basic good listed by Finnis does not cover all situations.

Secondly, on the question of facts and values. Finnis does not really address the dilemma of the fact-value dichotomy; the point of his argument is that natural law need not respond to the fact-value dichotomy. For on the one hand, Hume and legal positivism criticise natural law for deriving norms unjustifiably directly from human nature, but Finnis argues that natural law is rooted in the basic good,

not human nature. On the other hand, the basic good is self-evident and non-derivable, and it is itself irrelevant to the epistemological conundrum of natural law. And Finnis's own attitude towards the dichotomy between fact and value has changed. At the outset, when Finnis argued for the basic good's self-evident nature through the good of knowledge, he was adamant that facts could not be deduced from values. But in later polemics with McNaginney and Veitch, Finnis admits that in the realm of metaphysics, or moral philosophy, facts can derive value. One's primary understanding of what one knows about the basic good and what is worth having, doing, and becoming for human beings derives from when one thinks about what the good is to be, to have, and to do, and therefore what is (or will be) worth having, doing, and becoming. In other words, one's understanding or apprehension of the state of affairs one should have in one's life can be thought of as an expression of one's natural nature. This metaphysical apprehension also guides changes in human behaviour.

In both of these ways, Finnis actually avoids rather than actually addresses the fact-value dichotomy.

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